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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 153/01)

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

OJ C 141, 20.6.2009

Past publications

OJ C 129, 6.6.2009

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

These texts are available on:

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

COURT OF FIRST INSTANCE

Designation of the Judge replacing the President as the Judge hearing applications for interim measures

(2009/C 153/02)

On 16 June 2009, the Court of First Instance decided, in accordance with Article 106 of the Rules of Procedure, to designate Judge Papasavvas to replace the President of the Court for the purpose of deciding applications for interim measures where the latter is absent or prevented from dealing with them, in respect of the period from 1 July 2009 to 30 June 2010.

Appeal Chamber

(2009/C 153/03)

On 16 June 2009, the Court of First Instance decided that, for the period from 1 October 2009 to 31 August 2010, the Appeal Chamber will be composed of the President of the Court and, in rotation, two Presidents of Chambers.

The Judges who will sit with the President of the Appeal Chamber to make up the extended formation of five Judges will be the three Judges of the formation initially hearing the case and, in rotation, two Presidents of Chambers.

Criteria for assigning cases to Chambers

(2009/C 153/04)

On 16 June 2009, the Court of First Instance laid down the following criteria for the assignment of cases to the Chambers for the period from 1 October 2009 to 31 August 2010, in accordance with Article 12 of the Rules of Procedure:

1. Appeals against the decisions of the Civil Service Tribunal shall be assigned to the Appeal Chamber as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

2. Cases other than those referred to in paragraph 1 above shall be assigned to Chambers of three Judges as soon as the application has been lodged and without prejudice to any subsequent application of Articles 14 and 51 of the Rules of Procedure.

   Cases referred to in this paragraph shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following three separate rotas:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures;

   — for cases concerning the intellectual property rights referred to in Article 130(1) of the Rules of Procedure;

   — for all other cases.

   In applying those rotas, the two Chambers sitting with three Judges which are composed of four Judges shall be taken into consideration twice at each third turn.

   The President of the Court of First Instance may derogate from the rotas on the ground that cases are related or with a view to ensuring an even spread of the workload.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 14 May 2009 (reference for a preliminary ruling from the Oberlandesgericht Wien (Austria)) — Renate Ilsinger v Martin Dreschers, acting as administrator in the insolvency of Schlank & Schick GmbH

(Case C-180/06) [1]

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Jurisdiction over consumer contracts — Entitlement of a consumer to whom misleading advertising has been sent to seek payment, in judicial proceedings, of the prize which he has apparently won — Classification — Action of a contractual nature covered by Article 15(1)(c) of that regulation — Conditions)

(2009/C 153/05)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Renate Ilsinger

Defendant: Martin Dreschers, acting as administrator in the insolvency of Schlank & Schick GmbH

Re:

Reference for a preliminary ruling — Oberlandesgericht Wien — Interpretation of Article 15(1)(c) 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) — National consumer protection law providing for a right to the prize allegedly won by the addressee of the misleading advertisement

Operative part of the judgment

In a situation such as that at issue in the main proceedings, in which a consumer seeks, in accordance with the legislation of the Member State in which he is domiciled and before the court for the place in which he resides, an order requiring a mail-order company established in another Member State to pay a prize which that consumer has apparently won, and

— *where that company, with the aim of encouraging that consumer to conclude a contract, sent a letter addressed to him personally of such a kind as to give him the impression that he would be awarded a prize if he requested payment by returning the 'prize claim certificate' attached to that letter,*

— *but without the award of that prize depending on an order for goods offered for sale by that company or on a trial order,*

the rules on jurisdiction laid down by 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 follows:

— *such legal proceedings brought by the consumer are covered by Article 15(1)(c) of that regulation, on condition that the professional vendor has undertaken in law to pay that prize to the consumer;*

— *where that condition has not been fulfilled, such proceedings are covered by Article 15(1)(c) of Regulation No 44/2001 only if the consumer has in fact placed an order with that professional vendor.*

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[1] OJ C 165, 15.7.2006.

Judgment of the Court (First Chamber) of 30 April 2009 — Commission of the European Communities v Italian Republic, Wam Spa

(Case C-494/06 P) [1]

(Appeal — State aid — Loans at reduced rates to enable a firm to establish itself in certain third countries — Effect on trade between Member States — Distortion of competition — Trade with non-member States — Commission decision — Unlawful State aid — Obligation to state the reasons on which the decision is based)

(2009/C 153/06)

Language of the case: Italian

Parties

Appellant: Commission of the European Communities (represented by: V. Di Bucci and E. Righini, Agents)

Other party to the proceedings: Italian Republic (represented by: I.M. Braguglia, Agent, and P. Gentili, avvocato dello Stato), Wam SpA (represented by E. Giliani, avvocato)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 6 September 2006 Italian Republic and Wam v Commission (Joined Cases T-304/04 and T 316/04) whereby the Court annulled Commission Decision 2006/177/EC of 19 May 2004 on State aid No C 4/2003 (ex NN 102/2002) implemented by Italy for Wam SpA (OJ 2006 L 63, p. 11)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Commission of the European Communities to pay the costs at both instances.*

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[1] OJ C 20, 27.1.2007.

Judgment of the Court (Fourth Chamber) of 30 April 2009 — CAS Succhi di Frutta SpA v Commission of the European Communities

(Case C-497/06 P) [1]

(Appeal — Non-contractual liability — Tendering procedure — Payment in kind — Payment of the tenderers in fruits other than those specified in the notice of invitation to tender — Causal link)

(2009/C 153/07)

Language of the case: Italian

Parties

Appellant: CAS Succhi di Frutta SpA (represented by: F. Sciaudone, R. Sciaudone and R. Fioretti, avvocati)

Other party to the proceedings: Commission of the European Communities (represented by: C. Cattabriga, Agent, and A. Dal Ferro, avvocato)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 13 September 2006 in Case T-226/01 *CAS Succhi di Frutta* v *Commission*, by which the Court dismissed the action for compensation for the alleged loss caused by the Commission's Decisions C(96)1916 of 22 July 1996 and C(96)2208 of 6 September 1996, adopted within the framework of Commission Regulation (EC) No 228/96 of 7 February 1996 on the supply of fruit juice and fruit jams intended for the people of Armenia and Azerbaijan (OJ 1996 L 30, p. 18)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders CAS Succhi di Frutta SpA to pay the costs.*

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[1] OJ C 42 of 24.2.2007.

Judgment of the Court (Grand Chamber) of 28 April 2009 — Commission of the European Communities v Italian Republic

(Case C-518/06) [1]

(Failure of a Member State to fulfil obligations — Third-party liability motor insurance — Articles 43 EC and 49 EC — Directive 92/49/EEC — National legislation imposing an obligation to insure on insurance undertakings — Restriction on the freedom of establishment and on the freedom to provide services — Social protection for victims of road traffic accidents — Proportionality — Insurance undertakings' freedom to set rates — Principle of supervision by the home Member State)

(2009/C 153/08)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by E. Traversa and N. Yerrell, Agents)

Defendant: Italian Republic (represented by I.M. Braguglia, Agent, and by M. Fiorilli, avvocato dello Stato)

Intervener in support of the defendant: Republic of Finland (represented by J. Himmanen, Agent)

Re:

Failure to fulfil obligations — Infringement of Articles 43 EC and 49 EC — Infringement of Articles 6, 9, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third

non-life insurance Directive) (OJ 1992 L 228, p. 1) — Calculation of insurance premiums — Obligations imposed on insurers whose head office is in another Member State

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities, the Italian Republic and the Republic of Finland to bear their own costs.*

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Grand Chamber) of 19 May 2009 — Commission of the European Communities v Italian Republic

(Case C-531/06) (1)

(Failure of a Member State to fulfil obligations — Freedom of establishment — Free movement of capital — Articles 43 EC and 56 EC — Public health — Pharmacies — Provisions restricting the right to operate a pharmacy to pharmacists alone — Justification — Reliability and quality of the provision of medicinal products to the public — Professional independence of pharmacists — Undertakings engaged in the distribution of pharmaceutical products — Municipal pharmacies)

(2009/C 153/09)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and H. Krämer, Agents, assisted by G. Giacomini and E. Boglione, avvocati)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, assisted by G. Fiengo, Agents, avvocato dello Stato)

Interveners in support of the defendant: Hellenic Republic (represented by: E. Skandalou, Agent), Kingdom of Spain (represented by: J. Rodríguez Cárcamo and F. Díez Moreno, Agents), French Republic (represented by: G. de Bergues and B. Messmer, Agents), Republic of Latvia (represented by: E. Balode-Buraka and L. Ostrovska, Agents), Republic of Austria (represented by: C. Pesendorfer and T. Kröll, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 56 EC — Rules governing ownership of pharmacies

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities, the Italian Republic, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Latvia and the Republic of Austria to bear their own costs.*

(1) OJ C 42, 24.2.2007.

Judgment of the Court (Grand Chamber) of 19 May 2009 (references for a preliminary ruling from the Verwaltungsgericht des Saarlandes — Germany) — Apothekerkammer des Saarlandes, Marion Schneider, Michael Holzapfel, Fritz Trennheuser, Deutscher Apothekerverband eV (C-171/07) and Helga Neumann-Seiwert (C-172/07) v Saarland and Ministerium für Justiz, Gesundheit und Soziales

(Joined Cases C-171/07 and C-172/07) (1)

(Freedom of establishment — Article 43 EC — Public health — Pharmacies — Provisions restricting the right to operate a pharmacy to pharmacists alone — Justification — Reliability and quality of the provision of medicinal products to the public — Professional independence of pharmacists)

(2009/C 153/10)

Language of the case: German

Referring court

Verwaltungsgericht des Saarlandes

Parties to the main proceedings

Claimants: Apothekerkammer des Saarlandes, Marion Schneider, Michael Holzapfel, Fritz Trennheuser, Deutscher Apothekerverband eV (C-171/07) and Helga Neumann-Seiwert (C-172/07)

Defendants: Saarland and Ministerium für Justiz, Gesundheit und Soziales

Joined party: DocMorris NV

Re:

Reference for a preliminary ruling — Verwaltungsgericht des Saarlandes — Interpretation of Articles 10 EC, 43 EC and 48 EC — Authorisation to operate pharmacies restricted, under national legislation, to pharmacists who personally manage the pharmacy — Authorisation given by the national authorities to a legal person in view of the direct effect of Community law — Conditions under which national law should be disapplied

Operative part of the judgment

Articles 43 EC and 48 EC do not preclude national legislation, such as that at issue in the main actions, which prevents persons not having the status of pharmacist from owning and operating pharmacies.

(1) OJ C 140, 23.6.2007.

Judgment of the Court (Fourth Chamber) of 30 April 2009 — Italian Republic v European Parliament

(Joined Cases C-393/07 and C-9/08) ([1])

(Action for annulment — Decision of the European Parliament of 24 May 2007 on the verification of the credentials of Beniamino Donnici — Member of the European Parliament — Verification of the credentials of a Member of the Parliament — Appointment of a member resulting from the withdrawal of candidates — Articles 6 and 12 of the 1976 Act)

(2009/C 153/11)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: I. Braguglia, R. Adam, Agents, P. Gentili, avvocato dello Stato) (C-393/07)

Intervener in support of the applicant: Republic of Latvia

Applicant: Beniamino Donnici (represented by: M. Sanino, G. M. Roberti, I. Perego and P. Salvatore, avvocati) (C-9/08)

Intervener in support of the applicant: Italian Republic

Defendant: European Parliament (represented by: H. Krück, N. Lorenz, L. Visaggio, Agents, E. Cannizzaro, Professor)

Intervener in support of the defendant: Achille Occhetto (represented by: P. De Caterini and F. Paola, avvocati)

Re:

Annulment of Decision P6_TA-PROV(2007)0209 of the European Parliament of 24 May 2007 concerning the verification of Beniamino Donnici's credentials [2007/2121/(REG)], notified on 28 May 2007 — Member of the European Parliament — Verification of credentials — Appointment of a Member due to the withdrawal of candidates

Operative part of the judgment

The Court:

1. *Annuls Decision 2007/2121(REG) of the European Parliament of 24 May 2007 on the verification of credentials of Mr Beniamino Donnici;*

2. *Orders the European Parliament to pay Mr Donnici's costs and those incurred by the Italian Republic as applicant;*

3. *Orders the Italian Republic as intervener, the Republic of Latvia and Mr Occhetto to bear their own costs.*

([1]) OJ C 247, 20.10.2007.

Judgment of the Court (Fifth Chamber) of 7 May 2009 — Waterford Wedgwood plc v Assembled Investments (Proprietary) Ltd, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-398/07 P) ([1])

(Appeal — Community trade mark — Figurative mark WATERFORD STELLENBOSCH — Opposition by the proprietor of the Community word mark WATERFORD — Refusal to register by the Board of Appeal)

(2009/C 153/12)

Language of the case: English

Parties

Appellant: Waterford Wedgwood plc (represented by: J. Pagenberg, Rechtsanwalt)

Other parties to the proceedings: Assembled Investments (Proprietary) Ltd (represented by: P. Hagman, asianajaja, and J. Palm, tavaramerkkiasiamies), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Re:

Appeal against the judgment of the Second Chamber of the Court of First Instance of 12 June 2007 in Case T-105/05 *Assembled Investments (Proprietary)* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM)* annulling Decision R 240/2004-1 of the First Board of Appeal of OHIM of 15 December 2004 which annulled the decision of the Opposition Division dismissing the opposition filed by the proprietor of the Community word mark 'WATERFORD' in respect of goods in Classes 3, 8, 11, 21, 24 and 34

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Waterford Wedgwood plc to pay the costs.*

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Grand Chamber) of 28 April 2009 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — Meletis Apostolides v David Charles Orams, Linda Elizabeth Orams

(Case C-420/07) [1]

(Reference for a preliminary ruling — Protocol No 10 on Cyprus — Suspension of the application of the — Regulation (EC) No 44/2001 — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Judgment given by a Cypriot court sitting in the area effectively controlled by the Cypriot Government and concerning immovable property situated outside that area — Articles 22(1), 34(1) and (2), 35(1) and 38(1) of that regulation)

(2009/C 153/13)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division)

Parties to the main proceedings

Applicant: Meletis Apostolides

Defendants: David Charles Orams, Linda Elizabeth Orams

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Article 10(1) of Protocol No 10 to the Act of Accession of Cyprus and of Articles 22, 34(1) and (2) and 35(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) — Suspension of the application of the *acquis communautaire* in those areas in which the Government does not exercise effective control — Recognition and enforcement by the court of another Member State of a decision given by a Cypriot court sitting in the area of effective control and relating to land situated outside that area

Operative part of the judgment

1. *The suspension of the application of the acquis communautaire in those areas of the Republic of Cyprus in which the Government of that Member State does not exercise effective control, provided for by Article 1(1) of Protocol No 10 on Cyprus to the Act concerning the conditions of accession [to the European Union] of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, does not preclude the application 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 to a judgment which is given by a Cypriot court sitting in the area of the island effectively controlled by the Cypriot Government, but concerns land situated in areas not so controlled.*

2. *Article 35(1) of Regulation No 44/2001 does not authorise the court of a Member State to refuse recognition or enforcement of a judgment given by the courts of another Member State concerning land situated in an area of the latter State over which its Government does not exercise effective control.*

3. *The fact that a judgment given by the courts of a Member State, concerning land situated in an area of that State over which its Government does not exercise effective control, cannot, as a practical matter, be enforced where the land is situated does not constitute a ground for refusal of recognition or enforcement under Article 34(1) of Regulation No 44/2001 and it does not mean that such a judgment is unenforceable for the purposes of Article 38(1) of that regulation.*

4. *The recognition or enforcement of a default judgment cannot be refused under Article 34(2) of Regulation No 44/2001 where the defendant was able to commence proceedings to challenge the default judgment and those proceedings enabled him to argue that he had not been served with the document which instituted the proceedings or with the equivalent document in sufficient time and in such a way as to enable him to arrange for his defence.*

[1] OJ C 297, 8.12.2007.

Judgment of the Court (Second Chamber) of 7 May 2009 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Associação Nacional de Transportadores Rodoviários de Pesados de Passageiros (Antrop), J. Espírito Santo & Irmãos Lda, Sequeira, Lucas, Venturas & Ca Lda, Barraqueiro Transportes SA, Rodoviária de Lisboa v Conselho de Ministros, Companhia Carris de Ferro de Lisboa SA (Carris), Sociedade de Transportes Colectivos do Porto SA (STCP)

(Case C-504/07) [1]

(Regulation (EEC) No 1191/69 — Public service obligations — Grant of compensation — Urban passenger transport sector)

(2009/C 153/14)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Associação Nacional de Transportadores Rodoviários de Pesados de Passageiros (Antrop), J. Espírito Santo & Irmãos Lda, Sequeira, Lucas, Venturas & Ca Lda, Barraqueiro Transportes SA, Rodoviária de Lisboa

Defendants: Conselho de Ministros, Companhia Carris de Ferro de Lisboa SA (Carris), Sociedade de Transportes Colectivos do Porto SA (STCP)

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 73 EC, 76 EC, 87 EC, and 88 EC and of Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the conditions inherent in the concept of a public service in transport by rail, road and inland waterway (OJ 1969 L 156, p. 1) — Municipal public passenger transport service — Existence or not of duty of compensation — Aid intended to compensate for operating deficits of undertakings

Operative part of the judgment

1. *Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway, as amended by Council Regulation (EEC) No 1893/91 of 20 June 1991, must be interpreted as meaning that it authorises the Member States to impose public service obligations on a public undertaking entrusted with the provision of public passenger transport in a municipality and that it provides for compensation to be granted in respect of the financial burdens resulting therefrom; the amount of such compensation is to be determined in accordance with the provisions of that regulation.*

2. *Regulation No 1191/69, as amended by Regulation No 1893/91, precludes the grant of compensation payments, such as those at issue in the main proceedings, where it is not possible to determine the amount of the costs imputable to the activity of the undertakings concerned carried out in the performance of their public service obligations.*

3. *Where a national court finds certain aid measures to be incompatible with Regulation No 1191/69, as amended by Regulation No 1893/91, it is a matter for that court to establish all the consequences, under national law, as regards the validity of the acts giving effect to those measures.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Seventh Chamber) of 7 May 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-516/07) ([1])

(Failure to fulfil obligations — Directive 2000/60/EC — Framework for Community action in the field of water policy — Designation of competent authorities for hydrographic districts)

(2009/C 153/15)

Language of the case: Spanish

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the measures necessary to comply with Article 3(2), (7) and (8) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1)

Operative part

The Court:

1. *Declares that, by failing to designate the competent authorities for the application of the rules of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) and (7) of that directive;*

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

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Fifth Chamber) of 7 May 2009 — Commission of the European Communities v Portuguese Republic

(Case C-530/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Pollution and nuisance — Urban waste water treatment — Articles 3 and 4)

(2009/C 153/16)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and M. J. Lois, acting as Agents)

Re:

Failure of Member State to fulfil obligations — Failure to adopt in the prescribed period the measures necessary to comply with Art. 3 and 4 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40)

Operative part of the judgment

The Court:

1. *Declares that, by failing to provide, in accordance with the provisions of Article 3 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, the agglomerations of Bacia do Rio Uima (Fiães S. Jorge), Costa de Aveiro, Covilhã, Espinho/Feira, Ponta Delgada, Póvoa de Varzim/Vila do Conde and Santa Cita with collection systems, and by failing to subject to secondary treatment or an equivalent treatment, in accordance with Article 4 of that directive, the urban waste water from the agglomerations of Alverca, Bacio do Rio Uima (Fiães S. Jorge), Carvoeiro, Costa de Aveiro, Costa Oeste, Covilhã, Lisbon, Matosinhos, Milfontes, Nazaré/Famalicão, Ponta Delgada, Póvoa de Varzim/Vila do Conde, Santa Cita, Vila Franca de Xira and Vila Real de Santo António, the Portuguese Republic has failed to fulfil its obligations under Articles 3 and 4 of that directive.*

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

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Second Chamber) of 30 April 2009 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH

(Case C-531/07) ([1])

(Free movement of goods — National provisions on the obligation to sell imported books at fixed price — Measure having equivalent effect to a quantitative restriction on imports — Justification)

(2009/C 153/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Fachverband der Buch- und Medienwirtschaft

Defendant: LIBRO Handelsgesellschaft mbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Articles 3(1) EC, 10 EC, 28 EC, 30 EC, 81 EC and 151 EC — National legislation requiring importers of German language books to fix a retail sales price which cannot be lower than that fixed for the country of origin

Operative part of the judgment

1. *National provisions which prohibit importers of German-language books from fixing a price lower than the retail price fixed or recommended by the publisher in the State of publication constitute a 'measure having equivalent effect to a quantitative restriction on imports' within the meaning of Article 28 EC.*

2. *National provisions which prohibit importers of German-language books from fixing a price lower than the retail price fixed or recommended by the publisher in the State of publication cannot be justified under Articles 30 EC and 151 EC or by overriding requirements in the public interest.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Fourth Chamber) of 19 May 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia — Italy) — Assitur Srl v Camera di Commercio, Industria, Artigianato e Agricoltura di Milano

(Case C-538/07) ([1])

(Directive 92/50/EEC — First paragraph of Article 29 — Public service contracts — National legislation not allowing companies linked by a relationship of control or significant influence to participate, as competing tenderers, in the same procedure for the award of a public contract)

(2009/C 153/18)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Assitur Srl

Defendant: Camera di Commercio, Industria, Artigianato e Agricoltura di Milano

In the presence of: SDA Express Courier SpA, Poste Italiane SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Lombardia — Interpretation of Article 29 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) — National legislation

precluding undertakings which are linked or controlled from participating individually in public procurement procedures for the supply of services

Operative part of the judgment

1. *The first paragraph of Article 29 of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts must be interpreted as not precluding a Member State from laying down, in addition to the grounds for exclusion contained in that provision, other grounds for exclusion intended to guarantee respect for the principles of equality of treatment and transparency, provided that such measures do not go beyond what is necessary to achieve that objective.*

2. *Community law precludes a national provision which, while pursuing legitimate objectives of equality of treatment of tenderers and transparency in procedures for the award of public contracts, lays down an absolute prohibition on simultaneous and competing participation in the same tendering procedure by undertakings linked by a relationship of control, without allowing them an opportunity to demonstrate that that relationship did not influence their conduct in the course of that tendering procedure.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Third Chamber) of 7 May 2009 (reference for a preliminary ruling from the Raad van State (Netherlands)) — College van burgemeester en wethouders van Rotterdam v M.E.E. Rijkeboer

(Case C-553/07) ([1])

(Protection of individuals with regard to the processing of personal data — Directive 95/46/EC — Respect for private life — Erasure of data — Right of access to data and to information on the recipients of data — Time-limit on the exercise of the right to access)

(2009/C 153/19)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: College van burgemeester en wethouders van Rotterdam

Defendant: M.E.E. Rijkeboer

Re:

Preliminary ruling — Raad van State (Netherlands) — Interpretation of Articles 6(1)(e) and 12(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — National legislation limiting the right of access to data processed during the year prior to the request for access — Principle of proportionality

Operative part of the judgment

1. *Article 12(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data requires Member States to ensure a right of access to information on the recipients or categories of recipient of personal data and on the content of the data disclosed not only in respect of the present but also in respect of the past. It is for Member States to fix a time-limit for storage of that information and to provide for access to that information which constitutes a fair balance between, on the one hand, the interest of the data subject in protecting his privacy, in particular by way of his rights to object and to bring legal proceedings and, on the other, the burden which the obligation to store that information represents for the controller.*

2. *Rules limiting the storage of information on the recipients or categories of recipient of personal data and on the content of the data disclosed to a period of one year and correspondingly limiting access to that information, while basic data is stored for a much longer period, do not constitute a fair balance of the interest and obligation at issue, unless it can be shown that longer storage of that information would constitute an excessive burden on the controller. It is, however, for national courts to make the determinations necessary.*

([1]) OJ C 64, 8.3.2008.

Judgment of the Court (Fifth Chamber) of 30 April 2009 (reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany)) — BIOS Naturprodukte GmbH v Saarland

(Case C-27/08) ([1])

(Directive 2001/83/EC — Article 1(2)(b) — Concept of 'medicinal product by function' — Dosage of the product — Normal conditions of use — Risk to health — Ability to restore, correct or modify physiological functions in human beings)

(2009/C 153/20)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: BIOS Naturprodukte GmbH

Defendant: Saarland

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 1(2) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34) — Definition of medicinal product — Product containing a substance having a therapeutic effect in high doses, while capable of being harmful in lower doses, like the dose recommended by the manufacturer — Boswellia extract

Operative part of the judgment

Article 1(2) 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, must be interpreted as meaning that a product which includes in its composition a substance which has a physiological effect when used in a particular dosage is not a medicinal product by function where, having regard to its content in active substances and under normal conditions of use, it constitutes a risk to health without, however, being capable of restoring, correcting or modifying physiological functions in human beings.

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (First Chamber) of 14 May 2009 (reference for a preliminary ruling from the Tribunale ordinario di Padova (Italy)) — Azienda Agricola Disarò Antonio and Others v Cooperativa Milka 2000 Soc. coop. arl

(Case C-34/08) ([1])

(Agriculture — Common organisation of the markets — Milk quotas — Levy — Validity of Regulation (EC) No 1788/2003 — Objectives of the common agricultural policy — Principles of non-discrimination and proportionality — Determination of the national reference quantity — Criteria — Relevance of the criterion of a Member State's milk production deficit)

(2009/C 153/21)

Language of the case: Italian

Referring court

Tribunale ordinario di Padova

Parties to the main proceedings

Applicant: Azienda Agricola Disarò Antonio and Others

Defendant: Cooperativa Milka 2000 Soc. coop. arl

Re:

Reference for a preliminary ruling — Tribunale ordinario di Padova — Interpretation and validity of Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector (OJ 2003 L 270, p.123) — Regulation under which (i) no account is taken of the periodic updating for each country of the reference quantities exempt from the levy and (ii) the additional levy is applied in an identical manner to producers with surplus milk production and to those in deficit — Incompatibility with Articles 5, 32, 33 et 34 EC

Operative part of the judgment

1. *The fact that Council Regulation (EC) No 1788/2003 of 29 September 2003 establishing a levy in the milk and milk products sector does not take into account, for the purposes of determining the national reference quantity, the fact that the Member State concerned has a milk production deficit is not capable of affecting the compatibility of that regulation with the objectives laid down, in particular, in Article 33(1)(a) and (b) EC.*

2. *The analysis of Regulation No 1788/2003 in the light of the principle of non-discrimination has not disclosed any factor which might affect the validity of that regulation.*

3. *The analysis of Regulation No 1788/2003 in the light of the principle of proportionality has not disclosed any factor which might affect the validity of that regulation.*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Second Chamber) of 30 April 2009 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) (United Kingdom)) — The Queen on the application of Christopher Mellor v Secretary of State for Communities and Local Government

(Case C-75/08) ([1])

(Directive 85/337/EEC — Assessment of the effects of projects on the environment — Obligation to make public the reasons for a determination not to make a project subject to an assessment)

(2009/C 153/22)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: The Queen on the application of Christopher Mellor

Defendant: Secretary of State for Communities and Local Government

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Article 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Obligation to make available to the public reasons for a decision not to subject a project falling within the classes listed in Annex II to the directive to an assessment

Operative part of the judgment

1. *Article 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as not requiring that a determination, that it is unnecessary to subject a project falling within Annex II to that directive to an environmental impact assessment, should itself contain the reasons for the competent authority's decision that the latter was unnecessary. However, if an interested party so requests, the competent administrative authority is obliged to communicate to him the reasons for the determination or the relevant information and documents in response to the request made.*

2. *If a determination of a Member State not to subject a project, falling within Annex II to Directive 85/337 as amended by Directive 2003/35, to an environmental impact assessment in accordance with Articles 5 to 10 of that directive, states the reasons on which it is based, that determination is sufficiently reasoned where the reasons which it contains, added to factors which have already been brought to the attention of interested parties, and supplemented by any necessary additional information which the competent national administration is required to provide to those interested parties at their request, can enable them to decide whether to appeal against that decision.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court (Eighth Chamber) of 30 April 2009 (reference for a preliminary ruling from the Fővárosi Bíróság (Republic of Hungary)) — Lidl Magyarország Kereskedelmi bt. v Nemzeti Hírközlési Hatóság Tanácsa

(Case C-132/08) ([1])

(Free movement of goods — Radio equipment and telecommunications terminal equipment — Mutual recognition of conformity — Non-recognition of the declaration of conformity issued by the manufacturer established in another Member State)

(2009/C 153/23)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Lidl Magyarország Kereskedelmi bt.

Defendant: Nemzeti Hírközlési Hatóság Tanácsa

Re:

Reference for a preliminary ruling — Fővarosi Bíróság — Interpretation of Article 30 EC, of Article 8 of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10) and of Articles 2(e) and (f), 6(1) and 8(2) of Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ 2002 L 11, p. 4) — National legislation requiring importers of radio equipment using frequency bands whose use is not harmonised throughout the Community and bearing the CE mark to issue a declaration of conformity in accordance with the provisions of national law, even if the equipment at issue is accompanied by a declaration of conformity issued by the producer established ion another Member State

Operative part of the judgment

1. *Member States cannot require a person who places radio equipment on the market to provide a declaration of conformity even though the producer of that equipment, whose head office is situated in another Member State, has affixed the 'CE' marking to that product and issued a declaration of conformity in its regard.*

2. *Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety does not apply to the determination of questions concerning the obligation of a person to provide a declaration of conformity of radio equipment. As regards the power of the Member States, in accordance with Directive 2001/95, in connection with the marketing of radio equipment, to impose obligations other than the presentation of a declaration of conformity, a person who markets a product may be regarded as being the producer of that product only under the conditions laid down by Directive 2001/95 itself in Article 2(e), and as being the distributor of that product only under the conditions set out in Article 2(f). The producer and the distributor may be bound only by obligations which Directive 2001/95 imposes on each of them respectively.*

3. *Where a matter is regulated in a harmonised manner at Community level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure and not in that of Articles 28 EC and 30 EC. In matters coming under Directive 1999/5 of the European Parliament and*

of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, Member States must comply in full with the provisions of that directive and may not maintain in force contrary national provisions. In the case where a Member State takes the view that conformity with a harmonised standard does not guarantee compliance with the essential requirements laid down by Directive 1999/5 which that standard is supposed to cover, that Member State is required to follow the procedure set out in Article 5 of that directive. By contrast, a Member State may, in support of a restriction, invoke grounds external to the field harmonised by Directive 1999/5. In such a case, it may invoke only the reasons laid down in Article 30 EC or mandatory requirements relating to the public interest.

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (Third Chamber) of 7 May 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — Siebrand BV v Staatssecretaris van Financiën

(Case C-150/08) ([1])

(Combined Nomenclature — Tariff headings 2206 and 2208 — Fermented beverage containing distilled alcohol — Beverage produced from fruit or from a natural product — Addition of substances — Effects — Loss of the taste, smell and appearance of the original beverage)

(2009/C 153/24)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden Den Haag

Parties to the main proceedings

Applicant: Siebrand BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag –Interpretation of tariff headings 2206 and 2208 of the Combined Nomenclature — Fermented beverage containing distilled alcohol — Addition of water and ingredients resulting in a loss of the taste, smell and/or appearance of a beverage produced from fruit or from a natural product

Operative part of the judgment

Fermented alcohol-based beverages corresponding originally to heading 2206 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EEC) No 2587/91 of 26 July 1991, to which a certain proportion of distilled alcohol, water, sugar syrup, aromas, colourings and, in some cases, a cream base have been added, resulting in the loss of the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product, do not come under heading 2206 of the Combined Nomenclature but rather under heading 2208 thereof.

([1]) OJ C 171, 5.7.2008.

Judgment of the Court (Third Chamber) of 14 May 2009 (reference for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium)) — Internationaal Verhuis- en Transportbedrijf Jan de Lely BV v Belgische Staat

(Case C-161/08) ([1])

(Free movement of goods — Community transit — Transport operations carried out under cover of a TIR carnet — Offences or irregularities — Notification period — Period within which proof must be furnished of the place where the offence or irregularity was committed)

(2009/C 153/25)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicant: Internationaal Verhuis- en Transportbedrijf Jan de Lely BV

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van beroep te Antwerpen — Interpretation of Article 2 of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents (OJ 1991 L 148, p. 11), read in conjunction with Article 11 of the TIR Convention — Offences or irregularities — Notification period

Operative part of the judgment

1. *Article 2(1) of Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents, read in conjunction with Article 11(1) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as meaning that failure to comply with the period within which the holder of a TIR carnet is to be notified of its non-discharge does not have the consequence that the competent customs authorities forfeit the right to recover the duties and taxes due in respect of the international transport of goods made under cover of that carnet.*

2. *Article 2(2) and (3) of Regulation No 1593/91, read in conjunction with Article 11(1) and (2) of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, signed in Geneva on 14 November 1975, must be interpreted as determining only the period within which proof is to be furnished of the regularity of the transport operation, and not the period within which proof must be provided as to the place where the offence or irregularity was committed. It is for the national court to determine, according to the principles of national law on evidence, whether, in the specific case before it and in the light of all the circumstances, that proof was furnished within the period prescribed. However, the national court must determine that period in compliance with Community law and, in particular, must take account of the fact, first, that the period must not be so long as to make it legally and materially impossible to recover the amounts due in another Member State, and, second, that that period must not make it materially impossible for the TIR carnet holder to furnish that proof.*

([1]) OJ C 183, 19.7.2008.

Judgment of the Court (Sixth Chamber) of 19 May 2009 — Commission of the European Communities v Portuguese Republic

(Case C-253/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2006/22/EC — Approximation of laws — Social legislation relating to road transport activities — Failure to transpose within the prescribed period)

(2009/C 153/26)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell and M. Teles Romão, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and F. Fraústo de Azevedo, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ 2006 L 102, p. 35)

Operative part of the judgment

The Court:

1. *declares that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, the Portuguese Republic has failed to fulfil its obligations under Directive 2006/22;*

2. *orders the Portuguese Republic to pay the costs.*

([1]) OJ C 223, 30.8.2008.

Judgment of the Court (Eighth Chamber) of 30 April 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-256/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/83/EC — Minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection — Failure to transpose the directive within the prescribed period)

(2009/C 153/27)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: C. O'Reilly and M. Condou-Durande, acting as Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, 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 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

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

(1) OJ C 197, 2.8.2008.

Judgment of the Court (Sixth Chamber) of 14 May 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-266/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2004/81/EC — Residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities — Failure to transpose completely — Failure to communicate the measures to transpose the directive)

(2009/C 153/28)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and E. Adsera Ribera, acting as Agents, 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 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ 2004 L 261, p. 19)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and by failing to communicate to the Commission of the European Communities, the provisions of national law intended to contribute to ensuring such compliance, 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 209, of 15.8.2008.

Judgment of the Court (Eighth Chamber) of 19 May 2009 — Commission of the European Communities v Italian Republic

(Case C-313/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2003/58/EC — Company law — Documents and particulars subject to disclosure — Letters and order forms — Penalties — Failure to transpose within the period prescribed)

(2009/C 153/29)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: I. Bruni, Agent, and G. Fiengo, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, all the provisions necessary to comply with Article 1(4), (5) and (6) of Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC as regards disclosure requirements in respect of certain types of companies (OJ 2003 L 221, p. 13)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the laws, regulations and administrative provisions necessary to comply with Article 1(4), (5) and (6) of Directive 2003/58/EC of the European Parliament and of the Council of 15 July 2003 amending Council Directive 68/151/EEC, as regards disclosure requirements in respect of certain types of companies, the Italian Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 223, 30.8.2008.

Judgment of the Court (Sixth Chamber) of 14 May 2009 — Commission of the European Communities v Kingdom of Sweden

(Case C-322/08) [1]

(Failure of a Member State to fulfil obligations — Directive 2004/83/EC — Failure to transpose within the prescribed period)

(2009/C 153/30)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and J. Enegren, acting as Agents)

Defendant: Kingdom of Sweden (represented by: S. Johannesson, 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 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12)

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 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the Kingdom of Sweden failed to fulfil its obligations under that directive;*

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

[1] OJ C 223 of 30.8.2008.

Judgment of the Court (Sixth Chamber) of 19 May 2009 — Commission of the European Communities v Hellenic Republic

(Case C-368/08) [1]

(Failure of a Member State to fulfil obligations — Directive 2004/35/EC — Remedying of environmental damage — 'Polluter pays' principle))

(2009/C 153/31)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and I. Dimitriou, 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 provisions necessary to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

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 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, the Hellenic Republic has failed to fulfil its obligations under Article 19(1) of that directive;*

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

[1] OJ C 247, 27.9.2008.

Judgment of the Court (Seventh Chamber) of 14 May 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-390/08) [1]

(Failure of a Member State to fulfil obligations — Environment — Decision No 280/2004/EC — Implementation of the Kyoto Protocol — National measures intended to limit and/or reduce greenhouse gas emissions — Failure to communicate the information required)

(2009/C 153/32)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and J.-P. Keppenne, acting as Agents)

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to communicate, within the prescribed time-limit, the information required by Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community

greenhouse gas emissions and for implementing the Kyoto Protocol (OJ 2004 L 49, p. 1), read in conjunction with Articles 8 to 11 of Commission Decision No 2005/166/EC of 10 February 2005 laying down rules implementing Decision No 280/2004/EC (OJ 2005 L 55, p. 57) — Information relating to national projections concerning greenhouse gas emissions and measures adopted to limit and/or reduce such emissions

Operative part of the judgment

The Court:

1. *Declares that, by failing to communicate the information required by 15 March 2007 under Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol, read in conjunction with Articles 8 to 11 of Commission Decision No 2005/166/EC of 10 February 2005 laying down rules implementing Decision No 280/2004/EC, the Grand Duchy of Luxembourg failed to fulfil its obligations under those provisions;*

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

([1]) OJ C 285 of 8.11.2008.

Judgment of the Court (Third Chamber) of 7 May 2009 — Commission of the European Communities v French Republic

(Case C-443/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 1999/13/EC — Limitation of emissions of volatile organic compounds — Failure to transpose the concepts of 'small installation' and 'substantial change')

(2009/C 153/33)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and A. Adam, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt all the all the laws and regulations necessary to correctly transpose Article 2(3), 2(4) and 4(4) of Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ 1999 L 85, p. 1) — Concept of 'small installation' and 'substantial change'

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary in order to correctly transpose Articles 2(3), 2(4) and 4(4) of Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, the French Republic has failed to fulfil its obligations under that directive.*

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

([1]) OJ C 6, of 10.1.2009.

Judgment of the Court (Sixth Chamber) of 19 May 2009 — Commission of the European Communities v Ireland

(Case C-532/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/60/EC — Money laundering and terrorist financing — Failure to transpose within the period prescribed)

(2009/C 153/34)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: P. Dejmek and A.A. Gilly, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ 2005 L 309, p. 15).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Ireland has failed to fulfil its obligations under that directive;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 32, 7.2.2009.

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 6 April 2009 — Antoine Boxus, Willy Roua v Région wallone

(Case C-128/09)

(2009/C 153/35)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Antoine Boxus, Willy Roua

Defendant: Région wallone

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment [1] be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC [2] and Directive No 2003/35/EC [3] of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

   (b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, [4] be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

   (c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

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[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 1985 L 175, p. 40).

[2] Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

[3] 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 — Statement by the Commission (OJ 2003 L 156, p. 17).

[4] Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 6 April 2009 — Guido Durlet, Angela Verweij, Chretien Bruninx, Hans Hoff, Michel Raeds v Région wallone

(Case C-129/09)

(2009/C 153/36)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Guido Durlet, Angela Verweij, Chretien Bruninx, Hans Hoff, Michel Raeds

Defendant: Région wallone

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment [1] be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant

of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC ([2]) and Directive No 2003/35/EC ([3]) of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

(b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, ([4]) be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

(c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

([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 1985 L 175, p. 40).

([2]) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

([3]) 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 — Statement by the Commission (OJ 2003 L 156, p. 17).

([4]) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 6 April 2009 — Paul Fastrez, Henriette Fastrez v Région wallonne

(Case C-130/09)

(2009/C 153/37)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Paul Fastrez, Henriette Fastrez

Defendant: Région wallonne

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ([1]) be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC ([2]) and Directive of the European Parliament and of the Council No 2003/35/EC, ([3]) preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

(b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, ([4]) be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

(c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

([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 1985 L 175, p. 40).

([2]) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

([3]) 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 — Statement by the Commission (OJ 2003 L 156, p. 17).

([4]) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 6 April 2009 — Philippe Daras v Région wallonne

(Case C-131/09)

(2009/C 153/38)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Philippe Daras

Defendant: Région wallonne

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ([1]) be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC ([2]) and Directive No 2003/35/EC ([3]) of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

(b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, ([4]) be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

(c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved

by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

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(2) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

(3) 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 — Statement by the Commission (OJ 2003 L 156, p. 17).

(4) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Action brought on 6 April 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-132/09)

(2009/C 153/39)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: B. Eggers and J.-P. Keppenne, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by refusing to pay the costs of teaching equipment and materials for the European schools, the Kingdom of Belgium has failed to fulfil its obligations under the Seat Agreement of 1962, read in conjunction with Article 10 EC;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission alleges a breach of the Agreement concluded in October 1962 between the Board of Governors of the European Schools and the Kingdom of Belgium, involving a refusal by the latter to pay the expenses for teaching equipment and materials for the European Schools established on its territory.

In support of its action, the applicant submits, firstly, that it follows from the second paragraph of Article 6 of the Convention defining the Statute of the European Schools of 21 June 1994 (1) that each Member State must treat the European Schools as an educational establishment governed by its national public law. As a consequence, the European Schools should be financed by the Belgian public authorities and be treated in the same way as national State schools, with regard both to initial equipment required for the opening or extension of a European School and to the annual maintenance and running costs of those schools. In that respect, the federalisation of education in Belgium cannot justify a refusal by the Belgian authorities to finance the annual running costs of the European Schools, since it follows from settled case-law that a Member State cannot avoid obligations which it has assumed by delegating exercise of that power to infra-State public bodies.

In reply to the objections raised by the Belgian authorities, the Commission observes, secondly, that the conclusions arising from the meeting of the Board of Governors held at Karlsruhe in May 1967 in no way call into question the financing obligations on that State in its capacity as a State in which the Schools have a seat.

First of all, at Karlsruhe, the Board of Governors merely drew up guidelines for a standard protocol of agreement with the Member States in which the Schools have a seat and, in any event, it has no authority, having regard to the hierarchy of norms, to amend the Seat Agreement of 1962.

Next, that Karlsruhe 'decision' cannot in any way be interpreted as a 'subsequent agreement or practice of the parties' within the meaning of Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties, with regard to the interpretation to given to the Seat Agreement, in the absence of a succession of established acts or declarations calling into question the financing obligation laid down by the Seat Agreement. In addition, a number of documents and instances of financing by Belgium after 1967 attest to that obligation to pay the costs of teaching equipment and materials for the European Schools.

(1) OJ L 212, p. 3.

Reference for a preliminary ruling from the Fővárosi Bíróság (Hungary) lodged on 8 April 2009 — Dr. József Uzonyi. v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

(Case C-133/09)

(2009/C 153/40)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Dr. József Uzonyi

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

Question referred

Does it follow from the provision contained in Article 143ba(1) of Regulation (EC) 1782/2003 [1] in the version in force until 31 December 2006, under which '[payment] shall be granted on the basis of objective and non-discriminatory criteria', that, as regards eligibility for the separate sugar payment in connection with the single area payment, it was not possible to draw a distinction between farmers on the basis of whether they supplied the sugar beet for processing directly (themselves) or indirectly (via intermediaries)?

[1] Corrigendum to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001; OJ L 270, 21.10.2003, Special Edition in Hungarian, Chapter 3, Volume 40, p. 269-377.

Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 10 April 2009 — Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Bernard Page v Région wallonne

(Case C-134/09)

(2009/C 153/41)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Bernard Page

Defendant: Région wallonne

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment [1] be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC [2] and Directive No 2003/35/EC [3] of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

   (b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, [4] be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

   (c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

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[3] 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 — Statement by the Commission (OJ 2003 L 156, p. 17).

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Reference for a preliminary ruling from the Conseil d'Etat (Belgium) lodged on 9 April 2009 — Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Léon L'Hoir, Nadine Dartois v Région wallonne

(Case C-135/09)

(2009/C 153/42)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicants: Association des Riverains et Habitants des Communes Proches de l'Aéroport B.S.C.A. (Brussels South Charleroi Airport) ASBL — A.R.A.Ch, Léon L'Hoir, Nadine Dartois

Defendant: Région wallonne

Questions referred

1. Can Article 1(5) of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ([1]) be interpreted as excluding from its application legislation — such as the Decree of the Walloon Region on certain consents for which there are overriding reasons in the general interest of 17 July 2008 — which merely states that 'overriding reasons in the general interest have been established' for the grant of town planning consents, environmental consents and combined town planning and environmental consents relating to the acts and works listed therein and which 'ratifies' consents in respect of which it is stated that 'overriding reasons in the general interest have been established'?

2. (a) Do Articles 1, 5, 6, 7, 8 and 10a of Directive 85/337/EEC, as amended by Council Directive No 97/11/EC ([2]) and Directive No 2003/35/EC ([3]) of the European Parliament and of the Council, preclude a legal regime in which the right to implement a project subject to an environmental impact assessment is conferred by a legislative act against which no review procedure is available before a court of law or another independent and impartial body established by law which makes it possible to challenge, both in terms of the substance and the procedure followed, the decision granting the right to implement the project?

   (b) Must Article 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC of 17 February 2005, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality, in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment, of decisions, acts or omissions subject to the provisions of Article 6?

   (c) In the light of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved by the European Community by Council Decision 2005/370/EC ([4]) of 17 February 2005, must Article 10a of Directive 85/337/EEC, as amended by Directive 2003/35/EC, be interpreted as requiring the Member States to provide for the possibility of seeking a review before a court of law or another independent and impartial body established by law in order to be able to challenge the legality of decisions, acts or omissions in relation to any issue of substance or procedure relating to the substantive or procedural rules governing the authorisation of projects subject to an impact assessment?

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([4]) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

Reference for a preliminary ruling from the Tribunale Ordinario di Palermo (Italy) lodged on 15 April 2009 — Todaro Nunziatina & C. snc v Assessorato del Lavoro e della Previdenza Sociale

(Case C-138/09)

(2009/C 153/43)

Language of the case: Italian

Referring court

Tribunale Ordinario di Palermo

Parties to the main proceedings

Applicant: Todaro Nunziatina & C. snc

Defendant: Assessorato del Lavoro e della Previdenza Sociale

Questions referred

1. In the light of the fact that the aid scheme (Ref. NN 91/A/95) established by the Region of Sicily in Article 10 of Regional Law No 27 of 15 May 1991 laid down a mechanism of assistance for a minimum of two, and a maximum of five, years (two years for workers recruited on training and work experience contracts plus a maximum of three years in cases where those contracts are converted into open-ended contracts), was it the intention of the European Commission, in Decision No 95/C 343/11 of 14 November 1995 authorising the scheme's implementation ('the authorising decision'):

   — to permit such a cumulative increase to the duration and financial amount of the assistance (two years + three years) or, alternatively,

   — to authorise, on a mutually exclusive basis, either the grant of assistance for workers recruited on training and work experience contracts (for the two years' duration of such contracts) or the grant of assistance for those workers recruited previously on training and work experience contracts which were subsequently converted into open-ended contracts (for the three years from that conversion)?

2. Should the time-limit of the financial year 1997 for the implementation of State aid, laid down by the European Community in the authorising decision approving the scheme established by Regional Law No 27/91, be interpreted as referring to:

   — the initial provision for expenditure on aid scheduled in any event to be paid in subsequent years (according to the various interpretations of authorised aid possible, which have been referred to), or rather

   — the time-limit for the actual payment of assistance by the competent regional bodies?

3. Thus, for workers recruited on training and work experience contracts, pursuant to Article 10 of Regional Law No 27/91, for instance on 1 January 1996, and therefore before the time-limit for the period for implementing the State aid set out in the authorising decision, was the Region of Sicily permitted — and indeed required — actually to implement the aid scheme in question for all of the years authorised (that is to say two + three), and even where, as in the example mentioned, the implementation of the authorised scheme entailed the actual payment of the assistance until 31 December 2001 (that is to say, 1996 + five years = 2001)?

4. Was it the intention of the European Commission, by Article 1 of Decision No 2003/195/EC of 16 October 2002, which states: 'The aid scheme which Italy plans to implement under Article 11(1) of the Sicilian Regional Law No 16 of 27 May 1997 is incompatible with the common market. The scheme may accordingly not be implemented':

   — to refuse authorisation of the 'new' aid scheme established under Article 11 of Regional Law No 16/97, because the Commission regarded that scheme as an 'autonomous' system designed to extend the period for implementing the aid introduced by Article 10 of Regional Law No 27/91 beyond the time-limit of 31 December 1996 to include even the costs of recruiting workers and/or converting contracts carried out in the years 1997 and 1998, or

   — rather, by that decision, to prevent the Region from materially acquiring the financial resources, in order to prevent the actual payment of the State aid laid down in Article 10 of Regional Law No 27/91, even for workers recruited and/or contracts converted before 31 December 1996?

5. If the Commission's decision is to be interpreted along the lines of the first option in question 4, is such a decision compatible with the Commission's interpretation of Article 87 of the Treaty in determining similar cases relating to the exemptions from the costs of social security contributions on training and work experience contracts in Decision 2000/128/EC of 11 May 1999 (concerning the laws of the Italian State and specifically referred to in the grounds of the decision of incompatibility of 2002) and Decision 2003/739/EC of 13 May 2003 (concerning the laws of the Region of Sicily)?

6. If the Commission's decision is to be interpreted along the lines of the second option in question 4, what interpretation is to be given to the previous decision authorising the aid measures, taking into account the dual meaning that may be ascribed to the adjective 'further', that is to say 'further in relation to the budget as laid down in the Commission's decision' or 'further in relation to the provision for finance made by the Region only until the financial year 1996'?

7. Ultimately, which aid is to be regarded as lawful, and which as unlawful, according to the Commission?

8. Which of the parties to the present proceedings (the company or the Regional Ministry), has the burden of proving that the budget laid down by the Commission itself has not been exceeded?

9. Should the award of statutory interest to a company for late payment of assistance that is held to be lawful and admissible be taken into account in determining whether the budget originally approved by the authorising decision has been exceeded?

10. If the award of such interest is relevant in determining whether that budget has been exceeded, what measure of interest is to be applied?

Reference for a preliminary ruling from the Tribunale di Genova (Italy) lodged on 17 April 2009 — Fallimento Traghetti del Mediterraneo SpA — Curatore dott. Alberto Fontana v Presidenza del Consiglio dei Ministri

(Case C-140/09)

(2009/C 153/44)

Language of the case: Italian

Referring court

Tribunale di Genova

Parties to the main proceedings

Applicant: Fallimento Traghetti del Mediterraneo SpA — Curatore dott. Alberto Fontana

Defendant: Presidenza del Consiglio dei Ministri

Question referred

Is national legislation on State aid of the kind laid down in Law No 684/1974, in particular in Article 19 thereof, which provides for the possibility of the payment of State aid — albeit only on account — in the absence of agreements and without the prior establishment of precise and stringent criteria capable of ensuring that payment of the aid cannot give rise to distortion of competition, compatible with the principles of Community law and, in particular, with the provisions laid down in Articles 86 EC, 87 EC and 88 EC and in Title V (formerly Title IV) of the Treaty and, in that regard, may importance be attached to the fact that the beneficiary is required to apply tariffs imposed by the administrative authority?

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Dendermonde (Belgium) lodged on 22 April 2009 — Criminal proceedings against V.W. Lahousse & Lavichy BVBA

(Case C-142/09)

(2009/C 153/45)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Dendermonde

Parties to the main proceedings

Defendants:: 1. V.W. Lahousse

2. Lavichy BVBA

Question referred

Must Directive 2002/24/EC, [1] in particular Article 1(1)(d) thereof (according to which the directive does not apply to vehicles intended for use in competition, on roads or in off-road conditions), be interpreted as allowing the Member States to extend its scope so as to render it applicable to all traffic by land (that is to say, also to the use of two or three-wheel motor vehicles off-road and/or on private land), without granting the exception in respect of vehicles intended for use in competition on roads (racing) or for vehicles in off-road conditions?

[1] Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two or three-wheel motor vehicles and repealing Council Directive 92/61/EEC (OJ 2002 L 124, p. 1).

Reference for a preliminary ruling from the Fővárosi Bíróság (Budapest, Hungary) lodged on 23 April 2009 — Pannon GSM Távközlési Rt. v Namzeti Hírközlési Hatóság Tanácsának Elnöke

(Case C-143/09)

(2009/C 153/46)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Pannon GSM Tavközlesi Rt.

Defendant: Nemzeti Hírközlési Hatóság Tanácsának Elnöke

Questions referred

(1) On the basis of Community law, in particular, the Act of Accession (OJ 2003 L 236) and Articles 10 and 249 EC, does Directive 2002/22/EC [1] of the European Parliament and the Council ('the Universal Service Directive'), and in particular Article 13(2) thereof and Annex IV thereto, apply to the mechanisms for support and cost-sharing which Hungary, as a Member State, established for universal services provided in 2003, that is to say, before its accession on 1 May 2004, but in respect of which the obligation to finance, grant and pay support is based on decisions adopted in administrative procedures commenced and completed after the accession of Hungary to the European Union?

(2) If Question (1) is answered in the affirmative, should the Universal Service Directive, and in particular Article 13(2) thereof and Annex IV thereto, be interpreted as meaning that a universal service provider is entitled to payment of support in an amount equivalent to the difference between the subscription prices of the preferential and the normal tariff packages it offers?

(3) If Question (2) is answered in the negative, should support for the financing of a universal service, the amount of which is not calculated in accordance with the Universal Service Directive but on the basis of costs which are higher than its net value, be considered to be State aid compatible with the common market within the meaning of Article 87(1) EC?

(4) On a proper construction of the provisions of the Universal Service Directive, may transitional measures be adopted by a Member State, applying, only in respect of universal services provided in 2003, that is, before accession, different rules from those of the Universal Service Directive, even if they allow the adoption of decisions on the operation of the support and cost-sharing mechanism based on such rules and, in particular, of decisions on contributions and payments of support, which are — effectively — unlimited in time?

(5) Should the provisions of the Universal Service Directive relating to financing, in particular the last sentence of Article 13(2) and the provisions of Annex IV, be interpreted as meaning that they have direct effect?

(1) Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive); OJ 2002 L 102, p. 51 — 77; Special edition in Hungarian, Chapter 13, Volume 29, p. 367 — 393.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 24 April 2009 — Hotel Alpenhof GesmbH v Oliver Heller

(Case C-144/09)

(2009/C 153/47)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Hotel Alpenhof GesmbH

Claimant: Oliver Heller

Question referred

Is the fact that a website of the party with whom a consumer has concluded a contract can be consulted on the internet sufficient to justify a finding that an activity is being 'directed', within the terms of Article 15(1)(c) of Regulation (EC) No 44/2001 ('the Brussels I Regulation')? (1)

(1) 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.

Reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 24 April 2009 — Land Baden-Württemberg v Panagiotis Tsakouridis

(Case C-145/09)

(2009/C 153/48)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: Land Baden-Württemberg

Defendant: Panagiotis Tsakouridis

Questions referred

1. Is the expression 'imperative grounds of public security' used in Article 28(3) of Directive 2004/38/EC (1) of 29 April 2004 to be interpreted as meaning that only irrefutable threats to the external or internal security of the Member State can justify an expulsion, that is, only to the existence of the State and its essential institutions, their ability to function, the survival of the population, external relations and peaceful relations between nations?

2. Under what conditions can the right to enhanced protection against expulsion achieved following ten years of residence in the host Member State laid down in Article 28(3)(a) of Directive 2004/38/EC subsequently be lost? Is the condition for the loss of the right of permanent residence laid down in Article 16(4) of the directive to be applied mutatis mutandis in that context?

3. If the question in point 2 above is to be answered in the affirmative and Article 16(4) of the directive to be applied mutatis mutandis: is the enhanced protection against expulsion lost by lapse of time alone, irrespective of the reasons for the absence?

4. Also if the question in point 2 above is to be answered in the affirmative and Article 16(4) of the directive to be applied: can an enforced return to the host Member State in the context of criminal proceedings before expiry of the two-year period have the effect of maintaining the right to increased protection against expulsion, even where following that return the fundamental freedoms cannot be exercised for some time?

(1) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30.4.2004, p. 77, and Corrigenda in OJ L 229, 29.6.2004, p. 35 and L 204, 4.8.2007, p. 28.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 24 April 2009 — Prof. Dr. Claus Scholl v Stadtwerke Aachen AG

(Case C-146/09)

(2009/C 153/49)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Prof. Dr. Claus Scholl

Defendant: Stadtwerke Aachen AG

Question referred

Is the third example in the third indent of Article 6(3) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [1] to be interpreted as meaning that there is no right of withdrawal in respect of distance contracts for the mains supply of electricity and gas?

[1] OJ 1997 L 144, p. 19.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 24 April 2009 — Ronald Seunig v Maria Hölzel

(Case C-147/09)

(2009/C 153/50)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Appellant: Ronald Seunig

Respondent: Maria Hölzel

Questions referred

1. (a) Is the second indent of Article 5(1)(b) 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] ('Regulation No 44/2001') applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

   If the answer to that question is in the affirmative,

   Should the provision referred to be interpreted as meaning that

   (b) the place of performance of the obligation that is characteristic of the contract must be determined by reference to the place where the service provider's centre of business is located, which is to be determined by reference to the amount of time spent and the importance of the activity;

   (c) in the event that it is not possible to determine a centre of business, an action in respect of all claims founded on the contract may be brought, at the applicant's choice, in any place of performance of the service within the Community?

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

   Is Article 5(1)(a) of Regulation No 44/2001 applicable in the case of a contract for the provision of services also where the services are, by agreement, provided in several Member States?

[1] OJ 2001 L 12, p. 1.

Appeal brought on 27 April 2009 by Iride SpA and Iride Energia SpA against the judgment delivered by the Court of First Instance (Second Chamber) on 11 February 2009 in Case T-25/07 Iride SpA, Iride Energia SpA v Commission of the European Communities

(Case C-150/09 P)

(2009/C 153/51)

Language of the case: Italian

Parties

Appellants: Iride SpA, Iride Energia SpA (represented by: L. Radicati di Brozolo, M. Merola, T. Ubaldi, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment;

— grant the forms of order already sought at first instance or, in the alternative, refer the case back to the Court of First Instance, pursuant to Article 61 of the Statute of the Court of Justice;

— order the Commission to pay the costs of the proceedings at first instance and the appeal proceedings.

Pleas in law and main arguments

The appellants put forward two grounds of appeal in support of their claims.

The first ground of appeal relates to an error in law in the interpretation and application of Article 253 EC with reference to a failure to state adequate reasons in the decision at issue. The Court of First Instance erred in law in finding, with regard to whether the conditions laid down in Article 87(1) EC are satisfied in the present case, that the following are sufficient for compliance with the obligation to state reasons in Article 253 EC: (i) the simple statement by the Commission that it had established that the measure in question was to be regarded as State aid; (ii) that adequate reasons could be given for the contested measure by referring to the decision to initiate the investigation procedure and an earlier separate decision of the Commission.

The second ground of appeal relates to distortion of the pleas in the action and an error in law on the part of the Court of First Instance in its assessment of the scope of the *Deggendorf* case-law for the purpose of the assessment of the present case. In particular, the appellants submit that the Court of First Instance:

(i) distorted the pleas put forward by the appellants at first instance in that it claimed that they had misused the procedure for review of State aid, without, however, in fact clarifying what that misuse consisted of;

(ii) failed to identify the error made by the Commission in its assessment of the scope of the judgment in *Deggendorf* in so far as it applies to the present case in that it failed to carry out a concrete and specific assessment of the distortion of competition and intra-Community trade resulting from the cumulative effect of the new aid and the earlier aid that had not been recovered;

(iii) failed to identify the error made by the Commission in its assessment of the scope of the judgment in *Deggendorf* in so far as it applies to the present case in that, as a matter of fact, instead of regarding it as a further criteria in the assessment of whether aid is compatible, it made the non-recovery of earlier aid an additional and decisive condition for determining whether aid is compatible that is not provided for in the Treaty;

(iv) failed to point out that the Commission's excessive and abusive interpretation of the judgment in *Deggendorf* in this case has the effect of transforming that case-law into a means of penalising conduct contrary to the Treaty on the part of Member States in a manner that is not envisaged in the Treaty or secondary legislation;

(v) failed to point out that, when it decided to initiate the formal investigation procedure as regards the measure notified by Italy, the Commission indicated that it was of the view that it had available to it all the information necessary to conduct its investigation into whether the measure was compatible. The Commission thereby contradicted the argument underlying the contested decision, namely that, in the course of the notification procedure, the Italian authorities and the recipient company failed to provide it with sufficient information to enable it to carry out an analysis as to whether the measure was compatible;

(vi) committed a serious error in law in stating that Community case-law does not impose a requirement on the Commission to carry out a specific and detailed analysis as to whether the relevant factors enabling all the conditions laid down in Article 87(1) EC to be regarded as being satisfied are present, in order to be able to qualify the measure in question as aid.

Action brought on 4 May 2009 — Commission of the European Communities v Portuguese Republic

(Case C-154/09)

(2009/C 153/52)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: P. Guerra e Andrade and A. Nijenhuis, acting as Agents)

Defendant: Portuguese Republic

Forms of order sought

— Declare that, by failing to transpose correctly into national law the rules of Community law governing the designation of the universal service provider or providers, and, in any event, by failing to ensure in practice that those rules are applied, the Portuguese Republic has failed to fulfil its obligations under Articles 3(2) and 8(2) of Directive 2002/22/EC. [1]

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Article 121 of the Portuguese Law on Electronic Communications (Law No 5/2004 of 10 February) retains the public service, the exclusive public service concession and the corresponding rights and obligations until 2025, with PT Comunicações SA holding the concession for the public telecommunications service.

The Commission submits that, in terms of designating the companies responsible for providing the universal service, the Portuguese Law on Electronic Communications is confused, incoherent and inconsistent.

