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IV

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COURT OF JUSTICE

*(2010/C 51/01)***Last publication of the Court of Justice in the *Official Journal of the European Union***

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V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Republic of Finland(Case C-284/05) ⁽¹⁾**(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment)**

(2010/C 51/02)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by: G. Wilms and P. Aalto, Agents)

Defendant: Republic of Finland (represented by: T. Pynnä, E. Bygglin, J. Heliskoski and A. Guimaraes-Purokoski, Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Molde, Agent), Federal Republic of Germany (represented by: M. Lumma and U. Forsthoff, Agents), Hellenic Republic (represented by: E.-M. Mamouna and K. Boskovits, Agents), Italian Republic (represented by: I. M. Braguglia, Agent, G. De Bellis, avvocato dello Stato), Portuguese Republic (represented by: L. Inez Fernandes, Agent), Kingdom of Sweden (represented by: A. Falk, Agent)

Re:

Failure of a Member State to fulfil its obligations — Breach of Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and, for the period after 31 May 2000, of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision

94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Duty-free imports of military equipment and goods for dual military and civil use

Operative part of the judgment

The Court:

1. Declares that the Republic of Finland has failed to fulfil its obligations under Article 26 EC, Article 20 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and, consequently, the Common Customs Tariff by exempting imports of military equipment from customs duties in the period from 1998 until 2002 and has also failed to fulfil its obligations under Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (EC, Euratom) No 1355/96 of 8 July 1996, and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, by refusing to calculate, declare and to make available to the European Commission the own resources relating thereto and by refusing to pay default interest payable because of the failure to make those own resources available to the European Commission;
2. Orders the Republic of Finland to pay the costs;
3. Orders the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Italian Republic, the Portuguese Republic and the Kingdom of Sweden to bear their own costs.

⁽¹⁾ OJ C 271, 29.10.2005.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Kingdom of Sweden

(Case C-294/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment and of dual-use goods for civil and military use)

(2010/C 51/03)

Language of the case: Swedish

Parties

Applicant: European Commission (represented by: L. Ström van Lier, P. Dejmek and G. Wilms, Agents)

Defendant: Kingdom of Sweden (represented by: A. Kruse and A. Falk, Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented by: M. Lumma, Agent), Republic of Finland (represented by: J. Heliskoski, Agent), Kingdom of Denmark (represented by: J. Molde, Agent)

Re:

Failure of a Member State to fulfil obligations — Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and, for the period after 31 May 2000, of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Duty-free imports of military equipment and goods for civilian or military use

Operative part of the judgment

The Court:

1. Declares that, by failing to declare and pay to the European Commission own resources which were not collected in the period from 1 January 1998 until 31 December 2002, relating to imports of war material and goods for both civil and military use, and by failing to pay default interest arising from the failure to pay those own resources to the European Commission, the Kingdom of Sweden has failed to fulfil its obligations under Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (EC, Euratom) No 1355/96 of 8 July 1996, until 31 May

2000 and, after that date, the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources.

2. Orders the Kingdom of Sweden to pay the costs.
3. Orders the Federal Republic of Germany, the Republic of Finland and the Kingdom of Denmark to bear their own costs.

⁽¹⁾ OJ C 217, 3.9.2005.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Federal Republic of Germany

(Case C-372/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment)

(2010/C 51/04)

Language of the case: German

Parties

Applicant: European Commission (represented by: C. Cattabriga, G. Wilms, D. Triantafyllou and H. Støvlbæk, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma, Agent, C. von Donat, Rechtsanwalt)

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Bering Liisberg, Agent), Hellenic Republic (represented by: E.-M. Mamouna, A. Samoni-Rantou and K. Boskovits, Agents), Republic of Finland (represented by: E. Bygglin and A. Guimaraes-Purokoski, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and, for the period after 31 May 2000, of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Duty-free imports of military equipment

Operative part of the judgment

The Court:

1. Declares that, by refusing to calculate, declare and make available to the European Commission the own resources relating to imports of military material during the period from 1 January 1998 to 31 December 2002 and by refusing to pay default interest payable due to the failure to make those own resources available to the European Commission, the Federal Republic of Germany has failed to fulfil its obligations under Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;
2. Orders the Federal Republic of Germany to pay the costs;
3. Orders the Kingdom of Denmark, the Hellenic Republic and the Republic of Finland to bear their own costs.

(¹) OJ C 296, 26.11.2005.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Italian Republic

(Case C-387/05) (¹)

(Failure of a Member State to fulfil obligations — Duty-free imports of dual-use material for civil and military use)

(2010/C 51/05)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Wilms, L. Visaggio and C. Cattabriga, Agents)

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

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Bering Liisberg, Agent) Hellenic Republic (represented by: E.-M. Mamouna, A. Samoni-Rantou and K. Boskovits, Agents), Portuguese Republic (represented by: C. Guerra Santos, L. Inez Fernandes and J. Gomes, Agents),

Republic of Finland (represented by: A. Guimaraes-Purokoski, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 26 EC and various provisions of the customs legislation (Article 20 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), Articles 2, 9, 10 and 17(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1)) and the corresponding provisions of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 (OJ 2000 L 130, p. 1) — Duty free imports of material for military and civilian use — Refusal to calculate the amounts which ought to have been levied and made available as the Communities' own resources

Operative part of the judgment

The Court:

1. Declares that, by exempting imports of material capable of use both for civil and military purposes from customs duties during the period from 1 January 1999 until 31 December 2002 and by refusing to calculate, declare and make available to the European Commission the own resources which were not collected because of that exemption and the default interest payable because of the failure to make those own resources available to the European Commission in good time, the Italian Republic has failed to fulfil its obligations under, on the one hand, Article 26 EC, Article 20 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and, consequently, the Common Customs Tariff and, on the other, Articles 2, 9, 10 and 17(1) of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources.
2. Orders the Italian Republic to pay the costs.
3. Orders the Kingdom of Denmark, the Hellenic Republic, the Portuguese Republic and the Republic of Finland to bear their own costs.

(¹) OJ C 22, 28.1.2006.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Hellenic Republic

(Case C-409/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment)

(2010/C 51/06)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: C. Cattabriga, D. Triantafyllou, H. Støvlbæk and G. Wilms, Agents)

Defendant: Hellenic Republic (represented by: A. Samoni-Rantou, E.-M. Mamouna and K. Boskovits, Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Bering Liisberg, Agent), Italian Republic (represented by: I. Braguglia, Agent, G. De Bellis, avvocato dello Stato), Portuguese Republic (represented by: C. Guerra Santos, L. Inez Fernandes and J. Gomes, Agents), Republic of Finland (represented by: J. Heliskoski and A. Guimaraes-Purokoski, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 9, 10 and 11 of Council Regulation (EEC; Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and, in respect of the period after 31 May 2000 Council Regulation (EC; Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Duty-free imports of military equipment

Operative part of the judgment

The Court:

1. Declares that, by refusing to calculate and to make payment to the European Commission of the own resources which were not collected in the period from 1 January 1998 until 31 December 2002, in relation to imports of military material which were exempted from customs duties, and by refusing to pay default interest arising from the failure to pay those own resources to the European Commission, the Hellenic Republic has failed to fulfil its obligations under, respectively, Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council

Regulation (EC, Euratom) No 1355/96 of 8 July 1996, until 31 May 2000, and, after that date, the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;

2. Orders the Hellenic Republic to pay the costs;

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

⁽¹⁾ OJ C 10, 14.1.2006.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Kingdom of Denmark

(Case C-461/05) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment)

(2010/C 51/07)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: C. Cattabriga, G. Wilms, and H. Støvlbæk, Agents)

Defendant: Kingdom of Denmark (represented by: J. Molde, J. Bering Liisberg and B. Weis Fogh, Agents)

Interveners in support of the defendant: Hellenic Republic (represented by: E.-M. Mamouna, A. Samoni-Rantou and K. Boskovits, Agents), Portuguese Republic (represented by: C. Guerra Santos, L. Inez Fernandes and J. Gomes, Agents), Republic of Finland (represented by: E. Bygglin and A. Guimaraes-Purokoski, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and, for the period after 31 May 2000, of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Duty-free imports of military equipment

Operative part of the judgment

The Court:

1. Declares that, by refusing to calculate and make payment to the European Commission of own resources which were not collected in the period from 1 January 1998 until 31 December 2002 in relation to imports of military material which were exempted from customs duties, and by refusing to pay default interest arising from the failure to pay those own resources to the European Commission, the Kingdom of Denmark has failed to fulfil its obligations under, respectively, Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (EC, Euratom) No 1355/96 of 8 July 1996, until 31 May 2000, and, after that date, the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;
2. Orders the Kingdom of Denmark to pay the costs;
3. Orders the Hellenic Republic, the Portuguese Republic and the Republic of Finland to bear their own costs.

⁽¹⁾ OJ C 48, 25.2.2006.

Judgment of the Court (Grand Chamber) of 15 December 2009 — European Commission v Italian Republic

(Case C-239/06) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Duty-free imports of military equipment)

(2010/C 51/08)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Wilms, C. Cattabriga and L. Visaggio, Agents)

Defendant: Italian Republic (represented by: I.M. Braguglia, Agent, G. De Bellis, avvocato dello Stato)

Interveners in support of the defendant: Hellenic Republic (represented by: E.-M. Mamouna, A. Samoni-Rantou and K. Boskovits, Agents), Republic of Finland (represented by: A. Guimaraes-Purokoski, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Commu-

nities' own resources (OJ 1989 L 155, p. 1) and the corresponding provisions of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2000/597/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p) — Duty-free imports of military equipment — Refusal to calculate the amounts which should have been collected and allocated to the Communities' own resources.

Operative part of the judgment

The Court:

1. Declares that, by exempting imports of military material from customs duties in the period from 1 January 1998 until 31 December 2002 and by refusing to calculate, declare and make available to the European Commission in good time the own resources which were not collected because of that exemption and the default interest payable because of the failure to make those own resources available to the European Commission in good time, the Italian Republic has failed to fulfil its obligations under Article 2 and Articles 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (EC, Euratom) No 1355/96 of 8 July 1996, and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources.
2. Orders the Italian Republic to pay the costs.
3. Orders the Hellenic Republic and the Republic of Finland to bear their own costs.

⁽¹⁾ OJ C 178, 29.7.2006.

Judgment of the Court (Third Chamber) of 23 December 2009 (reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium)) — Spector Photo Group NV, Chris Van Raemdonck v Commissie voor het Bank-, Financie- en Assurantiewezen (CBFA)

(Case C-45/08) ⁽¹⁾

(Directive 2003/6 — Insider dealing — Use of inside information — Sanctions — Conditions)

(2010/C 51/09)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicant: Spector Photo Group NV, Chris Van Raemdonck

Defendant: Commissie voor het Bank-, Financier- en Assurantie- en Antifraud Bureau (CBFA)

Re:

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Articles 2 and 14 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16) and of Article 1 of Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC (OJ 2003 L 339, p. 70) — Use of inside information — Maximum harmonisation leaving Member States with no discretion as regards the definition of insider dealing — Sanctions which may be imposed — Conditions

Operative part of the judgment

1. On a proper interpretation of Article 2(1) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), the fact that a person as referred to in the second subparagraph of that provision, in possession of inside information, acquires or disposes of, or tries to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, the financial instruments to which that information relates implies that that person has 'used that information' within the meaning of that provision, but without prejudice to the rights of the defence and, in particular, to the right to be able to rebut that presumption. The question whether that person has infringed the prohibition on insider dealing must be analysed in the light of the purpose of that directive, which is to protect the integrity of the financial markets and to enhance investor confidence, which is based, in particular, on the assurance that investors will be placed on an equal footing and protected from the misuse of inside information.
2. Article 14(1) of Directive 2003/6 must be interpreted as meaning that gains realised from insider dealing may constitute a relevant element for the purposes of determining a sanction which is effective, proportionate and dissuasive. The method of calculation of those economic gains and, in particular, the date or the period to be taken into account are to be determined by national law.
3. Article 14(1) of Directive 2003/6 must be interpreted as meaning that, if, in addition to the administrative sanctions laid down in that provision, a Member State has introduced the possibility of imposing a criminal financial sanction, it is not necessary, for the purposes of assessing whether the administrative sanction is effective, proportionate and dissuasive, to take account of the possibility and/or the level of a criminal sanction which may subsequently be imposed.

Judgment of the Court (First Chamber) of 17 December 2009 (reference for a preliminary ruling from the Audiencia Provincial de Salamanca — Spain) — Eva Martín Martín v EDP Editores SL

(Case C-227/08) ⁽¹⁾

(Directive 85/577/EEC — Article 4 — Consumer protection — Contracts negotiated away from business premises — Right of cancellation — Obligation on the trader to give notice of that right — Contract void — Appropriate measures)

(2010/C 51/10)

Language of the case: Spanish

Referring court

Audiencia Provincial de Salamanca

Parties to the main proceedings

Applicant: Eva Martín Martín

Defendant: EDP Editores SL

Re:

Reference for a preliminary ruling — Audiencia Provincial de Salamanca — Interpretation of Article 4 of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31) — Articles 3 EC, 95 EC and 153 EC — Article 38 of the Charter of Fundamental Rights — Right of renunciation — Obligation on the trader to supply certain information — Consumer protection measures in case of non-performance — Nullity of contract and jurisdiction of national court

Operative part of the judgment

Article 4 of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises does not preclude a national court from declaring, of its own motion, that a contract falling within the scope of that directive is void on the ground that the consumer was not informed of his right of cancellation, even though the consumer at no stage pleaded that the contract was void before the competent national courts.

⁽¹⁾ OJ C 107, 26.4.2008.

⁽¹⁾ OJ C 223, 30.8.2008.

Judgment of the Court (Fifth Chamber) of 17 December 2009 — European Commission v Hellenic Republic

(Case C-248/08) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Regulation (EC) No 1774/2002 — Articles 4(2)(a) and (c), 5(2)(c), 6(2)(b), 10 to 15, 17, 18 and 26 — Animal by-products — Waste — Burial without prior treatment — Lack of official controls — Plants for the safe management of animal by-products — Operation — Lack of authorisation — Incineration of specified risk materials — No adequate process)

(2010/C 51/11)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: H. Tserepa-Lacombe and A. Markoulli, acting as Agents)

Defendant: Hellenic Republic (represented by: V. Kontolaimos, S. Charitaki, E.-M. Mamouna and Chalkias, acting as agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 4(2), 5(2), 10 to 15, 17, 18 and 26 of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1) — Burial of animal by-products without prior treatment — Lack of official controls

Operative part of the judgment

The Court:

1. By not correctly applying and imposing Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption, in so far as it regards burial in landfills without prior treatment, lack of official controls, authorisation of plants for the management of animal by-products and incineration of specified risk materials, the Hellenic Republic has failed to fulfil its obligations under Articles 4(2)(a) and (c), 5(2)(c), 6(2)(b), 10 to 15, 17, 18 and 26 of Regulation No 1774/2002;
2. orders the Hellenic Republic to pay the costs.

