(b) with a view to the decision on release it must be assessed whether, under the provisions of the national law of the Member State, the third-country national has the resources necessary to stay in the Member State as well as an address at which he may reside?

Action brought on 11 September 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-363/09)

(2009/C 267/80)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: L. Parpala and F. Jimeno Fernández, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that by maintaining in force Article 38 of Law 43/2002 of 20 November 2002 on plant health, the Kingdom of Spain has failed to fulfil its obligations under Article 13 of Directive 91/414/EEC [1]

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Directive 91/414/EEC responds to the need to harmonise the provisions of national law relating to the marketing of plant protection products. For that purpose it lays down uniform rules on the conditions and procedures for the authorization of such products.

Article 13 of that Directive sets out the rules relating to (i) the data which must be submitted by applicants for the authorisation of a particular plant protection product and (ii) the use and protection of that data, safeguarding, apart from specified exceptions, the confidentiality of that data.

The Directive is a complete harmonisation and, consequently, a Member State cannot adopt legislation at national level which requires economic operators to share data submitted by the first applicant for authorisation, except on the conditions laid down in Article 13(7).

Nevertheless, Article 38 of Law 43/2002 permits access to data obtained from studies and experiments in circumstances other than those expressly provided in the Directive.

The Commission considers that since the Kingdom of Spain has no discretion in relation to the transposition into national law of Article 13 of Directive 91/414/EEC and since it has not brought an action for the annulment of that provision, the introduction of an exception to the rules relating to access to data accompanying an application for authorisation of plant protection products, when that exception is not provided for in the Directive concerned, is an infringement of Community law.

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[1] Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, p. 1)

Appeal brought on 14 September 2009 by Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH against the judgment of the Court of First Instance (Eighth Chamber) delivered on 8 July 2009 in Case T-226/08 Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs); the other party to the proceedings being: Schwarzbräu GmbH

(Case C-364/09 P)

(2009/C 267/81)

Language of the case: German

Parties

Appellant: Mineralbrunnen Rhön-Sprudel Egon Schindel GmbH (represented by: P. Wadenbach, Rechtsanwalt)

Other parties to the proceedings:

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

— Schwarzbräu GmbH

Form of order sought

1. Set aside the judgment of the Court of First Instance of the European Communities of 8 July 2009 in Case T-226/08;

2. Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 April 2008 (Case R 1124/2004-4);

3. Completely delete the Community trade mark No 505503 'ALASKA' owing to the existence of absolute grounds for refusal;

4. Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings.