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Notice No | Contents | Page

IV *Notices*

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

**Court of Justice of the European Union**

2010/C 246/01 Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union* OJ C 234, 28.8.2010 ..... 1

V *Announcements*

COURT PROCEEDINGS

**Court of Justice**

2010/C 246/02 Case C-271/08: Judgment of the Court (Grand Chamber) of 15 July 2010 — European Commission v Federal Republic of Germany (Failure of a Member State to fulfil obligations — Directives 92/50/EEC and 2004/18/EC — Public service contracts — Occupational old-age pensions of local authority employees — Direct award of contracts, without a call for tenders at European Union level, to pension providers designated in a collective agreement concluded between management and labour) 2

EN

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EUR 3

(Continued overleaf)

| Notice No | Contents (continued) | Page |
|---|---|---|
| 2010/C 246/03 | Case C-573/08: Judgment of the Court (Third Chamber) of 15 July 2010 — European Commission v Italian Republic (Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Measures transposing the directive) | 3 |
| 2010/C 246/04 | Case C-577/08: Judgment of the Court (Fourth Chamber) of 29 July 2010 (reference for a preliminary ruling from the Arbeidshof te Antwerpen — Belgium) — Rijksdienst voor Pensioenen v Elisabeth Brouwer (Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Frontier workers — Calculation of pensions) | 3 |
| 2010/C 246/05 | Case C-582/08: Judgment of the Court (Third Chamber) of 15 July 2010 — European Commission v United Kingdom of Great Britain and Northern Ireland (Failure of a Member State to fulfil obligations — Value-added tax — Directive 2006/112/EC — Articles 169 to 171 — Thirteenth Directive 86/560/EEC — Article 2 — Refund — Taxable person not established in the European Union — Insurance transactions — Financial transactions) | 4 |
| 2010/C 246/06 | Case C-40/09: Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester (United Kingdom)) — Astra Zeneca UK Ltd v Commissioners for Her Majesty's Revenue and Customs (Sixth VAT Directive — Article 2(1) — Concept of the supply of services effected for consideration — Retail vouchers provided by an undertaking to its employees as part of their remuneration) | 4 |
| 2010/C 246/07 | Case C-54/09 P: Judgment of the Court (First Chamber) of 29 July 2010 — Hellenic Republic v European Commission (Appeals — Agriculture — Common organisation of the market in wine — Aid for the restructuring and conversion of vineyards — Regulation (EC) No 1493/1999 — Fixing of the definitive financial allocations made to Member States — Regulation (EC) No 1227/2000 — Article 16(1) — Time-limit — Binding nature) | 5 |
| 2010/C 246/08 | Case C-70/09: Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Alexander Hengartner, Rudolf Gasser v Landesregierung Vorarlberg (Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Lease of hunting ground — Regional tax — Concept of economic activity — Principle of equal treatment) | 5 |
| 2010/C 246/09 | Case C-74/09: Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Cour de Cassation — Belgium) — Bâtiments et Ponts Construction SA, WISAG Produktionsservice GmbH, formerly ThyssenKrupp Industrieservice GmbH v Berlaymont 2000 SA (Public works contracts — Directive 93/37/EEC — Article 24 — Grounds for exclusion — Obligations relating to the payment of social security contributions and taxes — Tenderers' registration obligation, on pain of exclusion — 'Registration Committee' and its powers — Examination of the validity of certificates issued by the competent authorities of the Member State in which a foreign tenderer is established) | 6 |
| 2010/C 246/10 | Case C-151/09: Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras (Spain)) — Federación de Servicios Públicos de la UGT (UGT-FSP) v Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal (Transfers of undertakings — Directive 2001/23/EC — Safeguarding of employees' rights — Employee representatives — Autonomy of the entity transferred) | 6 |


EN

2010/C 246/11 Case C-188/09: Judgment of the Court (Fourth Chamber) of 29 July 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny, Republic of Poland) — Dyrektor Izby Skarbowej w Białymstoku v Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski spółka jawna w Białymstoku, formerly Profaktor Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku (Reference for a preliminary ruling — VAT — Right to deduct — Reduction of the extent of the right to deduct in the event of breach of the obligation to use a cash register) ..... 7

2010/C 246/12 Case C-189/09: Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Republic of Austria (Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Respect for private life — Retention of data generated or processed in connection with the provision of electronic communications services — Failure to transpose within the prescribed period) ..... 8

2010/C 246/13 Case C-214/09 P: Judgment of the Court (Fourth Chamber) of 29 July 2010 — Anheuser-Busch Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Budějovický Budvar, národní podnik (Appeals — Community trade mark — Regulation (EC) No 40/94 — Application for registration of the word mark BUDWEISER — Opposition — Article 8(1)(a) and (b) of Regulation No 40/94 — Earlier international word and figurative marks BUDWEISER and Budweiser Budvar — Genuine use of the earlier trade mark — Article 43(2) and (3) of Regulation No 40/94 — Submission of evidence 'in due time' — Certificate of renewal for the earlier mark — Article 74(2) of Regulation No 40/94)..... 8

2010/C 246/14 Case C-234/09: Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v DSV Road A/S (Community Customs Code — Regulation (EEC) No 2913/92 — Article 204(1)(a) — Regulation (EEC) No 2454/93 — Article 859 — External transit procedure — Authorised consignor — Creation of a customs debt — Transit document relating to non-existent goods) ..... 9

2010/C 246/15 Case C-248/09: Judgment of the Court (First Chamber) of 29 July 2010 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Republic of Latvia) — Pakora Pluss SIA v Valsts ieņēmumu dienests (Act of Accession to the European Union — Customs union — Transitional measures — Goods free from customs duties when entered for free circulation — Goods in transport in the enlarged Community on the date of accession of the Republic of Latvia — Export formalities — Import duties — VAT) ..... 9

2010/C 246/16 Case C-256/09: Judgment of the Court (Second Chamber) of 15 July 2010 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Bianca Purrucker v Guillermo Vallés Pérez (Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Provisional, including protective, measures — Recognition and enforcement) ..... 10

2010/C 246/17 Case C-354/09: Judgment of the Court (Eighth Chamber) of 15 July 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Gaston Schul BV v Staatssecretaris van Financiën (Community Customs Code — Article 33 — Value of goods for customs purposes — Inclusion of the customs duties — Delivery term 'Delivered Duty Paid') ..... 11

EN

(Continued overleaf)

2010/C 246/18 Case C-368/09: Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Baranya Megyei Bíróság — Hungary) — Pannon Gép Centrum Kft v APEH Központi Hivatal Hatósági Főosztály Dél-dunántúli Kihelyezett Hatósági Osztály (Sixth VAT Directive — Directive 2006/112/EC — Right to deduct input tax — National legislation penalising an error in the invoice by loss of the right to deduct) ..... 11

2010/C 246/19 Case C-371/09: Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v Isaac International Limited (Regulation (EEC) No 2913/92 — Customs Code — Article 212a — Regulation (EEC) No 2454/93 — Article 292 — Regulation (EEC) No 88/97 — Article 14 — Anti-dumping duty — Bicycle frames) ..... 12

2010/C 246/20 Case C-377/09: Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the Tribunal de commerce de Bruxelles — Belgium) — Françoise-Eléonor Hanssens-Ensch (insolvency administrator of Agenor SA) v European Community (Article 235 EC and Article 288 EC, second paragraph — Jurisdiction of the Court of Justice to hear and determine actions for damages brought against the European Community on the basis of non-contractual liability — Action to make good a shortfall in the assets, within the meaning of Article 530(1) of the Belgian Code des sociétés — Action brought against the European Community by the insolvency administrator of a limited company — Jurisdiction of the national courts to hear and determine such an action) ..... 13

2010/C 246/21 Case C-512/09: Judgment of the Court (Sixth Chamber) of 15 July 2010 — European Commission v Hellenic Republic (Failure of a Member State to fulfil obligations — Directive 2006/66/EC — Batteries and accumulators and waste batteries and accumulators — Failure to transpose within the prescribed period) ..... 13

2010/C 246/22 Case C-513/09: Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Kingdom of Belgium (Failure of a Member State to fulfil obligations — Directive 2006/66/EC — Batteries and accumulators and waste batteries and accumulators — Failure to transpose within the prescribed period) ..... 14

2010/C 246/23 Case C-515/09: Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Republic of Estonia (Failure of a Member State to fulfil obligations — Directive 2006/21/EC — Management of waste from extractive industries — Failure to transpose within the prescribed period) 14

2010/C 246/24 Case C-6/10: Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Kingdom of Belgium (Failure of a Member State to fulfil obligations — Directive 2006/46/EC — Company law Annual and consolidated accounts of companies — Failure to transpose or to communicate national transposition measures) ..... 14

2010/C 246/25 Case C-8/10: Judgment of the Court (Seventh Chamber) of 15 July 2010 — European Commission v Grand Duchy of Luxembourg (Failure of a Member State to fulfil obligations — Directive 2006/46/EC — Annual accounts and consolidated accounts of companies — Failure to transpose completely within the prescribed period) ..... 15

| Notice No | Contents (continued) | Page |
|---|---|---|
| 2010/C 246/26 | Case C-19/10: Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Italian Republic (Failure of a Member State to fulfil obligations — Regulations (EC) Nos 273/2004 and 111/2005 — Drug precursors — Control and monitoring within the Union — Monitoring of trade between the Union and third countries — Penalties) | 15 |
| 2010/C 246/27 | Case C-35/10: Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v French Republic (Failure of a Member State to fulfil obligations — Directive 2006/21/EC — Protection of the environment — Waste management — Mining extraction — Failure to transpose within the prescribed period) | 16 |
| 2010/C 246/28 | Case C-254/10 P: Appeal brought on 21 May 2010 by Centre de Coordination Carrefour SNC against the judgment delivered by the General Court (Eighth Chamber) on 18 March 2010 in Case T-94/08 Centre de Coordination Carrefour v Commission | 16 |
| 2010/C 246/29 | Case C-262/10: Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 27 May 2010 — Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg | 17 |
| 2010/C 246/30 | Case C-275/10: Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 2 June 2010 — Residex Capital IV CV v Gemeente Rotterdam | 18 |
| 2010/C 246/31 | Case C-277/10: Reference for a preliminary ruling from the Handelsgericht Vienna (Austria) lodged on 3 June 2010 — Martin Luksan v Petrus van der Let | 18 |
| 2010/C 246/32 | Case C-284/10: Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Telefónica de España, S.A. v Administración del Estado | 19 |
| 2010/C 246/33 | Case C-285/10: Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Campsa Estaciones de Servicio S.A. v Administración del Estado | 20 |
| 2010/C 246/34 | Case C-288/10: Reference for a preliminary ruling from the Rechtbank van Koophandel te Dendermonde (Belgium) lodged on 2 June 2010 — Wamo BVBA v JBC NV and Modemakers Fashion NV | 20 |
| 2010/C 246/35 | Case C-289/10 P: Appeal brought on 10 June 2010 by European Dynamics SA against the judgment of the General Court (Third Chamber) delivered on 19 March 2010 in Case T-50/05: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission | 20 |
| 2010/C 246/36 | Case C-301/10: Action brought on 16 June 2010 — European Commission v United Kingdom of Great Britain and Northern Ireland | 21 |
| 2010/C 246/37 | Case C-303/10: Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 21 June 2010 — Administración General del Estado v Red Nacional de Ferrocarriles Españoles (RENFE) | 22 |


EN

(Continued overleaf)

| Notice No | Contents (continued) | Page |
|---|---|---|
| 2010/C 246/38 | Case C-304/10: Action brought on 22 June 2010 — European Commission v Republic of Poland | 22 |
| 2010/C 246/39 | Case C-307/10: Reference for a preliminary ruling from The Appointed Person by the Lord Chancellor (United Kingdom) made on 28 June 2010 — The Chartered Institute of Patent Attorneys v Registrar of Trade Marks | 23 |
| 2010/C 246/40 | Case C-308/10 P: Appeal brought on 29 June 2010 by Union Investment Privatfonds GmbH against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Case T-392/06 Union Investment Privatfonds GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs); other party to the proceedings: Unicre-Cartão International De Crédito SA | 23 |
| 2010/C 246/41 | Case C-311/10: Action brought on 29 June 2010 — European Commission v Republic of Poland | 24 |
| 2010/C 246/42 | Case C-314/10: Reference for a preliminary ruling from the Tribunal De Première Instance, Liège (Belgium) lodged on 30 June 2010 — Hubert Pagnoul v Belgian State — SPF Finances | 24 |
| 2010/C 246/43 | Case C-317/10 P: Appeal brought on 2 July 2010 by Union Investment Privatfonds GmbH against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Joined Cases T-303/06 and T-337/06 UniCredito Italiano SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Union Investment Privatfonds GmbH | 25 |
| 2010/C 246/44 | Case C-318/10: Reference for a preliminary ruling from the Cour de Cassation (Belgium) lodged on 2 July 2010 — SIAT SA v Belgian State | 26 |
| 2010/C 246/45 | Case C-319/10: Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 2 July 2010 — X v Inspecteur der Belastingdienst/Y | 26 |
| 2010/C 246/46 | Case C-320/10: Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 2 July 2010 — X v Inspecteur der Belastingdienst P | 27 |
| 2010/C 246/47 | Case C-321/10: Action brought on 5 July 2010 — European Commission v Kingdom of Belgium | 28 |
| 2010/C 246/48 | Case C-322/10: Reference for a preliminary ruling from Court of Appeal (Civil Division) (England & Wales) made on 5 July 2010 — Medeva BV v Comptroller-General of Patents | 28 |
| 2010/C 246/49 | Case C-327/10: Reference for a preliminary ruling from the Okresní Soud v Chebu (Czech Republic) lodged on 5 July 2010 — Hypoteční banka, a.s. v Udo Mike Lindner | 29 |
| 2010/C 246/50 | Case C-334/10: Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 12 July 2010 — X; other party: Staatssecretaris van Financiën | 30 |


EN

Notice No | Contents (continued) | Page

2010/C 246/51 Case C-340/10: Action brought on 29 June 2010 — European Commission v Republic of Cyprus 30

2010/C 246/52 Case C-346/10: Action brought on 8 July 2010 — European Commission v Hellenic Republic ..... 31

2010/C 246/53 Case C-347/10: Reference for a preliminary ruling from the Rechtbank Amsterdam (Netherlands), lodged on 8 July 2010 — A. Salemink v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (UWV) ..... 32

2010/C 246/54 Case C-348/10: Reference for a preliminary ruling from the Augstākās tiesas Senāta Administratīvo lietu departaments (Republic of Latvia) lodged on 9 July 2010 — SIA Norma-A, SIA Dekom v Ludzas novada dome ..... 32

2010/C 246/55 Case C-350/10: Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 12 July 2010 — Nordea Pankki Suomi Oyj ..... 33

2010/C 246/56 Case C-353/10: Action brought on 13 July 2010 — European Commission v Hellenic Republic .... 33

2010/C 246/57 Case C-354/10: Action brought on 13 July 2010 — European Commission v Hellenic Republic .... 34

2010/C 246/58 Case C-355/10: Action brought on 14 July 2010 — European Parliament v Council of the European Union ..... 34

2010/C 246/59 Case C-356/10: Action brought on 16 July 2010 — European Commission v Ireland ..... 35

2010/C 246/60 Case C-374/10: Action brought on 27 July 2010 — European Commission v Kingdom of Sweden 35