⁽¹⁾ OJ C 209 of 15.08.2008

Judgment of the Court (Fourth Chamber) of 23 December 2009 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — Consorzio Nazionale Interuniversitario per le Scienze del Mare (CoNISMa) v Regione Marche

(Case C-305/08) ⁽¹⁾

(Public service contracts — Directive 2004/18 — Concepts of ‘contractor’, ‘supplier’ and ‘service provider’ — Concept of ‘economic operator’ — Universities and research institutes — Group (‘consorzio’) of universities and public authorities — Where the primary object under the statutes is non-profit-making — Admission to a procedure for the award of a public contract)

(2010/C 51/12)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Consorzio Nazionale Interuniversitario per le Scienze del Mare (CoNISMa)

Defendant: Regione Marche

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Exclusion of non-profit-making entities whose objects include research, such as universities, from a tendering procedure for the award of a public service contract for the acquisition of geophysical data

Operative part of the judgment

1. The provisions of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in particular those in Article 1(2)(a) and (8), first and second subparagraphs, which refer to the concept of ‘economic operator’, must be interpreted as permitting entities which are primarily non-profit-making and do not have the organisational structure of an undertaking or a regular presence on the market — such as universities and research institutes and consortia made up of universities and public authorities — to take part in a public tendering procedure for the award of a service contract.

2. Directive 2004/18 must be construed as precluding an interpretation of national legislation, such as that at issue in the main proceedings, which prohibits entities, such as universities and research institutes, which are primarily non-profit-making from taking part in a procedure for the award of a public contract, even though such entities are entitled under national law to offer the services covered by the contract in question.

(¹) OJ C 247, 27.09.2008.

Judgment of the Court (Fourth Chamber) of 23 December 2009 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Lombardia (Italy)) — Serrantoni Srl, Consorzio stabile edili Srl v Comune di Milano

(Case C-376/08) (¹)

(Public works contracts — Directive 2004/18/EC — Articles 43 EC and 49 EC — Principle of equal treatment — Groups of undertakings — Prohibition on competing participation in the same tendering procedure by a ‘consorzio stabile’ (‘permanent consortium’) and one of its member companies)

(2010/C 51/13)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Lombardia

Parties to the main proceedings

Applicants: Serrantoni Srl, Consorzio stabile edili Srl

Defendant: Comune di Milano

Intervening parties: Bora Srl Costruzioni edili, Unione consorzi stabili Italia (UCSI), Associazione nazionale imprese edili (ANIEM),

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale per la Lombardia — Interpretation of Articles 39 EC, 43 EC, 49 EC and 81 EC and of Article 4 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and

public service contracts (OJ 2004 L 134, p. 114) — National legislation providing for the automatic exclusion of member companies of a consortium of economic operators, where the consortium itself participates in the procedure.

Operative part of the judgment

Community law must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that, when a public contract is being awarded, with a value below the threshold laid down in Article 7(c) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, but of certain cross-border interest, both a permanent consortium and its member companies are automatically excluded from participating in that procedure and face criminal sanctions where those companies have submitted tenders in competition with the consortium's tender in the context of the same procedure, even if the consortium's tender was not submitted on behalf and in the interests of those companies.

(¹) OJ C 327, 20.12.2008.

Judgment of the Court (Fifth Chamber) of 17 December 2009 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany)) — Swiss Caps AG v Hauptzollamt Singen

(Joined Cases C-410/08 to C-412/08) (¹)

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Tariff headings 1515, 1517, 2106 and 3004 — Gelatin capsules — Fish oil, wheat-germ oil and black cumin oil — Concept of ‘packaging’)

(2010/C 51/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Swiss Caps AG

Defendant: Hauptzollamt Singen

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg (Germany) — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) — Headings 1517 ('Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516') and 2106 ('Food preparations not elsewhere specified or included') — Rule 5(b) in Part A of Section I of Part One of that annex — Tariff classification of a fish-oil preparation to which vitamin E has been added and which is contained in capsules consisting of gelatin, glycerol and water — Concept of 'packing material'

Operative part of the judgment

The Combined Nomenclature, set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 2388/2000 of 13 October 2000, must be interpreted as meaning that:

- *edible preparations presented in the form of capsules containing 600 mg of cold-pressed concentrated fish oil and 22.8 mg of concentrated vitamin E in a casing consisting of 212.8 mg of gelatin, 77.7 mg of glycerol and 159.6 mg of purified water and intended for use as a food supplement;*
- *edible preparations presented in the form of capsules containing 580 mg of wheat-germ oil in a casing consisting of 250 mg of granulated starch and intended for use as a food supplement; and*
- *edible preparations presented in the form of capsules containing 500 mg of cold-pressed black cumin oil, 38.7 mg of soya oil, 18.8 mg of vitamin E, 16 mg of butterfat, 10 mg of lecithin, 8.2 mg of wax, 8 mg of calcium pantothenate, 0.2 mg of folic acid and 0.11 mg of biotin in a casing consisting of 313.97 mg of gelatin mass (47.3 % gelatin, 17.2 % glycerine, 35.5 % water), 4.30 mg of paste consisting of 50 % titanium dioxide and 50 % glycerine, and 1.73 mg of paste consisting of 25 % quinoline yellow lacquer and 75 % glycerine and intended for use as a food supplement*

come under heading 2106 of the abovementioned Combined Nomenclature.

(¹) OJ C 313, 06.12.2008
OJ C 327, 20.12.2008

Judgment of the Court (Second Chamber) of 23 December 2009 — European Commission v Ireland

(Case C-455/08) (¹)

(Failure of a Member State to fulfil obligations — Directives 89/665/EEC and 92/13/EEC — Public supply and public works contracts — Review procedure against a contract award decision — Guarantee of effective review — Minimum period to be ensured between notification to the unsuccessful tenderers of the decision to award a contract and the signature of the contract concerned)

(2010/C 51/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: G. Zavvos and M. Konstantinidis, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 1(1) and 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33) — Infringement of Articles 1(1) and 2(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Obligation to provide under national law for an effective and rapid review procedure enabling unsuccessful tenderers to procure the annulment of a decision awarding a contract — Time-limits for bringing proceedings

Operative part of the judgment

The Court:

1. Declares that, by adopting Article 49 of Statutory Instrument No 329 of 2006 and Article 51 of Statutory Instrument No 50 of 2007, Ireland established the rules governing the notification of contracting authorities and entities award decisions and their reasoning to tenderers in such a way that by the time that tenderers are fully informed of the reasons for the rejection of their offer, the standstill period preceding the conclusion of the contract may already have expired, and that, by so doing, Ireland has failed to fulfil its obligations under Articles 1(1) and 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and

administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, and Articles 1(1) and 2(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;

2. Orders Ireland to pay the costs.

⁽¹⁾ OJ C 32, 7.2.2009.

Judgment of the Court (Sixth Chamber) of 17 December 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-505/08) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2005/36/EC — Recognition of professional qualifications — Failure to transpose within the prescribed period)

(2010/C 51/16)

Language of the case: German

Parties

Applicant: European Commission (represented by: H. Støvlbæk and M. Adam, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and N. Graf Vitzthum, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the specified time-limit, the necessary provisions to comply with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22)

Operative part of the judgment

1. By failing to adopt and communicate to the European Commission all the laws, regulations or administrative provisions necessary to transpose Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, the Federal Republic of Germany has failed to fulfil its obligations under that Directive.

2. The Federal Republic of Germany is ordered to pay the costs.

⁽¹⁾ OJ C 19, 24.01.2009.

Judgment of the Court (Eighth Chamber) of 17 December 2009 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio — Italy) — Angelo Rubino v Ministero dell'Università e della Ricerca

(Case C-586/08) ⁽¹⁾

(Directive 2005/36/EC — Recognition of diplomas — 'Regulated profession' — Selection of a predefined number of persons on the basis of a comparative assessment conferring a qualification limited in time — National academic qualification for appointment — University lecturer)

(2010/C 51/17)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicant: Angelo Rubino

Defendant: Ministero dell'Università e della Ricerca

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Interpretation of Articles 3(1)(c) EC and 47(1) EC and of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications — National legislation which does not allow for the recognition of the professional qualification of university lecturer obtained in another Member State

Operative part of the judgment

The fact that access to a profession is reserved to candidates who have been successful in a procedure to select a predefined number of persons on the basis of a comparative assessment of the candidates rather than by application of absolute criteria, which confers a qualification the validity of which is strictly limited in time, does not mean that that profession constitutes a regulated profession within the meaning of Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

Nevertheless, Articles 39 EC and 43 EC require qualifications obtained in other Member States to be accorded their proper value and to be duly taken into account in such a procedure.

⁽¹⁾ OJ C 55, 7.3.2009.

Judgment of the Court (Fifth Chamber) of 17 December 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-120/09) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 1999/31/EC — Landfilling of waste — Concept of ‘underground storage’, of ‘landfill gas’ and ‘eluate’ — Obligation to determine the trigger levels from which it can be considered that the location of the landfill has a significant adverse effect on groundwater quality — Failure to transpose within the prescribed time limit with regard to the Walloon Region)

(2010/C 51/18)

Language of the case: French

Parties

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

Defendant: Kingdom of Belgium (represented by T. Materne, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to transpose fully into Walloon law Article 2(f), (j) and (k) of, and point 4C of Annex III to, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) — Concept of ‘underground storage’, of ‘landfill gas’ and ‘eluate’ — Obligation to determine the trigger levels from which it can be considered that the location of the landfill has a significant adverse effect on groundwater quality

Operative part of the judgment

1. By failing to ensure the transposition with regard to the Walloon Region of Article 2(f), (j) and (k) of, and point 4C of Annex III to, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the Kingdom of Belgium has failed to fulfil its obligations under that directive.
2. The Kingdom of Belgium shall bear the costs.

⁽¹⁾ OJ C 141 of 20.06.2009

Order of the Court (Seventh Chamber) of 9 November 2009 (References for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy)) — Roche SpA (C-450/07), Federazione nazionale unitaria dei Titolari di Farmacia italiani (Federfarma) (C-451/07) v Agenzia Italiana del Farmaco (AIFA), Ministero della Salute

(Joined Cases C-450/07 and C-451/07) ⁽¹⁾

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 89/105/EEC — Transparency of measures regulating the prices of medicinal products for human use — Article 4 — Price freeze — Price reduction)

(2010/C 51/19)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Roche SpA

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

Re:

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

Operative part

1. Article 4(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems is to be interpreted as meaning that, provided the requirements laid down by that provision are met, the competent authorities of a Member State may adopt general measures reducing the prices of all, or of certain categories of, medicinal products, even if the adoption of those measures is not preceded by a freeze on those prices.
2. Article 4(1) of Directive 89/105 is to be interpreted as meaning that, provided the requirements laid down by that provision are met, the adoption of measures reducing the prices of all, or of certain categories of, medicinal products is possible more than once a year and for several years.

3. Article 4(1) of Directive 89/105 is to be interpreted as meaning that it does not preclude measures controlling the prices of all, or of certain categories of, medicinal products from being adopted on the basis of predicted expenditure, provided that the requirements laid down by that provision are met and that the predictions are based on objective and verifiable data.
4. Article 4(1) of Directive 89/105 is to be interpreted as meaning that it is for the Member States to determine, in compliance with the objective of transparency pursued by that directive and the requirements laid down by that provision, the criteria on the basis of which the review of the macro-economic conditions referred to in that provision is to be conducted and that those criteria may consist in pharmaceutical expenditure alone, in health expenditure overall or even in other types of expenditure.
5. Article 4(2) of Directive 89/105 is to be interpreted as meaning that:
- the Member States must, in all cases, provide for the possibility for an undertaking, which is concerned by a measure freezing or reducing the prices of all, or of certain categories of, medicinal products, of applying for a derogation from the price imposed pursuant to such measure;
 - they are to ensure that a reasoned decision on any such application is adopted, and
 - the genuine participation of the undertaking concerned consists, first, in the submission of an adequate statement of the particular reasons justifying its application for derogation and, second, in the provision of detailed additional information if the information supporting the application is inadequate.

(¹) OJ C 297, 8.12.2007.

Order of the Court of 24 November 2009 — Landtag Schleswig-Holstein v Commission of the European Communities

(Case C-281/08 P) (¹)

(Appeal — Action for annulment — Access to documents — Capacity of a regional parliament to be a party to legal proceedings)

(2010/C 51/20)

Language of the case: German

Parties

Appellant: Landtag Schleswig-Holstein (represented by: S.R. Laskowski, Privatdozentin, and J. Caspar, Professor)

Other party to the proceedings: Commission of the European Communities (represented by: P. Costa de Oliveira and B. Mertenczuk, acting as Agents)

Re:

Appeal brought against the order of the Court of First Instance (Second Chamber) of 3 April 2008 in Case T-236/06 *Landtag Schleswig-Holstein v Commission*, by which the Court rejected as inadmissible an application for annulment of the Commission's decisions of 10 March 2006 and 23 June 2006 refusing to grant the applicant access to the document SEK(2005) 420, of 22 March 2005 containing a legal analysis of a draft framework decision, under discussion in the Council, on the retention of data processed and stored in relation to the provision of publicly available electronic communications services or of data transmitted by means of the public communications networks, for purposes of the prevention, investigation, detection and prosecution of crime and criminal offences, including terrorism — Capacity of a regional parliament to be a party to legal proceedings — Right to be heard before a court — Notion of 'legal person' in the fourth paragraph of Article 230 EC

Operative part of the order

1. The appeal is dismissed.
2. The Landtag Schleswig-Holstein is ordered to pay the costs.

(¹) OJ C 260, 11.10.2008.

Order of the Court (Seventh Chamber) of 9 November 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — A. Menarini — Industrie Farmaceutiche Riunite Srl, FIRMA Srl, Laboratori Guidotti SpA, Menarini International Operations Luxembourg SA, Istituto Lusofarmaco d'Italia SpA, Malesi Istituto Farmacobiologico SpA v Ministero della Salute, Agenzia Italiana del Farmaco (AIFA)

(Case C-353/08) (¹)

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 89/105/EEC — Transparency of measures regulating the prices of medicinal products for human use — Article 4(1) — Price freeze — Price reductions)

(2010/C 51/21)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicants: A. Menarini — Industrie Farmaceutiche Riunite Srl, FIRMA Srl, Laboratori Guidotti SpA, Menarini International Operations Luxembourg SA, Istituto Lusofarmaco d'Italia SpA, Malesi Istituto Farmacobiologico SpA

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

Intervening party: Bracco SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Interpretation of Article 4(1) and (2) of Council Directive 89/15/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems (OJ 1989 L 40, p. 8) — Medicinal products covered by a price freeze — Procedures to be followed in the event of any decrease in prices

Operative part

- Article 4(1) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems must be interpreted as meaning that, provided that the requirements laid down in that provision are respected, the competent authorities of a Member State may adopt general measures consisting of the reduction in the prices of all medicinal products or certain categories of medicinal products, even if the adoption of those measures is not preceded by a freezing of those prices.
- Article 4(1) of Directive 89/105 must be interpreted as meaning that, provided that the requirements laid down in that provision are respected, the adoption of measures to reduce the prices of all medicinal products or certain categories of medicinal products is possible several times per year and for many years.
- Article 4(1) of Directive 89/105 must be interpreted as not precluding the adoption of measures seeking to control the prices of all medicinal products or certain categories of medicinal products on the basis of expenditure predictions, provided that the requirements laid down in that provision are respected and that those predictions are based on objective and verifiable information.
- Article 4(1) of Directive 89/105 must be interpreted as meaning that it is the task of the Member States to determine, in compliance with the objective of transparency pursued by that directive and the requirements laid down in that provision, the criteria in accordance with which the macroeconomic conditions laid down in that provision are to be verified, and that that

criteria may consist of pharmaceutical expenditure alone, of total health expenditure or other types of expenditure.