Consequently, the Portuguese State has failed to designate, by means of an efficient, objective, transparent and non-discriminatory procedure, the company or companies responsible for providing the universal service, as laid down by Article 8(2) in conjunction with Article 3(2) of Directive 2002/22.

[1] Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51).

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 8 May 2009 — Ioannis Katsivardas — Nikolaos Tsitsikas O.E. v Ipourgos Ikonomikon

(Case C-160/09)

(2009/C 153/53)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Ioannis Katsivardas — Nikolaos Tsitsikas O.E.

Defendant: Ipourgos Ikonomikon

Question referred

Can an individual (an importer of bananas from Ecuador) who claims the refund of domestic excise duty as having been wrongly paid plead before the national court that the national tax rule (Article 7 of Law 1798/1988, as amended by Article 10 of Law 1914/1990) is incompatible with Article 4 of the 1984 agreement between the European Economic Community and the member countries of the Cartagena Agreement, which was approved by Council Regulation (EEC) No 1591/84? [1]

[1] OJ L 153, 8.6.1984, p. 1.

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 8 May 2009 — K. Frangopoulos kai Sia OE v Nomarkhiaki Avtodiikisi Korinthias

(Case C-161/09)

(2009/C 153/54)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: K. Frangopoulos kai Sia OE

Defendant: Nomarkhiaki Avtodiikisi Korinthias

Questions referred

1. Can a company operating under the conditions under which the applicant operates, that is to say, as a dried grape processing and packing company established in a specific area of the country to which it is prohibited by law to bring different varieties of drying grapes from other areas of the country for the purpose of processing and packing, thereby preventing it from exporting dried grapes which it would have processed from such drying grapes, plead in court that the legislative measures in question conflict with Article 29 EC?

2. If the answer to the first question is in the affirmative, do provisions such as those in internal Greek law governing the dispute at issue which, on the one hand, prohibit drying grapes from being brought from different areas of the country, for the purpose of storage, processing and onward export, to a specific area in which it is only permitted to process locally grown drying grapes and, on the other hand, reserve the possibility of recognising protected designation of origin solely for drying grapes which have been processed and packed in the specific area in which they were grown, conflict with Article 29 EC which prohibits quantitative restrictions on exports or measures having equivalent effect?

3. If the answer to the second question is in the affirmative, does protection of the quality of a product which is defined geographically by the national law of a Member State and which has not been granted the possibility of bearing a particular distinguishing name which would mark its generally acknowledged superior quality and uniqueness due to its originating from a certain geographical area, constitute, within the meaning of Article 30 of the Treaty establishing the European Community, a legitimate objective of overriding public interest which justifies a derogation from Article 29 EC prohibiting quantitative restrictions on exports of the said product and measures having equivalent effect?

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 8 May 2009 — Secretary of State for Work and Pensions v Taous Lassal

(Case C-162/09)

(2009/C 153/55)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Secretary of State for Work and Pensions

Defendant: Taous Lassal

Questions referred

1) In circumstances where (i) an EU citizen came to the United Kingdom in September 1999 as a worker and remained as a worker until February 2005 (H) the EU citizen then left the United Kingdom and returned to the Member State of which she is a national for a period of 10 months (iii) the EU citizen returned to the United Kingdom in December 2005 and resided there continuously until November 2006, when she made a claim for social security assistance:

Is Article 16(1) of Directive 2004/38 of the European Parliament and the Council of 29 April 2004 to be interpreted as entitling that EU citizen to a right of permanent residence by virtue of the fact that she had been legally resident, in accordance with earlier Community law instruments conferring rights of residence on workers, for a continuous period of five years which ended prior to 30 April 2006 (the date by which Member States had to transpose the Directive)?

Action brought on 13 May 2009 — Commission of the European Communities v Hellenic Republic

(Case C-169/09)

(2009/C 153/56)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: S. Schønberg and M. Kapanasou Apostolopoulou, Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/32/EC [1] of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council, or in any event by not informing the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing Directive 2005/32/EC into national law expired on 10 August 2007.

[1] OJ L 191 of 22.7.2005, p. 29.

Action brought on 13 May 2009 — Commission of the European Communities v French Republic

(Case C-170/09)

(2009/C 153/57)

Language of the case: French

Parties

Applicants: Commission of the European Communities (represented by: V. Peere and P. Dejmek, acting as Agents)

Defendants: French Republic

Form of order sought

— Declare that, by failing to adopt all the laws, regulation and administrative provisions necessary to comply with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [1] and, in any event, by failing to notify them to the Commission, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for transposition of Directive 2005/60/EC expired on 15 December 2007. At the date on which the present action was brought, the defendant still had not adopted all the transposing measures necessary or, in any event, had not notified them to the Commission.

[1] OJ L 309, p. 15.

Action brought on 13 May 2009 — Commission of the European Communities v French Republic

(Case C-171/09)

(2009/C 153/58)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis [1], or in any event by failing to communicate those provisions to the Commission, the French Republic has failed to fulfil its obligations under that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/70/EC expired on 15 December 2007. However, at the time the present action was brought, the defendant had not yet adopted all the necessary implementing measures or, in any event, had not informed the Commission thereof.

[1] OJ 2006 L 214, p. 29.

Reference for a preliminary ruling from Court of Appeal (United Kingdom) made on 14 May 2009 — Her Majesty's Commissioners of Revenue and Customs v Axa UK plc

(Case C-175/09)

(2009/C 153/59)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Applicant: Her Majesty's Commissioners of Revenue and Customs

Defendant: Axa UK plc

Questions referred

1. What are the characteristics of an exempt service that has 'the effect of transferring funds and entail[s] changes in the legal and financial situation'?

   In particular:

   (a) Is the exemption applicable to services which would not otherwise have to be performed by any of the financial institutions which (i) make a debit to one account, (ii) make a corresponding credit to another account, or (iii) perform an intervening task between (i) or (ii)?

   (b) Is the exemption applicable to services which do not include the carrying out of tasks of making a debit to one account and a corresponding credit to another account, but which may, where a transfer of funds results, be seen as having been the cause of that transfer?

2. In the light of SDC, is a trader (which is not itself a bank) performing an exempt service in accordance with Article 13B(d)(3) where the tasks he carries out for his client (1) comprise the collection, processing and onward payment of monies due to the client from a third party; in particular, the tasks of:

   (a) transmitting information to the third party's bank calling for a payment from the third party's bank account to the trader's own bank account, in reliance on a standing authorisation given by that third party to the bank (pursuant to the 'Direct Debit'

   scheme); and subsequently, if the bank makes that payment,

   (b) giving an instruction to his own bank to transfer funds from his account to the client's bank account but (2) do not include tasks of (a) making a debit to one bank account, (b) making a corresponding credit to another bank account, or (c) performing any intervening task between (a) and (b)?

3. Does it make a difference to the answer to Question 2 (above) if the service described in that question is performed by transmitting the information to an electronic system which then automatically communicates with the relevant bank, even if the transmission of the information may not always result in a transfer being made (e.g. because the third party has cancelled his standing authorisation to his bank or does not have sufficient funds in his account)?

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 6 May 2009 — Wieland-Werke v Commission

(Case T-116/04) [1]

(Competition — Agreements, decisions and concerted practices — Market for copper industrial tubes — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Principle that penalties must have a sound legal basis — Size of the market concerned — Deterrent effect — Duration of the infringement — Cooperation)

(2009/C 153/60)

Language of the case: German

Parties

Applicant: Wieland-Werke AG (Ulm, Germany) (represented by: R. Bechtold and U. Soltész, Lawyers)

Defendant: Commission of the European Communities (represented initially by: É. Gippini Fournier and H. Gading, and subsequently É. Gippini Fournier, O. Weber and K. Mojzesowicz, Lawyers)

Re:

Annulment or reduction of the fine imposed on the applicant under Article 2(a) of Commission Decision C(2003) 4820 final of 16 December 2003 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/38.240 — Industrial tubes).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Wieland-Werke AG to pay the costs.*

[1] OJ C 118, 30.4.2004.

Judgment of the Court of First Instance of 6 May 2009 — Outokumpu and Luvata v Commission

(Case T-122/04) [1]

(Competition — Agreements, decisions and concerted practices — Market for copper industrial tubes — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Size of the market concerned — Aggravating circumstances — Repeat infringement)

(2009/C 153/61)

Language of the case: English

Parties

Applicants: Outokumpu Oyj (Espoo, Finland); and Luvata Oy, formerly Outokumpu Copper Products Oy (Espoo) (represented by: J. Ratliff, Barrister, F. Distefano and J. Luostarinen, Lawyers)

Defendant: Commission of the European Communities (represented by: É. Gippini Fournier, Agent)

Re:

(1) Application for annulment or reduction of the fine imposed on the applicant by Article 2(b) of Commission Decision C(2003) 4820 final of 16 December 2003 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/38.240 — Industrial tubes); and (2) Counterclaim by the Commission that the amount of the fine should be increased.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Outokumpu Oyj and Luvata Oy to pay the costs.*

[1] OJ C 118, 30.4.2004.

Judgment of the Court of First Instance of 6 May 2009 — KME Germany and Others v Commission

(Case T-127/04) [1]

(Competition — Agreements, decisions and concerted practices — Market for copper industrial tubes — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Actual impact on the market — Size of the market concerned — Duration of the infringement — Attenuating circumstances — Cooperation)

(2009/C 153/62)

Language of the case: English

Parties

Applicants: KME Germany AG, formerly KM Europa Metal AG (Osnabruck, Germany); KME France SAS, formerly Tréfimétaux SA (Courbevoie, France); and KME Italy SpA, formerly Europa Metalli SpA (Florence, Italy) (represented by: M. Siragusa, A. Winckler, G.C. Rizza, T. Graf and M. Piergiovanni, Lawyers)

Defendant: Commission of the European Communities (represented by: É. Gippini Fournier, Agent, assisted by C. Thomas, Solicitor)

Re:

(1) Application for annulment or reduction of the fines imposed on the applicants by Article 2(c)(d) and (e) of Commission Decision C(2004) 4820 final of 16 December 2003 relating to a proceeding pursuant to Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/E-1/38.240 Industrial tubes); and (2) Counterclaim by the Commission that the amount of those fines be increased

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders KME Germany AG, KME France SAS and KME Italy SpA to pay the costs*

[1] OJ C 146, 29.5.2004.

Judgment of the Court of First Instance of 7 May 2009 — NVV and Others v Commission

(Case T-151/05) [1]

(Competition — Concentrations — Markets for the purchase of live pigs or sows for slaughter — Decision declaring the concentration compatible with the common market — Definition of the relevant geographic market — Duty of care — Duty to state reasons)

(2009/C 153/63)

Language of the case: Dutch

Parties

Applicants: Nederlandse Vakbond Varkenshouders (NVV) (Lunteren, Netherlands); Marius Schep (Lopik, Netherlands); and Nederlandse Bond van Handelaren in Vee (NBHV) (The Hague, Netherlands) (represented by: initially, J. Kneppelhout and M. van der Kaden and, subsequently, J. Kneppelhout, lawyers)

Defendant: Commission of the European Communities (represented by: initially, A. Whelan and S. Noë and, subsequently, A. Bouquet and S. Noë, Agents)

Intervener in support of the defendant: Sovion NV (Best, Netherlands) (represented by: J. de Pree and W. Geursen, lawyers)

Re:

Annulment of the Commission decision of 21 December 2004 declaring a concentration compatible with the common market and with the EEA Agreement (Case No COMP/M.3605 — Sovion/HMG)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nederlandse Vakbond Varkenshouders (NVV), Marius Schep and Nederlandse Bond van Handelaren in Vee (NBHV) to bear their own costs and to pay those incurred by the Commission and by Sovion NV.*

[1] OJ C 171, 9.7.2005.

Judgment of the Court of First Instance of 7 May 2009 — NHL Enterprises v OHIM — Glory & Pompea (LA KINGS)

(Case T-414/05) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LA KINGS — Earlier national figurative mark KING — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 153/64)

Language of the case: English

Parties

Applicant: NHL Enterprises BV (Rijswijk, Netherlands) (represented initially by G. Llewelyn, Solicitor, and V. Barresi, lawyer, and subsequently by M. Collins, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Glory & Pompea, SA (Mataró, Spain)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 6 July 2005 (Case R 371/2003-4), concerning opposition proceedings between Glory & Pompea, SA and NHL Enterprises BV.

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 6 July 2005 (Case R 371/2003-4);*

2. *Orders OHIM to bear its own costs and to pay those incurred by NHL Enterprises BV.*

[1] OJ C 36, 11.2.2006.

Judgment of the Court of First Instance of 14 May 2009 — Fiorucci v OHIM — Edwin (ELIO FIORUCCI)

(Case T-165/06) [1]

(Community trade mark — Invalidity and revocation proceedings — Community word mark ELIO FIORUCCI — Registration of the name of a well-known person as a trade mark — Article 52(2)(a) and Article 50(1)(c) of Regulation (EC) No 40/94)

(2009/C 153/65)

Language of the case: Italian

Parties

Applicant: Elio Fiorucci (Milan, Italy) (represented by: A. Vanzetti, G. Sironi and F. Rossi, Lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and L. Rampini, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Edwin Co. Ltd (Tokyo, Japan) (represented by: D. Rigatti, M. Bertani, S. Verea, K. Muraro and M. Balestriero, Lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 April 2006 (Decision R 238/2005-1) concerning invalidity and revocation proceedings between Mr Elio Fiorucci and Edwin Co. Ltd.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 6 April 2006 (Case R 238/2005-1) in so far as it contains an error of law in the interpretation of Article 8(3) of the Codice della Proprietà Industriale (Italian Industrial Property Code);*

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

3. *Orders OHIM to bear its own costs and two thirds of the costs incurred by Mr Elio Fiorucci;*

4. *Orders Edwin Co. Ltd to pay its own costs and one third of those incurred by Mr Elio Fiorucci.*

[1] OJ C 190, 12.8.2006.

Judgment of the Court of First Instance of 19 May 2009 — Euro-Information v OHIM (CYBERCREDIT, CYBERGESTION, CYBERGUICHET, CYBERBOURSE and CYBERHOME)

(Joined Cases T-211/06, T-213/06, T-245/06, T-155/07 and T-178/07) [1]

(Community trade mark — Applications for Community word marks CYBERCREDIT, CYBERGESTION, CYBERGUICHET, CYBERBOURSE and CYBERHOME — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 — Lack of distinctive character acquired through use — Article 7(3) of Regulation No 40/94)

(2009/C 153/66)

Language of the case: French

Parties

Applicant: Européenne de traitement de l'information (Euro-Information) (Strasbourg, France) (represented by: P. Greffe, J. Schouman, A. Jacquet and L. Paudrat, lawyers)

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

Re:

Actions brought against the decisions of the First Board of Appeal of OHIM of 24 May (Case R 0068/2006-1), 12 June (Case R 0066/2006-1), 5 July 2006 (Case R 0067/2006-1), 28 February (Case R 1046/2006-1) and 15 March 2007 (Case R 0067/2006-1), concerning registration of the signs CYBERGESTION (Case T-213/06), CYBERCREDIT (Case T-211/06), CYBERGUICHET (Case T-245/06), CYBERBOURSE (Case T-155/07) and CYBERHOME (Case T-178/07) as Community trade marks.

Operative part of the judgment

The Court:

1. *The actions are dismissed;*

2. *Européenne de traitement de l'information (Euro-Information) is ordered to pay the costs.*

[1] OJ C 249, 14.10.2006.