**General Court**

2010/C 246/61 Case T-165/10: Order of the General Court of 14 July 2010 — Grupo Osborne v OHIM — Confecciones Sanfertús (TORO) (Community trade mark — Opposition — Withdrawal of opposition — No need to adjudicate) ..... 36

2010/C 246/62 Case T-271/10 R: Order of the President of the General Court of 22 July 2010 — H v Council and Others (Application for interim measures — Common foreign and security policy — National official seconded to the European Union Police Mission in Bosnia and Herzegovina — Decision to redeploy and downgrade — Application for suspension of operation of a measure — Admissibility — Lack of urgency) ..... 36

2010/C 246/63 Case T-297/10: Action brought on 8 July 2010 — DBV v Commission ..... 37

EN

(Continued overleaf)

| Notice No | Contents (continued) | Page |
|---|---|---|
| 2010/C 246/64 | Case T-300/10: Action brought on 9 July 2010 — Internationaler Hilfsfonds v Commission | 37 |
| 2010/C 246/65 | Case T-303/10: Action brought on 19 July 2010 — Wam v Commission | 38 |
| 2010/C 246/66 | Joined Cases T-440/07, T-465/07 and T-1/08: Order of the General Court of 7 July 2010 — Huta Buczek and Others v Commission | 39 |
| 2010/C 246/67 | Case T-499/07: Order of the General Court of 12 July 2010 — Bulgaria v Commission | 39 |
| | **European Union Civil Service Tribunal** | |
| 2010/C 246/68 | Case F-126/06: Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 Magazzu v Commission (Staff cases — Officials — Appointment — Members of the temporary staff appointed as officials — Candidates' names included on a reserve list of a competition published prior to the entry into force of the new Staff Regulations — Grading pursuant to the new less favourable rules — Acquired rights — Principle of non-discrimination — Articles 2, 5 and 12 of Annex XIII to the Staff Regulations) | 40 |
| 2010/C 246/69 | Case F-130/06: Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 Sotgia v Commission (Staff cases — Officials — Appointment — Members of the temporary staff appointed as officials — Candidates' names included on a reserve list before the entry into force of the new Staff Regulations — Grading pursuant to the new less favourable rules — Article 5(4) and Article 12(3) of Annex XIII to the Staff Regulations) | 40 |
| 2010/C 246/70 | Case F-17/08: Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 — Wybranowski v Commission (Civil service — Open competition — Non-inclusion on the reserve list — Evaluation of the oral test — Notice of Competition EPSO/AD/60/06 — Statement of reasons — Powers of the selection board — Assessment of candidates) | 41 |
| 2010/C 246/71 | Case F-37/10: Action brought on 27 may 2010 — Stratakis/Commission | 41 |
| 2010/C 246/72 | Case F-46/10: Action brought on 16 June 2010 — AD v Commission | 41 |
| 2010/C 246/73 | Case F-48/10: Action brought on 22 June 2010 — Z v Court of Justice | 42 |
| 2010/C 246/74 | Case F-51/10: Action brought on 1 July 2010 — Bermejo Garde v EESC | 42 |
| 2010/C 246/75 | Case F-54/10: Action brought on 9 July 2010 — Verheyden v Commission | 43 |
| 2010/C 246/76 | Case F-55/10: Action brought on 9 July 2010 — Moschonaki v Commission | 43 |
| 2010/C 246/77 | Case F-56/10: Action brought on 9 July 2010 — Hecq v Commission | 43 |


EN

IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

# COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 246/01)

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

OJ C 234, 28.8.2010

**Past publications**

OJ C 221, 14.8.2010

OJ C 209, 31.7.2010

OJ C 195, 17.7.2010

OJ C 179, 3.7.2010

OJ C 161, 19.6.2010

OJ C 148, 5.6.2010

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*(Announcements)*

COURT PROCEEDINGS

# COURT OF JUSTICE

## Judgment of the Court (Grand Chamber) of 15 July 2010 — European Commission v Federal Republic of Germany

**(Case C-271/08)** [1]

***(Failure of a Member State to fulfil obligations — Directives 92/50/EEC and 2004/18/EC — Public service contracts — Occupational old-age pensions of local authority employees — Direct award of contracts, without a call for tenders at European Union level, to pension providers designated in a collective agreement concluded between management and labour)***

(2010/C 246/02)

*Language of the case: German*

### Parties

*Applicant:* European Commission (represented by: G. Wilms and D. Kukovec, acting as Agents)

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

*Interveners in support of the defendant:* Kingdom of Denmark (represented by: B. Weis Fogh and C. Pilgaard Zinglersen, acting as Agents), Kingdom of Sweden (represented by: A. Falk and A. Engman, acting as Agents)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Article 8, in conjunction with Titles III to VI, of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) and Article 20, in conjunction with Articles 23 to 55, 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) — Practice of local authorities and local authority undertakings of awarding contracts relating to collective pension schemes directly without open public procurement procedures

### Operative part of the judgment

*The Court:*

1. *Declares that, in so far as service contracts in respect of occupational old-age pensions were awarded directly, without a call for tenders at European Union level, to bodies or undertakings referred to in Paragraph 6 of the Collective agreement on the conversion, for local authority employees, of earnings into pension savings (Tarifvertrag zur Entgeltungwandlung für Arbeitnehmer im kommunalen öffentlichen Dienst), in 2004 by local authorities or local authority undertakings which then had more than 4 505 employees, in 2005 by local authorities or local authority undertakings which then had more than 3 133 employees and in 2006 and in 2007 by local authorities or local authority undertakings which then had more than 2 402 employees, the Federal Republic of Germany failed to fulfil its obligations, until 31 January 2006 under Article 8, in conjunction with Titles III to VI, of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts and from 1 February 2006 under Article 20, in conjunction with Articles 23 to 55, 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;*

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

3. *Orders the European Commission, the Federal Republic of Germany, the Kingdom of Denmark and the Kingdom of Sweden to bear their own costs.*

[1] OJ C 223, 30.8.2008.

## Judgment of the Court (Third Chamber) of 15 July 2010 — European Commission v Italian Republic

**(Case C-573/08)** [1]

***(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Measures transposing the directive)***

(2010/C 246/03)

*Language of the case: Italian*

### Parties

*Applicant:* European Commission (represented by: D. Recchia, Agent)

*Defendant:* Italian Republic (represented by: G. Palmieri and G. Fiengo, Agents)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 13 and 18 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Incorrect transposition — Derogations — Requirements

### Operative part of the judgment

*The Court:*

1. *Declares that by failing to transpose Council Directive 79/409/EEC of 2 April 1979, on the conservation of wild birds, into Italian law in a manner which is wholly in compliance with that directive, and by failing to transpose Article 9 of that directive in a manner which ensures that the derogations adopted by the competent Italian authorities comply with the conditions and requirements referred to in that article, the Italian Republic has failed to fulfil its obligations under Articles 2 to 7, 9 to 11, 13 and 18 of the directive;*

2. *orders the Italian Republic to bear the costs, including those linked to the interlocutory proceedings.*

[1] OJ C 55, 7.3.2009.

## Judgment of the Court (Fourth Chamber) of 29 July 2010 (reference for a preliminary ruling from the Arbeidshof te Antwerpen — Belgium) — Rijksdienst voor Pensioenen v Elisabeth Brouwer

**(Case C-577/08)** [1]

***(Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Frontier workers — Calculation of pensions)***

(2010/C 246/04)

*Language of the case: Dutch*

### Referring court

Arbeidshof te Antwerpen

### Parties to the main proceedings

*Applicant:* Rijksdienst voor Pensioenen

*Defendant:* Elisabeth Brouwer

### Re:

Reference for a preliminary ruling — Arbeidshof te Antwerpen — Interpretation of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24) — National legislation providing for notional and flat-rate daily wages that are lower for women than for men when calculating retirement pensions for salaried frontier workers

### Operative part of the judgment

*Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, precludes national legislation under which, for the years 1984 to 1994, the calculation of old-age and retirement pensions for female frontier workers, concerning equal work or work of equal value, was based on notional and/or flat-rate daily wages lower than those for male frontier workers.*

[1] OJ C 55, 7.3.2009.

## Judgment of the Court (Third Chamber) of 15 July 2010 — European Commission v United Kingdom of Great Britain and Northern Ireland

**(Case C-582/08)** [1]

***(Failure of a Member State to fulfil obligations — Value-added tax — Directive 2006/112/EC — Articles 169 to 171 — Thirteenth Directive 86/560/EEC — Article 2 — Refund — Taxable person not established in the European Union — Insurance transactions — Financial transactions)***

(2010/C 246/05)

*Language of the case: English*

### Parties

*Applicant:* European Commission (represented by: R. Lyal and M. Afonso, acting as Agents)

*Defendant:* United Kingdom of Great Britain and Northern Ireland (represented by: I. Rao and S. Hathaway, acting as Agents, and K. Lasok QC)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 169, 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and of Article 2(1) of Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory (OJ 1986 L 326, p. 40) — National legislation which does not permit the recovery of input tax paid in respect of certain insurance and financial transactions carried out by taxable persons not established in Community territory

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

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

[1] OJ C 69, 21.3.2009.

## Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester (United Kingdom)) — Astra Zeneca UK Ltd v Commissioners for Her Majesty's Revenue and Customs

**(Case C-40/09)** [1]

***(Sixth VAT Directive — Article 2(1) — Concept of the supply of services effected for consideration — Retail vouchers provided by an undertaking to its employees as part of their remuneration)***

(2010/C 246/06)

*Language of the case: English*

### Referring court

VAT and Duties Tribunal, Manchester

### Parties to the main proceedings

*Applicant:* Astra Zeneca UK Ltd

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

### Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, Manchester — Interpretation of Articles 2(1), 6(2)(b) and 17(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Meaning of 'a supply of services for consideration' — Retail vouchers made available to an employee under his or her employment contract, part of their value being charged against that employee's salary

### Operative part of the judgment

*Article 2(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that the provision of a retail voucher by a company, which acquired that voucher at a price including value added tax, to its employees in exchange for their giving up part of their cash remuneration constitutes a supply of services effected for consideration within the meaning of that provision.*

[1] OJ C 90, 18.4.2009.

## Judgment of the Court (First Chamber) of 29 July 2010 — Hellenic Republic v European Commission

**(Case C-54/09 P)** ([1])

***(Appeals — Agriculture — Common organisation of the market in wine — Aid for the restructuring and conversion of vineyards — Regulation (EC) No 1493/1999 — Fixing of the definitive financial allocations made to Member States — Regulation (EC) No 1227/2000 — Article 16(1) — Time-limit — Binding nature)***

(2010/C 246/07)

*Language of the case: Greek*

### Parties

*Appellant:* Hellenic Republic (represented by: I. Chalkias and M. Tassopoulou, Agents)

*Other party to the proceedings:* European Commission (represented by: H. Tserepa-Lacombe and F. Jimeno Fernández, acting as Agents)

### Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 11 December 2008 in Case T-339/06 *Greece* v *Commission*, by which the Court dismissed an action for annulment of Commission Decision 2006/669/EC of 4 October 2006 fixing, for the 2006 financial year and in respect of a certain number of hectares, the definitive financial allocations to Member States for the restructuring and conversion of vineyards under Council Regulation (EC) No 1493/1999 (notified under document number C(2006) 4348) (OJ 2006 L 275, p. 62) in so far as the decision fixes the hectares and the definitive financial allocations concerning Greece

### Operative part of the judgment

*The Court:*

1. *Dismisses the appeal;*

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

([1]) OJ C 82, 4.4.2009.

## Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Alexander Hengartner, Rudolf Gasser v Landesregierung Vorarlberg

**(Case C-70/09)** ([1])

***(Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Lease of hunting ground — Regional tax — Concept of economic activity — Principle of equal treatment)***

(2010/C 246/08)

*Language of the case: German*

### Referring court

Verwaltungsgerichtshof

### Parties to the main proceedings

*Applicants:* Alexander Hengartner, Rudolf Gasser

*Defendant:* Landesregierung Vorarlberg

### Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Article 43 EC — Concept of economic activity — Hunting for sport and without a profit motive — Sale of game to cover part of the hunting costs — No profit

### Operative part of the judgment

*The provisions of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed in Luxembourg on 21 June 1999, do not preclude a national of one of the contracting parties from being subjected in the territory of the other contracting party, as a recipient of services, to different treatment from that reserved to persons whose principal residence is in that territory, citizens of the Union, and persons who are equated to those citizens under European Union law, with respect to the charging of a tax payable for the provision of services such as the making available of a right to hunt.*

([1]) OJ C 102, 01.05.2009.

**Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Cour de Cassation — Belgium) — Bâtiments et Ponts Construction SA, WISAG Produktionsservice GmbH, formerly ThyssenKrupp Industrieservice GmbH v Berlaymont 2000 SA**

**(Case C-74/09)** ([1])

***(Public works contracts — Directive 93/37/EEC — Article 24 — Grounds for exclusion — Obligations relating to the payment of social security contributions and taxes — Tenderers' registration obligation, on pain of exclusion — 'Registration Committee' and its powers — Examination of the validity of certificates issued by the competent authorities of the Member State in which a foreign tenderer is established)***

(2010/C 246/09)

*Language of the case: French*

**Referring court**

Cour de Cassation

**Parties to the main proceedings**

*Applicants:* Bâtiments et Ponts Construction SA, WISAG Produktionsservice GmbH, formerly ThyssenKrupp Industrieservice GmbH

*Defendant:* Berlaymont 2000 SA

**Re:**

Reference for a preliminary ruling — Cour de Cassation (Belgium) — Interpretation of the second paragraph of Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) and Articles 49 EC and 50 EC — Award of public works contracts — National legislation allowing a contracting authority, first, to exclude a tenderer by reason of its not being registered in that State, even where that tenderer has provided equivalent certificates issued by the authorities of another Member State and, secondly, to subject those certificates to an assessment of their validity — Compatibility of that legislation with the provisions of Community law referred to above

**Operative part of the judgment**

1. *The law of the Union is to be interpreted as not precluding national legislation which imposes on a contractor established in another Member State, in order to be awarded a contract in the contracting authority's Member State, an obligation to hold a registration, in the latter Member State, certifying that none of the grounds for exclusion listed in the first paragraph of Article 24 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts applies to the contractor, provided that such obligation does not hinder or delay the contractor's participation in the public contract in question or give rise to excessive administrative charges, and provided that its sole objective is to check the professional qualities of the contractor concerned, for the purposes of that provision.*

2. *The law of the Union is to be interpreted as precluding national legislation under which the checking of the certificates issued to a contractor of another Member State by the tax and social security authorities of that Member State is entrusted to an authority other than the contracting authority where:*

   — *the majority on that other authority is composed of persons appointed by the employers' and workers' organisations in the construction sector of the province in which the public contract in question is to be awarded, and*

   — *that power extends to a check on the substance of the validity of those certificates.*

([1]) OJ C 102, 1.5.2009.

**Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras (Spain)) — Federación de Servicios Públicos de la UGT (UGT-FSP) v Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal**

**(Case C-151/09)** ([1])

***(Transfers of undertakings — Directive 2001/23/EC — Safeguarding of employees' rights — Employee representatives — Autonomy of the entity transferred)***

(2010/C 246/10)

*Language of the case: Spanish*

**Referring court**

Juzgado de lo Social Único de Algeciras

**Parties to the main proceedings**

*Applicant:* Federación de Servicios Públicos de la UGT (UGT-FSP)

*Defendants:* Ayuntamiento de La Línea de la Concepción, María del Rosario Vecino Uribe, Ministerio Fiscal

**Re:**

Reference for a preliminary ruling — Juzgado de lo Social Único de Algeciras — Interpretation of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses — Obligation to preserve the status and the function of the employee representatives in an undertaking or business, where the undertaking or business preserves its autonomy following the transfer — Concept of autonomy

**Operative part of the judgment**

*A transferred economic entity preserves its autonomy, within the meaning of Article 6(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, provided that the powers granted to those in charge of that entity, within the organisational structures of the transferor, namely the power to organise, relatively freely and independently, the work within that entity in the pursuit of its specific economic activity and, more particularly, the powers to give orders and instructions, to allocate tasks to employees of the entity concerned and to determine the use of assets available to the entity, all without direct intervention from other organisational structures of the employer, remain, within the organisational structures of the transferee, essentially unchanged. The mere change of those ultimately in charge cannot in itself be detrimental to the autonomy of the entity transferred, except where those who have become ultimately in charge have available to them powers which enable them to organise directly the activities of the employees of that entity and therefore to substitute their decision making within that entity for that of those immediately in charge of the employees.*

(1) OJ C 167, 18.7.2009.

## Judgment of the Court (Fourth Chamber) of 29 July 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny, Republic of Poland) — Dyrektor Izby Skarbowej w Białymstoku v Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski spółka jawna w Białymstoku, formerly Profaktor Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

**(Case C-188/09)** (1)

***(Reference for a preliminary ruling — VAT — Right to deduct — Reduction of the extent of the right to deduct in the event of breach of the obligation to use a cash register)***

(2010/C 246/11)

*Language of the case: Polish*

**Referring court**

Naczelny Sąd Administracyjny

**Parties to the main proceedings**

*Applicant:* Dyrektor Izby Skarbowej w Białymstoku

*Defendants:* Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski spółka jawna w Białymstoku, formerly Profaktor Kulesza, Frankowski, Trzaska spółka jawna w Białymstoku

**Re:**

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of the first and second paragraphs of Article 2 of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes (OJ, English Special Edition 1967, p. 14), in conjunction with Articles 2, 10(1) and (2), 17(1) and (2), 27(1) and 33(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Compatibility with those provisions of national legislation providing for the mandatory use of a cash register for sales to non-taxable persons effected by taxable persons for VAT purposes and under which breach of that obligation is penalised by forfeiture of the right to deduct input tax in the amount of 30 %

**Operative part of the judgment**

1. *The common system of value added tax, as defined in Article 2(1) and (2) of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning*

*turnover taxes and in Articles 2, 10(1) and (2) and 17(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2004/7/EC of 20 January 2004, does not preclude a Member State from imposing a temporary restriction on the extent of the right of taxable persons who have not complied with a formal requirement to keep accounting records of their sales to deduct input tax paid, on condition that the sanction thus provided for complies with the principle of proportionality.*

2. *Provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services (ustawa o podatku od towarów i usług) of 11 March 2004 are not 'special measures for derogation' intended to prevent certain types of tax evasion or avoidance within the meaning of Article 27(1) of Sixth Directive 77/388, as amended by Directive 2004/7.*

3. *Article 33 of Sixth Directive 77/388, as amended by Directive 2004/7, does not preclude the maintenance of provisions such as those of Article 111(1) and (2) of the Law on the Tax on Goods and Services of 11 March 2004.*

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([1]) OJ C 193, 15.8.2009.

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**Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Republic of Austria**

**(Case C-189/09)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Respect for private life — Retention of data generated or processed in connection with the provision of electronic communications services — Failure to transpose within the prescribed period)***

(2010/C 246/12)

*Language of the case: German*

**Parties**

*Applicant:* European Commission (represented by: L. Balta and B. Schöfer, Agents)

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

*Intervener in support of the applicant*: Council of the European Union

**Re:**

Failure of a Member State to fulfil obligations – Failure to adopt or communicate, within the prescribed period, the provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Republic of Austria has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 180, 01.08.2009.

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**Judgment of the Court (Fourth Chamber) of 29 July 2010 — Anheuser-Busch Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Budějovický Budvar, národní podnik**

**(Case C-214/09 P)** ([1])

***(Appeals — Community trade mark — Regulation (EC) No 40/94 — Application for registration of the word mark BUDWEISER — Opposition — Article 8(1)(a) and (b) of Regulation No 40/94 — Earlier international word and figurative marks BUDWEISER and Budweiser Budvar — Genuine use of the earlier trade mark — Article 43(2) and (3) of Regulation No 40/94 — Submission of evidence 'in due time' — Certificate of renewal for the earlier mark — Article 74(2) of Regulation No 40/94)***

(2010/C 246/13)

*Language of the case: English*

**Parties**

*Appellant:* Anheuser-Busch Inc. (represented by: V. von Bomhard and B. Goebel, Rechtsanwälte)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral), Budějovický Budvar, národní podnik (represented by: K. Čermák, advokát)

**Re:**

Appeal against the judgment of the Court of First Instance (First Chamber) of 25 March 2009 in Case T-191/07 *Anheuser-Busch, Inc.* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* by which that Court dismissed an action brought by the applicant for the word mark "BUDWEISER" for goods in class 32 seeking annulment of Decision R 299/2006-2 of the Second Board of Appeal of OHIM of 20 March 2007, dismissing the appeal against the decision of the Opposition Division refusing registration of the mark in opposition proceedings brought by the proprietor of the international figurative and word marks "BUDWEISER" and "Budweiser Budvar" for goods in classes 31 and 32.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

2. *Orders Anheuser-Busch Inc. to pay the costs.*

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([1]) OJ C 193, 15.8.2009.

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**Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Skatteministeriet v DSV Road A/S**

**(Case C-234/09)** ([1])

***(Community Customs Code — Regulation (EEC) No 2913/92 — Article 204(1)(a) — Regulation (EEC) No 2454/93 — Article 859 — External transit procedure — Authorised consignor — Creation of a customs debt — Transit document relating to non-existent goods)***

(2010/C 246/14)

*Language of the case: Danish*

**Referring court**

Vestre Landsret

**Parties to the main proceedings**

*Applicant:* Skatteministeriet

*Defendant:* DSV Road A/S

**Re:**

Reference for a preliminary ruling — Vestre Landsret — Interpretation of Articles 1, 4(9) and (10), 92, 96 and 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Authorised consignor generating by mistake two transit documents for the same consignment of goods in the New Computerised Transit System (NCTS), thus assigning two different movement reference numbers to a single consignment — Customs debt arising following the impossibility of discharging the external Community transit procedure by presenting the goods to the customs office of destination — Charging of customs duty on goods which have been declared but do not physically exist

**Operative part of the judgment**

*Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, is to be interpreted as not applying to a situation such as that of the case before the referring court, where an authorised consignor generated by mistake two external transit procedures for one and the same consignment of goods, because the goods covered by the extra procedure do not exist and, as a consequence, that procedure cannot entail the creation of a customs debt pursuant to the above provision.*

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([1]) OJ C 205, 29.8.2009.

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**Judgment of the Court (First Chamber) of 29 July 2010 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Republic of Latvia) — Pakora Pluss SIA v Valsts ieņēmumu dienests**

**(Case C-248/09)** ([1])

***(Act of Accession to the European Union — Customs union — Transitional measures — Goods free from customs duties when entered for free circulation — Goods in transport in the enlarged Community on the date of accession of the Republic of Latvia — Export formalities — Import duties — VAT)***

(2010/C 246/15)

*Language of the case: Latvian*

**Referring court**

Augstākās tiesas Senāts

**Parties to the main proceedings**

*Applicant:* Pakora Pluss SIA

*Defendant:* Valsts ieņēmumu dienests

**Re:**

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 4(10) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), of Article 448 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) and of the Act concerning the conditions of accession to the European Union, Annex IV, Chapter 5, paragraph 1 — Import of a motor vehicle by sea — Release for free circulation free of customs duties and other customs measures applicable to goods being, at the date of accession, transported within the enlarged Community after export formalities have been completed

**Operative part of the judgment**

1. *Annex IV, Chapter 5, paragraph 1 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 must be interpreted as meaning that, in order to ascertain whether the export formalities referred to therein have been completed, it is irrelevant that the actions provided for in Article 448 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 2787/2000 of 15 December 2000, were performed, even where a cargo manifest has been drawn up.*

2. *Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, and Regulation No 2454/93, as amended by Regulation No 2787/2000, are applicable in the new Member States as from 1 May 2004, but the procedure provided for in Annex IV, Chapter 5, paragraph 1 of the Act of Accession cannot be relied on where the export formalities set out therein have not been completed with respect to goods in transport in the enlarged Community at the date of accession of those new Member States of the European Union.*

3. *Article 4(10) of Regulation No 2913/92, as amended by Regulation No 82/97 must be interpreted as meaning that import duties do not include the value added tax to be levied on the importation of goods.*

4. *When goods are imported, the obligation to pay the value added tax is imposed on the person or persons designated or accepted as being liable by the Member State into which the goods are imported.*

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([1]) OJ C 220, 12.9.2009.

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**Judgment of the Court (Second Chamber) of 15 July 2010 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Bianca Purrucker v Guillermo Vallés Pérez**

**(Case C-256/09)** ([1])

***(Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Provisional, including protective, measures — Recognition and enforcement)***

(2010/C 246/16)

*Language of the case: German*

**Referring court**

Bundesgerichtshof

**Parties to the main proceedings**

*Applicant:* Bianca Purrucker

*Defendant:* Guillermo Vallés Pérez

**Re:**

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Chapter 3 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Application of the recognition and enforcement rules in that regulation to a provisional measure awarding custody of a child to its father and ordering the return of the child, retained by its mother in another Member State, to its father

**Operative part of the judgment**

*The provisions laid down in Article 21 et seq. of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, do not apply to provisional measures, relating to rights of custody, falling within the scope of Article 20 of that regulation.*

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([1]) OJ C 220, 12.9.2009.

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**Judgment of the Court (Eighth Chamber) of 15 July 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Gaston Schul BV v Staatssecretaris van Financiën**

**(Case C-354/09)** ([1])

***(Community Customs Code — Article 33 — Value of goods for customs purposes — Inclusion of the customs duties — Delivery term 'Delivered Duty Paid')***

(2010/C 246/17)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Applicant:* Gaston Schul BV

*Defendant:* Staatssecretaris van Financiën

**Re:**

Interpretation of Article 33(1)(f) and Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Customs value — Contract containing the term of delivery 'Delivered Duty Paid' concluded on the assumption that no customs duties would be payable — Amount not mentioned — Exclusion from or inclusion in the customs value

**Operative part of the judgment**

*The condition specified in Article 33 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, to the effect that import duties must be 'shown separately' from the price actually paid or payable for the imported goods, is satisfied in the case where the parties to the contract have agreed that those goods are to be delivered DDP ('Delivered Duty Paid') and have incorporated that information in the customs declaration but, by reason of a mistake as to the preferential origin of those goods, have failed to state the amount of the import duties.*

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([1]) OJ C 282, 21.11.2009.

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**Judgment of the Court (Third Chamber) of 15 July 2010 (reference for a preliminary ruling from the Baranya Megyei Bíróság — Hungary) — Pannon Gép Centrum Kft v APEH Központi Hivatal Hatósági Főosztály Dél-dunántúli Kihelyezett Hatósági Osztály**

**(Case C-368/09)** ([1])

***(Sixth VAT Directive — Directive 2006/112/EC — Right to deduct input tax — National legislation penalising an error in the invoice by loss of the right to deduct)***

(2010/C 246/18)

*Language of the case: Hungarian*

**Referring court**

Baranya Megyei Bíróság

**Parties to the main proceedings**

*Applicant:* Pannon Gép Centrum Kft

*Defendant:* APEH Központi Hivatal Hatósági Főosztály Dél-dunántúli Kihelyezett Hatósági Osztály

**Re:**

Reference for a preliminary ruling — Baranya Megyei Bíróság — Interpretation of Articles 17(1), 18(1) and 22(3)(a) and (b) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), and of Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax (OJ 2002 L 15, p. 24) — Loss of the right to deduct for a recipient of services by reason of an error in the completion date of the works referred to in the invoice issued by the provider — National rules penalising any formal defect in the invoice by the loss of the right to deduct

**Operative part of the judgment**

*Articles 167, 178(a), 220(1) and 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation or practice whereby the national authorities deny to a taxable person the right to deduct from the VAT which he is liable to pay the VAT due or paid in respect of services supplied to him on the grounds that the initial invoice, in the possession of the taxable person when the deduction is made, contained an incorrect completion date for the supply of services and the numbering of the subsequently corrected invoice and the credit note cancelling the initial invoice were not sequential, if the material conditions governing deduction are satisfied and, before the tax authority concerned has made a decision, the taxable person has submitted to the tax authority a corrected invoice stating the correct date on which that supply of services was completed, even though the numbering of that invoice and the credit note cancelling the initial invoice are not sequential.*

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([1]) OJ C 11, 16.1.2010.

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**Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v Isaac International Limited**

**(Case C-371/09)** ([1])

***(Regulation (EEC) No 2913/92 — Customs Code — Article 212a — Regulation (EEC) No 2454/93 — Article 292 — Regulation (EEC) No 88/97 — Article 14 — Anti-dumping duty — Bicycle frames)***

(2010/C 246/19)

*Language of the case: English*

**Referring court**

High Court of Justice (Chancery Division)

**Parties to the main proceedings**

*Applicant:* Commissioners for Her Majesty's Revenue and Customs

*Defendant:* Isaac International Limited

**Re:**

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 14(c) of Commission Regulation No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) 2474/93 (OJ 1997 L 17, p. 17) — Interpretation of Article 292(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Interpretation of Article 212(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 (OJ 1992 L 302, p.1) — Anti-dumping duty on bicycles originating in the People's Republic of China — Conditions for the exemption of certain imports of essential bicycle parts — Obtaining an end-use authorisation — Importer not having obtained the necessary authorisation because he failed to ascertain the terms of Article 14(c) of Regulation (EC) No 88/97 and Article 292(3) of Regulation (EEC) No 2454/93 — Meaning of obvious negligence

**Operative part of the judgment**

1. *The procedure laid down in Article 292(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1602/2000 of 24 July 2000, cannot be used to authorise an importer established and operating in two Member States, which imports goods into the first Member State and transports them immediately to the second Member State, so as to permit the importer to obtain an exemption from anti-dumping duty under Article 14(c) of Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93;*

2. *Article 212a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 does not permit an exemption from anti-dumping duty to be granted to an importer who does not have the prior authorisation to benefit from the exemption from such duties provided for in Article 14(c) of Regulation No 88/97.*

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([1]) OJ C 267, 07.11.2009.

## Judgment of the Court (Third Chamber) of 29 July 2010 (reference for a preliminary ruling from the Tribunal de commerce de Bruxelles — Belgium) — Françoise-Eléonor Hanssens-Ensch (insolvency administrator of Agenor SA) v European Community

**(Case C-377/09)** [1]

***(Article 235 EC and Article 288 EC, second paragraph — Jurisdiction of the Court of Justice to hear and determine actions for damages brought against the European Community on the basis of non-contractual liability — Action to make good a shortfall in the assets, within the meaning of Article 530(1) of the Belgian Code des sociétés — Action brought against the European Community by the insolvency administrator of a limited company — Jurisdiction of the national courts to hear and determine such an action)***

(2010/C 246/20)

*Language of the case: French*

### Referring court

Tribunal de commerce de Bruxelles

### Parties to the main proceedings

*Applicant:* Françoise-Eléonor Hanssens-Ensch (insolvency administrator of Agenor SA)

*Defendant:* European Community

### Re:

Reference for a preliminary ruling — Tribunal de commerce de Bruxelles — Interpretation of the second paragraph of Article 288 EC — Action for damages brought by an insolvency administrator against the European Community on grounds of serious misconduct on the part of the Community in the *de facto* management of a commercial company, thus contributing to its insolvency — Jurisdiction of the Court of Justice to hear and determine an action for damages brought under national insolvency provisions on the basis of non-contractual liability

### Operative part of the judgment

*An action for damages brought against the European Community on the basis of non-contractual liability, even if it is brought under national legislation establishing special statutory rules which differ from the ordinary rules of law governing civil liability in the Member State concerned, does not — pursuant to Article 235 EC, read in conjunction with the second paragraph of Article 288 EC — fall within the jurisdiction of the national courts.*

[1] OJ C 312, 19.12.2009.

## Judgment of the Court (Sixth Chamber) of 15 July 2010 — European Commission v Hellenic Republic

**(Case C-512/09)** [1]

***(Failure of a Member State to fulfil obligations — Directive 2006/66/EC — Batteries and accumulators and waste batteries and accumulators — Failure to transpose within the prescribed period)***

(2010/C 246/21)

*Language of the case: Greek*

### Parties

*Applicant:* European Commission (represented by: I. Dimitriou and A. Margeli, Agents)

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

### Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ 2006 L 266, p.1)

### Operative part of the judgment

*The Court:*

1. *Declares that by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

[1] OJ C 37, 13.2.2010.

## Judgment of the Court (Seventh Chamber) of 29 July 2010 — European Commission v Kingdom of Belgium

**(Case C-513/09)** [1]

***(Failure of a Member State to fulfil obligations — Directive 2006/66/EC — Batteries and accumulators and waste batteries and accumulators — Failure to transpose within the prescribed period)***

(2010/C 246/22)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: V. Peere and A. Marghelis, Agents)

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

### Re:

Failure of a Member State to fulfil obligations — Failure to adopt or communicate, within the prescribed period, all the provisions necessary to comply with Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ 2006 L 266, p. 1)

### Operative part of the judgment

*The Court:*

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

[1] OJ C 37, 13.02.2010.

## Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Republic of Estonia

**(Case C-515/09)** [1]

***(Failure of a Member State to fulfil obligations — Directive 2006/21/EC — Management of waste from extractive industries — Failure to transpose within the prescribed period)***

(2010/C 246/23)

*Language of the case: Estonian*

### Parties

*Applicant:* European Commission (represented by: A. Marghelis and K. Saaremäel-Stoilov, Agents)

*Defendant:* Republic of Estonia (represented by: L. Uibo, Agent)

### Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ 2006 L 102, p. 15)

### Operative part of the judgment

*The Court:*

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, the Republic of Estonia has failed to fulfil its obligations under that directive;*

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

[1] OJ C 63, 13.03.2010.

## Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Kingdom of Belgium

**(Case C-6/10)** [1]

***(Failure of a Member State to fulfil obligations — Directive 2006/46/EC — Company law Annual and consolidated accounts of companies — Failure to transpose or to communicate national transposition measures)***

(2010/C 246/24)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: G. Braun and L. de Schietere de Lophem, Agents)

*Defendant:* Kingdom of Belgium (represented by: M. Jacobs and J.-C. Halleux, Agents)

**Re:**

Failure of a Member State to fulfil obligations — Failure to adopt or communicate, within the prescribed period, all the measures necessary to comply with Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ 2006 L 224, p. 1)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to comply with Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, the Kingdom of Belgium has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 80, 27.03.2010.

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**Re:**

Failure of a Member State to fulfil obligations — Failure to adopt or to communicate, within the prescribed period, all the measures necessary to comply with Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (OJ 2006 L 224, p. 1)

**Operative part of the judgment**

*The Court:*

1. *Declares that by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 80, 27.3.2010.

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## Judgment of the Court (Seventh Chamber) of 15 July 2010 — European Commission v Grand Duchy of Luxembourg

**(Case C-8/10)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 2006/46/EC — Annual accounts and consolidated accounts of companies — Failure to transpose completely within the prescribed period)***

(2010/C 246/25)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: G. Braun and L. de Schietere de Lophem, Agents)

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

## Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v Italian Republic

**(Case C-19/10)** ([1])

***(Failure of a Member State to fulfil obligations — Regulations (EC) Nos 273/2004 and 111/2005 — Drug precursors — Control and monitoring within the Union — Monitoring of trade between the Union and third countries — Penalties)***

(2010/C 246/26)

*Language of the case: Italian*

**Parties**

*Applicant:* European Commission (represented by: P. Oliver and S. Mortoni, Agents)

*Defendant:* Italian Republic (represented by: G. Palmieri, Agent, and S. Fiorentino, avvocato dello Stato)

**Re:**

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Art. 12 of Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors (OJ 2004 L 47, p. 1) and Art. 31 of Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors (OJ 2005 L 22, p. 1)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt the national measures necessary for the implementation, first, of Article 12 of Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors and, secondly, of Art. 31 of Council Regulation (EC) No 111/2005 of 22 December 2004 laying down rules for the monitoring of trade between the Community and third countries in drug precursors, the Italian Republic has failed to fulfil its obligations under those regulations;*

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

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([1]) OJ C 80, 27.03.2010.

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## Judgment of the Court (Eighth Chamber) of 29 July 2010 — European Commission v French Republic

**(Case C-35/10)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 2006/21/EC — Protection of the environment — Waste management — Mining extraction — Failure to transpose within the prescribed period)***

(2010/C 246/27)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: A. Marghelis and J. Sénéchal, Agents)

*Defendant:* French Republic (represented by: G. de Bergues and S. Menez, Agents)

**Re:**

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ 2006 L 102, p. 15)

**Operative part of the judgment**

*The Court:*

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC, the French Republic has failed to fulfil its obligations under that directive;*

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

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([1]) OJ C 80, 27.03.2010.

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## Appeal brought on 21 May 2010 by Centre de Coordination Carrefour SNC against the judgment delivered by the General Court (Eighth Chamber) on 18 March 2010 in Case T-94/08 Centre de Coordination Carrefour v Commission

**(Case C-254/10 P)**

(2010/C 246/28)

*Language of the case: French*

**Parties**

*Appellant:* Centre de Coordination Carrefour SNC (represented by: X. Clarebout, C. Docclo and M. Pittie, avocats)

*Other party to the proceedings:* European Commission

**Form of order sought**

— declare that the appeal is admissible and well-founded,

— consequently, set aside the judgment under appeal,

— consequently:

  — either refer the case back to the General Court for a fresh decision;

— or give final judgment by granting the form of order sought by Centre de Coordination Carrefour SNC at first instance and annulling the contested decision; ([1])

— order the European Commission to pay all the costs.

**Pleas in law and main arguments**

The appellant puts forward five pleas in law in support of its appeal.

By its first ground of appeal, the appellant submits that the General Court breached its obligation to state reasons in finding, first, that the appellant had no legal interest in bringing proceedings against the contested decision due to the lack of a valid authorisation under Belgian law and, second, that the admissibility of the action did not depend on its having valid authorisation. Such a statement of reasons is contradictory, since the General Court was not entitled to find at the same time that the appellant had no interest in bringing proceedings due to the lack of valid authorisation and that such authorisation was not material in assessing whether the action was admissible.

By its second ground of appeal, the appellant submits that the General Court distorted the facts submitted to it, by misconstruing the broad logic of the Belgian legislation on coordination centres, misinterpreting Royal Decree No 187 of 30 December 1982 concerning the establishment of coordination centres, ([2]) distorting its scope, and failing to apply the hierarchy of sources of Belgian law. The royal decree at issue is a special powers decree which, under Belgian law, has the same legal force as a law and is still applicable to the appellant, which therefore benefits from an authorisation for a period of 10 years.

By its third ground of appeal, the appellant submits that the General Court disregarded the principle of *res judicata* attaching to the judgment of the Court of Justice in Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, in so far as the General Court held that if it annulled the contested decision, the effect would be to prohibit renewal of the authorisations of the coordination centres as from the date of notification of the contested decision. However, the judgment of the Court of Justice annulled the contested decision in that case precisely because of the lack of adequate transitional periods for the coordination centres whose applications for renewal of authorisation were pending on the date of notification of the contested decision or whose authorisations expired on that date or shortly thereafter.

By its fourth ground of appeal, the appellant complains that the General Court misconstrued the notion of 'interest in bringing proceedings', in that it held that the action brought by the appellant was not likely, if successful, to procure an advantage for it, on the ground that it is not certain that the Belgian authorities would maintain the status of the appellant's coordination centre beyond 31 December 2005 if the contested decision were annulled. First, the Belgian authorities did not have any discretion in the present case, since the authorisation had to be granted for 10 years if the criteria laid down by Royal Decree No 187 were satisfied. Second, the General Court itself observed, in the judgment under appeal, that the Belgian authorities had not ruled out allowing the appellant to benefit from the scheme at issue after 31 December 2005 and had decided not to apply any penalty to it as long as no definitive ruling has been given on its action.

By its fifth and final ground of appeal, the appellant submits, lastly, that the General Court erred in law by finding that a transitional measure may not take effect retroactively. It is not unusual for a transitional period to start to run from an earlier point, in particular in tax matters.

([1]) Commission Decision 2008/283/EC of 13 November 2007 amending Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2008 L 90, p. 7).

([2]) *Moniteur belge*, 13 January 1983, p. 502.

**Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 27 May 2010 — Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg**

**(Case C-262/10)**

(2010/C 246/29)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Döhler Neuenkirchen GmbH

*Defendant:* Hauptzollamt Oldenburg

**Question referred**

Is Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) to be interpreted as meaning that it also applies to non-fulfilment of those obligations which are to be fulfilled only after discharge of the relevant customs procedure which has been used, so that where goods imported under an inward processing procedure in the form of a system of suspension have been partly re-exported within the time-limit the failure to fulfil the obligation to supply the bill of discharge to the supervising office within 30 days of the expiry of the time-limit for discharging the procedure gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge if the requirements of Article 859(9) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 ([2]) establishing the Community Customs Code, as amended by Article 1(30)(b) of Commission Regulation (EC) No 993/2001 of 4 May 2001 ([3]) are not fulfilled?

([1]) OJ 1992 L 302, p. 1.
([2]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; OJ 1993 L 253, p. 1.
([3]) Commission Regulation (EC) No 993/2001 of 4 May 2001 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code; OJ 2001 L 141, p. 1.

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**Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 2 June 2010 — Residex Capital IV CV v Gemeente Rotterdam**

**(Case C-275/10)**

(2010/C 246/30)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Applicant:* Residex Capital IV CV

*Defendant:* Gemeente Rotterdam

**Question referred**

Does the provision in the last sentence of Article 88(3) EC, now Article 108(3) TFEU, mean that, in a case such as the present, where the unlawful aid measure was implemented by granting the lender a guarantee which enabled the borrower to obtain a loan from the lender which would not have been available to it under normal market conditions, the national courts, within the framework of their obligation to remedy the consequences of the unlawful aid measure, are obliged, or at any rate authorised to cancel the guarantee, even if that does not result in the cancellation of the loan granted under the guarantee?

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**Reference for a preliminary ruling from the Handelsgericht Vienna (Austria) lodged on 3 June 2010 — Martin Luksan v Petrus van der Let**

**(Case C-277/10)**

(2010/C 246/31)

*Language of the case: German*

**Referring court**

Handelsgericht Vienna

**Parties to the main proceedings**

*Applicant:* Martin Luksan

*Defendant:* Petrus van der Let

**Questions referred**

1. Must the provisions of European Union law concerning copyright and related rights, and in particular Article 2(2), (5) and (6) of Directive 92/100, ([1]) Article 1(5) of Directive 93/83/EEC ([2]) and Article 2(1) of Directive 2006/116, ([3]) in conjunction with Article 4 of Directive 92/100, Article 2 of Directive 93/83 and Articles 2 and 3 and Article 5(2)(b) of Directive 2001/29, ([4]) be interpreted as meaning that the principal director of a cinematographic or audiovisual work *or other authors of films designated by the legislatures of the Member States* are directly (primarily) entitled in all events, by law, to the exploitation rights in respect of reproduction, satellite broadcasting and other communication to the public through the making available to the public and that the film-maker is not entitled thereto directly (primarily) and exclusively;

   Are laws of the Member States which assign the exploitation rights by law directly (primarily) and exclusively to the film-maker inconsistent with European Union law?

If the answer to Question 1 is in the affirmative:

2a. Does European Union law grant the legislatures of the Member States the option of providing for *a legal presumption in favour of a transfer to the film-maker of the exploitation rights within the meaning of paragraph 1* to which the principal director of a cinematographic or audiovisual work *or other authors of films designated by the legislatures of the Member States are entitled, even in respect of rights other than rental and lending rights, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?*

2b. Must the primary ownership of rights of the principal director of a cinematographic or audiovisual work, *or of other authors of films designated by the legislature of a Member State* also be applied to the rights granted by the legislature of a Member State to equitable remuneration, such as 'empty cassette remuneration' pursuant to Paragraph 42b of the Austrian Urhebergesetz (Copyright law), or to rights to fair compensation within the meaning of Article 5(2)(b) of Directive 2001/29?

If the answer to Question 2b is in the affirmative:

3. Does European Union law grant the legislatures of the Member States the option of providing for a legal presumption in favour of a transfer to the film-maker of the rights to remuneration within the meaning of paragraph 2 to which the principal director of a cinematographic or audiovisual work *or other authors of films designated by the legislatures of the Member States* are entitled, and if so, must the conditions laid down in Article 2(5) and (6) of Directive 92/100, in conjunction with Article 4 of that directive, be satisfied?

If the answer to Question 3 is in the affirmative:

4. If a legal provision of a Member State accords to the principal director of a cinematographic or audiovisual work *or other authors of films designated by the legislatures of the Member States* a right to half of the statutory rights to remuneration, but provides that that right is capable of alteration and not therefore unwaivable, is that provision consistent with the aforementioned provisions of European Union law in the area of copyright and related rights?

(1) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61)

(2) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15)

(3) Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ 2006 L 372, p. 12)

(4) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10)

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## Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Telefónica de España, S.A. v Administración del Estado

**(Case C-284/10)**

(2010/C 246/32)

*Language of the case: Spanish*

### Referring court

Tribunal Supremo

### Parties to the main proceedings

*Applicant:* Telefónica de España, S.A

*Defendant:* Administración del Estado

### Question referred

Does Directive 97/13/EC (1) of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services and, in particular, Article 6 thereof, permit Member States to charge holders of general authorisations an annual fee which is calculated on the basis of a percentage of gross operating income invoiced in the relevant year, subject to such amount not exceeding two per thousand, and which is applied for the purpose of defraying the costs, including management costs, incurred by the telecommunications regulatory body in the implementation of the scheme of licences and general authorisations, as provided for in Article 71 of Law 11/1998 of 24 April 1998 on telecommunications?

