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Information and Notices

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Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 92/01)

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

OJ C 79, 29.3.2008

Past publications

OJ C 64, 8.3.2008

OJ C 51, 23.2.2008

OJ C 37, 9.2.2008

OJ C 22, 26.1.2008

OJ C 8, 12.1.2008

OJ C 315, 22.12.2007

These texts are available on:
EUR-Lex: http://eur-lex.europa.eu

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 21 February 2008 — Commission of the European Communities v Italian Republic

(Case C-412/04) [1]

(Failure of a Member State to fulfil its obligations — Public works, supply and service contracts — Directives 92/50/EEC, 93/36/EEC, 93/37/EEC and 93/38/EEC — Transparency — Equal treatment — Contracts excluded from the scope of those directives on account of their value)

(2008/C 92/02)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis, K. Wiedner, Agent and G. Bambara, lawyer)

Defendant: Italian Republic (represented by: I. Braguglia and M. Fiorilli, agents)

Intervening parties support the defendant: French Republic, (represented by G. de Bergues, agent), Kingdom of Holland (represented by: H.G. Sevenster and M. de Grave, agents), Finnish Republic (represented by: A. Guimaraes-Purokoski, agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. l) 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) Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) and 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) — Infringement of Articles 43 and 49 EC — Infringement of the principles of transparency and equal treatment

Operative part of the judgment

The Court:

1. *Declares that, by adopting:*

   — *Article 2(1) of Law No 109 of 11 February 1994 — Framework Law on public works (legge quadro in materia di lavori pubblici), as amended by Law No 166 of 1 August 2002, the Italian Republic has failed to fulfil its obligations under Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997;*

   — *Article 2(5) of Law No 109/1994 as amended, the Italian Republic has failed to fulfil its obligations under Directive 93/37 as amended; and*

   — *Articles 27(2) and 28(4) of Law No 109/1994 as amended, the Italian Republic has failed to fulfil its obligations under Directive 92/50 and Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors.*

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

3. *Orders the Commission of the European Communities and the Italian Republic to bear their own costs;*

4. *Orders the French Republic, the Kingdom of the Netherlands and the Republic of Finland to bear their own costs.*

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[1] OJ C 300, 4.12.2004.

Judgment of the Court (Grand Chamber) of 26 February 2008 — Commission of the European Communities v Germany

(Case C-132/05) ([1])

(Failure of a Member State to fulfil its obligations — Regulation (EEC) No 2081/92 — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — 'Parmigiano Reggiano' cheese — Use of the name 'Parmesan' — Obligation on a Member State to proceed on its own initiative against the abuse of a protected designation of origin)

(2008/C 92/03)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: E. de March, S. Grünheid and B. Martenczuk, Agents)

Interveners in support of the applicant: Czech Republic (represented by: T. Boček, Agent), Italian Republic, (represented by: I. M. Braguglia, Agent and G. Aiello, avvocato dello Stato)

Defendant: Federal Republic of Germany (represented by: M. Lumma, and A. Dittrich, Agents and M. Loschelder, Rechtsanwalt)

Interveners in support of the defendant: Kingdom of Denmark (represented by: J. Molde, Agent), Republic of Austria (represented by: E. Riedl, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 13(1)(b) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) — Lack of measures prohibiting the use of the name 'Parmesan' for products which do not comply with the specification for the protected designation of origin 'Parmigiano Reggiano'

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the Czech Republic, the Kingdom of Denmark, the Italian Republic and the Republic of Austria to bear their own costs.*

([1]) OJ C 132, 28.5.2005.

Judgment of the Court (Second Chamber) of 21 February 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Tele2 Telecommunication GmbH v Telekom-Control-Kommission

(Case C-426/05) ([1])

(Electronic communications — Networks and services — Common regulatory framework — Articles 4 and 16 of Directive 2002/21/EC (Framework Directive) — Appeals — Administrative market analysis procedure)

(2008/C 92/04)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Tele2 Telecommunication GmbH

Defendant: Telekom-Control-Kommission

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Articles 4(1) and 16(3) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) — Market analysis proceedings — Meaning of person 'affected' or 'concerned' ('betroffen') — National legislation that only an undertaking to which the decision imposing, amending or withdrawing specific regulatory obligations is addressed has the capacity of 'party affected', to the exclusion of competitors

Operative part of the judgment

1) *The terms user 'affected' or undertaking 'affected' for the purposes of Article 4(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and the term party 'affected' within the meaning of Article 16(3) of that directive must be interpreted as being applicable not only to an undertaking (formerly) having significant power on the relevant market which is subject to a decision of a national regulatory authority taken in the context of a market analysis procedure referred to in Article 16 of that directive and which is the addressee of that decision, but also to users and undertakings in competition with such an undertaking which are not themselves addressees of that decision but the rights of which are adversely affected by it;*

2) *A provision of national law which, in the context of non-adversarial market analysis proceedings, grants party status only to undertakings (formerly) having significant power on the relevant market and in respect of which specific regulatory obligations are imposed, amended or withdrawn is not, in principle, contrary to Article 4 of Directive 2002/21. However, it is for the national court to ensure that national procedural law guarantees the safeguarding of the rights which users and undertakings in competition with an undertaking (formerly) having significant power on the relevant market derive from the Community legal order in a manner which is not less favourable than that in which comparable domestic rights are safeguarded and which does not prejudice the effectiveness of the legal protection of those users and undertakings guaranteed in Article 4 of Directive 2002/21.*

([1]) OJ C 22, 28.1.2006.

Judgment of the Court (Third Chamber) of 21 February 2008 — Commission of the European Communities v French Republic

(Case C-201/06) ([1])

(Failure of a Member State to fulfil obligations — Plant protection products — Parallel imports — Marketing authorisation procedure — Conditions — Common origin of a plant protection product imported in parallel and the reference product)

(2008/C 92/05)

Language of the case: French

Parties

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

Defendant: French Republic (represented by: G. de Bergues and R. Loosli-Surrans, acting as Agents)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by H.G. Sevenster, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Article 28 EC — Requirement that a plant protection product imported in parallel and a reference product have a common origin

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Commission of the European Communities to pay the costs;*

3. *Orders the Kingdom of the Netherlands to bear its own costs.*

([1]) OJ C 165, 15.7.2006.

Judgment of the Court (Fourth Chamber) of 21 February 2008 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — *Netto Supermarkt GmbH & Co. OHG* v *Finanzamt Malchin*

(Case C-271/06) ([1])

(Sixth VAT Directive — Article 15(2) — Exemption for supplies of goods for export to a destination outside the Community — Conditions for exemption not fulfilled — Proof of export falsified by the purchaser — Supplier acting with due commercial care)

(2008/C 92/06)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Netto Supermarkt GmbH & Co. OHG

Defendant: Finanzamt Malchin

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Community law on VAT, in particular Article 15(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) — Reimbursement of VAT on supplies of goods for export obtained on the basis of forged documents — Exemption on grounds of fairness

Operative part of the judgment

Article 15(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 95/7/EC of 10 April 1995, must be interpreted as not precluding a Member State from granting an exemption from value added tax on the supply of goods for export to a destination outside the European Community, where the conditions for such an exemption are not met, but the taxable person was not able to recognise — even by exercising due commercial care — that they were not met, because the export proofs provided by the purchaser had been forged.

([1]) OJ C 224, 16.9.2007.

Operative part of the judgment

Articles 6, 11, 22 and 25 of Directive 97/13/EC 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 preclude a Member State from requiring an operator, formerly the holder of an exclusive right to provide public telecommunications services and then the holder of a general authorisation, to pay a pecuniary charge such as the charge in the main proceedings, corresponding to the amount previously demanded for that exclusive right, for one year from the final date laid down for transposition of that directive into national law, namely 31 December 1998.

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Third Chamber) of 21 February 2008 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio — Italy) — Telecom Italia SpA v Ministero dell'Economia e delle Finanze, Ministero delle Comunicazioni

(Case C-296/06) ([1])

(Telecommunications services — Directive 97/13/EC — Articles 6, 11, 22 and 25 — Fees and charges for general authorisations and individual licences — Obligation on former holders of exclusive rights — Temporary continuation)

(2008/C 92/07)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendants: Ministero dell'Economia e delle Finanze, Ministero delle Comunicazioni

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale del Lazio — Interpretation of Articles 11, 22 and 25 of Directive 97/13/EC 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 (OJ 1997 L 117, p. 15) — Whether it is possible to impose fees and charges other than those permitted by the directive

Judgment of the Court (Third Chamber) of 21 February 2008 — Marie-Claude Girardot v Commission of the European Communities

(Case C-348/06 P) ([1])