(¹) OJ C 313, 6.12.2008.

Order of the Court (Eighth Chamber) of 2 December 2009 — Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH v Office for Harmonisation in the Internal Market (Trade marks and Designs), Manpower Inc.

(Case C-553/08 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Articles 7(1)(c) and 51(1) and (2) — Invalidity proceedings — Cross Appeal — Community word mark MANPOWER — Absolute grounds for refusal — Descriptive character — Distinctive character acquired through use)

(2010/C 51/22)

Language of the case: German

Parties

Appellant: Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH (represented by: B. Kuchar, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade marks and Designs) (represented by: G. Schneider, Agent), and Manpower Inc. (represented by: A. Bryson, Barrister and V. Marsland, Solicitor)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 15 October 2008 in Case T-405/05 Powerserv Personalservice v OHIM and Manpower by which the Court of First Instance dismissed the action for annulment brought by the appellant against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 22 July 2005 dismissing the appeal against the decision of the Cancellation Division refusing the application for a declaration of invalidity in respect of Community word mark 'MANPOWER' for goods in Classes 9, 16, 35, 41 and 42 — Incorrect assessment of the distinctive character of the mark — Failure to reassess the evidence relating to the acquisition of distinctive character through use, after extending the relevant public by comparison with the contested decision of the Board of Appeal

Operative part of the order

1. *The main appeal brought by Powerserv Personalservice GmbH is dismissed.*
2. *The cross appeal brought by Manpower Inc. is dismissed.*
3. *Powerserv Personalservice GmbH is ordered to pay the costs.*

⁽¹⁾ OJ C 69, 21.3.2009.

Order of the Court (Fifth Chamber) of 23 October 2009 — Commission of the European Communities v Gerasimos Potamianos (C-561/08 P), Gerasimos Potamianos v Commission of the European Communities (C-4/09 P)

(Joined Cases C-561/08 P and C-4/09 P) ⁽¹⁾

(Appeal — Civil Service — Temporary agent — Non-renewal of a fixed-term contract — Act having adverse effect)

(2010/C 51/23)

Language of the case: French

Parties

Appellants: Commission of the European Communities (represented by: J. Curral and D. Martin, agents) (C-561/08 P), Gerasimos Potamianos (represented by: J.-N. Louis, lawyer) (C-4/09 P)

Other parties to the proceedings: Gerasimos Potamianos (represented by: J.-N. Louis, lawyer) (C-4/09 P), Commission of the European Communities (represented by: J. Curral and D. Martin, agents) (C-561/08 P)

Re:

Appeal against the judgment of the Court of First Instance of the European Communities (Seventh Chamber) of 15 October 2008 in Case T-160/04 *Potamianos v Commission* in which the Court held that that action brought by Mr Potamianos against the notification by the Director-General of the Directorate-General for 'Research', of information according to which his contract as a member of the temporary staff would not be renewed beyond its date of expiry — Concept of an act adversely affecting the official — Differences in the interpretation between the Court, first, and the Court of First Instance and the Civil Service Tribunal, second

Operative part of the order

1. *The appeals are dismissed.*
2. *The parties shall bear their own costs.*

⁽¹⁾ OJ C 44, 21.02.2009
OJ C 82, 04.04.2009

Order of the Court of 29 October 2009 — Portela — Comércio de artigos ortopédicos e hospitalares, Lda v European Commission

(Case C-85/09 P) ⁽¹⁾

(Appeal — Non-contractual liability — Claim for compensation for damage sustained on account of the various omissions by the Commission in the application of Directive 93/42/EEC — No causal connection between the omission alleged and the damage suffered by the applicant in the marketing of defective digital thermometers — Appeal manifestly unfounded)

(2010/C 51/24)

Language of the case: Portuguese

Parties

Appellant: Portela — Comércio de artigos ortopédicos e hospitalares, Lda (represented by: C. Mourato, avocat)

Other party to the proceedings: European Commission (represented by: B. Schima and P. Guerra e Andrade, Agents)

Re:

Appeal brought against the order of the Court of First Instance (Eighth Chamber) of 17 December 2008 in Case T-137/07 *Portela v Commission*, in which the Court rejected as, in part, manifestly inadmissible and, for the remainder, manifestly unfounded an application claiming, primarily, that the Court of First Instance should impose on the Commission the obligation to act in accordance with Article 14b of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1), as amended by Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on in vitro diagnostic medical devices (OJ 1998 L 331, p. 1), by ordering the certification company TÜV Rheinland Product Safety GmbH, through the Federal Republic of Germany, to activate, in favour of the appellant, the mandatory civil liability insurance provided for in point 6 of Annex XI to Directive 93/42, concluded by that company or, if the alleged damage could not be remedied by the main claim, a claim for compensation for the damage sustained by the applicant on account of the various omissions on the part of the Commission.

Operative part of the order

1. *The appeal is dismissed.*
2. *Portela — Comércio de artigos ortopédicos e hospitalares, Lda is ordered to pay the costs.*

⁽¹⁾ OJ C 102, 1.5.2009.

Order of the Court of 17 September 2009 (reference for a preliminary ruling from the Fővárosi Bíróság (Republic of Hungary)) — Pannon GSM Távközlési Rt. v Nemzeti Hírközlési Hatóság Tanácsa

(Case C-143/09) ⁽¹⁾

(Article 104(3), first subparagraph, of the Rules of Procedure — Accession to the European Union — Directive 2002/22/EC — Application ratione temporis — Jurisdiction of the Court)

(2010/C 51/25)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság (Republic of Hungary)

Parties to the main proceedings

Applicant(s): Pannon GSM Távközlési Rt.

Defendant(s): Nemzeti Hírközlési Hatóság Tanácsa

Re:

Reference for a preliminary ruling — Fővárosi Bíróság — Interpretation of the Act concerning the conditions of accession 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 (OJ 2003 L 236, p. 33), of Articles 10, 87(1) and 249 EC and of 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) — Sharing of the net cost of the universal service obligation between providers of networks and electronic communications services — National legislation on the mechanisms for cost sharing providing for the application of rules incompatible with the directive as regards the financing of universal services provided during the year preceding the accession of the Member State in question to the European Union

Operative part

Article 13(2) of 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') and Annex IV to that directive do not apply to the facts of a dispute such as that in the main proceedings, which concerns a contribution in the field of electronic communications charged by the authorities of the Republic of Hungary for 2003.

⁽¹⁾ OJ C 153, 04.07.2009

Order of the Court of 9 November 2009 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy)) — IFB Stroder Srl v Agenzia Italiana del Farmaco (AIFA)

(Case C-198/09) ⁽¹⁾

(Article 104(3), first subparagraph, of the Rules of Procedure — Directive 89/105/EEC — Transparency of measures governing the pricing of medicinal products for human use — Article 4 — Price freeze — Price reduction)

(2010/C 51/26)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio (Italy)

Parties to the main proceedings

Applicant: IFB Stroder Srl

Defendant: Agenzia Italiana del Farmaco (AIFA)

Re:

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

Operative part

1. Article 4(1) of Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the pricing of medicinal products for human use and their inclusion in the scope of national health insurance systems is to be interpreted as meaning that, provided the requirements laid down in that provision are met, the competent authorities of a Member State may adopt general measures reducing the prices of all, or of certain categories of, medicinal products, even if the adoption of those measures is not preceded by a freeze of those prices.
2. Article 4(1) of Directive 89/105 must be interpreted as meaning that, provided the requirements laid down in that provision are met, the adoption of measures reducing the prices of all, or of certain categories of, medicinal products is possible more than once a year and for several years.

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

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

5. Article 4(2) of Directive 89/105 must be interpreted as meaning that:

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

— Member States are to ensure that a reasoned decision on any such application is adopted; and

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

Order of the Court (Sixth Chamber) of 27 November 2009 (reference for a preliminary ruling from the Conseil de prud'hommes de Caen — France) — Sophie Noël v SCP Brouard Daude, liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, Centre de Gestion et d'Étude AGS IDF EST

(Case C-333/09) ⁽¹⁾

(Preliminary reference — European Convention for the Protection of Human Rights and Fundamental Freedoms — International Covenant on Civil and Political Rights — Principle of equal treatment — Redundancy for economic reasons — No link with Community law — Lack of jurisdiction of the Court of Justice)

(2010/C 51/27)

Language of the case: French

Referring court

Conseil de prud'hommes of Caen — France

Parties to the main proceedings

Applicant: Sophie Noël

Defendant: SCP Brouard Daude, liquidator in the judicial liquidation of Pronuptia Boutiques Province SA, Centre de Gestion et d'Étude AGS IDF EST

Re:

Reference for a preliminary ruling — Conseil de Prud'hommes (Labour Tribunal) of Caen (France) — Interpretation of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms — Interpretation of Article 26 of the International Covenant on Civil and Political Rights — Redundancy for economic reasons — Redundancy for personnel reasons — National provisions presumed contrary the abovementioned standards — Breach of the principle of equal treatment

Operative part

The Court of Justice of the European Communities clearly has no jurisdiction to answer the questions put by the Conseil de Prud'hommes of Caen by decision of 11 June 2009.

⁽¹⁾ OJ C 233, 26.9.2009.

⁽¹⁾ OJ C 256, 24.10.2009.

Reference for a preliminary ruling from the Tribunale Ordinario di Cosenza (Italy) lodged on 13 November 2009 — C.C.I.A.A di Cosenza v Grillo Star srl Fallimento

(Case C-443/09)

(2010/C 51/28)

Language of the case: Italian

Referring court

Tribunale Ordinario di Cosenza

Parties to the main proceedings

Applicant: Camera di commercio, industria, artigianato e agricoltura (CCIAA) di Cosenza

Defendant: Grillo Star srl Fallimento

Questions referred

1. Are the criteria for determining the annual duty referred to in Article 18[1](b) of Italian Law No 580 of 29 December 1993, as provided for in Article 18(3), (4), (5) and (6) thereof, inconsistent with Council Directive 2008/7/EC ⁽¹⁾ of 12 February 2008 concerning indirect taxes on the raising of capital, in so far as the duty cannot be covered by the exceptions provided for in Article 6[1](e) of that directive?
2. In particular:
 - Does the annual duty, which is to be determined by reference to 'the budgetary resources needed in order for the chambers of commerce system to be able to carry out the services which it is under a duty to provide throughout the national territory', constitute a duty paid by way of fees or dues?
 - Does the provision for a 'balancing fund', which is intended to harmonise throughout the national territory the performance of all the 'administrative functions' entrusted by law to the chambers of commerce, preclude the possibility that the annual duty is a duty paid by way of fees or dues?
 - Is the power conferred on the individual chambers of commerce to increase the amount of the annual duty by up to 20 % for the purposes of cofinancing initiatives aimed at increasing production and improving the economic conditions of the territorial unit under their responsibility consistent with that annual duty being a duty paid by way of fees or dues?
 - Does the fact that no methods have been specified for determining the total budgetary requirements for the maintaining and the updating by the chambers of commerce of registrations and notes in the register of companies mean that the annual duty cannot be a duty paid by way of fees or dues?

- Is the fact that the annual duty is determined on a flat-rate basis, with no provision for checking at 'regular intervals' that it appropriately reflects the average cost of the service, consistent with the annual duty being a duty paid by way of fees or dues?

⁽¹⁾ OJ 2008 L 46, p. 11.

Appeal brought on 4 December 2009 by the European Commission against the judgment delivered by the Court of First Instance on 23 September 2009 in Case T-183/07 Poland v Commission

(Case C-504/09 P)

(2010/C 51/29)

Language of the case: Polish

Parties

Appellant: European Commission (represented by: E. Kružíková, E. White and K. Herrmann, Agents)

Other parties to the proceedings: United Kingdom of Great Britain and Northern Ireland, Republic of Poland, Republic of Hungary, Republic of Lithuania and Slovak Republic

Form of order sought

- set aside in its entirety the judgment of the Court of First Instance of 23 September 2009 in Case T-183/07;
- order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the form of order which it seeks, the appellant puts forward four pleas in law. First, it submits that the General Court exceeded the limits of its powers of judicial review and committed procedural infringements in a manner which impacted adversely on the Commission's interests. Second, it contends that there was a breach of Article 9(3) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. ⁽¹⁾ Third, the appellant submits that there was a misinterpretation of the scope of the obligation to give reasons for a decision laid down in Article 296 TFEU. Fourth, it pleads an error in law in so far as the General Court held that Articles 1(1), 2(1) and 3(1) were not severable from the other provisions of the contested decision and as a consequence ruled that that decision was invalid in its entirety.

In the context of the first plea, the appellant submits that the General Court held to be admissible the claim that the Commission had exceeded its powers, which claim was raised by the applicant only at the stage of the reply, contrary to Article 48(2) of the Rules of Procedure. Furthermore, in itself determining to which provisions of Community law the second head of claim related, the General Court exceeded the limits of its judicial review.

In the context of the second plea, the appellant submits that the General Court erred in law in its interpretation of the scope and manner of exercise of the rights conferred on the Commission by Article 9(3) of Directive 2003/87/EC. That plea is divided into two parts.

In the first part of this plea, the appellant argues that, by finding that the Commission was not entitled, in its examination of the notified National Allocation Plans II (NAP II) pursuant to the criteria set out in Annex III to Directive 2003/87/EC, to base itself on verified data on CO₂ resulting from one single source (Community Independent Transaction Log) (CITL) for all Member States for the same period (2005), and by finding that the Commission was not entitled to base its decision on GDP forecasts for the period 2005-2010 published in that same period for all Member States, the General Court misinterpreted Article 9(3) of Directive 2003/87/EC and infringed the principle of equal treatment.

In the context of the second part of that plea in law, the appellant submits that, by denying to the Commission the right to disregard data used by certain Member States when carrying out its appraisal of a NAP II, and by denying the Commission the right to refer, in its decision rejecting a NAP II adopted on the basis of Article 9(3) of Directive 2003/87/EC, to the upper limit of the total quantity of allowances which a Member State may allocate, the General Court misinterpreted Article 9(3) of Directive 2003/87/EC by reason of its failure to have regard for its objective and subject-matter.

In the view of the appellant, the prior NAP II appraisal on the basis of Article 9(3) of Directive 2003/87/EC is intended to make possible the achievement of its objective, that is to say, promoting a reduction in greenhouse gases in a manner which is cost-effective and economically viable and ensuring the correct functioning of the Community system of allowance trading. Inasmuch as the right to issue a decision rejecting a NAP II is limited in time, the manner in which the Commission exercises its monitoring rights on the basis of the first sentence of Article 9(3) of Directive 2003/87/EC has to be construed having regard for the purpose of the appraisal procedure in its entirety, that is to say, the assurance that only a NAP II which complies with the criteria in Annex III, in particular with those laid down in points 1 to 3 thereof, may become definitive and constitute the basis on which Member States may adopt their decisions on the total amounts of allowances for distribution.