(1) OJ 1997 L 117, p. 15.

**Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 June 2010 — Campsa Estaciones de Servicio S.A. v Administración del Estado**

**(Case C-285/10)**

(2010/C 246/33)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Applicant:* Campsa Estaciones de Servicio S.A.

*Defendant:* Administración del Estado

**Question referred**

Did the Sixth Council Directive 77/388/EEC ([1]) of 17 May 1977 permit Member States to enact legislation whereby, for transactions between connected parties where the price was patently lower than the open market value, the taxable amount was other than that determined by Article 11A.(1)(a) to be generally applicable — namely, the consideration — by extending the scope of the rules on application of goods and services for private use (as was done by Article 79(5) of the Law on VAT, before its amendment by Law 36/2006 of 29 November), when the specific procedure provided for in Article 27 of the Sixth Directive to obtain authorisation for derogation from the general rule was not followed, such derogation being obtained by Spain only after the Council Decision of 15 May 2006?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

**Reference for a preliminary ruling from the Rechtbank van Koophandel te Dendermonde (Belgium) lodged on 2 June 2010 — Wamo BVBA v JBC NV and Modemakers Fashion NV**

**(Case C-288/10)**

(2010/C 246/34)

*Language of the case: Dutch*

**Referring court**

Rechtbank van Koophandel te Dendermonde

**Parties to the main proceedings**

*Applicant:* Wamo BVBA

*Defendants:* JBC NV

Modemakers Fashion NV

**Question referred**

Does Directive 2005/29/EC ([1]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices preclude a national provision such as that laid down in Article 53 of the Wet van 14 juli 1991 betreffende de handelspraktijken en de voorlichting en bescherming van de consument (Law of 14 July 1991 on commercial practices and consumer information and protection, 'WHP') which prohibits announcements of price decreases and suggestions of such decreases during defined periods?

([1]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

**Appeal brought on 10 June 2010 by European Dynamics SA against the judgment of the General Court (Third Chamber) delivered on 19 March 2010 in Case T-50/05: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission**

**(Case C-289/10 P)**

(2010/C 246/35)

*Language of the case: English*

**Parties**

*Appellant:* European Dynamics SA (represented by: N. Korogiannakis, Attorney at Law)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellant claims that the Court should:

— set aside the decision of the General Court

— annul the decision of the Commission (DG Taxation and Customs Union) to reject the bid of the Appellant, filed in response to the Call for Tender TAXUD/2004/AO-004 for the 'Specification, Development, Maintenance and Support of Telematic Systems to Control the Movements of Products Subject to Excise Duty within the European Community under the Excise-Duty Suspension Arrangement (EMCS-DEV)' (OJ 2004/S 139-118603) and to award the same Call for Tender to another bidder

— order the Commission to pay the Appellant's legal and other costs including those incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

**Pleas in law and main arguments**

The Appellant submits that the contested judgment should be set aside on the following grounds:

First, because the General Court committed an error in law, by adopting an erroneous interpretation of Article 89 (1) of the Financial Regulation and of the principles of equality of treatment, non-discrimination, transparency and freedom of competition, when it rejected the plea of the Appellant that two types of technical information that were necessary for the formulation of tenders for the contract at issue, namely the exact specifications for the EMCS and the source-code and design and technical documentation for the NCTS were not made available to the appellant.

Second, the Appellant submits that the General Court erred in law when it concluded that the statement of reasons provided by the Commission enabled the Appellant to assert its rights. More specifically, the GC erred in considering that DG TAXUD communicated to the Appellant sufficient information 'enabling it to assert its rights and the GC to exercise its review'.

Thirdly, the Court erred at par. 102-116 of the judgment when it considered that the Appellant did not substantiate its claim that the award criteria were 'vague and subjective'. The Appellant considers, especially in the light of the total uncertainty on the scope of the work and the degree of potential re-use of NCTS requested by the contracting authority, that Article 97 par. 1 of the Financial Regulation and Article 17 par. 1 of Directive 92/50 [1] have been infringed.

Finally, the Appellant considers that the General Court appears to err in law by stating, with regard to the plea as to the manifest error of assessment, that the Appellant limited its arguments to general assertions and consequently failed to show whether, and in what way, the alleged errors affected the final outcome of the evaluation of the tender.

[1] Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ L 209, 24.07.1992, p. 1

## Action brought on 16 June 2010 — European Commission v United Kingdom of Great Britain and Northern Ireland

**(Case C-301/10)**

(2010/C 246/36)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: S. Pardo Quintillán, Agent, A.-A. Gilly, Agent)

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

**The applicant claims that the Court should:**

— declare that, by failing to ensure that appropriate collecting systems pursuant to Articles 3(1) and (2) and Annex I(A) to Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment [1] are in place in Whitburn and the Beckton and Crossness collecting systems in London, and that appropriate treatment is provided with regard to waste waters from the Beckton, Crossness and Mogden waste water treatment plants in London pursuant to Articles 4(1), 4(3) and 10 of, and Annex I(B) to, the Directive, the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under these provisions.

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

**Pleas in law and main arguments**

Pursuant to Articles 3(1) and (2) of, and Annex I(A) to, Council Directive 91/271/EEC, the United Kingdom is required to ensure that collecting systems are provided for all agglomerations of more than 15,000 population equivalent by 31 December 2000 at the latest and that those collecting systems satisfy the requirements of Annex I(A) to the Directive. Pursuant to Articles 4(1) and (3) of, and Annex I(B) to, that Directive, the United Kingdom is also required to ensure that urban waste water entering collecting systems are, before discharge, subject to secondary treatment or an equivalent treatment for all discharges from agglomerations of more than 15,000 population equivalent by 31 December 2000 at the latest and that discharges from urban waste water treatment plants satisfy the standards to be met for discharges from urban waste water treatment plants to receiving waters.

As the United Kingdom operates a combined system of collection for both urban waste waters and rainwater run off in the London area, that system must be designed to ensure that the waters collected are retained and conducted for treatment in accordance with the requirements set out in the Directive. The United Kingdom has failed to ensure that the collecting systems are designed and built so as to collect all the urban waste water generated by the agglomerations they serve and that they are conducted for treatment. The capacity of the collecting system must be able to take into account natural climatic conditions and seasonal variations. The United Kingdom has infringed the requirements of the Directive in failing to provide adequate collecting systems and treatment facilities in the London and Whitburn areas and allowing excessive quantities of untreated waste water to spill into the environment without treatment.

(1) OJ L 135, p. 40

**Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 21 June 2010 — Administración General del Estado v Red Nacional de Ferrocarriles Españoles (RENFE)**

**(Case C-303/10)**

(2010/C 246/37)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellant:* Administración General del Estado

*Respondent:* Red Nacional de Ferrocarriles Españoles (RENFE)

**Question referred**

Must the phrase 'in the field of passenger transport, and the carriage of goods, by rail' as used in Article 8(2)(c) of Council Directive 92/81/EEC (1) of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, for the purposes of defining the exemption which the Member States may provide in that field, be interpreted strictly, in accordance with its literal meaning, or, conversely, must it be interpreted broadly, as meaning that the exemption extends to fuel used by machinery for the maintenance of the railway infrastructure, which moves by rail?

(1) OJ 1992 L 316, p. 12.

**Action brought on 22 June 2010 — European Commission v Republic of Poland**

**(Case C-304/10)**

(2010/C 246/38)

*Language of the case: Polish*

**Parties**

*Applicant:* European Commission (represented by: M. Wilderspin and D. Milanowska, Agents)

*Defendant:* Republic of Poland

**Form of order sought**

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure application of Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, (1) or, in any event, by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 7 of that directive;

— order the Republic of Poland to pay the costs of the proceedings.

**Pleas in law and main arguments**

The period within which Directive 2004/82 had to be transposed expired on 5 September 2006.

(1) OJ 2004 L 261, p. 24.

**Reference for a preliminary ruling from The Appointed Person by the Lord Chancellor (United Kingdom) made on 28 June 2010 — The Chartered Institute of Patent Attorneys v Registrar of Trade Marks**

**(Case C-307/10)**

(2010/C 246/39)

*Language of the case: English*

**Referring court**

The Appointed Person by the Lord Chancellor

**Parties to the main proceedings**

*Applicant:* The Chartered Institute of Patent Attorneys

*Defendant:* Registrar of Trade Marks

**Questions referred**

Is it:

1. necessary for the various goods or services covered by a trade mark application to be identified with any and if so what particular degree of clarity and precision?

2. permissible to use the general words of the Class Headings of the International Classification of Goods and Services established under the Nice Agreement of June 15, 1957 (as revised and amended from time to time) for the purpose of identifying the various goods or services covered by a trade mark application?

3. necessary or permissible for such use of the general words of the Class Headings of the said International Classification of Goods and Services to be interpreted in accordance with Communication No. 4/03 of the President of the Office for Harmonisation in the Internal Market of 16 June 2003 (OJ OHIM 2003 p. 1647)?

**Appeal brought on 29 June 2010 by Union Investment Privatfonds GmbH against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Case T-392/06 Union Investment Privatfonds GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs); other party to the proceedings: Unicre-Cartão International De Crédito SA**

**(Case C-308/10 P)**

(2010/C 246/40)

*Language of the case: German*

**Parties**

*Appellant:* Union Investment Privatfonds GmbH (represented by: J. Zindel, Rechtsanwalt)

*Other parties to the proceedings:*

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

— Unicre-Cartão International De Crédito SA

**Form of order sought**

— set aside the judgment of the General Court of 27 April 2010 in Case T-392/06;

— declare void Decision R 442/2004-2 of the Board of Appeal of the Office for Harmonisation in the Internal Market of 10 October 2006 and uphold the appellant's oppositions to the registration of Community Trade Mark 1871896 'unibanco'.

**Pleas in law and main arguments**

The appeal alleges misapplication of Article 74(2) of Regulation (EC) No 40/94. The General Court, in the appellant's view, wrongly proceeded on the basis that the appellant had been late in submitting evidence of use of the marks cited in opposition. Furthermore, the discretionary examination which the Board of Appeal of OHIM is required to carry out under Article 74(2) of Regulation (EC) No 40/94 does not comply with the requirements laid down by the Court in its judgment of 13 March 2007 in Case C-29/05 P *OHIM* v *Kaul* [2007] ECR I-2213.

A proper discretionary examination would necessarily have resulted in the appellant's evidence as to use of the mark cited in opposition being taken into account even if it had in fact been submitted late. Appraisal of the evidence would not have given rise to a delay in the proceedings because the Opposition Division of OHIM did not take its decision until 15 months after the evidence had been submitted. The evidence would also have had direct legal relevance. Furthermore, inaccurate written communications from the Opposition Division of OHIM were instrumental in contributing to the appellant's submission of the evidence only after the period for so doing had elapsed.

The General Court also failed to assess the finding of the Opposition Division of OHIM that the parties involved had submitted their arguments and evidence within the periods which had been laid down. The Opposition Division of OHIM thus did not take the view that there had been a delay. The Board of Appeal of OHIM was thus precluded from assuming that there had been a delay. Rather, the Board of Appeal ought to have carried out a substantive examination of the evidence submitted.

Neither the Board of Appeal nor the General Court could make up for the absence of a discretionary decision on the part of the Opposition Division of OHIM. Because of non-exercise of discretion, the Board of Appeal ought to have remitted the matter back to the Opposition Division in accordance with Article 62(2) of Regulation (EC) No 40/94.

Furthermore, there are a number of reasons why the appellant was not late in submitting the evidence of use of the mark cited in opposition. First, the daily publications in the financial section of national newspapers, by which the use of the marks cited in opposition and further serial trade marks was evidenced by the indication of investment funds of the appellant, are established matters of public knowledge. OHIM was, for its part, obliged to take cognisance of this matter. Second, the trade mark applicant did not dispute the use of the opposition and serial trade marks. Third, the Opposition Division of OHIM unlawfully prevented the appellant from submitting further evidence of trade mark use. OHIM in fact informed the appellant that it could set out its views only in regard to arguments of the trade mark applicant, and it stated that it would not consider new evidence. It was thus irrelevant whether or not the appellant adduced further evidence of use. Fourth, periods were shortened in an impermissible manner. In this regard, OHIM also failed to comply with rule 80 of implementing Regulation No 2868/95.

## Action brought on 29 June 2010 — European Commission v Republic of Poland

**(Case C-311/10)**

(2010/C 246/41)

*Language of the case: Polish*

### Parties

*Applicant:* European Commission (represented by: G. Zavvos and Ł. Habiak, Agents)

*Defendant:* Republic of Poland

### Form of order sought

— declare that, by failing to adopt all of the laws, regulations and administrative provisions necessary to give effect to Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive), [1] or, in any event, by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under that directive;

— order the Republic of Poland to pay the costs of the proceedings.

### Pleas in law and main arguments

The period within which Directive 2007/46 had to be transposed expired on 29 April 2009.

[1] OJ 2007 L 263, p. 1.

## Reference for a preliminary ruling from the Tribunal De Première Instance, Liège (Belgium) lodged on 30 June 2010 — Hubert Pagnoul v Belgian State — SPF Finances

**(Case C-314/10)**

(2010/C 246/42)

*Language of the case: French*

### Referring court

Tribunal De Première Instance, Liège

**Parties to the main proceedings**

*Applicant:* Hubert Pagnoul

*Defendant:* Belgian State — SPF Finances

**Question referred**

Does Article 6 of Title I, 'Common Provisions', of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union, signed at Maastricht on 7 February 1992, in force since 1 December 2009 (substantially reproducing the provisions previously contained in Article 6 of Title I of the Treaty on European Union signed at Maastricht on 7 February 1992, which itself entered into force on 1 November 1993) and Article 234 (formerly 177) of the Treaty establishing the European Community (EC Treaty) of 25 March 1957, on the one hand, and/or Article 47 of the Charter of Fundamental Rights of the European Union of 7 December 2000, on the other hand, preclude a national Law, such as that of 12 July 2009 amending Article 26 of the Special Law of 6 January 1989 on the Cour d'Arbitrage, ([1]) from requiring prior recourse to the Cour Constitutionnelle by a national court which finds that a taxpaying citizen is deprived of the effective judicial protection guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as incorporated in Community law, by another national Law, namely Article 49 of the Programmatic Law of 9 July 2004, without that court being able immediately to ensure the direct applicability of Community law to the dispute before it or being able to scrutinise compliance with that convention when the Cour Constitutionnelle has recognised the compatibility of the national law with the fundamental rights guaranteed by Title II of the Constitution?

([1]) *Moniteur belge*, 31 July 2009, p. 51617.

**Appeal brought on 2 July 2010 by Union Investment Privatfonds GmbH against the judgment of the General Court (Third Chamber) delivered on 27 April 2010 in Joined Cases T-303/06 and T-337/06 UniCredito Italiano SpA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) — Union Investment Privatfonds GmbH**

**(Case C-317/10 P)**

(2010/C 246/43)

*Language of the case: Italian*

**Parties**

*Appellant:* Union Investment Privatfonds GmbH (represented by: J. Zindel, Rechtsanwalt)

*Other parties to the proceedings:* UniCredito Italiano SpA and Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

**Form of order sought**

— Set aside the judgment of 27 April 2010 in Joined Cases T-303/06 and T-337/06 in its entirety;

— Dismiss the applications of UniCredito Italiano SpA;

— Annul the decision of the Board of Appeal of OHIM of 5 September 2006 in Case R 196/2005-2 and uphold the opposition proceedings brought by the appellant against registration of the Community trade mark 2 236 164 'UNIWEB' with regard to the service 'real-estate affairs';

— Annul the decision of the Board of Appeal of OHIM of 25 September 2006 in Case R 502/2005-2 and uphold the opposition proceedings brought by the appellant against registration of the Community trade mark 2 330 066 'UniCredit Wealth Management' with regard to the service 'real-estate affairs'.