(Appeal — Temporary staff — Action for damages — Loss of an opportunity to be recruited — Actual and certain damage — Determination of extent of reparation for damage)

(2008/C 92/08)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Martin and F. Clotuche-Duvieusart, agents)

Other party to the proceedings: Marie-Claude Girardot (represented by: C. Bernard-Glanz and S. Rodrigues, lawyers)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 6 June 2006 in Case T-10/02 *Girardot* v *Commission*, by which that Court fixed the level of compensation to be paid by the Commission to Ms Marie-Claude Girardot under the interim judgment of the Court of First Instance of 31 March 2004 at EUR 92 785, together with interest as from 6 September 2004, at the rate fixed by the European Central Bank for its main refinancing operations, plus two percentage points — Infringement of Article 236 EC and of the conditions governing the liability of the Commission — Method of calculation of the sum payable by a Community institution to compensate for the loss of an opportunity to be recruited in that institution resulting from an unlawful decision on its part

Operative part of the judgment

The Court:

1. *Dismisses the main appeal and the cross-appeal.*

2. *Orders the Commission of the European Communities to pay the costs of the main appeal.*

3. *Orders Mrs Girardot to pay the costs of the cross-appeal.*

([1]) OJ C 249, 14.10.2006.

Judgment of the Court (Second Chamber) of 21 February 2008 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — Ministero dell'Economia e delle Finanze v Part Service Srl, in liquidation

(Case C-425/06) ([1])

(Sixth VAT Directive — Articles 11A(1)(a) and 13B(a) and (d) — Leasing — Artificial division of the supply into a number of parts — Effect — Reduction of the taxable amount — Exemptions — Abusive practice — Conditions)

(2008/C 92/09)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Ministero dell'Economia e delle Finanze

Defendant: Part Service Srl, in liquidation

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation 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) — Leasing transaction split into a number of separate contracts with the effect of obtaining a tax advantage — Interpretation of the concept of abuse of rights as defined in the judgment of the Court of Justice in Case C-255/02 *Halifax and Others*

Operative part of the judgment

1. *The Sixth Council Directive 77/338/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that there can be a finding of an abusive practice when the accrual of a tax advantage constitutes the principal aim of the transaction or transactions at issue.*

2. *It is for the national court to determine, in light of the ruling on the interpretation of Community law provided by the present judgment, whether, for the purposes of the application of VAT, transactions such as those at issue in the dispute in the main proceedings can be considered to constitute an abusive practice under the Sixth Directive.*

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Fourth Chamber) of 21 February 2008 (reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras (Spain)) — Maira María Robledillo Núñez v Fondo de Garantía Salarial (Fogasa)

(Case C-498/06) ([1])

(Social policy — Protection of workers in the event of insolvency of the employer — Directive 80/987/EEC amended by Directive 2002/74/EC — First paragraph of Article 3 and Article 10(a) — Compensation for unfair dismissal agreed under an extra-judicial conciliation procedure — Payment guaranteed by the guarantee institution — Payment conditional upon the adoption of a judicial decision — Principles of equality and non-discrimination)

(2008/C 92/10)

Language of the case: Spanish

Referring court

Juzgado de lo Social Único de Algeciras

Parties to the main proceedings

Applicant: Maira María Robledillo Núñez

Defendant: Fondo de Garantía Salarial (Fogasa)

Re:

Reference for a preliminary ruling — Juzgado de lo Social Único de Algeciras — Interpretation of Article 3 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September

2002 (OJ 2002 L 270, p. 10) — Scope of the guarantee offered by the guarantee institution — Compensation in the event of termination of the employment relationship — National rules which require judgment or administrative decision for such compensation — Principles of equality and non-discrimination

Operative part of the judgment

The first paragraph of Article 3 of Council Directive 80/987/EEC of 20 October 1980 relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002, is to be interpreted as meaning that a Member State has the power to exclude compensation granted for unfair dismissal from the payment guarantee of the guarantee institutions pursuant to that provision where they have been recognised by an extra-judicial conciliation settlement and such exclusion, objectively justified, constitutes a measure necessary to avoid abuses within the meaning of Article 10(a) of that directive.