In the context of the third plea, the appellant argues that, by holding that the Commission ought to have clarified, in the contested decision, why the data used in the Republic of Poland's NAP II were 'less reliable', the General Court failed to have regard for the entire reasoning contained in recital 5 in the preamble to the contested decision and, in any event, construed too widely the scope of the obligation to provide reasons laid down in Article 296 TFEU.

In the context of the fourth plea, the appellant submits that the General Court incorrectly applied the condition governing severability of the provisions of the contested decision when it stated that paragraphs 2 to 5 of Articles 1 and 2 thereof, referring to the incompatibility of the NAP II with criteria of Annex III to the Directive other than the criteria in paragraph 1 of each of those articles, were not severable from those articles. The General Court's erroneous analysis, it is submitted, led to the finding that the contested decision was invalid in its entirety.

(¹) OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel (Belgium) lodged on 11 December 2009 — RTL Belgium SA (formerly TVI SA) v Conseil supérieur de l'audiovisuel

(Case C-517/09)

(2010/C 51/30)

Language of the case: French

Referring court

Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel

Parties to the main proceedings

Applicant: RTL Belgium SA (formerly TVI SA)

Defendant: Conseil supérieur de l'audiovisuel

Question referred

Can the notion of 'effective control both over the selection of the programmes and over their organisation' in Article 1(c) of the Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (¹) [as amended by Directive 2007/65/EC] (the Audiovisual Media Services Directive) be interpreted as meaning that a company established in a Member State and licensed by

the government of that Member State to provide an audiovisual media service does in fact exercise such control, even though it delegates, with an option to further delegate, to a third company established in another Member State, against payment of an indeterminate sum equal to the total advertising revenue generated by the broadcasting of that service, the actual production of all the programmes specific to that service, the communication to the public of programme scheduling information and the provision of financial and legal services, human resources, the management of infrastructure and other personnel-related services, and even though it is apparent that it is at the head offices of that third company that decisions are taken and implemented concerning the putting together of programmes and any deletions from or changes to the programming schedule in response to current events?

(¹) Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298 p. 23)

Action brought on 15 December 2009 — European Commission v Romania

(Case C-522/09)

(2010/C 51/31)

Language of the case: Romanian

Parties

Applicant: European Commission (represented by: D. Recchia and L. Bouyon, Agents)

Defendant: Romania

Form of order sought

— Declare that, by failing to designate to a sufficient degree, either in number or in size, as special protection areas the most suitable territories for the protection of the bird species listed in Annex I to Directive 79/409/EEC (¹) and migratory species returning to its territory, Romania has failed to fulfil its obligations under Article 4(1) and (2) of the directive.

— order Romania to pay the costs.

Pleas in law and main arguments

Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended, regulates the conservation of all species of wild birds occurring naturally occurring in the European territory of the Member States. The obligations under the directive have been applicable in Romania since the date of its accession (1 January 2007). Romania is therefore required, pursuant to Article 4(1) and (2) of the directive, to complete the designation of special protection areas within its territory.

Following its examination of the special protection areas designated by the Romanian authorities, the Commission reached the conclusion that Romania's designation of the most suitable territories as special protection areas was insufficient in both number and size.

In the present case, the areas designated by Romania as special protection areas were examined by reference to the Inventory of Important Bird Areas drawn up by BirdLife International and a similar survey carried out by the Societatea Ornitologică Română. The procedure for designating important bird areas in Romania ended in 2007 and concluded with the designation of 130 such areas.

Out of a total of 130 important bird areas, covering an area of 4 157 500 hectares, the Romanian authorities designated only 108 areas as special protection areas, covering an area of 2 998 700 hectares, only 38 of which were designated in their entirety as special protection areas.

Moreover, 21 important bird areas, covering an area of 341 013 hectares, have yet to be designated as special protection areas in Romania and the area covered by 71 designated special protection areas differs significantly from the area covered by bird protection areas.

In addition to the matters set out above, even though 71 important bird areas have not been registered in their entirety as special protection areas and 21 important bird areas were not included in the designation procedure, the Romanian authorities have failed to provide any inventory or any indication of the scientific methodology used which might justify such discrepancies between important bird areas and designated special protection areas.

As a result of that failure properly to designate and the partial designation of the relevant important bird areas, there are no measures for the protection of the species referred to in Annex I to Directive 79/409/EEC or migratory species and, accordingly, there is infringement of Article 4(1) and (2) of the directive.

The Commission is therefore of the view that, as a result of the failure to designate special protection areas in sufficient number and size, Romania has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409/EEC.

⁽¹⁾ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).

Action brought on 17 December 2009 — European Commission v Portuguese Republic

(Case C-525/09)

(2010/C 51/32)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: A. Marghelis and G. Braga da Cruz, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC ⁽¹⁾ of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, or, in any event, by failing to communicate those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 25 of that directive.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 30 April 2008.

⁽¹⁾ OJ 2006 L 102, p. 15.

Action brought on 17 December 2009 — European Commission v Portuguese Republic

(Case C-526/09)

(2010/C 51/33)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and G. Braga da Cruz, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by permitting the discharge of industrial waste water from the industrial unit 'Estação de Serviço Sobritos', situated in the Matosinhos area, without adequate authorisation, the Portuguese Republic has failed to fulfil its obligations under Article 11(1) and (2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment. ⁽¹⁾

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese Republic has not to date informed the Commission that the licensing of the industrial unit 'Estação de Serviço Sobritos' has been completed.

⁽¹⁾ OJ 1991 L 135, p. 40.

Action brought on 18 December 2009 — European Commission v Kingdom of Spain

(Case C-529/09)

(2010/C 51/34)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Flynn and C. Urraca Caviedes, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that the Kingdom of Spain has failed to fulfil its obligations under the fourth paragraph of Article 288 TFEU, and Articles 2 and 3 of Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (OJ 1999 L 198, p. 15), by not adopting the measures necessary to comply with that decision in respect of Industrias Domésticas, S.A. (Indosa)

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain has failed to adopt, within the prescribed period, the measures necessary to comply with Decision 1999/509/EC in respect of Industrias Domésticas, S.A. (Indosa).

Action brought on 18 December 2009 — European Commission v Portuguese Republic

(Case C-531/09)

(2010/C 51/35)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: N. Yerrell and M. Teles Romão, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/38/EC ⁽¹⁾ of the European Parliament and of the Council of 17 May 2006 amending Directive 1999/62/EC on the charging of heavy goods vehicles for the use of certain infrastructures and, in any event, by failing to communicate them to the Commission, the Portuguese Republic has failed to fulfil its obligations under that directive.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 10 June 2008.

⁽¹⁾ OJ 2006 L 157, p. 8.

Appeal brought on 18 December 2009 by Vladimir Ivanov against the order of the Court of First Instance (Third Chamber) delivered on 30 September 2009 in Case T-166/08 Ivanov v Commission

(Case C-532/09 P)

(2010/C 51/36)

Language of the case: French

Parties

Appellant: Vladimir Ivanov (represented by: R. Rollinger, avocat)

Other party to the proceedings: European Commission

Form of order sought

— declare the appeal admissible;

— declare the appeal well founded;

— annul the order of the Court of First Instance of 30 September 2009;

— decide the case in accordance with the application initiating the proceedings;

— order the opposing party to pay the costs of both instances.

Pleas in law and main arguments

The appellant relies on three grounds in support of his appeal:

By his first ground, which is made up of two parts, the appellant claims that the Court of First Instance should not have used abuse of process to justify the inadmissibility of his action for non-contractual liability, since the very limited scope of abuse of process extends only to exceptional cases in which the object of the action for damages is payment of a sum identical to that which the appellant would have obtained if he had succeeded in an action for annulment. In the present case, the action for damages brought by the appellant is entirely independent, the appellant wishing to render the Commission non-contractually liable for the conduct adopted in his regard, rather than to achieve a financial situation identical to that which he would have had in the event of the annulment of the Commission decisions.

In that context, the appellant claims, moreover, that the Court was not entitled to raise abuse of process of its own motion, since the burden of proof for abuse of process rests on the defendant.

By his second ground, the appellant claims that the Court erred in law by requiring a finding of unlawful conduct on the part of the Commission as a precondition for it to be rendered non-contractually liable, although unlawful conduct of the Community institution is no longer one of the grounds in the most recent case-law of the Court on which the institutions can be rendered liable.

By his third ground, the appellant claims, lastly, that, in ruling that an action for annulment was more appropriate than an action for damages, the contested order adversely affected his right to an effective remedy, as recognised by the Charter of Fundamental Rights of the European Union.

Action brought on 18 December 2009 — European Commission v Portuguese Republic

(Case C-533/09)

(2010/C 51/37)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: H. Støvlbæk and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by requiring Portuguese nationality as a condition of access to the notarial profession, in accordance with the decision of the Ministry of Justice of 12 December 1991 which endorsed the opinion of the Conselho Consultivo da Procuradoria-Geral da República (the Consultative Council of the Attorney General's Office) on Article 15 of the Portuguese Constitution, the Portuguese Republic has failed to fulfil its obligations under Article 49 TFEU, since the requirement laid down in Article 51 TFEU has not been satisfied.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

In Portugal, the interests pursued by a notary are not State interests, a notary is not directly and specifically involved in the exercise of official authority, and does not form part of public administration. The exception provided for in Article

51 of the Treaty on the Functioning of the European Union is not applicable to the notarial profession in Portugal. The consultative opinion of the Attorney General's Office endorsed on 12 December 1991 does not state that the profession of notary falls within the scope of Article 15(2) of the Portuguese Constitution. The functions of a notary in Portugal are exclusively technical in nature. They are based on professional competence, and not on political trust.

Action brought on 21 December 2009 — European Commission v Kingdom of Belgium

(Case C-538/09)

(2010/C 51/38)

Language of the case: French

Parties

Applicant: European Commission (represented by: D. Recchia and A. Marghelis, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, as Belgian legislation does not require an appropriate environmental impact study for certain activities when those activities may affect a Natura 2000 site and as the Kingdom of Belgium has made certain activities subject to a declaratory scheme, the Kingdom of Belgium has failed to fulfil its obligations under the provisions of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽¹⁾,

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission relies on a single plea in law in support of its action alleging that Article 6(3) of Directive 92/43/EEC (the 'Habitats' Directive) has been transposed incorrectly.

In that regard, the applicant submits that that provision requires that any plan or project not directly connected with or necessary to the management of a Natura 2000 site be subject to an appropriate environmental impact study. The Belgian legislation does not comply with Community law in so far as it does not require such an impact study as a matter of course and provides for a mere declaratory scheme in respect of certain activities which may affect a Natura 2000 site.

That is true, inter alia, of all the plans or projects which are not subject to an environmental permit in the Walloon Region.

(¹) OJ 1992 L 206, p. 7.

Action brought on 21 December 2009 — European Commission v Federal Republic of Germany

(Case C-539/09)

(2010/C 51/39)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Caeiros and B. Conte, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by refusing to permit the Court of Auditors to carry out audits in Germany concerning the administrative cooperation in the field of value added tax which is provided for under Regulation No 1798/2003 and the relevant implementing measures, the Federal Republic of Germany has failed to fulfil its obligations under Article 248(1), (2) and (3) EC, Article 140(2) and Article 142(1) of Regulation No 1605/2002, and Article 10 EC;

— Order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The subject of the present action is the refusal of the German authorities to permit the Court of Auditors of the European Union to carry out audits in Germany concerning the administrative cooperation in the field of value added tax which is provided for under Regulation No 1798/2003 and the relevant implementing measures.

According to the Commission, the Federal Republic of Germany has thereby failed to fulfil its obligations under Article 248 EC and Regulation No 1605/2002, and also infringed its obligation to cooperate in good faith under Article 10 EC.

The Court of Auditors audit powers should be interpreted broadly: the role of the Court of Auditors is to audit EU finances and to propose improvements. In order to do so it must have the right to carry out comprehensive audits and checks relating to all sectors and actors concerned by EU revenue and expenditure. Such audits may also be carried out in the Member States, which must, under Article 248(3) EC,

Article 140(2) and Article 142(1) of Regulation No 1605/2002, and pursuant to the obligation to cooperate in good faith laid down in Article 10 EC, provide full support for the Court of Auditors activities. That also includes the obligation to permit all audits by the Court of Auditors which are designed to assess how EU financial resources were collected and used.

In the present case the German authorities refused to permit the Court of Auditors to do precisely that.

Regulation No 1798/2003 lays down rules and procedures for the lawful and correct assessment of Community revenue. The Regulation forms part of a web of various measures which are designed to ensure that the Member States have at their disposal the correct value added tax yield, and therefore the Community — in optimal circumstances — the own resources to which it is entitled, by means of combating fraudulent practices or preventing their very occurrence. From that perspective, the Commission regards it as necessary that, in order to be able to examine whether value added tax revenue has been lawfully and correctly assessed, the Court of Auditors should be able to check the implementation and application of Regulation No 1798/2003. That means that it should be able to examine whether Member States have established an efficient system of cooperation and assistance and whether they can implement it satisfactorily in practice or whether improvements are required.

The implementation in practice of the administrative cooperation provided for in Regulation No 1798/2003 has an impact on the own resources based on value added tax to be paid by the Member States. Effective cooperation in this sector prevents value added tax evasion and avoidance and therefore leads automatically to increased value added tax revenue and thus also to an increase in Community own resources based on value added tax. If a Member State does not however cooperate properly, it infringes not only its obligations under Regulation No 1798/2003, but also its obligation under the Directive on value added tax to take all legislative and administrative measures appropriate for ensuring collection of all value added tax due on its territory.

Reference for a preliminary ruling from the Regeringsrätten (Sweden) lodged on 21 December 2009 — Skandinaviska Enskilda Banken AB Momsgrupp v Skatteverket

(Case C-540/09)

(2010/C 51/40)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skandinaviska Enskilda Banken AB Momsgrupp

Defendant: Skatteverket

Question referred

Is Article 13B of the Sixth VAT Directive (Article 135(1) of the Council Directive on a common system of value added tax ⁽¹⁾) to be interpreted as meaning that the tax exemptions provided for therein also include services (underwriting) which involve a credit institution providing, for consideration, a guarantee to a company which is about to issue shares, where under that guarantee the credit institution undertakes to acquire any shares which are not subscribed within the period for share subscription?

⁽¹⁾ Council Directive 77/388/EEC (OJ L 145, p. 1).

Appeal brought on 22 December 2009 by the Federal Republic of Germany against the judgment of the Court of First Instance (Seventh Chamber) delivered on 6 October 2009 in Case T-21/06 Germany v Commission

(Case C-544/09 P)

(2010/C 51/41)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: M. Lumma, J. Möller and B. Klein, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

- Set aside the judgment of the Court of First Instance of the European Communities of 6 October 2009 in Case T-21/06 *Germany v Commission*;
- Annul Commission Decision C(2005)3903 of 9 November 2005 on the State Aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg; and
- Order the defendant to pay all the costs.