**Pleas in law and main arguments**

The appellant submits that the final half-sentence of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) has been incorrectly applied. In addition, it submits that the contested decision was taken on the basis of some of the facts only, which failed in part to reflect the actual position.

Unlike OHIM which had correctly upheld the substance of the appellant's claims, the General Court erred in failing to recognise that the marks at issue belong to a large family of marks. It is submitted that all the marks comprising that family each contain the same initial syllable, followed directly by another investment-sector concept. The marks of UniCredito Italiano SpA also displayed the same distinctive elements of that series. The General Court erred in starting from the premiss that the marks under comparison were structurally different on the basis that the initial syllable of UniCredito Italiano SpA's marks is followed by an element in English, whereas the initial syllable of the appellant's marks is followed by one in German. Nevertheless, the General Court failed to have due regard to the fact that because the marks form part of a series, all the marks in a family of marks must be taken into consideration when applying the final half-sentence of Article 8(1)(b) of Regulation (EC) No 40/94. In that regard, it must be emphasised that the appellant also uses English-language and international elements, so that the General Court's opposing point of view is objectively mistaken.

The appellant further submits that the General Court also erred in assuming that the marks used by it in respect of investment funds are always used in conjunction with the name of the issuing institution. That is, however, refuted by the evidence already submitted to OHIM by the appellant, from which it is clear, as has been outlined, that in press articles on funds, or during the provision of investment advice, the name of the issuing institution is not referred to.

The appellant emphasises that the judgment under appeal is inadequately reasoned since it is not apparent how the General Court managed to determine the German public's point of view, which is of crucial importance in analysing the likelihood of confusion.

However, determining that point of view was necessary, given that by submitting various decisions of the Deutsches Patent- und Markenamt (DPMA) (German Patent and Trade Mark Office) and other German courts, the appellant proved that the DPMA and the German courts assume that there is confusion on the part of the German public where certain marks containing the same initial syllable as that in the appellant's series of marks are registered or used by third parties in order to designate services in the financial sector.

Lastly, it is submitted that, like OHIM beforehand, the General Court failed to realise that there is a likelihood of confusion due to the similarity of services also in the 'real-estate affairs' sector. In the case of the real-estate funds covered by the appellant's marks, the appellant states that the increase in value expected by the investor is achieved by means of the management, leasing or sale of real estate. The appellant therefore submits that both OHIM and the General Court erred in assuming that managing a real-estate fund is limited to raising capital. In so far as OHIM attributed only property-brokerage activities to 'real-estate affairs', this fails to take due account of the fact that the concept of 'real-estate affairs' is much broader.

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

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## Reference for a preliminary ruling from the Cour de Cassation (Belgium) lodged on 2 July 2010 — SIAT SA v Belgian State

**(Case C-318/10)**

(2010/C 246/44)

*Language of the case: French*

### Referring court

Cour de Cassation

### Parties to the main proceedings

*Appellant:* SIAT SA

*Respondent:* Belgian State

### Question referred

Must Article 49 of the EC Treaty, in the version applicable to this case (the facts giving rise to the dispute having occurred prior to the entry into force of the Treaty of Lisbon on 1 December 2009), be interpreted as precluding national legislation of a Member State according to which payments for supplies or services are not to be regarded as deductible business expenses where they are made or attributed directly or indirectly to a taxpayer resident in another Member State or to a foreign establishment which, by virtue of the legislation of the country in which they are established, are not subject there to a tax on income or are subject there, for the relevant income, to a tax regime which is appreciably more advantageous than the one to which such income is subject in the Member State whose national legislation is at issue, unless the taxpayer proves, by any legal means, that such payments relate to genuine and proper transactions and do not exceed the normal limits, whereas such proof is not required, as a precondition for the deduction of payments for supplies or services made to a taxpayer residing in that Member State, even if the taxpayer is not subject to any tax on income or is subject to a tax regime which is appreciably more advantageous than the one laid down by the ordinary law of that State?

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## Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 2 July 2010 — X v Inspecteur der Belastingdienst/Y

**(Case C-319/10)**

(2010/C 246/45)

*Language of the case: Dutch*

### Referring court

Rechtbank Haarlem

### Parties to the main proceedings

*Applicant:* X

*Defendant:* Inspecteur der Belastingdienst/Y

**Questions referred**

1. In the assessment of the validity and/or the interpretation of Regulations No 535/94, [1] No 1832/2002, [2] No 1871/2003 [3] and No 2344/2003, [4] by which additional note 7 (CN) to Chapter 2 was introduced (numbered as note 8 at the time) and amended, is it possible to rely on the decision of 27 September 2005 of the Dispute Settlement Body (DSB) [of the World Trade Organisation] concerning the interpretation of the term 'salted' in heading 0210, even in cases in which the declaration for the customs procedure for 'release for free circulation' was made before that date?

2. If Question 1 is answered in the affirmative:

   How is it to be determined whether the character of chicken meat has been altered?

3. If Question 1 is answered in the affirmative:

   (a) Having regard to the DSB's decision of 27 September 2005, are the aforementioned regulations valid in so far as they lay down that, for the purposes of heading 0210, meat is deemed to be 'salted' if it has a total salt content by weight of 1,2 % or more?

   (b) In the light of the DSB's decision of 27 September 2005, must the aforementioned regulations be interpreted as meaning that additional note 7 (CN) to Chapter 2 lays down that the character of meat with a salt content by weight of 1,2 % or more is deemed to have been altered, that that meat qualifies as 'salted' for the purposes of heading 0210, and that meat with a salt content by weight of less than 1,2 %, the character of which has been demonstrably altered through the addition of salt, is not excluded from classification under heading 0210?

4. If Question 3(a) is answered in the affirmative:

   How is it to be determined whether the long-term preservation of chicken meat is guaranteed through the addition of salt?

[1] Commission Regulation (EC) No 535/94 of 9 March 1994 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1994 L 68, p. 15).

[2] Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2002 L 290, p. 1).

[3] Commission Regulation (EC) No 1871/2003 of 23 October 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 275, p. 5).

[4] Commission Regulation (EC) No 2344/2003 of 30 December 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 346, p. 38).

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## Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 2 July 2010 — X v Inspecteur der Belastingdienst P

**(Case C-320/10)**

(2010/C 246/46)

*Language of the case: Dutch*

**Referring court**

Rechtbank Haarlem

**Parties to the main proceedings**

*Applicant:* X BV

*Defendant:* Inspecteur der Belastingdienst P

**Questions referred**

1. In the assessment of the validity and/or the interpretation of Regulations No 535/94, [1] No 1832/2002, [2] No 1871/2003 [3] and No 2344/2003, [4] by which additional note 7 (CN) to Chapter 2 was introduced (numbered as note 8 at the time) and amended, is it possible to rely on the decision of 27 September 2005 of the Dispute Settlement Body (DSB) [of the World Trade Organisation] concerning the interpretation of the term 'salted' in heading 0210, even in cases in which the declaration for the customs procedure for 'release for free circulation' was made before that date?

2. If Question 1 is answered in the affirmative:

   How is it to be determined whether the character of chicken meat has been altered?

3. If Question 1 is answered in the affirmative:

   (a) Having regard to the DSB's decision of 27 September 2005, are the aforementioned regulations valid in so far as they lay down that, for the purposes of heading 0210, meat is deemed to be 'salted' if it has a total salt content by weight of 1,2 % or more?

(b) In the light of the DSB's decision of 27 September 2005, must the aforementioned regulations be interpreted as meaning that additional note 7 (CN) to Chapter 2 lays down that the character of meat with a salt content by weight of 1,2 % or more is deemed to have been altered, that that meat qualifies as 'salted' for the purposes of heading 0210, and that meat with a salt content by weight of less than 1,2 %, the character of which has been demonstrably altered through the addition of salt, is not excluded from classification under heading 0210?

4. If Question 3(a) is answered in the affirmative:

How is it to be determined whether the long-term preservation of chicken meat is guaranteed through the addition of salt?

(1) Commission Regulation (EC) No 535/94 of 9 March 1994 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1994 L 68, p. 15).
(2) Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2002 L 290, p. 1).
(3) Commission Regulation (EC) No 1871/2003 of 23 October 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 275, p. 5).
(4) Commission Regulation (EC) No 2344/2003 of 30 December 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 346, p. 38).

## Action brought on 5 July 2010 — European Commission v Kingdom of Belgium

**(Case C-321/10)**

(2010/C 246/47)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: A. Alcover San Pedro and J. Sénéchal, Agents)

*Defendant:* Kingdom of Belgium

### Form of order sought

— Declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), (1) or in any event by not communicating such measures to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

### Pleas in law and main arguments

The period prescribed for transposing Directive 2007/2/EC expired on 14 May 2009. As at the date on which the present action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not communicated those measures to the Commission.

(1) OJ 2007 L 108, p. 1.

## Reference for a preliminary ruling from Court of Appeal (Civil Division) (England & Wales) made on 5 July 2010 — Medeva BV v Comptroller-General of Patents

**(Case C-322/10)**

(2010/C 246/48)

*Language of the case: English*

### Referring court

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

### Parties to the main proceedings

*Applicant:* Medeva BV

*Defendant:* Comptroller-General of Patents

### Questions referred

1. Regulation 469/2009 (1) (the Regulation) recognises amongst the other purposes identified in the recitals, the need for the grant of an SPC by each of the Member States of the Community to holders of national or European patents to be under the same conditions, as indicated in recitals 7 and 8. In the absence of Community harmonisation of patent law, what is meant in Article 3(a) of the Regulation by 'the product is protected by a basic patent in force' and what are the criteria for deciding this?

2. In a case like the present one involving a medicinal product comprising more than one active ingredient, are there further or different criteria for determining whether or not 'the product is protected by a basic patent' according to Article 3(a) of the Regulation and, if so, what are those further or different criteria?

3. In a case like the present one involving a multi-disease vaccine, are there further or different criteria for determining whether or not 'the product is protected by a basic patent' according to Article 3(a) of the Regulation and, if so, what are those further or different criteria?

4. For the purposes of Article 3(a), is a multi-disease vaccine comprising multiple antigens 'protected by a basic patent' if one antigen of the vaccine is 'protected by the basic patent in force'?

5. For the purposes of Article 3(a), is a multi-disease vaccine comprising multiple antigens 'protected by a basic patent' if all antigens directed against one disease are 'protected by the basic patent in force'?

6. Does the SPC Regulation and, in particular, Article 3(b); permit the grant of a Supplementary Protection Certificate for a single active ingredient or combination of active ingredients where:

   (a) a basic patent in force protects the single active ingredient or combination of active ingredients within the meaning of Article 3(a) of the SPC Regulation; and

   (b) a medicinal product containing the single active Ingredient or combination of active Ingredients together with one or more other active ingredients is the subject of a valid authorisation granted in accordance with Directive 2001/83/EC [2] or 2001/82/EC [3] which is the first marketing authorization that places the single active Ingredient or combination of active ingredients on the market?

[1] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (Codified version) (Text with EEA relevance)
OJ L 152, p. 1

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

[3] Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products
OJ L 311, p. 1

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**Reference for a preliminary ruling from the Okresní Soud v Chebu (Czech Republic) lodged on 5 July 2010 — Hypoteční banka, a.s. v Udo Mike Lindner**

**(Case C-327/10)**

(2010/C 246/49)

*Language of the case: Czech*

**Referring court**

Okresní Soud v Chebu

**Parties to the main proceedings**

*Applicant:* Hypoteční banka, a.s.

*Defendant:* Udo Mike Lindner

**Questions referred**

1. If one of the parties to court proceedings is a national of a State other than the one in which those proceedings are taking place, does that fact provide a basis for the cross-border element within the meaning of Article 81 (formerly Article 65) of the Treaty, which is one of the conditions for the applicability of Council Regulation (EC) No 44/2001 [1] of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I Regulation')?

2. Does the Brussels I Regulation preclude the use of provisions of national law which enable proceedings to be brought against persons of unknown address?

3. If Question 2 is answered in the negative, can the making of submissions by a court-appointed guardian of the defendant in the case be regarded on its own as submission by the defendant to the jurisdiction of the local court for the purposes of Article 24 of the Brussels I Regulation, even where the subject-matter of the dispute is a claim arising out of a consumer contract and the courts of the Czech Republic would not have jurisdiction under Article 16(2) of that regulation to determine that dispute?

4. Can an agreement on the local jurisdiction of a particular court be regarded as establishing the international jurisdiction of the chosen court for the purposes of Article 17(3) of the Brussels I Regulation, and, if so, does that apply even if the agreement on local jurisdiction is invalid for conflict with Article 6(1) of Council Directive 93/13/EEC [2] of 5 April 1993 on unfair terms in consumer contracts?

[1] OJ 2001 L 12, p. 1.
[2] OJ 1993 L 95, p. 29.

**Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 12 July 2010 — X; other party: Staatssecretaris van Financiën**

**(Case C-334/10)**

(2010/C 246/50)

*Language of the case: Dutch*

**Referring court**

Hoge Raad der Nederlanden

**Parties to the main proceedings**

*Appellant:* X

*Other party:* Staatssecretaris van Financiën

**Questions referred**

1. Regard being had to Article 6(2), first subparagraph, (a) and (b), Article 11.A(1)(c) and Article 17(2) of the Sixth Directive, [1] is a taxable person who makes temporary use for private purposes of part of a capital item of his business entitled to deduct the VAT levied on expenditure incurred in respect of permanent alterations carried out exclusively with a view to that use for private purposes?

2. For the purpose of answering this question, does it make any difference whether the taxable person was charged VAT, which he deducted, on the acquisition of the capital item?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

**Action brought on 29 June 2010 — European Commission v Republic of Cyprus**

**(Case C-340/10)**

(2010/C 246/51)

*Language of the case: Greek*

**Parties**

*Applicant:* European Commission (represented by: Georgios Zavvos and Donatella Recchia)

*Defendant:* Republic of Cyprus

**Form of order sought**

The applicant claims that the Court should:

— declare that, by not having included the area of Paralimni Lake in the national list of proposed sites of Community importance, the Republic of Cyprus has failed to fulfil its obligations under Article 4(1) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

— declare that, by tolerating activities which place the ecological characteristics of Paralimni Lake at serious risk and by not having taken the protective measures necessary to safeguard the population of *Natrix natrix cypriaca*, the species which constitutes the ecological interest of Paralimni Lake and Xiliatos Dam, the Republic of Cyprus has failed to fulfil its obligations under Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora as interpreted by the Court in Cases C-117/03 and C-224/05;

— declare that, by not having taken the requisite measures to establish and apply a system of strict protection for the *Natrix natrix cypriaca*, the Republic of Cyprus has failed to fulfil its obligations under Article 12(1) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

— order the Republic of Cyprus to pay the costs.

**Pleas in law and main arguments**

The Commission submits that, by not having included the entire area of Paralimni Lake in the national list of proposed sites of Community importance (SCIs) up until December 2009, the Republic of Cyprus has failed to fulfil its obligations under Article 4(1) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. The Republic of Cyprus did not dispute the need to include Paralimni Lake among the proposed SCIs. Nevertheless, the lake was not included in the national list of proposed SCIs before expiry of the period set in the reasoned opinion. On 24 November 2009 the Republic of Cyprus informed the Commission that Paralimni Lake was officially included in the Natura 2000 network, but the important northern end of the lake was omitted from the proposed SCIs. On 24 April 2009 the amendment of the Paralimni Local Plan was published in the Government Gazette of the Republic of Cyprus, an amendment which converted the northern end of the lake into a residential area. The Commission submits that no restriction whatsoever of the extent of the habitat is justified and that, by not having included all of Paralimni Lake in the national list of proposed SCIs, the Republic of Cyprus is infringing Article 4(1) of Directive 92/43/EEC.

Furthermore, the Commission contends that particular damaging activities at Paralimni Lake (in particular the unlawful over-extraction of water, residential development, motor-cycle racing and the operation of a rifle-range) degrade and damage the habitat of the species and that therefore, by not having taken the protective measures necessary to safeguard the population of the species *Natrix natrix cypriaca*, the Republic of Cyprus has failed to fulfil its obligations under Directive 92/43/EEC as interpreted in the Court's case-law (in Cases C-117/03 and C-224/05).

In addition, the Commission submits that, as a result of activities such as residential development in the area and the separating of building plots at the northern end of Paralimni Lake, the habitat of the endemic species and its population have been adversely affected. Therefore, by not having taken the requisite measures to establish and implement a system of strict protection for the water snake *Natrix natrix cypriaca*, through the application of 'coherent and coordinated measures of a preventive nature', the Republic of Cyprus is failing to fulfil its obligations under Article 12(1)(a), (b) and (d) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

## Action brought on 8 July 2010 — European Commission v Hellenic Republic

**(Case C-346/10)**

(2010/C 246/52)

*Language of the case: Greek*

**Parties**

*Applicant:* European Commission (represented by: G. Zavvos)

*Defendant:* Hellenic Republic

**Form of order sought**

— declare that, by the imposition of restrictions on the issue of road licences for commercial vehicles and private road tankers, in particular by Article 4 of Law 383/1976, Articles 6 and 7 of Law 3054/2002 and the ministerial decisions concerning implementation of those laws, and by the imposition of set charges (between certain limits) for the transport services which are provided by commercial vehicles, Greece is infringing Article 49 of the Treaty on the Functioning of the European Union (formerly Article 43 EC);

— order the Hellenic Republic to pay the costs.

**Pleas in law and main arguments**

The Commission contends that the fact that the grant of new licences for commercial vehicles is dependent upon the 'country's transport needs', which are not defined objectively, restricts the freedom of establishment of road hauliers in Greece and, given that the restrictions in question are not justified on grounds of public policy, public security or public health, Article 4(3)(a) of Law 383/1976 infringes Article 49 TFEU (formerly Article 43 EC).

The Commission further submits that the obligation to impose defined carriage charges with upper and lower limits, first, discourages access of foreign undertakings to the road haulage market and/or to the Greek market for trade in petroleum products and, second, prevents undertakings already established in Greece from developing their activities as they are denied the possibility of effective competition with the undertakings

already firmly on the market, a result which, in accordance with the Court of Justice's case-law, infringes the freedom of establishment. This setting of rates and conditions for carriage is not consistent with Article 96(2) TFEU (as the Commission has not granted the requisite authorisation) and does not serve to protect vulnerable sectors of the economy and remote areas, whilst the setting by the Greek State of only minimum limits in respect of the charge for carriage of liquid fuels by commercial road vehicles is not consistent with the rules of free competition and must therefore be abolished immediately.

In addition, the Commission contends that Law 3054/2002 enables the Greek Government to control the number of private tankers on the road and the provision in question therefore infringes freedom of establishment, being one of that body of Greek legislative provisions which ultimately seek not only to preserve the closed nature of the profession of petroleum goods transporter but also to preserve the power of every company operating on that market. The administrative setting of the number of tankers of companies trading in petroleum products is not necessary for the adaptation of those undertakings to market conditions and is not justified on grounds of public security (road safety) and public health.

The Commission submits that the Hellenic Republic has not put forward sufficient explanation and details to justify the adoption of the foregoing restrictions, so that Article 4 of Law 383/1976 and Articles 6 and 7 of Law 3054/2002 together with the ministerial decisions concerning implementation of those laws and the imposition of set charges (between certain limits) for the transport services which are provided by commercial vehicles infringe Article 49 of the Treaty on the Functioning of the European Union (formerly Article 43 EC).

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**Reference for a preliminary ruling from the Rechtbank Amsterdam (Netherlands), lodged on 8 July 2010 — A. Salemink v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (UWV)**

**(Case C-347/10)**

(2010/C 246/53)

*Language of the case: Dutch*

**Referring court**

Rechtbank Amsterdam

**Parties to the main proceedings**

*Applicant:* A. Salemink

*Defendant:* Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (UWV)

**Question referred**

Do the rules forming part of European Community law which are designed to bring about free movement for workers, in particular the rules set out in Titles I and II of Regulation No 1408/71 ([1]) as well as in Articles 39 and 299 of the EC Treaty (now respectively Articles 45 TFEU and 52 TEU, in conjunction with Article 355 TFEU) preclude an employee working outside Netherlands territory on a fixed installation on the Netherlands section of the continental shelf for an employer established in the Netherlands from being in a position in which he is not insured under national statutory employee insurance solely on the ground that he is not resident in the Netherlands but in another Member State (in this case, Spain), even if he has Netherlands nationality and can also avail of the option to take out voluntary insurance under essentially the same conditions as those which apply to compulsory insurance?

([1]) Regulation of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

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**Reference for a preliminary ruling from the Augstākās tiesas Senāta Administratīvo lietu departaments (Republic of Latvia) lodged on 9 July 2010 — SIA Norma-A, SIA Dekom v Ludzas novada dome**

**(Case C-348/10)**

(2010/C 246/54)

*Language of the case: Latvian*

**Referring court**

Augstākās tiesas Senāta Administratīvo lietu departaments

**Parties to the main proceedings**

*Applicants:* SIA Norma-A, SIA Dekom

*Defendant:* Ludzas novada dome

**Questions referred**

1. Must Article 1(3)(b) of Directive 2004/17/EC [1] be interpreted as meaning that it is necessary to treat as a public service concession a contract under which the successful tenderer is granted the right to provide public bus services, in cases where part of the consideration consists in the right to operate the public transport services but where, at the same time, the contracting authority compensates the service provider for losses arising as a result of the provision of services, and in addition the public law provisions governing the provision of the service and the contractual provisions limit the risk associated with operation of the service?

2. If the first question is answered in the negative, has Article 2f(1)(b) of Directive 92/13/EEC, as amended by Directive 2007/66/EC, [2] been directly applicable in Latvia since 21 December 2009?

3. If the second question is answered in the affirmative, must Article 2f(1)(b) of Directive 92/13/EEC be interpreted as being applicable to public contracts entered into before the end of the period prescribed for domestic law to be brought into conformity with Directive 2007/66/EC?

[1] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

[2] Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (Text with EEA relevance) (OJ 2007 L 335, p. 31).

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## Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 12 July 2010 — Nordea Pankki Suomi Oyj

**(Case C-350/10)**

(2010/C 246/55)

*Language of the case: Finnish*

**Referring court**

Korkein hallinto-oikeus

**Parties to the main proceedings**

*Applicant*: Nordea Pankki Suomi Oyj

**Question referred**

Must points 3 and 5 of Article 13B(d) of the Sixth VAT Directive 77/388/EEC [1] be interpreted as meaning that the swift services described in section 1 of this order used in payment transactions and securities transaction settlements between financial institutions are exempt from value added tax?

[1] Sixth Council Directive 77/388/EEC of *17 May 1977* on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment

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## Action brought on 13 July 2010 — European Commission v Hellenic Republic

**(Case C-353/10)**

(2010/C 246/56)

*Language of the case: Greek*

**Parties**

*Applicant:* European Commission (represented by: M. Patakia)

*Defendant:* Hellenic Republic

**Form of order sought**

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel, [1] or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

**Pleas in law and main arguments**

The time-limit for transposition of Directive 2006/117 into domestic law expired on 25 December 2008.

[1] OJ No L 337 of 5.12.2006, p. 21.

## Action brought on 13 July 2010 — European Commission v Hellenic Republic

**(Case C-354/10)**

(2010/C 246/57)

*Language of the case: Greek*

### Parties

*Applicant*: European Commission (represented by: D. Triantafillou and B. Stromsky)

*Defendant*: Hellenic Republic

### Form of order sought

— declare that, since it did not take within the prescribed period all the measures necessary for the refund of the aid that was found to be unlawful and incompatible with the common market, under Article 1(1) (except as referred to in Article 1(2) and Articles 2 and 3) of the Commission decision of 18 July 2007 (C(2007) 3251) concerning the tax-exempt reserve fund (aid number C 37/2005), or in any event has not informed the Commission sufficiently of the measures which it has taken under the article, the Hellenic Republic has failed to fulfil its obligations under Articles 4, 5 and 6 of that decision and under the Treaty on the Functioning of the European Union;

— order the Hellenic Republic to pay the costs.

### Pleas in law and main arguments

The Greek authorities have not pleaded an absolute inability to implement the Commission decision and, three years on, have not demonstrated exactly what they have checked, in which instances recovery has been sought and in which instances recovery has taken place. More specifically:

they have not explained for every recipient what sort of expenditure it carried out so as to be entitled to aid on the basis of a regulation concerning a general exemption;

they have not calculated the extent of the aid in respect of each recipient;

they have extended the exemption from the obligation to refund aid to instances beyond those provided for in the decision;

they have miscalculated the amount of 'de minimis' aid which is exempt from refund;

they have not examined any cumulation with other aid;

they have not calculated correctly the amount to be recovered, proceeding from a mistaken basis;

they have not produced documentation for those refunds which have been effected.

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## Action brought on 14 July 2010 — European Parliament v Council of the European Union

**(Case C-355/10)**

(2010/C 246/58)

*Language of the case: English*

### Parties

*Applicant:* European Parliament (represented by: M. Dean, A. Auersperger Matić, Agents)

*Defendant:* Council of the European Union

### The applicant claims that the Court should:

— Annul Council Decision 2010/252/EU [1] of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;

— Order that the effects of the Council Decision be maintained until it is replaced;

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

### Pleas in law and main arguments

Parliament seeks the annulment of the contested Decision on the grounds that it exceeds the scope of the implementing power in Article 12(5) of the Schengen Borders Code [2] in that it introduces rules on 'interception', 'search and rescue' and 'disembarkation' which cannot be considered to be within the scope of 'surveillance' as defined by Article 12 of the Schengen Borders Code and which cannot be considered to be non-essential elements, and modifies the essential elements of the Schengen Borders Code which are reserved to the legislator. Moreover, the contested Decision modifies the obligations of the EU Member States relating to Frontex operations, which are laid down in the Frontex Regulation [3].

Should the Court annul the contested Decision, Parliament nonetheless considers it would be desirable that the Court exercise its discretion to maintain the effects of the contested Decision, in accordance with Article 264 (2) TFEU, until such time as it is replaced.

(1) Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
OJ L 111, p. 20

(2) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
OJ L 105, p. 1

(3) Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
OJ L 349, p. 1

## Action brought on 16 July 2010 — European Commission v Ireland

**(Case C-356/10)**

(2010/C 246/59)

*Language of the case: English*

### Parties

*Applicant:* European Commission (represented by: S. Walker, D. Kukovec, Agents)

*Defendant:* Ireland

### The applicant claims that the Court should:

— Declare that, in the context of the award procedure by the Department of Agriculture and Food for a public supply contract for animal identification tags, concerning the application of criteria relating to tenderers' ability to perform the contract in question as award criteria, instead of selection criteria, Ireland has failed to fulfil its obligations under Article 53 of Directive 2004/18/EC (1) 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;

— order Ireland to pay the costs.

### Pleas in law and main arguments

The Commission submits that the award criteria applied by the Department of Agriculture and Food included criteria reserved for the selection stage, namely criteria relating to tenderers' ability to perform the contract in question and that, consequently, Ireland has failed to fulfil its obligations under Article 53 of Directive 2004/18/EC.

(1) OJ L 134, p. 114

## Action brought on 27 July 2010 — European Commission v Kingdom of Sweden

**(Case C-374/10)**

(2010/C 246/60)

*Language of the case: Swedish*

### Parties

*Applicant:* European Commission (represented by: G. Braun and M. Sundén, acting as Agents)

*Defendant:* Kingdom of Sweden

### Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (1) or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under that directive;

— order the Kingdom of Sweden to pay the costs.

### Pleas in law and main arguments

The time-limit for implementing the Directive expired on 3 August 2009.

(1) OJ 2007 L 184, p. 17.

# GENERAL COURT

## Order of the General Court of 14 July 2010 — Grupo Osborne v OHIM — Confecciones Sanfertús (TORO)

**(Case T-165/10)** [1]

***(Community trade mark — Opposition — Withdrawal of opposition — No need to adjudicate)***

(2010/C 246/61)

*Language of the case: Spanish*

### Parties

*Applicant:* Grupo Osborne, SA (El Puerto de Santa María, Spain) (represented by: J. M. Iglesias Monravá, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Confecciones Sanfertús, SL (Graus, Spain)

### Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 January 2010 (Case R 638/2009-2), concerning opposition proceedings between Confecciones Sanfertús, SL and Grupo Osborne, SA.

### Operative part of the order

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

2. *The applicant shall bear the costs.*

[1] OJ C 148, 5.6.2010.

## Order of the President of the General Court of 22 July 2010 — H v Council and Others

**(Case T-271/10 R)**

***(Application for interim measures — Common foreign and security policy — National official seconded to the European Union Police Mission in Bosnia and Herzegovina — Decision to redeploy and downgrade — Application for suspension of operation of a measure — Admissibility — Lack of urgency)***

(2010/C 246/62)

*Language of the case: English*

### Parties

*Applicant:* H (Catania, Italy) (represented by: C. Mereu and M. Velardo, lawyers)

*Defendants:* Council of the European Union (represented by: A. Vitro and G. Marhic, acting as Agents) and European Commission (represented by: F. Erlbacher and B. Eggers, acting as Agents)

### Re:

Application for suspension of operation of the decision of 7 April 2010 of the Head of the European Union Police Mission (EUPM) in Bosnia and Herzegovina having the effect of downgrading and redeploying the applicant.

### Operative part of the order

1. *The Council of the European Union and the European Commission are considered to be the only defendants.*

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

3. *Costs are reserved.*

## Action brought on 8 July 2010 — DBV v Commission

**(Case T-297/10)**

(2010/C 246/63)

*Language of the case: German*

### Parties

*Applicant:* DBV Deutscher Brennstoffvertrieb Würzburg GmbH (Würzburg, Germany) (represented by: C. Rudolph and A. Günther, lawyers)

*Defendant:* European Commission

### Form of order sought

— declare void Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China;

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

### Pleas in law and main arguments

The applicant is challenging Regulation (EU) No 404/2010, [1] by which the Commission imposed a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China.