Judgment of the Court of First Instance of 7 May 2009 — Omnicare v OHIM

(Case T-277/06) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark OMNICARE — Earlier national figurative mark OMNICARE — Refusal of an application for restitutio in integrum)

(2009/C 153/67)

Language of the case: English

Parties

Applicant: Omnicare, Inc. (Covington, Kentucky, United States) (represented initially by M. Edenborough, Barrister, and O. Patterson, Solicitor, and subsequently by M. Edenborough)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Astellas Pharma GmbH (Munich, Germany) (represented by: A. Franke, lawyer)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 24 July 2006 (Case R 446/2006-2), concerning opposition proceedings between Yamanouchi Pharma GmbH and Omnicare, Inc. and rejecting the application for restitutio in integrum brought by the latter.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 24 July 2006 (Case R 446/2006-2);*

2. *Orders OHIM to bear its own costs and to pay the costs incurred by Omnicare, Inc.;*

3. *Orders Astellas Pharma GmbH to bear its own costs.*

[1] OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 20 May 2009 — VIP Car Solutions v Parliament

(Case T-89/07) [1]

(Public service contracts — Tendering procedure concerning a chauffeur driven car and minibus service for Members of the European Parliament during sessions in Strasbourg — Rejection of a tender — Obligation to state reasons — Refusal to disclose the price proposed by the successful tenderer — Action for damages)

(2009/C 153/68)

Language of the case: French

Parties

Applicant: VIP Car Solutions SARL (Hoenheim, France) (represented by: G. Welzer and S. Leuvrey, lawyers)

Defendant: European Parliament (represented by: D. Petersheim and M. Ecker, Agents)

Re:

First, annulment of the decision of the Parliament to refuse to award to the applicant the public contract which was the subject of tendering procedure PE/2006/06/UTD/1 concerning a chauffeur-driven car and minibus service for Members of the European Parliament during sessions in Strasbourg and, second, a claim for damages.

Operative part of the judgment

The Court:

1. *Annuls the decision by which the European Parliament refused to award to VIP Car Solutions SARL the public contract which was the subject of tendering procedure PE/2006/06/UTD/1;*

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

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

[1] OJ C 117, 29.5.2007.

Judgment of the Court of First Instance of 7 May 2009 — Klein Trademark Trust v OHIM — Zafra Marroquineros (CK CREACIONES KENNYA)

(Case T-185/07) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark CK CREACIONES KENNYA — Earlier Community figurative mark CK Calvin Klein and earlier national figurative marks CK — Relative ground for refusal — No likelihood of confusion — No similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 153/69)

Language of the case: Spanish

Parties

Applicant: Calvin Klein Trademark Trust (Wilmington, Delaware, United States) (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: Ó. Mondéjar Ortuño, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Zafra Marroquineros, SL (Caravaca de la Cruz, Spain) (represented by: J. Martín Álvarez, lawyer)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 29 March 2007 (Case R 314/2006-2), concerning opposition proceedings between Calvin Klein Trademark Trust and Zafra Marroquineros, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Calvin Klein Trademark Trust to pay the costs.*

[1] OJ C 170, 21.7.2007.

Judgment of the Court of First Instance of 20 May 2009 — CFCMCEE v OHIM (P@YWEB CARD and PAYWEB CARD)

(Joined Cases T-405/07 and T-406/07) ([1])

(Community trade mark — Applications for Community word marks P@YWEB/email CARD and PAYWEB CARD — Absolute ground for refusal — Partial lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2009/C 153/70)

Language of the case: French

Parties

Applicant: Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) (Strasbourg, France) (represented by: P. Greffe, J. Schouman and L. Paudrat, lawyers.)

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

Re:

Actions brought against the decisions of the First Board of Appeal of OHIM of 10 July 2007 (Case R 119/2007-1) and 12 September 2007 (Case R 120/2007-1) concerning applications for registration of the word signs P@YWEB CARD and PAYWEB CARD as Community trade marks.

Operative part of the judgment

The Court:

1. *annuls the decisions of the First Board of Appeal of Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 10 July 2007 (Case R 119/2007-1) and 12 September 2007 (Case R 120/2007-1) to the extent that they refuse the registration as Community trade marks of the word signs P@YWEB CARD and PAYWEB CARD for photographic, cinematographic, signalling, checking (supervision) apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; recording discs; electronic notebooks; automatic vending machines, video tapes. distributors of bank-notes, slips, bank statements and extract bank statements, cameras (cinematographic apparatus) video cameras, video cassettes, CD-ROMS, bar code readers, compact discs (audio-video), optical compact discs, counterfeit money detectors, floppy discs, magnetic data carriers, optical data carriers, video screens, data processing apparatus, intercommunication apparatus, interfaces (IT), readers (IT), software (recorded programs), monitors (computer programs), computers, computer input and output devices, recorded computer programmes, recorded operating system programs (for computers), radiotelephones, receivers (audio, video), telephone apparatus, television apparatus, apparatus for time recording, transmitters (telecommunications), central processing units (processors) within Class 9 and certain information (news) services inter alia in the banking sector, radio-telephonic communications, telephone communications, sending of telegrams, transmission of telegrams, broadcasting of television programmes, radiotelephonic transmissions, television transmissions, renting of telecommunication apparatus, renting of apparatus for transmission of messages, rental of telephones, mobile radiotelephony, telephone services within Class 38 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;*

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

3. *orders the Caisse fédérale du Crédit mutuel Centre Est Europe (CFCMCEE) and OHIM to bear their own costs.*

([1]) OJ C 8, 12.1.2008.

Judgment of the Court of First Instance of 12 May 2009 — Jurado Hermanos v OHIM (JURADO)

(Case T-410/07) ([1])

(Community trade mark — Community word mark JURADO — Failure by the proprietor of the trade mark to apply for renewal — Removal of the mark on expiry of the registration — Application by the exclusive licensee for restitutio in integrum)

(2009/C 153/71)

Language of the case: Spanish

Parties

Applicant: Jurado Hermanos, SL (Alicante, Spain) (represented by: C. Martín Álvarez, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 September 2007 (Case R 866/2007-2) concerning the application lodged by the applicant for *restitutio in integrum*.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Jurado Hermanos, SL to pay the costs, including those of the interlocutory proceedings.*

([1]) OJ C 8, 12.1.2008.

Judgment of the Court of First Instance of 13 May 2009 — Aurelia Finance v OHIM (AURELIA)

(Case T-136/08) [1]

(Community trade mark — Community word mark AURELIA — Failure to pay renewal fee — Removal of trade mark from register on expiry of registration — Application for restitutio in integrum)

(2009/C 153/72)

Language of the case: English

Parties

Applicant: Aurelia Finance SA (Geneva, Switzerland) (represented by M. Elmslie, Solicitor, and N. Saunders, Barrister)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 9 January 2008 (Case R 1214/2007-1), concerning the application for *restitutio in integrum* lodged by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Aurelia Finance SA to pay the costs.*

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[1] OJ C 128, 24.5.2008.

Judgment of the Court of First Instance of 13 May 2009 — Schuhpark Fascies v OHMI — Leder & Schuh (jello SCHUHPARK)

(Case T-183/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative and word mark jello SCHUHPARK — Earlier national word mark Schuhpark — Relative ground for refusal — Proof of use of earlier mark — Article 43(2) of Regulation (EC) No 40/94)

(2009/C 153/73)

Language of the case: German

Parties

Applicant: Schuhpark Fascies GmbH (Warendorf, Germany) (represented by: A. Peter and J. Braune, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Leder & Schuh AG (Graz, Austria) (represented by: W. Kellenter and A. Schlaffge, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 March 2008 (Case R 1560/2006-4), concerning opposition proceedings between Schuhpark Fascies GmbH and Leder & Schuh AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Schuhpark Fascies GmbH to pay the costs.*

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[1] OJ C 171, 5.7.2008.

Order of the Court of First Instance of 29 April 2009 — HALTE v Commission

(Case T-58/06) [1]

(State aid — Complaint — Action for failure to act — Definition of Commission's position terminating the failure to act — No need to adjudicate)

(2009/C 153/74)

Language of the case: French

Parties

Applicant: Honorable Association de Logisticiens et de Transporteurs Européens (HALTE) (Neuilly-sur-Seine, France) (represented by: J.-L. Lesquins, lawyer)

Defendant: Commission of the European Communities (represented by: C. Giolito and E. Righini, Agents.)

Re:

Action seeking a declaration, under Article 232 EC, that by refraining from initiating the formal investigation procedure under Article 88 EC and from adopting protective measures in relation to the aid allegedly granted in the context of the sale of SERNAM SA, the Commission failed to fulfil its obligations under Community law.

Operative part of the order

1. *There is no longer any need to adjudicate on the present action;*

2. *The Honorable Association de Logisticiens et de Transporteurs Européens (HALTE) and the Commission shall bear their own costs.*

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[1] OJ C 96, 22.4.2006.

Order of the Court of First Instance of 28 April 2009 — Tailor v OHIM (Representation of a left pocket)

(Case T-282/07) ([1])

(Community trade mark — Application for Community figurative mark representing a left pocket — Absolute ground for refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 — Action manifestly devoid of any legal basis)

(2009/C 153/75)

Language of the case: German

Parties

Applicant: Tom Tailor GmbH (Hamburg, Germany) (represented by: S.O. Gillert, K. Vanden Bossche and F. Schiwek, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 May 2007 (Case R 669/2006-1), concerning registration as a Community trade mark of a figurative sign representing a left pocket.

Operative part of the judgment

The Court:

1. *Dismisses the action as manifestly devoid of any legal basis;*

2. *Orders Tom Tailor GmbH to pay the costs.*

([1]) OJ C 235, 6.10.2007.

Order of the Court of First Instance of 28 April 2009 — Tailor v OHIM (Representation of a right pocket)

(Case T-283/07) ([1])

(Community trade mark — Application for Community figurative mark representing a right pocket — Absolute ground for refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 — Action manifestly devoid of any legal basis)

(2009/C 153/76)

Language of the case: German

Parties

Applicant: Tom Tailor GmbH (Hamburg, Germany) (represented by: S.O. Gillert, K. Vanden Bossche and F. Schiwek, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 May 2007 (Case R 668/2006-1), concerning registration as a Community trade mark of a figurative sign representing a right pocket.

Operative part of the judgment

The Court:

1. *Dismisses the action as manifestly devoid of any legal basis;*

2. *Orders Tom Tailor GmbH to pay the costs.*

([1]) OJ C 235, 6.10.2007.

Action brought on 30 January 2009 — Al Barakaat International Foundation v Commission

(Case T-45/09)

(2009/C 153/77)

Language of the case: Swedish

Parties

Applicant: Al Barakaat International Foundation (Spånga, Sweden) (represented by: L. Silbersky and T. Olsson, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Regulation (EC) No 1190/2008 in so far as it concerns the Al Barakaat International Foundation;

— order the Commission to pay the costs of the proceedings in an amount to be indicated later.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Regulation (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, ([1]) by virtue of which the applicant is to be placed on the list of persons and entities whose funds and economic resources are frozen in accordance with Regulation No 881/2002. ([2]) Regulation No 1190/2008 was adopted after the Court of Justice delivered its judgment of 3 September 2008 in Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-0000, which annulled the previous list that included the applicant's name.

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

The Commission exceeded its powers, since the duty to amend defects in the administrative procedure does not give the Commission power to amend or supplement the list.

Infringement of the duty to state reasons, the principle of solicitude, the rights of the defence and the right to effective legal remedies, since the reasoning as to why the applicant should remain on the list failed to include precise information regarding the alleged collaboration between the applicant on the one hand and Al-Qaida, Usama Bin Ladin and the Taliban on the other.

Infringement of the prohibition of retroactive legislation, since the inclusion of the applicant on the list was based on events which occurred 10 years ago.

Infringement of the principle of proportionality, since the freezing measures laid down in the contested regulation constitute a disproportionate and unacceptable interference which affects the right to respect for a person's property.

([1]) OJ 2008 L 322, p. 25.

([2]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 2 April 2009 — Eliza v OHIM — Went Computing Consultancy Group (eliza)

(Case T-130/09)

(2009/C 153/78)

Language in which the application was lodged: English

Parties

Applicants: Eliza Corporation (Beverly, United States) (represented by: R. Köbbing, lawyer)

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

Other party to the proceedings before the Board of Appeal: Went Computing Consultancy Group BV (Utrecht, The Netherlands)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 February 2009 in case R 1244/2008-4; 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 figurative mark "eliza", for goods and services in classes 9, 37 and 42

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 "ELISE" for goods and services in classes 9, 16, 35 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 holding that there is a likelihood of confusion between the trade marks concerned on the part of the relevant public

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([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 7 April 2009 — Muñoz Arraiza v OHIM — Consejo Regulador de la Denominación de Origen Calificada Rioja (RIOJAVINA)

(Case T-138/09)

(2009/C 153/79)

Language in which the application was lodged: Spanish

Parties

Applicant: Félix Muñoz Arraiza (Logroño, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Consejo Regulador de la Denominación de Origen Calificada Rioja (Logroño, Spain)

Form of order sought

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 29 January 2009 in Case R 721/2008-2, allowing the application for registration of "RIOJAVINA" (word mark) as a Community trade mark in classes 29, 30 and 35;

— make an express order as to costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Félix Muñoz Arraiza

Community trade mark concerned: Word mark "RIOJAVINA" (Application No 4 121 621) for goods and services in classes 29, 30 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Consejo Regulador de la Denominación de Origen Calificada Rioja

Mark or sign cited in opposition: Various registered marks, including in particular the Community figurative mark "RIOJA" (No 226 118) for goods in class 33 and the International figurative mark "RIOJA" (No 655 291) for goods in class 33.

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

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

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

Appeal brought on 8 April 2009 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 29 January 2009 in Case F-98/07 Petrilli v Commission

(Case T-143/09 P)

(2009/C 153/80)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by D. Martin and B. Eggers, Agents)

Other party to the proceedings: Nicole Petrilli (Woluwé-Saint-Étienne, Belgium)

Form of order sought by the appellant

— annul the judgement of the Civil Service Tribunal of 29 January 2009 in Case F-98/07 *Petrilli*; and

— order each of the parties to bear their own costs in connection with the proceedings before the Court of First Instance and the Civil Service Tribunal.

Pleas in law and main arguments

By this appeal, the Commission seeks annulment of the judgment of the Civil Service Tribunal of 29 January 2009 in Case F-98/07 *Petrilli* v *Commission* by which the Tribunal annulled the Commission decision of 20 July 2007 dismissing Ms Petrilli's request for her contract as a member of the contract staff for auxiliary tasks to be extended.

In support of its appeal, the Commission puts forward three grounds of appeal alleging that:

— the Tribunal should, according to the Commission, have declared the action inadmissible in view of the fact that the annulled decision contained no real and detailed examination of the applicant's personal situation;

— the Tribunal erred in law in holding that the six year rule contained in Decision C(2004) 1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services [1] infringes Article 88 of the Conditions of Employment of Other Servants of the Communities;

— the Tribunal erred in law in holding that the unlawfulness of the six year rule alone sufficed for the Commission to incur non-contractual liability without checking in addition whether the Commission had manifestly and gravely infringed its wide discretion to assess the interest of the service in not renewing of Ms Petrilli's contract.

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[1] Administrative Notices No 75-2004 of 24 June 2004.

Action brought on 9 April 2009 — Trelleborg Industrie v Commission

(Case T-147/09)

(2009/C 153/81)

Language of the case: English

Parties

Applicant: Trelleborg Industrie SAS (Clermont Ferrand, France) (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 three 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.

Third, alternatively, the applicant argues that the Commission has unlawfully discriminated against it in treating it differently from another addressee as regards liability for a corporate predecessor and has breached the right to be heard and the obligation to give reasons.