Pleas in law and main arguments

This appeal relates to the judgment of the Court of First Instance of the European Communities by which the action brought by the Federal Republic of Germany against the Commission's decision of 9 November 2005 in State aid case C-25/2004 on the introduction of digital terrestrial television (DVB-T) in Berlin-Brandenburg was dismissed as unfounded. The Commission had, in that decision, found the aid to be incompatible with the common market (Article 107(3)(c) TFEU).

The Federal Republic of Germany puts forward five grounds of appeal by which it alleges that the Court failed to recognise a misuse of powers on the part of the Commission and, accordingly, that it erred in dismissing the action.

First, the Court erred in denying the incentive effect of the measure by focusing only on the very limited period of the switch-over from analogue terrestrial transmission to DVB-T, instead of considering the cost of the measure as a whole to those broadcasters in receipt of aid. In addition to the switch-over itself, the measure as a whole includes an obligation to maintain broadcasting output via DVB-T for a period of five years, irrespective of the degree of market acceptance which is difficult to forecast. Accordingly, the ancillary costs in respect of this mandatory transmission period should also be taken into account.

Second, the Court erred in overextending the Commission's assessment criteria under Article 107(3)(c) TFEU by accepting that the Commission could dismiss the suitability of the aid measure solely on the ground that the same objective would be attained by means of alternative regulatory measures. The comparison with alternative measures is not, according to the purpose of the TFEU's State aid control provisions, within the parameters of what the Commission may review. In that context, the Federal Government also complains that the Court is passing on to the Member State the burden of proving that the alternative measures suggested by the Commission would have been ineffective from the outset. This is contrary to the principle of legal certainty, the general principles of the allocation of the burden of proof and the purpose of the control of State aid.

Third, the Court misjudged the relevance of the fundamental rights of the European Union when considering Article 107(3)(c) TFEU, rights which, as part of primary law, are binding on all institutions of the European Union in respect of all acts. To accept that the mere reference to alternative regulatory measures allegedly available is sufficient for approval of an aid measure to be refused is to overlook the fact that regulatory measures interfere with the fundamental right of the freedom of undertakings to pursue an economic activity. This, at the very least, should be taken into consideration, but that did not happen in this case.

Fourth, by its reference to alternative regulatory measures, the Court erred in its interpretation of the concepts of the internal market and the effect on trading conditions in Article 107(3) TFEU, in that it failed to recognise that regulatory measures also affect competition. The broad assumption that any regulatory measure would have a lesser effect on such legal interests than aid means that an unlawfully stringent standard is imposed.

Fifth, the Federal Republic of Germany objects to the fact that the Court adopted the principle of technological neutrality developed by the Commission without recognising that its effect is to dismiss the purpose of the measure pursued by the German authorities in this case. Technological neutrality is an appropriate criterion against which to review compatibility only if the switch-over to digital broadcasting is, by itself, the purpose of the support. In the case of support for the switch-over to DVB-T in Berlin-Brandenburg, however, it was that platform specifically which, for various reasons, was intended to be supported, no support being required for cable or satellite. Member States have a degree of discretion in setting the legitimate objective of aid measures.

Appeal brought on 23 December 2009 by BCS SpA against the judgment of the Court of First Instance (Eighth Chamber) delivered on 28 October 2009 in Case T-137/08: BCS SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-553/09 P)

(2010/C 51/42)

Language of the case: English

Parties

Appellant: BCS SpA (represented by: M. Franzosi, V. Jandoli, F. Santonocito, avvocati)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Deere & Company

Form of order sought

The appellant claims that the Court should:

— annul the contested decisions;

— declare the nullity of CTM ‘289’;

— order the counterpart to pay the costs.

Pleas in law and main arguments

The appellant submits that the contested judgment is vitiated by following errors in law:

- I. the Court of First Instance wrongfully interpreted Article 7 (1) (b) and 7 (3) CTMR ⁽¹⁾, by claiming that the acquisition of distinctive character in a sign does not depend on its past and present exclusive use (moreover, said use has not been proven; rather, in the same decision, it is held to be denied in some countries);
- II. the CFI wrongfully applied the criteria set forth in the Community case-law for ascertaining the acquisition of distinctiveness, in violation of Article 7 (3) CTMR.

Under I. the lack of exclusive use in other parts of the Community is proven by the statements made by third-parties in Denmark and Ireland. Indeed the lack of a univocal association between the green and yellow color combination and Deere is incompatible with the acknowledgement of distinctiveness acquired by the sign in these countries.

Under II. BCS challenge the legal criteria applied by the CFI in relation to the evidence of secondary meaning, because they clash with the principles set forth in the longstanding case law of the Court of Justice. Indeed, the duration of use of the Deere trade mark, the market shares and the volume of sales cannot be regarded as elements sufficient — when taken individually — to prove the acquired secondary meaning. And in particular they cannot compensate for the lack of an opinion poll (or a contradictory result from third party declarations), as these are evidentiary parameters of a different nature.

There the CFI erred in disregarding the direct proof of the absence of a distinctive character of CTM ‘289’ in Ireland and Denmark.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) OJ L 78, p. 1

Action brought on 25 January 2010 — European Commission v Council of the European Union

(Case C-40/10)

(2010/C 51/43)

Language of the case: French

Parties

Applicant(s): European Commission (represented by: J. Currall, G. Berscheid and J.-P. Keppenne, acting as Agents)

Defendant(s): Council of the European Union

Form of order sought

— annul Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto⁽¹⁾ apart from Articles 1 and 3 thereof, while maintaining its effects until the adoption by the Council of a new regulation correctly applying Articles 64 and 65 of the Staff Regulations and Annex XI thereto;

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

Pleas in law and main arguments

The Commission seeks the annulment in part of Regulation (EU) No 1296/2009 in so far as the Council, for reasons of political expediency, has replaced in that regulation the amounts of the remuneration and pensions proposed by the Commission on the basis of a rate of adjustment of 3,7 % — which is the result of the mechanical application of Article 65 of the Staff Regulations and Annex XI thereto — by amounts corresponding to a coefficient of 1,85 %, which is incorrect. In the view of the Council, that replacement is justified by the economic and financial crisis and by the economic and social policy of the Union.

As regards Articles 2 and 4 to 17 of the contested regulation, the Commission puts forward a single plea, alleging breach of Article 65 of the Staff Regulations and Articles 1 and 3 of Annex XI to the Staff Regulations. The Council has circumscribed powers in this area, more so under the current version of the Staff Regulations — in which the details of the method of adjusting remuneration and pensions are set out in Annex XI thereto — than in the past, when the Court, on the basis of Article 65 of the Staff Regulations alone, concluded

that the Council's discretion was limited. The Commission also relies on a breach of legitimate expectations and of the principle of 'patere legem quam ipse fecisti'.

Article 18 of the contested regulation, for its part, breaches Articles 3 to 7 of Annex XI to the Staff Regulations in creating the possibility of making an intermediate adjustment of remuneration, beyond the deadline laid down in Article 65 of the Staff Regulations and outside the framework of the conditions laid down in Articles 4 to 7 of Annex XI to the Staff Regulations.

⁽¹⁾ OJ 2009 L 348, p. 10.

Order of the President of the Court of 17 November 2009 — Commission of the European Communities v Republic of Cyprus

(Case C-466/08) ⁽¹⁾

(2010/C 51/44)

Language of the case: Greek

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

⁽¹⁾ OJ C 327, 20.12.2008.

Order of the President of the Eighth Chamber of the Court of 4 December 2009 — European Commission v Czech Republic

(Case C-544/08) ⁽¹⁾

(2010/C 51/45)

Language of the case: Czech

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

⁽¹⁾ OJ C 44, 21.2.2009.

Order of the President of the Eighth Chamber of the Court of 12 November 2009 — Commission for the European Communities v Kingdom of Sweden

(Case C-548/08) ⁽¹⁾

(2010/C 51/46)

Language of the case: Swedish

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

⁽¹⁾ OJ C 32, 7.2.2009.

Order of the President of the Fifth Chamber of the Court of 26 November 2009 — Commission of the European Communities v Czech Republic

(Case C-15/09) ⁽¹⁾

(2010/C 51/47)

Language of the case: Czech

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

⁽¹⁾ OJ C 69, 21.3.2009.

Order of the President of the Court of 2 December 2009 — European Commission v Italian Republic

(Case C-42/09) ⁽¹⁾

(2010/C 51/48)

Language of the case: Italian

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

⁽¹⁾ OJ C 69, 21.3.2009.

Order of the President of the Eighth Chamber of the Court of 2 December 2009 — European Commission v French Republic

(Case C-171/09) ⁽¹⁾

(2010/C 51/49)

Language of the case: French

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

⁽¹⁾ OJ C 153, 4.7.2009.

Order of the President of the Court of 30 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-183/09) ⁽¹⁾

(2010/C 51/50)

Language of the case: Greek

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

⁽¹⁾ OJ C 167, 18.7.2009.

Order of the President of the Court of 20 November 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-184/09) ⁽¹⁾

(2010/C 51/51)

Language of the case: Spanish

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

⁽¹⁾ OJ C 167, 18.7.2009.

Order of the President of the Court of 11 November 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-192/09) ⁽¹⁾

(2010/C 51/52)

Language of the case: Dutch

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

⁽¹⁾ OJ C 180, 1.8.2009.

**Order of the President of the Court of 18 November 2009
— Commission of the European Communities v Italian
Republic**

(Case C-206/09) ⁽¹⁾

(2010/C 51/53)

Language of the case: Italian

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

⁽¹⁾ OJ C 180, 1.8.2009.

**Order of the President of the Court of 12 November 2009
— Commission of the European Communities v Republic
of Malta**

(Case C-220/09) ⁽¹⁾

(2010/C 51/55)

Language of the case: Maltese

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

⁽¹⁾ OJ C 193, 15.8.2009.

**Order of the President of the Court of 7 December 2009
— European Commission v Slovak Republic**

(Case C-207/09) ⁽¹⁾

(2010/C 51/54)

Language of the case: Slovak

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

⁽¹⁾ OJ C 205, 29.8.2009.

**Order of the President of the Court of 19 November 2009
— Commission of the European Communities v
Portuguese Republic**

(Case C-252/09) ⁽¹⁾

(2010/C 51/56)

Language of the case: Portuguese

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

⁽¹⁾ OJ C 205, 29.8.2009.

GENERAL COURT

Judgment of the General Court of 19 January 2010 — Co-Frutta v Commission

(Joined Cases T-355/04 and T-446/04) ⁽¹⁾

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the Community market for imports of bananas — Implied refusal of access followed by express refusal — Actions for annulment — Admissibility — Exception relating to protection of the commercial interests of third parties — Compliance with time-limits — Prior consent of the Member State — Obligation to state reasons)

(2010/C 51/57)

Language of the case: Italian

Parties

Applicant: Co-Frutta Soc. coop. (Padua, Italy) (represented by: W. Viscardini and G. Donà, lawyers)

Defendant: European Commission (represented by: L. Visaggio and P. Aalto, initially, and P. Aalto and L. Prete, subsequently, acting as Agents)

Re:

Action in Case T-355/04 for annulment of (i) the decision of the Commission of 28 April 2004 rejecting an initial application for access to information concerning operators registered in the Community as importers of bananas and (ii) the implied decision of the Commission rejecting the confirmatory access application and action in Case T-446/04 for annulment of the express decision of the Commission of 10 August 2004 refusing access to the information

Operative part of the judgment

The Court:

1. Declares that there is no need to adjudicate on the action in Case T-355/04;
2. Dismisses the action in Case T-446/04;
3. Orders Co-Frutta Soc. coop. to pay the costs.

⁽¹⁾ OJ C 262, 23.10.2004.

Judgment of the General Court (Eighth Chamber) of 20 January 2010 — Sungro and Others v Council and Commission

(Joined Cases T-252/07, 271/07, 272/07) ⁽¹⁾

(Non-contractual liability — Common agricultural policy — Amendment of the Community support scheme for cotton — Chapter 10a of Title IV of Regulation (EC) No 1782/2003, inserted by Article 1(20) of Regulation (EC) No 864/2004 — Annulment of the provisions in question by a judgment of the Court — Causal link)

(2010/C 51/58)

Language of the case: Spanish

Parties

Applicants: Sungro, SA (Córdoba, Spain) (T-252/07); Eurosemillas, SA (Córdoba, Spain) (T-271/07); and Surcotton, SA (Córdoba, Spain) (T-272/07) (represented by: L. Ortiz Blanco, lawyer)

Defendants: Council of the European Union, (represented by: M. Moore, A. De Gregorio Merino and A. Westerhof Löfflerova, Agents); and European Commission (represented by: L. Parpala and F. Jimeno Fernández, Agents, assisted by E. Díaz-Bastien Lopez, L. Divar Bilbao and J. Magdalena Anda, lawyers)

Re:

Actions for compensation, under Article 235 EC and the second paragraph of Article 288 EC, for losses allegedly suffered by the applicants as a result of the adoption and application, during the 2006/07 marketing campaign, of Chapter 10a of Title IV of 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 2003 L 270, p. 1), as inserted by Article 1(20) of Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation No 1782/2003 and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 161, p. 48), and annulled by the Court's judgment in Case C-310/04 *Spain v Council* [2006] ECR I-7285

Operative part of the judgment

The Court:

1. Joins Cases T-252/07, T-271/07 and T-272/07 for the purposes of judgment;
2. Dismisses the actions;
3. Orders Sungro, SA, Eurosemillas, SA, and Surcotton, SA to bear their own costs and to pay, jointly and severally, those incurred by the Council of the European Union and by the European Commission.

⁽¹⁾ OJ C 211, 8.9.2007.

**Judgment of the General Court of 20 January 2010 —
Nokia v OHIM — Medion (LIFE BLOG)**

(Case T-460/07) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community word mark LIFE BLOG — Earlier national word mark LIFE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now, Article 8(1)(b) of Regulation (EC) No 207/2009) — Partial refusal to register)

(2010/C 51/59)

Language of the case: Finnish

Parties

Applicant: Nokia Oyj (Helsinki, Finland) (represented by: J. Tanhuanpää, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Medion AG (Essen, Germany) (represented by: P.-M. Weisse, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of the OHIM of 2 October 2007 (Case R 141/2007-2), concerning opposition proceedings between Medion AG and Nokia Oyj

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Nokia Oyj to pay the costs.

⁽¹⁾ OJ C 51, 23.2.2008.

**Judgment of the General Court of 19 January 2010 — De
Fays v Commission**

(Case T-355/08 P) ⁽¹⁾

(Appeal — Cross-appeal — Staff case — Officials — Leave — Sick leave — Unauthorised absence established following a medical examination — Deduction from annual leave entitlement — Loss of the benefit of remuneration)

(2010/C 51/60)

Language of the case: French

Parties

Applicant: Chantal De Fays (Bereldange, Luxembourg) (represented by: F. Moyse and A. Salerno, lawyers)

Defendant: European Commission (represented by: D. Martin and K. Herrmann, acting as Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 17 June 2008 in Case F-97/07 *De Fays v Commission*, not yet published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. Dismisses the appeal and the cross appeal;
2. Orders Chantal De Fays to pay the costs of the appeal;
3. Orders the European Commission to pay the costs of the cross appeal.

⁽¹⁾ OJ C 285, 8.11.2008.