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Grand Chamber) of 26 February 2008 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Sabine Mayr v Bäckerei und Konditorei Gerhard Flöckner OHG

(Case C-506/06) ([1])

(Social policy — Directive 92/85/EEC — Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Meaning of 'pregnant worker' — Prohibition of dismissal of pregnant workers during the period from the beginning of their pregnancy to the end of the maternity leave — Woman dismissed where, at the date she was given notice of her dismissal, her ova had been fertilised in vitro, but not yet transferred to her uterus — Directive 76/207/EEC — Equal treatment for men and women — Woman undergoing in vitro fertilisation treatment — Prohibition of dismissal — Scope)

(2008/C 92/11)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Sabine Mayr

Respondent: Bäckerei und Konditorei Gerhard Flöckner OHG

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 2(a) of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1) — Worker dismissed where, on the date she was given notice of her dismissal, her ova have been fertilised 'in vitro', but not yet implanted — Categorisation of that worker as a 'pregnant worker' or not

Operative part of the judgment

1. *Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and, in particular, the prohibition of dismissal of pregnant workers provided for in Article 10(1) of that directive must be interpreted as not extending to a female worker who is undergoing in vitro fertilisation treatment where, on the date she is given notice of her dismissal, her ova have already been fertilised by her partner's sperm cells, so that in vitro fertilised ova exist, but they have not yet been transferred into her uterus;*

2. *Articles 2(1) and 5(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, preclude the dismissal of a female worker who, in circumstances such as those in the main proceedings, is at an advanced stage of in vitro fertilisation treatment, that is, between the follicular puncture and the immediate transfer of the in vitro fertilised ova into her uterus, inasmuch as it is established that the dismissal is essentially based on the fact that the woman has undergone such treatment.*

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Second Chamber) of 21 February 2008 (reference for a preliminary ruling from the Oberlandesgericht Innsbruck) — *Malina Klöppel* v *Tiroler Gebietskrankenkasse*

(Case C-507/06) ([1])

(Entitlement to childcare allowance in Austria — Periods of drawing family benefits in another Member State not taken into account — Regulation (EEC) No 1408/71)

(2008/C 92/12)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Appellant: Malina Klöppel

Respondent: Tiroler Gebietskrankenkasse

Re:

Reference for a Preliminary ruling — Oberlandesgericht Innsbruck — Interpretation of Article 72 of Council Regulation (EEC) No 1408/71 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 1971 L 149, p. 2) as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001 (OJ 2001 L 187, p. 1), and Article as well as of Article 10(2)(a) of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 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 1972 L 74, p. 1), as amended by Commission Regulation (EC) No 410/2002 of 27 February 2002 (OJ 2002 L 62, p. 17) — Childcare allowance — Possibility of extending the period of granting from 30 months to 36 months where care of the child is transferred and allowance granted to other parent — Account not taken of periods, completed jointly by the father and the mother, of granting of a similar allowance paid to the other parent in another Member State

Operative part of the judgment

Article 3(1) of Council Regulation (EEC) No 1408/71 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended in turn by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, precludes a Member State from refusing to take into account, for the purposes of granting a family benefit such as the Austrian childcare allowance, the period during which a comparable benefit was drawn in another Member State as if that period had been completed in its own territory.

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Sixth Chamber) of 21 February 2008 — Commission of the European Communities v Ireland

(Case C-211/07) ([1])

(Failure of a Member State to fulfil obligations — Incorrect transposition — Directive 84/5/EEC — Article 1(4) — Compulsory insurance for civil liability in respect of motor vehicles — Conditions for the exclusion from compensation of passengers in an uninsured vehicle)

(2008/C 92/13)

Language of the case: English

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 1(4) of Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17) — Compensation in respect of damage caused by inadequately insured vehicles — Exclusion conditions going beyond those provided for by the directive

Operative part of the judgment

The Court:

1) *Declares that, by maintaining in force clauses 5.2 and 5.3 of the Motor Insurance Agreement of 31 March 2004 between the Minister for Transport and the Motor Insurers' Bureau of Ireland, Ireland has failed to fulfil its obligations under the third subparagraph of Article 1(4) of Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles.*

2) *Orders Ireland to pay the costs.*

(1) OJ C 155, 7.7.2007.

Judgment of the Court (Sixth Chamber) of 26 February 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-273/07) (1)

(Failure of a Member State to fulfil its obligations — Directive 2005/51/EC — Public procurement — Procedures for the award of contracts)

(2008/C 92/14)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Commission Directive 2005/51/EC of 7 September 2005, amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement (OJ 2005 L 257, p. 127)

Operative part of the judgment

The Court

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2005/51/EC of 7 September 2005, amending Annex XX to Directive 2004/17/EC and Annex VIII to Directive 2004/18/EC of the European Parliament and the Council on public procurement, the Grand Duchy of Luxembourg failed to fulfil its obligations under that directive;*

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

(1) OJ C 211, 8.9.2007.