Action brought on 11 April 2009 — Rintisch v OHIM — Valfeuri Pates Alimentaires (PROTIACTIVE)

(Case T-152/09)

(2009/C 153/82)

Language in which the application was lodged: English

Parties

Applicants: Bernhard Rintisch (Bottrop, Germany) (represented by: A. Dreyer, lawyer)

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

Other party to the proceedings before the Board of Appeal: Valfeuri Pates Alimentaires SA (Wittenheim, France)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 February 2009 in case R 1661/2007-4; and

— Order OHIM to pay the costs

Pleas in law and main arguments

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

Community trade mark concerned: The word mark "PROTIACTIVE", for goods in classes 5, 29 and 30 — application No 4 843 348

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

Mark or sign cited: German trade mark registration of the word mark "PROTI" for goods in classes 29 and 32; German trade mark registration of the figurative mark "PROTIPOWER" for goods in classes 5, 29 and 32; German trade mark registration of the word mark "PROTIPLUS" for goods in classes 5, 29 and 32; German trade mark registration of the trade word "PROTITOP" for goods in classes 5, 29, 30 and 32; Community trade mark registration of the word mark "PROTI" for goods in classes 5 and 29

Decision of the Opposition Division: Rejected 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 failed to assess the opposition on its merits; Infringement of Article 74(2) of Council Regulation 40/94 (which became Article 76(2) of Council Regulation 207/2009) as the Board of Appeal failed to exercise discretion or at least failed to state reasons how it exercised discretion; Misuse of power as the Board of Appeal erred by not taking into account documents and evidence submitted by the applicant.

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[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 15 April 2009 — Maxcom v OHIM — Maxdata Computer (maxcom)

(Case T-155/09)

(2009/C 153/83)

Language in which the application was lodged: Polish

Parties

Applicant: Maxcom sp. z o.o. (Tychy, Poland) (represented by: P. Kral, 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: Maxdata Computer GmbH & Co. KG (Marl, Germany)

Form of order sought

— annul the decision of the Second Board of Appeal of OHIM of 30 January 2009 in Case R 1019/2008-2, served upon the applicant on 16 February 2009;

— order OHIM and the intervener to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: graphic trade mark 'maxcom' for goods in Classes 9 and 11

Proprietor of the mark or sign cited in the opposition proceedings: Maxdata Computer GmbH & Co. KG

Mark or sign cited in opposition: national word mark 'max' registered in Germany for services in Classes 38 and 42 and certain goods in Class 9

Decision of the Opposition Division: opposition upheld in relation to goods in Class 9

Decision of the Board of Appeal: dismissal of the appeal brought by the applicant

Pleas in law: infringement of Article 8(1)(b) of Regulation No 40/94 (now Article 8(1)(b) of Regulation No 207/2009) [1]

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

Action brought on 17 April 2009 — Four Ace International v OHIM (skiken)

(Case T-156/09)

(2009/C 153/84)

Language in which the application was lodged: German

Parties

Applicant: Four Ace International Ltd (represented by G. Uphoff, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 6 February 2009 — served on 11 February 2009 — in Case R 519/2008-4 concerning the application for Community trade mark No 5819371 and amend it so as to enable registration to proceed in respect of the following goods and services: Class 39 — travel arrangement and Class 41 — education; providing of training; entertainment; sporting and cultural activities;

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'skiken' for services in Classes 35, 39, 41 and 43

Decision of the Examiner: Registration refused in part

Decision of the Board of Appeal: Appeal dismissed in part

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 ([1])), since the trade mark applied for has the requisite distinctive character and there is no need for it to be allowed to remain available.

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

Action brought on 14 April 2009 — Hellenic Republic v Commission

(Case T-158/09)

(2009/C 153/85)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: V. Karra, I. Khalkias and S. Papaioannou)

Defendant: Commission of the European Communities

Form of order sought

— annul or alter Commission Decision C(2009) 810 of 13 February 2009 relating to the financial treatment in the context of clearance of expenditure financed by the EAGGF in certain cases of irregularities committed by operators, in so far as it concerns the Hellenic Republic;

— refund to the applicant the 50% which has been deducted pursuant to Article 32(5) of Regulation No 1290/2005 in the instances where there is no irregularity, numbered 3, 4 and 6 to 13 (except 7), or the debtor is insolvent, the case numbered 2;

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

Pleas in law and main arguments

By Decision C(2009) 810 of 13 February 2009 relating to the financial treatment in the context of clearance of expenditure financed by the EAGGF in certain cases of irregularities committed by operators, the Commission imposed financial corrections on the applicant amounting to EUR 13 348 979,02 on account of the negligence which, according to the Commission, was displayed by the Greek authorities over a four-year period from the primary finding of the irregularity, and on account of the fact that they did not recover sums which had been wrongly paid to five undertakings operating in the wine-making, cotton and other sectors and to eight mass-production undertakings which participated in the aid regime for olive oil consumption.

The Hellenic Republic contends by its first general plea for annulment that there is no valid legal basis for imposing the correction in any of the 13 cases examined because the Commission misinterpreted and misapplied the provision, relied upon as applicable, in Articles 31(1) and 32(8) of Regulation (EC) No 1290/2005. ([1]) The applicant submits in the alternative that the Commission made a manifest fundamental error and misappraised the factual circumstances that relate to the acts of the competent Greek authorities and, in the further alternative, that the statement of reasons in the contested decision, which is based on the mistaken presumption that nothing was done in the four-year period from the primary finding of the irregularity and that the recovery procedure or a valid recovery procedure was not begun, does not meet the requirement of Article 253 EC because it is defective, insufficient and vague, failing to rebut the arguments which Greece put forward in the course of the bilateral consultations and of the procedure before the Conciliation Body.

By the second plea for annulment, the applicant contends that the Commission mistakenly did not apply the fifth paragraph of Article 32(5) and Article 32(6)(a) and (b) of Regulation (EC) No 1290/2005 instead of Article 32(1) and (8) in four cases, with the result that it charged the expenditure in question to the applicant instead of its being taken on by the EAGF.

By the third plea for annulment, the applicant maintains that Article 32 of Regulation (EC) No 1290/2005, which lays down a period of one year from the primary administrative or judicial finding for the initiation of all administrative and judicial

procedures laid down by national legislation with a view to recovery, concerns only irregularities occurring after the regulation began to apply and cannot concern irregularities which took place decades ago, when a different legal regime was in force which did not lay down a corresponding time-limit, the control being restricted to the observance of a reasonable period.

By the fourth plea for annulment, the applicant submits that the Commission's claim that the sums should be charged to the applicant, after the passing of 15 to 20 years from the irregularity relied upon, is time-barred because of the excessive duration of the procedure, or in the alternative the principle of legal certainty has been infringed.

Finally, by the fifth plea for annulment, the applicant submits that, since there is no irregularity in cases 3, 4, 6 and 8 to 13, the 24-month rule in Article 31(4) of Regulation (EC) No 1290/2005 applies in respect of any instance of recovery, and therefore the charging of the corresponding sums which are referable to a period far in excess of 24 months from notification of the inspection findings is misconceived and must be annulled.

(1) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 27 April 2009 — Biofrescos — Comércio de Produtos Alimentares Lda v Commission of the European Communities

(Case T-159/09)

(2009/C 153/86)

Language of the case: Portuguese

Parties

Applicant: Biofrescos — Comércio de Produtos Alimentares Lda (Linda-a-Velha, Portugal) (represented by: A. Magalhães e Menezes, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decision of 16 January 2009 rejecting the applicant's request for remission of import duties in the sum of EUR 41 271,09 and ordering that that amount be entered into the accounts *a posteriori*;

Pleas in law and main arguments

Between September 2003 and February 2005, the applicant imported a number of consignments of frozen prawns from Indonesia, for which it sought remission of import duties pursuant to Articles 220(2)(b), 236 and 239(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. (1)

The applicant submits that the Commission infringed, at the very least, those provisions in so far as: first, it made no observations on any of the arguments put forward by the applicant in its request for remission of import duties; secondly, the reasons given by the Commission were inadequate, misleading and incomprehensible; thirdly, it misinterpreted the error made by the Indonesian authorities themselves; fourthly and last, the Commission deemed to be proved facts which are not actually proved, the burden of proving which fell, subsequently, to the bodies involved in the procedure and not the applicant.

(1) OJ 1996 L 97, p. 38.

Action brought on 21 April 2009 — Ilink Kommunikationssysteme v OHIM (ilink)

(Case T-161/09)

(2009/C 153/87)

Language in which the application was lodged: German

Parties

Applicant: Ilink Kommunikationssysteme GmbH (Berlin, Germany) (represented by B. Schütze, lawyer)

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

Form of order sought

— Annul the contested decision of the Office for Harmonisation in the Internal Market of 5 February 2009 in Case R 1849/2007-4; and

— order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'ilink' for goods and services in Classes 9, 16, 38 and 42

Decision of the Examiner: Registration refused in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 (now Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 (1)), since the trade mark applied for has the requisite distinctive character and there is no need for it to be allowed to remain available.

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

Action brought on 3 April 2009 — Kitou v European Data Protection Supervisor

(Case T-164/09)

(2009/C 153/88)

Language of the case: French

Parties

Applicant: Erasmia Kitou (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: European Data Protection Supervisor

Form of order sought

— declare that Regulation (EC) No 1049/2001 is inapplicable;

— in the alternative, declare an error of law in the application of Regulation (EC) No 1049/2001 in conjunction with Regulation (EC) No 45/2001;

— consequently, annul the Decision of the European Data Protection Supervisor 2008-0600;

— declare that the request for access to the document does not satisfy the conditions laid down in Regulation No 45/2001;

— order the defendant to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of the decision of the European Data Protection Supervisor by which the latter found that the disclosure during national legal proceedings of certain data concerning the applicant's career in the Commission of the European Communities is not contrary to the provisions of Regulations No 45/2001 ([1]) and No 1049/2001. ([2])

In support of its action, the applicant claims that:

— the contested decision is unfounded inasmuch as it is based on Regulation No 1049/2001 which is inapplicable in the present case, since the request for access does not concern a document within the meaning of Regulation No 1049/2001, but exclusively an item of personal data.

— even if Regulations No 1049/2001 and No 45/2001 were to apply in conjunction with one another in the present case, the defendant, when applying them, erred in considering that the conditions imposed by Regulation No 45/2001 concerning the processing of personal data apply only where the exception provided for in Article 4(1)(b) of Regulation No 1049/2001 regarding access to documents is applicable;

— the defendant infringed the provisions of Regulation No 45/2001 inasmuch as the request for access did not concern a document and was not based on any of the conditions for permitting the processing of personal data.

([1]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

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

Action brought on 24 April 2009 — Shanghai Biaowu High-Tensile Fastener and Shanghai Prime Machinery v Council

(Case T-170/09)

(2009/C 153/89)

Language of the case: English

Parties

Applicants: Shanghai Biaowu High-Tensile Fastener (Shanghai, China) and Shanghai Prime Machinery (Shanghai, China) (represented by: K. Adamantopoulos and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China, insofar as:

— the three-month time limit for disclosing market economy treatment findings was not respected, in breach of the second paragraph of Article 2(7)(c);

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), first part of the first indent, of the basic Regulation;

— it unjustifiably rejects the applicants' market economy treatment claim in breach of Article 2(7)(c), second part of the first indent, of the basic Regulation;

— its findings are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures;

— it places a burden of proof on exporting producers seeking market economy treatment inconsistent with general principles of Community law, in particular the principle of sound administration;

— it is in breach of Articles 1.1 and 1.2, Article 2, Article 3.1, Article 5, Article 6, Article 8, Article 10.1, Article 11 and Article 15 of the basic anti-subsidy Regulation as it uses the rejection of market economy treatment in order to countervail subsidies;

— it fails to adjust a difference demonstrated to affect price comparability, in breach of Article 2(10) of the basic Regulation,

— it fails to give reasons for maintaining the market economy treatment rejection in breach of Article 253 EC;

— its findings were based on a procedure in breach of the fundamental right of defence of the applicants, preventing them from effectively contesting some findings essential to the calculation of the duties, and the outcome of the investigation; and

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the annulment of the contested regulation on the following grounds:

In respect of their first head of claim, the applicants submit that the second subparagraph of Article 2(7)(c) of the basic Regulation has been breached as the market economy treatment ("MET") decision was disclosed after the three-month time limit established in this Article, and after the Commission had all essential information to calculate the applicants' dumping margin.

In respect of their second head of claim, the applicants submit that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET even though the applicants had demonstrated that they take their business decisions purely on response to market signals without any State interference. According to the applicants the contested regulation failed to identify any fact that would point to any State interference prior to, during or after the period of investigation. The applicants moreover contend, in respect of their third head of claim, that the contested regulation is in breach of the first indent of Article 2(7)(c) as it rejected the applicants' claim for MET after the applicants had overcome their burden of proof and demonstrated that the costs of major inputs reflect market values.

In respect of their fourth head of claim, the applicants contend that the facts of the case lack careful and impartial examination. More precisely, the conclusion that raw material prices in China were distorted due to subsidization, which was used as the grounds for considering that the applicants did not buy input at market value, was based on insufficient information and the Commission did not properly assess the evidence concerning the steel sector in China.

In respect of their fifth head of claim, the applicants submit that the contested regulation is in breach of general principles of EC law and in particular, the principle of sound administration, also set out in Article 41 of the Charter of Fundamental Rights, since an unreasonable burden of proof was imposed on them in order to demonstrate that market economy conditions prevail, as required by Article 2(7)(b).

In respect of their sixth head of claim, the applicants put forward that the contested regulation is in breach of the anti-subsidy regulation as it allegedly used MET rejection in an anti-dumping investigation to compensate for subsidies that could only be addressed by the anti-subsidy basic Regulation after due investigation.

In respect of their eighth claim, the applicants argue that there is no legal basis for denying adjustment to the normal value based on the argument that raw material price is distorted, contrary to the reasons given by the EU institution in order to reject their claim for adjustment under Article 2(10)(k) of the basic Regulation.

In respect of their ninth head of claim, the applicants claim that in the definitive disclosure document proposing the imposition of definitive measures, the Commission simply rephrased and repeated the same argument used in the MET disclosure document, without analysing the evidence provided and giving reasons for the rejection. Moreover, the applicants claim that the contested regulation did not provide any reasons for confirming the rejection of the evidence provided by the applicants.

Finally, in respect of their last head of claim, the applicants submit that their rights of defence were breached, since they were prevented from accessing essential information regarding the calculation of normal value and dumping margins.

Action brought on 24 Avril 2009 — Gem-Year et Jinn-Well Auto-Parts (Zhejiang) v Council

(Case T-172/09)

(2009/C 153/90)

Language of the case: English

Parties

Applicants: Gem-Year Industry Co. Ltd and Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: K. Adamantopoulos and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China, insofar as

  — it made a manifest error in the assessment of the facts in order to conclude that the complaining community producers had standing, in breach of Articles 5(1) and 5(4) of the basic Regulation;

  — it breached Article 1(1), (2) and (4), Article 2(8) and Article 5(2) and (10) of the Basic Regulation by imposing anti-dumping duties against several different products;

  — it breached Article 3(3) and (4) of the basic Regulation in that it finds that the Community industry suffered material injury on the basis of a manifest error in the assessment of the facts of the case;

  — it unjustifiably rejects the market economy treatment claims of Chinese exporting producers in breach of Article 2(7)(c), second part of the first indent, of the basic Regulation;

  — it is in breach of Article 2(7)(c), as interpreted in line with the WTO Agreement and paragraph 15 of China's Protocol of Accession to the WTO, in that it rejected the claim for market economy treatment of producers in the fastener industry based on a situation prevailing in another industry;

  — its findings are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures;

  — it is in breach of Articles 1(1) and 1(2), Article 2, Article 3(1), Article 5, Article 6, Article 8, Article 10(1), Article 11 and Article 15 of the basic anti-subsidy Regulation as it uses the rejection of market economy treatment in order to countervail subsidies;

— order the Council to bear the costs of these proceedings

Pleas in law and main arguments

By means of their application, the applicants seek the annulment of Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron and steel fasteners originating in the People's Republic of China ([1]), on the basis of the following grounds:

The applicants submit that the Council made a manifest error in the assessment of the facts applied in the case in order to conclude that the complainants had standing under Articles 5(1) and 5(4) of the basic regulation ([2]), as it should allegedly have taken into account the margin of error in the statistics it used for calculating the total community production and should have corrected this figure accordingly. Moreover, the applicants claim that the contested regulation is in breach of Articles 1(1), (2) and (4), 2(8), 5(2) and (10) of the basic regulation by imposing anti-dumping duties against several different products, where an anti-dumping investigation can cover no more than one single product. Further, the applicants put forward that the Council made a manifest error in the assessment of the facts of the case and breached Article 3(3) and (4) of the basic regulation when it concluded in recital 161 of the contested regulation that the Community industry suffered material injury, whereas this finding rests solely on one negative injury indicator, on one contradictory finding, and on several speculative assessments.

The applicants also argue that the contested regulation is in breach of the second part of the first indent of Article 2(7)(c), as it rejected the claim for market economy treatment of Chinese exporting producers on the ground that their cost of major inputs did not reflect international, non-distorted market price, whereas this provision simply requires companies claiming market economy treatment to demonstrate that they purchase their main input at market value.

Furthermore, it is submitted that the contested regulation is in breach of Article 2(7)(c), as interpreted in line with the WTO Agreement and paragraph 15 of China's Protocol of Accession to the WTO, in that it rejected the claim for market economy treatment of producers in the fastener industry based on a situation prevailing in another industry. In addition, the applicants contend that the findings of the contested regulation are based on insufficient information in breach of the duty of examining carefully and impartially all the relevant aspects of each individual case as guaranteed by the Community legal order in administrative procedures.

Finally, the applicants claim that the contested regulation is in breach of Articles 1(1) and 1(2), Article 2, Article 3(1) of the anti-subsidy basic regulation ([3]) as it did not determine whether subsidies found to exist during the anti-dumping investigation were subsidies as defined in those articles; in other words, that a financial contribution took place, was specific, conferred a benefit and that the EU industry was injured as a consequence of it. Similarly, according to the applicants, the Commission never analysed the injury, in accordance with Article 8 of the anti-subsidy basic regulation, or calculated the benefit conferred upon the recipient as mandated by Articles 5 and 6 of the said regulation. In addition, the applicants claim that the Commission did not follow the procedures set out in Articles

10(1) and 11, nor did it establish, on the basis of facts, the existence of countervailable subsidies and injury caused thereof as required by Article 15 of the basic anti-subsidy regulation as it uses the rejection of market economy treatment in order to countervail subsidies.

(1) OJ 2009 L 29, p. 1
(2) Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) as amended by Council Regulation (EC) No 2117/2005 (OJ 2005 L 340, p. 17)
(3) Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community (OJ 1997 L 288, p. 1)

Action brought on 27 April 2009 — Complejo Agrícola v Commission

(Case T-174/09)

(2009/C 153/91)

Language of the case: Spanish

Parties

Applicant: Complejo Agrícola, SA (Madrid, Spain) (represented by: A. Menéndez Menéndez and G. Yanguas Montero, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the present action admissible;

— annul in part Article 1 of, in conjunction with Annex 1 to, Commission Decision 2009/95/EC of 12 December 2008, (1) in so far as they concern the declaration as a site of Community importance of "Acebuchales de la Campiña sur de Cádiz" Code ES6120015 ("SCI Acebuchales") and restore fully the exercise of COMPLEJO AGRÍCOLA's right of ownership over that part of its farm which does not have sufficient environmental value for it to be declared a site of Community importance ("SCI");

— order the Commission to pay the costs.

Pleas in law and main arguments

The decision challenged in the present proceedings adopts the second updated list of SICs for the Mediterranean biogeographical region in accordance with Article 4(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. (2) The SCIs which were designated or retained in the contested decision included the SCI Acebuchales with an area of 26 475,31 hectares and with the following coordinates: longitude 5° 57′ 4″ W and latitude 36° 24′ 2″.

In accordance with the contested decision, a surface area of 1 759 hectares of the farm of which the applicant is the owner ('the farm') is included in the SCI Acebuchales. Since the declaration of Acebuchales as an SCI, the legal protection regime laid down in Article 6(2), (3) and (4) of Directive 92/43 has applied automatically to that area of land. That regime restricts the applicant's ability to use and to enjoy the part of the farm included in SCI Acebuchales.

The applicant makes the following submissions in support of its claim:

— in the determination of the perimeter of SCI Acebuchales, which affects the farm, the Commission exceeded its powers as a consequence of its erroneous application of the criteria established in Annexes I, II and III to Directive 92/43.

  As established in the Environmental Impact Assessment carried out by the environmental consultants Istmo '94, of the 1 759 hectares of the farm affected by SCI Acebuchales, 877 hectares do not satisfy the environmental conditions required by Directive 92/43 for them to be included in an SCI area. The Commission's erroneous application of the criteria of Annex III to Directive 92/43 has resulted in a large tract of land owned by the applicant lacking in environmental value being regarded as an SCI area, which, moreover, entails an infringement of the principles of proportionality and legality which shape Community law.

— there has been an unjustified and disproportionate restriction of the ability to use and enjoy inherent in the applicant's right of ownership over those areas of the farm affected by SCI Acebuchales which are lacking in environmental value.

— the applicant had no opportunity to participate in the procedure for declaring Acebuchales to be an SCI, nor even to learn of its existence, before the publication of the contested decision: that has resulted in an infringement of the principles of *audi alteram partem* and legal certainty.

(1) Commission Decision of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) (OJ 2009 L 43, p. 393).
(2) OJ 1992 L 206, p. 7.

Action brought on 6 May 2009 — Government of Gibraltar v Commission

(Case T-176/09)

(2009/C 153/92)

Language of the case: English

Parties

Applicant: Government of Gibraltar (represented by: D. Vaughan, QC and M. Llamas, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— annul Decision 2009/95/EC to the extent that it extends ES6120032 to British Gibraltar Territorial Waters (both within and outside UKGIB0002) and to an area of the High Seas;

— order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

By means of present application, the applicant seeks the partial annulment of Commission Decision 2009/95/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) [1] insofar as it designates ES6120032 "Estrecho oriental" site so as to include Gibraltar Territorial Waters (both within and outside UKGIB0002) and an area of the High Seas.

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

First, the applicant submits that the contested decision is in breach of the EC Treaty in that:

— the Commission made manifest errors of law in that, in breach of Article 299 EC, it has designated an area of one Member State, British Gibraltar Territorial Waters, as forming part of another Member State, Spain;

— it was adopted in breach of Articles 3(2) and 4(1) of the Directive 92/43/ECC [2] and in manifest violation of the scheme of that directive, as it purports to attribute "site of Community importance" status to a large part of the site ES6120032 which is not in Spanish territory and which is national to another Member State and in clear breach of Article 2 of the same directive to a part of the High Seas which do not form part of the European territory of Member States and over which Spain does not, and cannot, exercise any jurisdiction or sovereignty;

— it contains an error in law in that it purports to grant "site of Community importance" status and Directive 92/43/ECC obligations to parts of ES6120032, being under Spanish sovereignty, which overlap with UKGIB0002, being under United Kingdom sovereignty, thereby purporting to apply two separate and distinct legal, penal, administrative and monitoring regimes in the same site area;

— it was adopted in breach of Article 300(7) EC and provisions of Part XII of the United Nations Convention on the Law of the Sea 1982 (UNICLOS), the Barcelona Convention on the Protection of the Mediterranean Sea 1976 and the 1995 Protocol to that Convention as it requires Spain to comply with the same environmental obligations in the part of British Gibraltar Territorial Waters included in ES6120032 as are required to be complied with by the UK/Gibraltar in the same area;

Second, the applicant claims that the contested decision is vitiated by manifest errors of facts which lead the Commission to an improper application of the law and infringements of the EC Treaty since it is based on information which is false and misleading.

Third, the applicant contends that the contested decision was adopted in breach of the principle of legal certainty in that the automatic effect of the "overlapping" designation of the sites is to apply two systems of law (Gibraltar's and Spain's law implementing the Directive 92/43/ECC) in the same area for the same purpose.

In the alternative, the applicant claims that the contested decision was adopted in breach of the principles set for in Articles 2, 3, 89 and 137(1) UNICLOS as a matter of customary international law. As a further alternative, it submits that the decision, to the extent it designates ES6120032 as encompassing British Gibraltar Territorial Waters is in breach of the principle of customary international law that the territorial sea extends, as a minimum, to three nautical miles.

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[1] OJ 2009 L 43, p. 393

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7

Action brought on 11 May 2009 — Spa Monopole v OHIM — Club de Golf Peralada (WINE SPA)

(Case T-183/09)

(2009/C 153/93)

Language in which the application was lodged: English

Parties

Applicants: Spa Monopole, compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and O. Klimis, lawyers)

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

Other party to the proceedings before the Board of Appeal: Club de Golf Peralada, SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 March 2009 in joined cases R 1231/2005-4 and R 1250/2005-4; and

— Order OHIM to pay the costs

Pleas in law and main arguments

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

Community trade mark concerned: The word mark "WINE SPA", for goods and services in classes 3, 5, 16, 24, 25 and 42

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

Mark or sign cited: Various national, international and Community trade mark registrations of the mark "SPA" for goods and services in classes 3, 32 and 42, respectively; Benelux and international trade mark registration of the mark "LES THERMES DE SPA" for goods and services in classes 3 and 42; German trade mark registration of the mark "SPA MONOPOLE S.A. SPA" for goods in class 3; S.A. SPA Monopole, Compagnie fermière de Spa, en abrégé S.A. Spa Monopole N.V., société anonyme, company name protected in Belgium; Les Thermes de Spa, Place Royale 2, 4900 Spa, Belgium, trade name protected in Belgium

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Partially annulled the decision of the Opposition Division and rejected the opposition in its entirety

Pleas in law: Infringement of Articles 75, second sentence and 76(1), second sentence of Council Regulation 207/2009 [1] as the decision of the Board of Appeal was taken in breach of the principle of the right to a fair hearing, as well as in breach of the adversarial principle; Infringement of Article 8(5) of Council Regulation 207/2009 as the Board of Appeal based its assessment of the distinctive character of the earlier trade mark "SPA" on erroneous and non-established elements and failed to assess the similarity between the trade marks concerned in relation to the goods for which they are registered or applied for. Finally, the Board of Appeal failed to examine whether the use of the Community trade mark concerned was likely to take unfair advantage of, or to be detrimental to the distinctive character and the reputation of the earlier mark "SPA", thereby infringing Article 8(5) of Council Regulation 207/2009.

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

Order of the Court of First Instance of 5 May 2009 — Roche v Council and Commission

(Joined Cases T-142/94 and T-143/94) [1]

(2009/C 153/94)

Language of the case: English

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

[1] OJ C 174, 25.6.1994.

Order of the Court of First Instance of 8 May 2009 — Opus Arte UK v OHIM — Arte (OPUS ARTE)

(Case T-170/07) [1]

(2009/C 153/95)

Language of the case: English

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

[1] OJ C 170, 21.7.2007.

Order of the Court of First Instance of 5 May 2009 – Commission v Eurgit et Cirese

(Case T 470/08) [1]

(2009/C 153/96)

Language of the case: Italian

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

[1] OJ C 327, 20.12.2008.

Order of the Court of First Instance of 4 May 2009 — Rundpack v OHIM (Representation of a tumbler)

(Case T-503/08) [1]

(2009/C 153/97)

Language of the case: German

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

[1] OJ C 44, 21.2.2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 27 March 2009 — B v Parliament

(Case F-26/09)

(2009/C 153/98)

Language of the case: French

Parties

Applicant: B (Brussels, Belgium) (represented by: E. Boigelot, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application that the Tribunal order the Parliament to pay the applicant the sum of EUR 12 000 by way of compensation for the harm suffered, first, on account of the professional and psychological harassment which she was subject to and, secondly, on account of there being no internal administrative investigation by an independent body.

Form of order sought

The applicant claims that the Tribunal should:

— Order the Parliament to pay the applicant the sum of EUR 12 000 by way of compensation for the harm (non-material harm, detriment to her political reputation and career, the undermining of her dignity and detriment to her health) which she suffered, first, on account of the professional and psychological harassment to which she was subject during her posting at the Parliament and, secondly, on account of there being no internal administrative investigation by an independent body;

— order the European Parliament to pay the costs.

Action brought on 7 April 2009 — Časta v Commission

(Case F-40/09)

(2009/C 153/99)

Language of the case: Czech

Parties

Applicant: Radek Časta (Brussels, Belgium) (represented by: L. Tahotná, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

First, an application for annulment of EPSO's decision not to admit the applicant to the oral tests in open competition EPSO/AD/107/07-LAW on account of the fact that the condition relating to 3 years' experience in a senior management post was not met. Secondly, an application for an order that the defendant pay the applicant a sum in respect of the material and non-material harm suffered.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the appointing authority's decision No R/45715/08 of 22 December 2008;

— Order the defendant to pay the applicant EUR 20 000, in respect of the material and non-material harm suffered, plus interest for late payment from 9 June 2008 until 15 days after the judgment has acquired the binding authority of a judgment which has become definitive;

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

Action brought on 24 April 2009 — Lebedef-Caponi v Commission

(Case F-45/09)

(2009/C 153/100)

Language of the case: French

Parties

Applicant: Maddalena Lebedef-Caponi (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the applicant's career development report for 2007.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the applicant's career development report for the period from 1 January 2007 to 31 December 2007;

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

Action brought on 7 May 2009 — Fries Guggenheim v CEDEFOP

(Case F-47/09)

(2009/C 153/101)

Language of the case: French

Parties

Applicant: Eric Mathias Fries Guggenheim (Liège, Belgium) (represented by: L. Lucas, lawyer)

Defendant: European Centre for the Development of Vocational Training (CEDEFOP)

Subject-matter and description of the proceedings

Annulment of CEDEFOP's decision not to renew the applicant's contract as a member of the temporary staff and, should the applicant not be reinstated, an order that the defendant pay him damages to compensate for the non-material harm suffered.

Form of order sought

The applicant claims that the Tribunal should:

— Annul CEDEFOP's decision of 7 July 2008 not to renew the applicant's contract and confirming that his employment will end on 15 October 2008;

— Annul, in so far as necessary, CEDEFOP's decision of 18 July 2008 confirming the first decision, following the applicant's letter of 9 July 2008 and his meeting on 17 July 2008 with the representatives of personnel;

— Order CEDEFOP to pay the applicant, should he not be reinstated, damages of an amount to be assessed by the Tribunal to compensate for his non-material harm;

— Allow the applicant, should he consider it necessary, to value the detriment to his career and, if not, order CEDEFOP to pay him damages to compensate for that detriment, should he not be reinstated, of an amount to be assessed by the Tribunal;

— Order CEDEFOP to pay the costs.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-126/09

(Official Journal of the European Union C 129, 6 June 2009, p. 18)

(2009/C 153/102)

The notice in the Official Journal concerning Case T-126/09 *Italy* v *Commission and EPSO* is to read as follows:

'**Action brought on 24 March 2009 — Italy v Commission and EPSO**

(Case T-126/09)

(2009/C 129/31)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, Avvocato dello Stato)

Defendants: Commission of the European Communities and European Personnel Selection Office (EPSO)

Form of order sought

— Annulment of Notices of open competitions EPSO/AD/144/09 (public health), EPSO/AD/145/09 (food safety (policy and legislation)), and EPSO/AD/146/09 (food safety (audit, inspection and evaluation)) for the drawing up of a reserve from which to recruit 35, 40 and 55 administrators (AD 5) respectively, with Bulgarian, Cypriot, Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian citizenship, in the field of public health.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case T-166/07 *Italy* v *Commission*.'

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(Continued on inside back cover)

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