**Order of the Court of First Instance of 22 December 2009
— Associazione Giùlemanidallajuve v Commission**

(Case T-254/08) ⁽¹⁾

*(Alleged infringements of Articles 81 EC and 82 EC —
Complaint — Application for a declaration of failure to act
— Adoption of a position by the Commission bringing the
failure to act to an end — No need to adjudicate)*

(2010/C 51/61)

Language of the case: French

Parties

Applicant: Associazione Giùlemanidallajuve (Cerignola, Italy)
(represented by: L. Mission, A. Kettels, G. Ernes and A. Pel,
lawyers)

Defendant: European Commission (represented by: A. Bouquet,
Agent)

Re:

Application seeking a declaration, under Article 232 EC, that the Commission unlawfully abstained from adopting a position on the applicant's complaint, concerning infringements of Articles 81 EC and 82 EC allegedly committed by the Federazione Italiana Giuoco Calcio (FIGC), the Comitato Olimpico Nazionale Italiano (CONI), the Union of European Football Associations (UEFA) and the International Federation of Association Football (FIFA).

Operative part of the order

1. *There is no further need to adjudicate on the action.*
2. *The Associazione Giùlemanidallajuve and the European Commission shall bear their own costs.*

⁽¹⁾ OJ C 223, 30.8.2008.

Order of the General Court of 5 January 2010 — Química Atlântica v Commission

(Case T-71/09) ⁽¹⁾

(Action for failure to act — Adoption of a position — Article 44(1)(c) of the Rules of Procedure of the Court of First Instance — Inadmissibility)

(2010/C 51/62)

Language of the case: Portuguese

Parties

Applicant: Química Atlântica L^{da} (Lisbon, Portugal) (represented by: J. Teixeira Alves, lawyer)

Defendant: European Commission (represented by: M. Afonso and L. Bouyon, acting as Agents)

Re:

Application for a declaration that the Commission failed to act in that it unlawfully failed to take the measures necessary to harmonise the tariff heading criteria for dicalcium phosphate, and an application for reimbursement of the difference between the amounts that the applicant has had to pay since 1995 by way of customs duties and those which would have been payable had the rate for Tariff Code 28 35 52 90 been applied to the importation of dicalcium phosphate from Tunisia or an indemnity of an equivalent amount.

Operative part of the order

1. *The action is dismissed.*
2. *There is no need to adjudicate on Timab Ibérica SL's application to intervene application.*
3. *Química Atlântica Lda is ordered to pay its own costs as well as those of the European Commission.*

⁽¹⁾ OJ C 113, 16.5.2009.

Order of the President of the General Court of 15 January 2010 — United Phosphorus v Commission

(Case T-95/09 R II)

(Application for interim measures — Directive 91/414/EEC — Decision concerning the non-inclusion of napropamide in Annex I to Directive 91/414 — Extension of suspension of operation)

(2010/C 51/63)

Language of the case: English

Parties

Applicant: United Phosphorus Ltd (Warrington, Cheshire, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission (represented by: L. Parpala and N. Rasmussen, Agents)

Re:

Application for the extension of the suspension of operation of Commission Decision 2008/902/EC of 7 November 2008 concerning the non-inclusion of napropamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2008 L 326, p. 35).

Operative part of the order

1. The suspension of operation laid down in paragraph 1 of the operative part of the order of the President of the Court of 28 April 2009 in Case T-95/09 R *United Phosphorus v Commission* (not published in the ECR) is extended until 30 November 2010, but shall not extend beyond the date of delivery of the decision in the main proceedings or beyond the date of the formal conclusion of the accelerated procedure, initiated with regard to napropamide, under Article 13 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included in its Annex I (OJ 2008 L 15, p. 5).

2. The costs shall be reserved.

Order of the President of the General Court of 8 January 2010 — Escola Superior Agrária de Coimbra v Commission

(Case T-446/09 R)

(Interim measures — Programme Life — Reimbursement of a part of the amounts paid — Recovery order — Debit note — Application for suspension of enforcement — Financial loss — Exceptional circumstances — Lack of urgency)

(2010/C 51/64)

Language of the case: Portuguese

Parties

Applicant: Escola Superior Agrária de Coimbra (Coimbra, Portugal) (represented by: L. Pais do Amaral, lawyer)

Defendant: European Commission (represented by: G. Braga da Cruz and J-B. Laignelot, acting as Agents)

Re:

Application for suspension of operation of the decisions contained, respectively, in Commission letter D (2009) 224268 of 9 September 2009, concerning a recovery order, and Commission debit note No 3230909105 of 11 September 2009 for an amount of EUR 327 500,35.

Operative part of the order

1. The application for interim measures is rejected.

2. The costs are reserved.

Action brought on 20 November 2009 — European Commission v New Acoustic Music et Anna Hildur Hildibrandsdottir

(Case T-464/09)

(2010/C 51/65)

Language of the case: English

Parties

Applicant: European Commission (represented by: A.-M. Rouchaud-Joët, N. Bambara, Agents, assisted by C. Erkelens, lawyer)

Defendant: New Acoustic Music Association (Orpington, United Kingdom), Anna Hildur Hildibrandsdottir (Orpington)

Form of order sought

— order the defendants to repay to the Commission the amount of EUR 31,136.23 in principal, to be accrued with interests at 7,70 % per annum as of 14 January 2008 until the date of final payment;

— order the defendants to pay the procedural costs, including those incurred by the Commission.

Pleas in law and main arguments

The application is filed in relation to a grant agreement identified with the contract number 2003-1895/001-001, entered into between the European Commission (hereinafter 'Commission') and New Acoustic Music Association (hereinafter 'NAMA'), represented by Ms Anna Hildur Hildibrandsdottir, with a view to carrying out the action entitled CLT2003/A1/GB-317 — European Music Roadwork in framework of the Programme 'Culture 2000' (!).

By means of its application, the applicant seeks an order from the Court requesting the defendants, each liable for the entire amount, one in the absence of the other, to repay to the Commission the sum of EUR 31,136.23, accrued with default interests, resulting from the difference between the sum paid in advance by the applicant to NAMA for the implementation of the actions provided for in the grant agreement and the sum which NAMA is entitled to.

In support of its application, the applicant raises a single plea in law. It submits that NAMA has allegedly breached its contractual obligations by failing to reimburse part of the advance payment made by the Commission since the actual eligible expenses were lower than the estimated total costs.

The Commission contends that both Acoustic and Ms Anna Hildur Hildibrandsdottir, in her capacity as partner and authorised legal representative of NAMA, are jointly liable for the sum due.

(¹) Decision No 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the Culture 2000 programme (OJ 2000 L 63, p. 1)

Action brought on 4 December 2009 — Poland v Commission

(Case T-486/09)

(2010/C 51/66)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, Agent)

Defendant: European Commission

Form of order sought

— annul Commission Decision 2009/721/EC of 24 September 2009 (notified under document C(2009) 7044) excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), (¹) in so far it excludes from Community financing the sum of PLN 47 152 775 spent by the paying agency accredited by the Republic of Poland;

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision provides for a financial correction amounting to 5 % of the resources spent within the framework of the Rural Development Plan in 2005 to support agricultural activity in disadvantaged areas and agri-

environmental ventures. The basis for the correction was alleged breaches relating to cross-checks in respect of observance of the principles of normal good farming practice, to the system of penalties, to reports of on-the-spot checks, and to linking the checks in respect of all commitments connected with agri-environmental measures.

The applicant questions the existence of all the alleged breaches and advances the following pleas against the contested decision.

First, it pleads infringement of the first subparagraph of Article 7(4) of Regulation No 1258/99 (²) and Article 31(1) of Regulation No 1290/2005 (³) and infringement of the guidelines in document VI/5330/97 through the making of a financial correction on the basis of incorrect findings of fact and an incorrect interpretation of the law. In the applicant's submission, none of the alleged breaches forming the basis for the financial correction occurred and the expenditure excluded from Community financing under the contested decision was effected in accordance with the Community provisions.

Within the framework of the first plea, the applicant maintains that the reports of on-the-spot checks reflected checking in respect of all the principles of normal good farming practice, including in respect of observance of the annual limit on the spreading of organic fertilisers, in accordance with Article 28 of Regulation No 796/2004. (⁴) The applicant also submits that administrative cross-checks with the animal identification and registration system were not carried out only on account of the fact that that system was worthless as a basis of reference for cross-checks and therefore the carrying out of cross-checks with that system was not required under Article 68 of Regulation No 817/2004. (⁵) Furthermore, the system of penalties for breaches of the principles of good farming practice was fully effective, appropriate to the situation in the first year of implementation of the Rural Development Plan and even more rigorous than the system of Community penalties currently in force; it was therefore entirely consistent with Article 73 of Regulation No 817/2004. In addition, the applicant maintains in the context of the first plea that the comprehensive on-the-spot checks that were carried out were even wider in scope than required by the third paragraph of Article 69 of Regulation No 817/2004.

Second, the applicant pleads infringement of the fourth subparagraph of Article 7(4) of Regulation No 1258/99 and Article 31(2) of Regulation No 1290/2005, infringement of the guidelines in document VI/5330/97 and infringement of the principle of proportionality through the making of a flat-rate correction of an amount that was grossly excessive in relation to the risk of any financial loss for the Community budget. In the applicant's submission, none of the alleged breaches forming the basis for the correction could have caused the Community financial losses, and in any event the risk of such supposed financial losses was entirely marginal and related to an amount many times lower than the sum excluded from Community financing under the contested decision.

Third, the applicant pleads infringement of the second subparagraph of Article 296 TFEU because the reasons stated for the contested decision are inadequate. In the applicant's submission, the Commission did not explain and did not enable the Polish authorities to ascertain the reasons for the fundamental change in the scope of the alleged breaches.

⁽¹⁾ OJ 2009 L 257, p. 28.

⁽²⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

⁽³⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

⁽⁴⁾ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

⁽⁵⁾ Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 153, p. 30; corrigendum at OJ 2004 L 231, p. 24).

Appeal brought on 9 December 2009 by Petrus Kerstens against the judgment of the Civil Service Tribunal delivered on 29 September 2009 in Case F-102/07, Kerstens v Commission

(Case T-498/09 P)

(2010/C 51/67)

Language of the case: French

Parties

Appellant: Petrus Kerstens (Overijse, Belgium) (represented by C. Mourato, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- Set aside the judgment under appeal;
- Refer the case back to the Civil Service Tribunal of the European Union;
- Order the Commission to pay the costs.

Pleas in law and main arguments

By this appeal, the appellant requests the Court to set aside the judgment of the Civil Service Tribunal (CST) of 29 September

2009, delivered in Case F-102/07 *Kerstens v Commission*, by which the CST dismissed as unfounded an action seeking the annulment of various Commission decisions concerning the award to the applicant of directorate general priority points (PPDG) and/or priority points in recognition of additional tasks carried out in the interests of the institution (PPII) under the 2004, 2005 and 2006 promotion exercises.

In support of his appeal, the applicant submits two grounds of appeal alleging

- that the CST erred in law in the application of the principle of equal treatment, of Article 5 of the General Provisions for implementing Article 45 of the Staff Regulations and of the criteria laid down by the director of the Office for the Administration and Payment of Individual Entitlements in respect of the award of priority points for the 2005 promotion exercise under the abovementioned provision, and that the evidence was distorted;
- that the rights of the defence were not observed in so far as the CST based its decision on an alleged extract from a 2004 Career Development Report which was not produced and could not be challenged by the parties.

Action brought on 11 December 2009 — Inovis v OHIM — Sonaecom (INOVIS)

(Case T-502/09)

(2010/C 51/68)

Language in which the application was lodged: English

Parties

Applicant: Inovis, Inc. (Alpharetta, United States) (represented by: R. Black and B. Ladas, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Sonaecom — Serviços de Comunicações, S.A. (Maia, Portugal)

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 September 2009 in case R 1691/2008-1;
- Direct the Board of Appeal of the defendant to register the application for the Community trade mark; and

— Order the defendant to bear its own costs and those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark “INOVIS”, for goods and services in classes 9, 35, 38 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: Portuguese trade mark registration of the word mark “NOVIS”, for goods and services in classes 9, 35, 37, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly: (i) ignored the clear differences between the respective goods and services covered by the trade marks concerned, including that it erroneously considered that the earlier mark covered classes 9 and 42, whereas registration for such classes was refused by the Portuguese Trade mark Office, and that, in any event, such registration was not substantiated during the proceedings; (ii) ignored the clear conceptual differences between the trade marks concerned; and (iii) held that there was a likelihood of confusion between the trade marks concerned.

Action brought on 16 December 2009 — Cybergun v OHIM — Umarex Sportwaffen (AK 47)

(Case T-503/09)

(2010/C 51/69)

Language in which the application was lodged: French

Parties

Applicant: Cybergun (Bondoufle, France) (represented by: S. Guyot, 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: Umarex Sportwaffen GmbH & Co KG (Arnsberg, Germany).

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 8 October 2009 in so far as it declared the mark AK 47 invalid;

— in accordance with Articles 87(2) and 92 of the Rules of Procedure, order OHIM to pay the costs including the costs incurred by the applicant for the purposes of the present procedure, in particular the costs associated with the translation of documents, lawyer's fees, and, in so far as necessary, travel and hotel costs; the Court is asked to assess that sum at EUR 20 000

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark ‘AK 47’ for goods and services in Classes 9, 28 and 38 (Community trade mark No 3 249 381)

Proprietor of the Community trade mark: Cybergun

Applicant for the declaration of invalidity: Umarex Sportwaffen GmbH & Co KG

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity of the trade mark at issue

Decision of the Board of Appeal: Annulment of the decision of the Cancellation Division and declaration of invalidity of the Community trade mark

Pleas in law: Infringement of Article 7(1) of Regulation (EC) No 40/94 [now Article 8(1) of Regulation (EC) No 207/2009] and Article 51(1) of Regulation No 40/94 [now Article 52(1)(b) of Regulation (EC) No 207/2009]

Action brought on 16 December 2009 — Carlyle v OHIM — Mascha & Regner Consulting (CAFE CARLYLE)

(Case T-505/09)

(2010/C 51/70)

Language in which the application was lodged: English

Parties

Applicant: The Carlyle, LLC (St. Louis, United States) (represented by: E. Cornu, E. De Gryse and D. Moreau, lawyers)

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

Other party to the proceedings before the Board of Appeal: Mascha & Regner Consulting KEG (Vienna, Austria)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2009 in case R 239/2009-4; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the request for revocation: The word mark “CAFE CARLYLE”, for services in class 42

Proprietor of the Community trade mark: The applicant

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

Decision of the Cancellation Division: Rejected the request for revocation

Decision of the Board of Appeal: Revoked the Community trade mark concerned

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation 207/2009, as the Board of Appeal erroneously employed a too restrictive interpretation of the concept of genuine use. Moreover, the Board of Appeal failed: (i) to take into consideration properly the evidence of use submitted by the applicant before the Cancellation Division; (ii) to assess correctly the scope of the said evidence of use; and (iii) to make an overall assessment thereof.