As a basis for its action, the applicant first submits that there has been a breach of essential procedural requirements and of the rights of the defence in that, in the course of the procedure prior to adoption of the contested regulation, the applicant was not informed or given a hearing, with the result that it had no opportunity to defend its interests and set out its views.

Second, the applicant contends that there was a defective determination of the facts and an abuse of discretionary power. It submits in this regard that the background to the case was misrepresented and incorrectly investigated. The applicant argues that no account was taken of, for instance, the higher exchange rate of the dollar in the interim or of the increased prices of crude oil. The applicant further submits, in connection with its allegation of abuse of discretionary power, that the Commission failed to have regard for the principle of proportionality. An abuse of discretionary power and breach of Regulation (EC) No 1225/2009 [2] also lie, in the applicant's view, inter alia in the fact that no suitable information was collected in the course of the investigations to establish differentiated duties.

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[1] Commission Regulation (EU) No 404/2010 of 10 May 2010 imposing a provisional anti-dumping duty on imports of certain aluminium wheels originating in the People's Republic of China (OJ 2010 L 117, p. 64).

[2] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

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## Action brought on 9 July 2010 — Internationaler Hilfsfonds v Commission

**(Case T-300/10)**

(2010/C 246/64)

*Language of the case: German*

### Parties

*Applicant:* Internationaler Hilfsfonds eV (Rosbach, Germany) (represented by: H. Kaltenecker, lawyer)

*Defendant:* European Commission

### Form of order sought

— annul the Commission's decision of 29 April 2010 in so far as the applicant is thereby refused access to documents which have not been released or which have been the subject of only partial release;

— order the defendant to pay the costs of the proceedings and the costs incurred by the applicant.

### Pleas in law and main arguments

The applicant challenges the Commission's decision of 29 April 2010, by which its second application for access to undisclosed documents relating to the LIEN 97-2011 contract was refused in part.

In support of its action the applicant submits, in essence, that the Commission was not entitled to deny the applicant access to the documents applied for on the basis of the exceptions laid down in Article 4 of Regulation (EC) No 1049/2001 [1] concerning protection of the decision-making process and protection of the privacy and integrity of the individual. The applicant further submits in this connection that there is an overriding public interest in release of the documents which have not yet been made available.

[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).

## Action brought on 19 July 2010 — Wam v Commission

**(Case T-303/10)**

(2010/C 246/65)

*Language of the case: Italian*

### Parties

*Applicant:* Wam SpA (Modena, Italy) (represented by: G. Roberti, lawyer, I. Perego, lawyer)

*Defendant:* European Commission

### Form of order sought

— annul, in whole or in part, the contested decision insofar as:

  — it declares that WAM has benefited from unlawful State aid, for the purpose of Article 107(1) TFEU, under the 1995 financing contract and the 2000 financing contract, both of which were entered into pursuant to Article 2 of Italian Law 394/1981;

  — it declares that the aid under the 1995 and 2000 financing contracts is incompatible with the common market;

  — it orders the incompatible aid to be recovered as assessed, providing also that interest calculated from the date on which the aid was granted to WAM is payable on the amounts to be recovered;

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

### Pleas in law and main arguments

The contested decision is the same as that in Case T-257/10 *Italy* v *Commission*. [1]

WAM raises seven pleas in law, submitting that the European Commission:

— misapplied Article 107(1) TFEU to the facts and, in any event, incorrectly assessed the facts and failed to state sufficient reasons, in so far as it found that the interest-rate subsidies received by WAM for trade-penetration programmes in non-member States were liable to affect intra-Community trade and to distort competition, failing to have regard to the findings already set out in that regard by the Court of Justice in Case C-94/06 P, [2] and by the General Court in Case T-316/04, [3] in breach of Article 266 TFEU;

— incorrectly found, without reasoning, that Article 107(1) TFEU was applicable to the financing in question, without taking into consideration the principles and rules applied by itself to similar support measures for trade-penetration programmes in non-member States. The Commission did not find that that financing had been granted in the context of the scheme provided for under Law 394/1981, and also infringed Article 108(1) TFEU and Article 1(b) of Regulation 659/99;

— incorrectly found, while failing to provide adequate reasons, that the aid from which WAM benefited was in part incompatible with the common market, thereby infringing Article 107(3)(c) TFEU, the *de minimis* regulation and the relevant block exemption regulations;

— incorrectly calculated the grant equivalent of the aid in the form of subsidised interest received by WAM;

— failed to initiate the procedure under Article 108(2) TFEU, in order to re-adopt the decision already annulled by the Court of Justice and the General Court, thereby breaching WAM's rights of defence.

— breached the principles of sound administration and diligence owing, in particular, to the excessive duration of the administrative procedure.

[1] Not yet published in the Official Journal of the European Union.
[2] Case C-494/06 P *Commission* v *Italy and Wam* [2009] ECR I-3639.
[3] Case T-316/04 R *Italy and Wam* v *Commission* [2009] ECR II-3197.

## Order of the General Court of 7 July 2010 — Huta Buczek and Others v Commission

**(Joined Cases T-440/07, T-465/07 and T-1/08)** ([1])

(2010/C 246/66)

*Language of the case: Polish*

The President of the Second Chamber has ordered the partial removal of the joined cases from the register.

([1]) OJ C 64, 08.03.2008.

## Order of the General Court of 12 July 2010 — Bulgaria v Commission

**(Case T-499/07)** ([1])

(2010/C 246/67)

*Language of the case: Bulgarian*

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

([1]) OJ C 64, 8.3.2008.

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 Magazzu v Commission

**(Case F-126/06)** [1]

***(Staff cases — Officials — Appointment — Members of the temporary staff appointed as officials — Candidates' names included on a reserve list of a competition published prior to the entry into force of the new Staff Regulations — Grading pursuant to the new less favourable rules — Acquired rights — Principle of non-discrimination — Articles 2, 5 and 12 of Annex XIII to the Staff Regulations)***

(2010/C 246/68)

*Language of the case: French*

**Parties**

*Applicant:* Salvatore Magazzu (Brussels, Belgium) (represented by: initially T. Bontinck and J. Feld, lawyers, and subsequently T. Bontinck and S. Woog, lawyers)

*Defendant:* European Commission (represented by: J. Currall and G. Berscheid, agents)

**Re:**

Application for annulment of the decision of the Appointing Authority of 13 December 2005 by which the applicant, a temporary agent in Grade A*11 who was successful in open competition COM/A/18/04, was appointed as an official with classification in Grade A*6, step 2, in accordance with Annex XIII of the Staff Regulations.

**Operative part of the judgment**

*The Tribunal:*

1. *Dismisses the application.*

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

[1] OJ C 310, 16.12.2006, p. 32.

## Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 Sotgia v Commission

**(Case F-130/06)** [1]

***(Staff cases — Officials — Appointment — Members of the temporary staff appointed as officials — Candidates' names included on a reserve list before the entry into force of the new Staff Regulations — Grading pursuant to the new less favourable rules — Article 5(4) and Article 12(3) of Annex XIII to the Staff Regulations)***

(2010/C 246/69)

*Language of the case: French*

**Parties**

*Applicant:* Stefano Sotgia (Dublin, Ireland) (represented by: initially, T. Bontinck and J. Feld, lawyers, and subsequently T. Bontinck and S. Woog, lawyers)

*Defendant:* European Commission (represented by: J. Currall and H Krämer, agents)

**Re:**

Application for annulment of the decision of the Appointing Authority which took effect on 16 April 2006 and by which the applicant, a member of temporary staff classified in grade A*11 who was successful in open competition EPSO/A/18/04, was appointed as an official classified in Grade A*6, step 2, in accordance with Annex XIII of the Staff Regulations.

**Operative part of the judgment**

*The Tribunal:*

1. *Dismisses the application.*

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

[1] OJ C 326, 30.12.2006, p. 86.

## Judgment of the Civil Service Tribunal (Second Chamber) of 8 July 2010 — Wybranowski v Commission

**(Case F-17/08)** [1]

***(Civil service — Open competition — Non-inclusion on the reserve list — Evaluation of the oral test — Notice of Competition EPSO/AD/60/06 — Statement of reasons — Powers of the selection board — Assessment of candidates)***

(2010/C 246/70)

*Language of the case: Polish*

### Parties

*Applicant:* Andrzej Wybranowski (Warsaw, Poland) (represented by: Z. Wybranowski, lawyer)

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

### Re:

Amendment or annulment of the decision of the selection board in Competition EPSO/AD/60/06 AD5 not to include the applicant on the reserve list for that competition following the results of the oral test.

### Operative part of the judgment

*The Tribunal:*

1. *dismisses the action;*

2. *orders Mr Wybranowski to pay the costs.*

[1] OJ C 158 of 21.06.2008, p. 25.

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## Action brought on 27 may 2010 — Stratakis/Commission

**(Case F-37/10)**

(2010/C 246/71)

*Language of the case: English*

### Parties

*Applicant:* Sofoklis Stratakis (Athens, Greece) (represented by: F. Sigalas, lawyer)

*Defendant:* European Commission

### The subject matter and description of the proceedings

The annulment of the decision of the selection board for open competition EPSO/AD/129/08 not to include the name of the applicant on the reserve list published in the Official Journal of the European Union.

### Form of order sought

The applicant claim that the Court should:

— Annul the decision of July 30, 2009, of the selection board for open competition EPSO/AD/129/08 not to include his name on the reserve list published in the Official Journal of the European Union.

— Order the European Commission to pay the costs.

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## Action brought on 16 June 2010 — AD v Commission

**(Case F-46/10)**

(2010/C 246/72)

*Language of the case: French*

### Parties

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

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Application for annulment of the decision not to grant the applicant the household allowance

### Form of order sought

— Annul the decision taken by the Office for Administration and Payment of Individual Entitlements (PMO) on 13 November 2009 not to allocate to the applicant the household allowance provided for in Article 1(2) of Annex VII to the Staff Regulations;

— In any event, annul the decision taken by the PMO on 9 September 2009 not to allocate to the applicant the household allowance provided for in Article 1(2) of Annex VII to the Staff Regulations in so far as that 'decision' may be considered to adversely affect him;

— In the alternative, should the Tribunal take the view that Article 1(2) of Annex VII to the Staff Regulations permitted the authority authorised to conclude contracts (AACC) to refuse to allocate to the applicant the household allowance although it is impossible for the couple of which he is part to marry because their sexual orientation is rendered illegal by the national law to which his partner is subject, acknowledge that Article 1(2)(c)(iv) of Annex VII to the Staff Regulations is unlawful in so far as it provides for a reference to the law of one of the Member States in assessing the possibility of access to marriage and, consequently, not apply that condition in the present case;

— Order the European Commission to pay the costs.

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**Action brought on 22 June 2010 — Z v Court of Justice**

**(Case F-48/10)**

(2010/C 246/73)

*Language of the case: French*

**Parties**

*Applicant:* Z (Luxembourg, Luxembourg) (represented by: L. Levi and M. Vandenbussche, lawyers)

*Defendant:* Court of Justice of the European Union

**Subject-matter and description of the proceedings**

Application for annulment of the decision to impose on the applicant a disciplinary measure in the form of a written warning and for an order that the defendant pay a sum by way of compensation for non-material damage.

**Form of order sought**

— Annul the decision of the Appointing Authority of 10 July 2009 imposing a disciplinary measure on the applicant in the form of a written warning.

— So far as necessary, annul the decision of 10 March 2010, received on 15 March 2010, rejecting the complaint.

— Order the defendant to pay a sum of EUR 50 000 by way of compensation for non-material damage.

— Order the Court of Justice of the European Union to pay the costs.

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**Action brought on 1 July 2010 — Bermejo Garde v EESC**

**(Case F-51/10)**

(2010/C 246/74)

*Language of the case: French*

**Parties**

*Applicant:* Moises Bermejo Garde (Brussels, Belgium) (represented by: L. Levi, lawyer)

*Defendant:* European Economic and Social Committee

**Subject-matter and description of the proceedings**

First, annulment of the vacancy notice ESC No 43/09 seeking to fill the post of Director of the Directorate for General Affairs and of all decisions taken on the basis of that vacancy notice. Secondly, an order that the defendant pay the applicant a sum in respect of damages.

**Form of order sought**

The applicant claims that the Tribunal should:

— annul the vacancy notice of the ESC No 43/09 seeking to fill the post of Director of the Directorate for General Affairs;

— annul all decisions taken on the basis of the vacancy notice of the ESC No 43/09;

— order the defendant to pay EUR 1 000 in respect of damages;

— order the European Economic and Social Committee to pay the costs.

**Action brought on 9 July 2010 — Verheyden v Commission**

**(Case F-54/10)**

(2010/C 246/75)

*Language of the case: French*

**Parties**

*Applicant:* Luc Verheyden (Angera, Italy) (represented by: E. Boigelot, lawyer)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

Annulment of the decision rejecting the applicant's application for the same treatment as that accorded to the applicants in Cases F-5/05 and F-7/05

**Form of order sought**

— Annul the implied decision rejecting the application submitted by the applicant on 16 July 2009;

— Annul, in so far as necessary, the express decision of 29 March 2010 rejecting the complaint submitted by the applicant on 28 December 2009;

— Order the Commission to pay the sum of EUR 3 000 in compensation;

— Order the European Commission to pay the costs.

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**Action brought on 9 July 2010 — Moschonaki v Commission**

**(Case F-55/10)**

(2010/C 246/76)

*Language of the case: French*

**Parties**

*Applicants:* Chrysanthe Moschonaki (Brusssels, Belgium) (represented by: N. Lhoëst)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

Annulment of the decision refusing to take into consideration the applicant's application for a post as a library assistant and an order that the Commission pay her a sum by way of compensation for the material and non-material harm suffered.

**Form of order sought**

The applicant claims that the Tribunal should:

— annul the appointing authority's decision of 30 September 2009, by which it refused to take into consideration the applicant's application in consequence of the publication of the vacancy notice COM/2009/1379 for the post of library assistant within DGT.D.3;

— so far as necessary, annul the appointing authority's decision of 31 March 2010, rejecting the complaint brought by the applicant on 28 December 2009 under Article 90(2) of the Staff Regulations;

— grant the applicant damages of EUR 30 000 in respect of the material and non-material harm she suffered;

— order the European Commission to pay the costs.

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**Action brought on 9 July 2010 — Hecq v Commission**

**(Case F-56/10)**

(2010/C 246/77)

*Language of the case: French*

**Parties**

*Applicant:* André Hecq (Chaumont-Gistoux, Belgium) (represented by: L. Vogel, lawyer)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

Annulment of the Commission's decision refusing the full reimbursement of certain medical fees and expenses.

**Form of order sought**

The applicant claims that the Tribunal should:

— annul the decision adopted on 20 October 2009 by the Brussels settlements office of the Sickness Insurance Fund, in the form of a breakdown of expenses No 171, refusing the applicant full reimbursement for four consultations with a general practitioner, on 17 February, 2 April, 23 April and 11 May 2009, two consultations with a specialist, on 6 April and 15 June 2009, and two purchases of medicines prescribed by the psychiatrist Vandenborre, on 22 June and 22 September 2009;

— annul, so far as necessary, the decision adopted by the appointing authority on 13 April 2010 in so far as it rejects the applicant's complaint brought on 20 January 2010 against the decision of 20 October 2009;

— order the European Commission to pay the costs.

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