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

Other party to the proceedings before the Board of Appeal: Mascha & Regner Consulting KEG (Vienna, Austria)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2009 in case R 240/2009-4; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark subject of the request for revocation: The word mark ‘THE CARLYLE’, for goods and services in classes 3, 25 and 42

Proprietor of the Community trade mark: The applicant

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

Decision of the Cancellation Division: Partially rejected the request for revocation

Decision of the Board of Appeal: Revoked the Community trade mark concerned

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation 207/2009, as the Board of Appeal erroneously employed a too restrictive interpretation of the concept of genuine use. Moreover, the Board of Appeal failed: (i) to take into consideration properly the evidence of use submitted by the applicant before the Cancellation Division; (ii) to assess correctly the scope of the said evidence of use; and (iii) to make an overall assessment thereof.

Action brought on 16 December 2009 — Carlyle v OHIM — Mascha & Regner Consulting (THE CARLYLE)

(Case T-506/09)

(2010/C 51/71)

Language in which the application was lodged: English

Parties

Applicant: The Carlyle, LLC (St. Louis, United States) (represented by: E. Cornu, E. De Gryse and D. Moreau, lawyers)

Action brought on 22 December 2009 — Baena Grupo v OHIM — Neuman and Galdeano del Sel (Designs)

(Case T-513/09)

(2010/C 51/72)

Language in which the application was lodged: Spanish

Parties

Applicant: José Manuel Baena Grupo, SA (Santa Perpètua de Mogoda, Spain) (represented by: A. Canela Giménez, lawyer)

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

Defendant: European Commission

Other parties to the proceedings before the Board of Appeal of OHIM:
Herbert Neuman and Andoni Galdeano del Sel

Form of order sought

- allow the action against the decision of 14 October 2009 of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) in Case R 1323/2008-3;
- annul OHIM's decision;
- order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community registered design No 000 426 895-0002 for ornamentation for T-shirts, ornamentation for caps, ornamentation for stickers, ornamentation for printed material including advertising material.

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Herbert Neuman and Andoni Galdeano del Sel

Trade mark right of applicant for the declaration: figurative Community mark No 1 312 651, for goods in Classes 25, 28 and 32 of the Classification of Nice.

Decision of the Cancellation Division of the Designs Department: allow the application and declare the design to be invalid.

Decision of the Board of Appeal: annul the contested decision and, pursuant to the power conferred on it by Article 60(1) of Regulation No 6/2002 on Community designs, decide the appeal on its merits and declare the invalidity of the Community design.

Pleas in law: incorrect interpretation of Article 6(1) of Regulation No 6/2002.

Action brought on 31 December 2009 — De Post v Commission

(Case T-514/09)

(2010/C 51/73)

Language of the case: English

Parties

Applicant: De Post NV van publiek recht (Brussel, Belgium) (represented by: R. Martens and B. Schutyser, lawyers)

Form of order sought

- the annulment of the decision of the Publications Office of the European Union to award the contract referred to in the invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034) to 'Entreprises des Postes et Télécommunications Luxembourg' and not to the applicant, as notified to the latter on 17 December 2009;

- in the event that, at the time of the rendering of the judgment, the Publications Office would have already signed the contract with Entreprises des Postes et Télécommunications Luxembourg pursuant to invitation to tender No 10234, a declaration that this contract is null and void;

- an award of damages as compensation for the loss that the applicant has incurred as a consequence of the contested decision, provisionally estimated at EUR 2 386 444,94, to be increased by the moratory and compound interest as from the date of the filing of this application;

- an order that the European Commission pays the costs of the proceedings, including the expenses for legal counsel incurred by the applicant.

Pleas in law and main arguments

By means of its application, the applicant seeks on the one hand, the annulment of the decision of the Publications Office of the European Union (hereinafter 'the Publications Office') of 17 December 2009, to award the contract referred to in the invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034), to Entreprises des Postes et Télécommunications Luxembourg (hereinafter 'Post Luxembourg') and, consequently, not to award the contract to the applicant and, on the other, compensation of an estimated amount of 2 386 444,94 EUR for the damages allegedly suffered by the applicant following the rejection of its tender.

In support of its application, the applicant puts forward a single plea in law, consisting of four parts.

The first and only plea in law raised by the applicant points at the alleged infringement by the Publications Office of the principles of transparency and equal treatment of tenderers contained in Article 15 TFEU and in Article 89 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter 'the Financial Regulation')⁽¹⁾, to the infringement of the obligation to award the contract on the basis of an evaluation of the selection criteria contained in Article 100(1) of the Financial Regulation, to its failure to adequately state the reasons for its decision (breach of Article 296 TFEU) and to the several manifest errors of assessment it has allegedly made, thus invalidating its decision that the tender of Post Luxembourg, and not that of the applicant, is the economically the most advantageous tender.

In the first part of the plea in law, the applicant claims that the Publications Office has failed to base its decision on an evaluation of the selection and award criteria, in breach of Article 100 (1) of the Financial Regulation.

In the second part of the plea in law, the applicant argues that the Publications Office has applied various sub criteria in its evaluation of the tenders that were not contained in the tender specifications and has thus violated the principle of transparency as laid down in Article 15 TFEU and Article 89 of the Financial Regulation.

In the third part of its plea, the applicant claims that the Publications Office has applied the open-ended technical award criteria in an inconsistent manner, effectively removing all transparency from the evaluation process.

In the fourth part of its plea, the applicant contends that the Publications Office, in violation of Articles 15, 296 TFEU, 89 of the Financial Regulation as well as the general procedural requirements of the duty to state reasons and of transparency, has not provided an adequate and unequivocal statement of reasons for its evaluation of the tenders, the motivation of the decision allegedly being contradictory and vitiated by manifest errors of assessment.

Further, the applicant submits that since the contested decision is vitiated by breaches of European law, the Publications Office has committed a fault and is thus liable under Article 340 TFEU. In fact, the applicant claims that due to the decision to award the contract to Post Luxembourg instead of the applicant, the latter has incurred a serious loss, consisting of a chance to have the contract awarded to it and of all the expenses made by it relating to the preparation and the drafting of the tender, as well as in defending its position.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Appeal brought on 21 December 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 7 October 2009 in Case F-3/08, Marcuccio v Commission

(Case T-515/09 P)

(2010/C 51/74)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal,
- declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever,
- allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-3/08. That order dismissed as manifestly unfounded an action seeking annulment of the Commission's decision refusing to send to the appellant a translation in Italian of a previous decision and an order that the Commission pay compensation for the damage resulting from that refusal. The order under appeal also ordered the appellant, pursuant to Article 94(a) of the Rules of Procedure of the CST, to pay to the Tribunal the sum of EUR 1 000.

In support of his claims, the appellant relies on the following pleas:

- a total failure to state reasons and distortion and misrepresentation of the facts insofar as concerns the assertions made by the CST concerning whether it was possible for the appellant to understand the content of the letter in question in the language version in which it was notified to him.
- Failure to have regard to the rules of law relating to the right of any individual to apply to a Community institution using any of the official languages of the Union and to receive a reply in the same language.
- Misinterpretation and misapplication of Article 94 of the Rules of Procedure of the CST.

Appeal brought on 21 December 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 7 October 2009 in Case F-122/07, Marcuccio v Commission

(Case T-516/09 P)

(2010/C 51/75)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal;
- declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever;
- allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-122/07. That order dismissed as partly manifestly inadmissible and partly manifestly unfounded an action seeking annulment of the Commission's decision to reject the appellant's request that an investigation be carried out in relation to certain events which occurred in 2001 and 2003 and an order that the Commission pay compensation for the damage suffered as a result.

In support of his claims, the appellant alleges that the order under appeal distorted and misrepresented the facts and misinterpreted and misapplied the obligation to give reasons for measures.

Action brought on 21 December 2009 — Alstom v Commission

(Case T-517/09)

(2010/C 51/76)

Language of the case: French

Parties

Applicant: Alstom (Levallois Perret, France) (represented by: J. Derenne and A. Müller-Rappard, lawyers)

Defendant: European Commission

Form of order sought

- Annul the Commission decision of 7 October 2009 in Case COMP/F/39.129 — *Power Transformers*; and
- Annul the decision of the Commission's accounting officer of 10 December 2009;
- Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, Alstom requests, first, the annulment of Commission Decision C(2009) 7601 Final of 7 October 2009 — *Power Transformers*, relating to a proceeding under Article 81 EC (now Article 101 TFEU) and Article 53 EEA, concerning an agreement on European market for power transformers and, secondly, the annulment of the decision of the Commission's accounting officer of 10 December 2009 rejecting Alstom's request to provide a financial guarantee during the proceedings initiated by the present application.

In support of its action for annulment of the Commission decision of 7 October 2009, the applicant raises three pleas in law alleging:

- an infringement of the legal rules applicable to joint and several liability, in that the Commission made two companies jointly and severally liable for the same infringement which the Commission was not able, individually and independently, to hold directly and formally responsible for the infringement;
- an infringement of Article 296 TFEU in that the contested decision is vitiated by:
 - an insufficient statement of reasons regarding the existence of an effect on trade between Member States;
 - a failure to state reasons concerning the Commission's claim that Alstom failed to rebut the presumption that the parent company is liable for the actions of the subsidiary and failed to demonstrate the subsidiary's independence;
 - inconsistent reasons regarding the concurrent liability of Alstom and Alstom T&D SA;
- an infringement of Article 101 TFEU in relation to the rules concerning whether parent companies are answerable for infringements committed by their subsidiaries in that the Commission relied on case-law which infringed European Union law and should therefore be excluded for having created, by judicial decision, a principle of irrebutable presumption based not on independence or market behaviour but on economic, legal and organisational links, which are characteristics common to all groups of undertakings.

In support of its action for annulment of the decision of the Commission's accounting officer of 10 December 2009, the applicant raises the following pleas in law alleging:

- a lack of legal basis in that the decision to reject the request to provide a financial guarantee during the proceedings for annulment of the Commission decision of 7 October 2009 was not based on law, neither on Council Financial Regulation No 1605/2002 ⁽¹⁾ nor on Commission Regulation No 2342/2002, as amended by Regulation No 1248/2006 ⁽²⁾, which implemented it;
- an infringement of the principle of protection of legitimate expectations in that the accounting officer's decision failed to have regard to the justified hopes resulting from the Commission's previous practice;
- an infringement of the principle of equality in that the Commission accounting officer's new approach, in the absence of prior publicity or transitional measures, would place Alstom in an unequal situation compared with those

subject to fines who could have provided a financial guarantee prior to that change of approach;

- an infringement of the obligation to publicly correct an error of interpretation where the General Court held that the Commission's previous practice was not consistent with the applicable financial regulation.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

⁽²⁾ Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006 amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2006 L 227, p. 3).

Action brought on 23 December 2009 — Toshiba v Commission

(Case T-519/09)

(2010/C 51/77)

Language of the case: English

Parties

Applicant: Toshiba Corp. (represented by: J. MacLennan, Solicitor, A. Schulz, J. Jourdan and P. Berghe, lawyers)

Defendant: European Commission

Form of order sought

- annul the Decision of the European Commission relating to proceedings under Article 81 EC (Article 101 TFEU) and Article 53 EEA in case COMP/39.129 — Power Transformers in so far as it relates to the applicant;
- cancel the fine imposed on the applicant;
- in the alternative, in the event that the contested decision is upheld in whole or in part, reduce the fine imposed on the applicant;
- order the Commission to pay the applicant's costs incurred in these proceedings;
- grant such other order as may be necessary to give effect to the judgment of the Court.

Pleas in law and main arguments

By means of the present application, the applicant seeks the annulment of Commission decision of 7 October 2009 (Case No COMP/39.129 — Power Transformers) in so far as the Commission found the applicant liable of infringement of Article 81 EC and Article 53 EEA by participating in the sharing of markets by means of the Gentlemen's Agreement between European and Japanese producers of power transformers to respect each others home markets and to refrain from selling in those markets. Alternatively, the applicant seeks the reduction of the fine imposed upon it.

In support of its claims the applicant submits four pleas in law.

First, the applicant submits that the Commission failed to prove to the requisite legal standard the existence of, and the applicant's participation in, a Gentlemen's Agreement, or indeed any agreement or concerted practice, between European and Japanese producers of power transformers.

Second, the applicant argues that the Commission failed to establish jurisdiction over the alleged Gentlemen's Agreement, even if, *quod non*, proved. It submits that, due to the very high barriers to entry, such an agreement was not capable of having an immediate and substantial effect on competition in the EU or an influence on the pattern of trade between Member States.

In its third plea, put forward alternatively, the applicant contends that the Commission erred in deciding on the duration of the infringement and of the applicant's participation therein. It submits that the Commission failed to prove that some meetings had any anti competitive object or effect and that by participating in them the applicant infringed European competition law.

Further in the alternative, in its fourth plea, the applicant claims that the Commission erred in law and in fact in setting the basic amount of its fine. First, it submits that the Commission erred in choosing the reference year to calculate the value of the applicant's sales departing thus from the methodology set out in the Fining Guidelines. Furthermore, in the applicant's opinion, the Commission committed a manifest error of appreciation in ignoring the very high barriers to entry on the European market and assuming that Toshiba could have achieved to the EEA market a market share equal to its worldwide market share. The applicant also submits that the Commission wrongly interpreted Paragraph 18 of the Fining Guidelines to justify estimating the value of the applicant's EEA sales on the basis of its worldwide sales rather than looking only at the markets affected by the alleged infringement. As a result, the applicant considers that the fine imposed on it is disproportionate.

Action brought on 21 December 2009 — Areva T&D v Commission**(Case T-521/09)**

(2010/C 51/78)

*Language of the case: French***Parties**

Applicant: Areva T&D SAS (Paris, France) (represented by: A. Schild and C. Simphal, lawyers)

Defendant: European Commission

Form of order sought

- Annul the contested decision in so far as it concerns Areva T&D SA; and
- Order the Commission to pay the costs.

Pleas in law and main arguments

The purpose of this action, brought by Areva T&D SAS, is the annulment of European Commission Decision C(2009) 7601 final of 7 October 2009 relating to a proceeding under Article 81 EC (now Article 101 TFEU) and Article 53 EEA — Case COMP/39.129 — Power Transformers.

The applicant raises four pleas in law in support of its action for annulment.

The first plea in law concerns the infringement of the obligation to provide reasons laid down in Article 296 TFEU. The applicant takes the view that the Commission has not stated reasons for the delegation of its power to impose sanctions following the imposition of sanctions jointly on Areva T&D SA and the addition of a supplementary condition to the conditions laid down by the Notice of 19 February 2002 for entitlement to immunity from fines.

By its second plea in law, the applicant alleges that the Commission infringed Article 101(1) TFEU and, specifically, the legal rules on imputability for competition law infringements. According to the applicant, the Commission could not hold Areva T&D SA liable for anti-competitive practices prior to the transfer by Alstom of Alstom T&D SA. At the time of the facts, Alstom T&D SA was not in fact an independent company, but a company controlled by its parent company, Alstom. Consequently, the Commission should have held, in accordance with the principles relating to imputability for infringements in the event of the transfer of a company, that at the time of the facts at issue, only the parent company, in the present case Alstom, could be held liable for the anti-competitive practices prior to the transfer. The applicant is also of the opinion that, by upholding the liability of Areva T&D SA, the Commission infringed the general legal principles of legal certainty and that penalties are personal and must fit the offence.

By its third plea in law, the applicant submits that the Commission infringed Article 101(1) TFEU and specifically the legal rules applicable to joint and several liability. The applicant maintains that the Commission could not hold Areva T&D SA and Alstom jointly liable for payment of the fine in so far as they no longer, at the date of the decision, formed an economic unit. Lastly, the applicant considers that, by finding Alstom and Areva T&D SA jointly liable, the Commission's decision infringes two general principles of Union law, namely the principle of equal treatment and the principle of legal certainty.

By its fourth plea in law, the applicant criticises the Commission for having infringed Article 101(1) TFEU and, specifically, the rules set out in the Commission Notice of 19 February 2002 on immunity from fines and reduction of fines.⁽¹⁾ The applicant also claims that, by refusing Areva T&D SA entitlement to immunity, the Commission infringed the general legal principles of the protection of legitimate expectations and legal certainty.

⁽¹⁾ OJ 2002 C 45, p. 3

Action brought on 21 December 2009 — Gemmi Furs v OHIM — Lemmi-Fashion (GEMMI)

(Case T-522/09)

(2010/C 51/79)

Language in which the application was lodged: English

Parties

Applicant: Gemmi Furs Oy (Loviisa, Finland) (represented by: J. Tanhuanpää, lawyer)

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

Other party to the proceedings before the Board of Appeal: Lemmi-Fashion Vertriebsgesellschaft mbH & Co. Bekleidungs KG (Fritzlar, Germany)

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 21 October 2009 in case R 1372/2008-4;
- Dismiss the opposition filed by the other party to the proceedings before the Board of Appeal;

- Allow registration of the Community trade mark concerned 'GEMMI', for all the goods in class 25, in accordance with the applicant's Community trade mark application;
- Order the defendant to bear the costs of the applicant, including those incurred before the Board of Appeal; and
- Order the other party to the proceedings before the Board of Appeal to bear the costs of the applicant, including those incurred before the Board of Appeal, should it decide to become a party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The mark 'GEMMI', for goods in classes 18, 24 and 25

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

Mark or sign cited: German trade mark registration of the mark 'LEMMI', for goods in class 25; international trade mark registration of the mark 'LEMMI fashion', for goods in class 25; earlier non-registered trade mark 'LEMMI', used in the course of trade in Germany for clothing

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

Decision of the Board of Appeal: Annulled the contested decision and rejected the application for the Community trade mark concerned, for goods in class 25

Pleas in law:

Infringement of Rule 19(2)(a)(i) and (ii) of Commission Regulation No 2868/95⁽¹⁾, as the Board of Appeal has not correctly and/or sufficiently addressed the substantiation of earlier rights; infringement of Rule 22(3) of Commission Regulation No 2868/95, as the Board of Appeal has not correctly and/or sufficiently assessed the proof of use submitted; infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal: (i) has not correctly assessed the similarity of the trade marks concerned; and (ii) has not correctly assessed the degree of attention of the relevant public; infringement of Article 75 of Council Regulation No 207/2009, as the Board of Appeal failed to grant the applicant the opportunity to present its comments on the evidence purporting to substantiate earlier rights; infringement of the principles of protection of legitimate expectations, equal treatment and legality.

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

Action brought on 23 December 2009 — Smart Technologies v OHIM (WIR MACHEN DAS BESONDERE EINFACH)**(Case T-523/09)**

(2010/C 51/80)

*Language of the case: English***Parties**

Applicant(s): Smart Technologies ULC (Calgary, Canada) (represented by: M. Edenborough, Barrister)

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

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 September 2009 in case R 554/2009-2;
- In the alternative, alter the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 September 2009 in case R 554/2009-2, to state that the Community trade mark concerned possesses sufficient distinctive character that no objection to its registration may be raised under Article 7(1)(b) of Council Regulation No 207/2009; and
- Order the defendant to pay the applicant's costs of and occasioned by this appeal.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'WIR MACHEN DAS BESONDERE EINFACH' for goods in class 9

Decision of the examiner: Refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found

that the Community trade mark concerned was not eligible for registration due to the fact that it is purportedly devoid of any distinctive character.

Action brought on 24 December 2009 — Meredith v OHIM (BETTER HOMES AND GARDENS)**(Case T-524/09)**

(2010/C 51/81)

*Language of the case: English***Parties**

Applicant: Meredith Corporation (Des Moines, United States) (represented by: R.N. Furneaux and E.A. Hardcastle, Solicitors)

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

Form of order sought

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 September 2009 in case R 517/2009-2, insofar as it rejected the application for the Community trade mark concerned for services in class 36, with the consequence that the application will be allowed for such services;
- Uphold the claims of the applicant; and
- Order the defendant to pay the costs of these proceedings in the event it contests them and dismiss its claim.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'BETTER HOMES AND GARDENS' for goods and services in classes 16, 35 and 36

Decision of the examiner: Partially refused the application for a Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and 7(2) of Council Regulation No 207/2009, as the Board of Appeal erred in not applying the correct test for assessing whether a trade mark is devoid of any distinctive character to distinguish the goods and services for which registration is sought.

Action brought on 30 December 2009 — Hubei Xinyegang Steel v Council

(Case T-528/09)

(2010/C 51/82)

Language of the case: English

Parties

Applicant: Hubei Xinyegang Steel Co. Ltd (represented by: F. Carlin, Barrister, N. Niejahr, Q. Azau and A. MacGregor, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul the Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China ⁽¹⁾ to the extent that it imposes anti-dumping duties on exports by the applicant and collects provisional duties imposed on such exports or, alternatively, to annul the said regulation to the extent that it collects the provisional duties imposed on the applicant;

— Order the Council to pay its own costs and the costs of the applicant in connection with these proceedings.

Pleas in law and main arguments

By means of present application the applicant seeks the annulment of Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China, in as far as it concerns the applicant.

In support of its application the applicant puts forward three pleas in law.

First, it claims that the Council made a manifest error of appraisal of the facts when identifying the 'products concerned' by defining over-simplified product categories. In addition, the

applicant submits that the Commission made an inappropriate comparison with US-produced goods.

Second, the applicant contends that the Council breached Article 9(5) of the basic regulation ⁽²⁾ by withdrawing the applicant's IT status in the contested regulation although that status had initially been granted to the applicant by the Commission during the administrative procedure prior to the publication of the provisional regulation ⁽³⁾.

Third, the applicant claims that the Council infringed Articles 9(4) and 10(2) of the basic regulation by imposing a definitive duty and deciding to definitively collect the provisional duty imposed on exports of the "products concerned" by the applicant to the EU, because these decisions were based on manifest errors of assessment as to the existence of a threat of material injury.

⁽¹⁾ OJ L 262, p. 19

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

⁽³⁾ Commission Regulation (EC) No 289/2009 of 7 April 2009 imposing a provisional anti-dumping duty on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China, OJ L 94, p. 48

Action brought on 5 January 2010 — De Lucia v OHIM — Galbani (De Lucia La natura pratica del gusto)

(Case T-2/10)

(2010/C 51/83)

Language in which the application was lodged: Italian

Parties

Applicant: Domenico De Lucia SpA (San Felice a Cancelli, Italy) (represented by: S. Cutolo, 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: Egidio Galbani SpA (Melzo, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 15 October 2009 in Case R 37/2009-1.

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: De Lucia

Community trade mark concerned: Figurative mark composed of the word element 'De Luca/La natura pratica del gusto' (application for registration No 4 962 346) for goods in Classes 29, 30 and 31.

Proprietor of the mark or sign cited in the opposition proceedings: Egidio Galbani SpA.

Mark or sign cited in opposition: Community word mark 'LUCIA' (No 620 716) for goods in Classes 29 and 30; Community figurative mark composed of the word element 'Galbani-Santa Lucia' (No 2 302 677) for goods in Class 29; national (Italian registration No 67 470) and international (No 256 299) figurative mark 'LUCIA' for goods in Class 29; national (Italian registration No 597 377), international (No 601 651) and Community (No 70 185) figurative mark 'Santa Lucia' for goods in Classes 29 and 30; national (Italian registration No 131 028) and international (No 256 299) word mark 'Santa Lucia' for goods in Class 29, and Community word mark 'Santa Lucia' (No 70 128) for goods in Classes 29 and 30.

Decision of the Opposition Division: Opposition upheld in part insofar as concerns certain goods in Class 31.

Decision of the Board of Appeal: Appeal granted insofar as concerns 'tobacco' (Class 31) and authorisation granted for the registration of this product.

Pleas in law: Misapplication of Article 8(1)(b) of Regulation No 207/2009 and no and/or inadequate reasons given in relation to the request that Article 12(a) of the regulation be applied.

Defendant: European Commission

Form of order sought

— to annul Commission Regulation (EC) No 954/2009 of 13 October 2009 insofar as it concerns the applicant;

— to order the European Commission to pay the applicant's costs.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 954/2009 of 13 October 2009 ⁽¹⁾ amending for the 114th time Council Regulation (EC) No 881/2002 ⁽²⁾ imposing certain specific restrictive measures directed against persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, by virtue of which the applicant was placed on the list of persons and entities whose funds and economic resources are frozen.

The applicant's name was initially added to Annex I of Council Regulation (EC) No 881/2002 by Commission Regulation (EC) No 2049/2003 of 20 November 2003 ⁽³⁾, which was later replaced by Commission Regulation (EC) No 46/2008 of 18 January 2008 ⁽⁴⁾. By its judgement of 3 December 2009 in Joint Cases *Hassan v Council and the Commission* (C-399/06 P) and *Ayadi v Council* (C-403/06 P) ⁽⁵⁾, the Court of Justice of the European Union annulled Council Regulation (EC) No 881/2002, as amended by Regulation (EC) No 46/2008, insofar as it concerns the applicant.

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

Action brought on 7 January 2010 — Al Saadi v Commission

(Case T-4/10)

(2010/C 51/84)

Language of the case: English

Parties

Applicant: Faraj Faraj Hassan Al Saadi (Leicester, United Kingdom) (represented by: J. Jones, Barrister, Mudassar Arani, Solicitor)

First, the applicant claims that the contested regulation infringes the applicant's rights of defence, including the right to be heard and the right to effective judicial protection, and that it fails to remedy the infringements of those rights. Moreover, it is submitted that the Commission failed to provide evidence justifying the freeze of the applicant's assets thereby preventing the applicant from defending himself with regard to this evidence.

Second, the applicant contends that the Commission failed to provide convincing reasons for maintaining the asset freeze against the applicant, in violation of its obligation under Article 296 TFEU.

Third, the applicant claims that the Commission failed to undertake an assessment of all relevant facts and evidence in deciding whether to enact the contested regulation and therefore manifestly erred in its assessment. The applicant further claims that he has never engaged in any form of terrorism related activity, or that any form of financial sanctions or preventive measures against him is necessary.

Fourth, the applicant submits that the indefinite restrictions of the applicant's right to property imposed by the contested regulation amount to a disproportionate and intolerable interference with the applicant's right to respect for property which is not justified by compelling evidence.

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- (¹) Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th 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 (OJ 2009 L 269, p. 20)
- (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)
- (³) Commission Regulation (EC) No 2049/2003 of 20 November 2003 amending for the 25th 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, and repealing Council Regulation (EC) No 467/2001 (OJ 2003 L 303, p. 20)
- (⁴) Commission Regulation (EC) No 46/2008 of 18 January 2008 amending for the 90th 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 (OJ 2008 L 16, p. 11)
- (⁵) Judgment of the Court of Justice of 3 December 2009, *Hassan v Council and the Commission* (C-399/06 P) and *Ayadi v Council* (C-403/06 P), not yet published in the ECR
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Action brought on 11 January 2010 — Sviluppo Globale v Commission

(Case T-6/10)

(2010/C 51/85)

Language of the case: Italian

Parties

Applicant: Sviluppo Globale GEIE (Rome, Italy) (represented by: F. Sciaudone, R. Sciaudone and A. Neri, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decisions of 10 November 2009 and 26 November 2009.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought, first, against the Commission's decision of 10 November 2009 by which the Commission rejected the tender submitted by the ITAK consortium (of which the applicant was a member, being responsible for the whole of the management and administration of the consortium itself) in call for tenders EUROPEAID/127843/D/SER/KOS for the provision of support services to the customs and tax authorities in Kosovo, and, second, against the Commission's decision of 26 November 2009 concerning ITAK's application for access to documents relating to the call for tenders in question.

In support of its application for annulment of the decision of 10 November 2010, the applicant makes the following pleas:

- Infringement of the duty to state reasons, insofar as the Commission never provided information on the characteristics and relative advantages of the successful tender.
- Infringement of the Commission's obligations under point 2.4.15 of the 'Practical Guide to contract procedures for EU external actions' of the European Community and of the Commission's duty to exercise due care in administrative procedure. It is submitted in this connection that the defendant failed to reply to the complaints lodged in accordance with the procedure laid down in point 2.4.15 of the Practical Guide.
- Manifest error of assessment of the quality of the technical proposal submitted by the ITAK consortium, insofar as the evaluation committee considered that a proposal submitted by three administrations (tax and customs) of as many as three EU Member States was insufficient and technically inadequate.

— Manifest error of assessment of the quality of the technical proposal of the successful bid. It is submitted in this connection that the evaluation committee awarded an extremely high number of points to a bid submitted by a consortium of computer experts with a team leader who, in the past, had been assessed as mediocre by the Commission.

In support of its application for annulment of the decision of 26 November 2009, the applicant makes the following pleas:

- Infringement of Article 7 of Regulation No 1049/2001, (¹) insofar as the Commission failed to handle promptly the application for access, failed to send an acknowledgement of receipt, and took the view that it could simply disregard the application.

— Infringement of Article 8 of Regulation No 1049/2001, insofar as the Commission failed to handle promptly the confirmatory application submitted by the ITAK consortium, failed to send, even in those circumstances, an acknowledgment of receipt and, lastly, took the view that it was entitled to reply to the application after the period prescribed for its reply had expired.

— Infringement of the general principles relating to access to documents established in Regulation No 1049/2001 and the case-law pertaining thereto. In particular, the Commission went so far as to fail even to provide information which had previously sent to the applicant.

— Lastly, the applicant submits that the Commission infringed Article 4(2), (3) and (6) of Regulation No 1049/2001.

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

Order of the General Court of 18 December 2009 — Balfe and Others v Parliament

(Case T-219/09) (¹)

(2010/C 51/86)

Language of the case: French

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

(¹) OJ C 205, 29.8.2009.

Order of the General Court of 5 January 2010 — Shell Hellas v European Commission

(Case T-245/09) (¹)

(2010/C 51/87)

Language of the case: French

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

(¹) OJ C 193, 15.8.2009.

Order of the General Court of 5 January 2010 — Société des Pétroles Shell v European Commission

(Case T-251/09) (¹)

(2010/C 51/88)

Language of the case: French

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

(¹) OJ C 193, 15.8.2009.

Order of the General Court of 14 December 2009 — Serifo v Commission and Education, Audiovisual and Culture Executive Agency

(Case T-438/09) (¹)

(2010/C 51/89)

Language of the case: Italian

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

(¹) OJ C 312, 19.12.2009.

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