Judgment of the Court (Fifth Chamber) of 21 February 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-328/07) (1)

(Failure of a Member State to fulfil obligations — Directive 2004/48/EC — Enforcement of intellectual property rights — Failure to transpose within the prescribed period)

(2008/C 92/15)

Language of the case: French

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt the provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and Corrigendum OJ 2004 L 195, p. 16)

Operative part of the judgment

The Court:

1) *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, 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.*

(1) OJ C 211, 8.9.2007.

Order of the Court (Seventh Chamber) of 16 January 2008 (reference for a preliminary ruling from the Commissione Tributaria Provinciale di Latina (Italy)) — Angelo Molinari (C-128/07), Giovanni Galeota (C-129/07), Salvatore Barbagallo (C-130/07), Michele Ciampi (C-131/07) v Agenzia delle Entrate — Ufficio di Latina

(Joined Cases C-128/07 to C-131/07) ([1])

(Directive 76/207/EEC — Equal treatment for men and women — Redundancy payment — Tax advantage granted at a different age according to the worker's gender)

(2008/C 92/16)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Latina

Parties

Applicants: Angelo Molinari, (C-128/07), Giovanni Galeota (C-129/07), Salvatore Barbagallo (C-130/07), Michele Ciampi (C-131/07)

Defendant: Agenzia delle Entrate — Ufficio di Latina

Re:

Reference for a preliminary ruling — Commissione Tributaria Provinicale di Latina — Interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) and Council Directive 79/7/EEC 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) — Interpretation and scope of the judgment in Case C-207/04 *Vergani* — Application of a reduced rate of tax in respect of sums received by way of voluntary redundancy incentive for workers who have reached a particular age — Tax advantage granted to workers at different ages according to their gender

Operative part of the order

1. *Following the judgment in Case C-207/04 Vergani [2005] ECR I-7453, in which national legislation was found to be incompatible with Community law, it is for the authorities of the Member State concerned to adopt the general or specific measures necessary to ensure that Community law is complied with in their territory, those authorities retaining the choice of measures to be taken to ensure that national law is changed so as to comply with Community law and that the rights which individuals derive from Community law are given full effect. Where there has been found to be discrimination contrary to Community law, for as long as measures reinstating equal treatment have not been adopted, a national court must set aside any discriminatory provision of national law, without having to request or await its prior removal by the legislature, and apply to members of the disadvantaged category the same arrangements as those enjoyed by the persons in the other category.*

2. *The derogation provided for in Article 7(1)(a) 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 is not applicable to a tax measure such as provided for in Article 17(4a) of Decree No 917 of the President of the Republic of 22 December 1986, as amended by Legislative Decree No 314 of 2 September 1997.*

([1]) OJ C 117, 26.5.2007.

Order of the Court (Seventh Chamber) of 21 January 2008 (reference for a preliminary ruling from the Tribunal administratif de Paris (France)) — Diana Mayeur v Ministère de la Santé et des Solidarités

(Case C-229/07) ([1])

(Article 104/3 of the Rules of Procedure — Article 23 of Directive 2004/38/EC of the European Parliament and of the Council — Freedom of establishment — Recognition of diplomas, qualifications and experience — Situation of a national of a non-Member State, the holder of a degree in medicine issued by that non-Member State and recognised by a Member State, wishing to obtain authorisation to practise her profession as a doctor in another Member State where she resides lawfully with her spouse, a national of the latter Member State)

(2008/C 92/17)

Language of the case: French

Referring court

Tribunal administratif de Paris (France)

Parties to the main proceedings

Applicant: Diana Mayeur

Defendant: Ministère de la Santé et des Solidarités

Re:

Reference for a preliminary ruling — Tribunal administratif de Paris (France) — Interpretation of Article 23 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory

of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and — Corrigenda — OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34) — Mutual recognition of diplomas and freedom of establishment — Obligation to take account of all the diplomas, certificates and other evidence of formal qualifications and of the relevant experience of the person concerned — Situation of a national of a non-Member State, the holder of a degree in medicine issued by that non-Member State and recognised by a Member State, wishing to obtain authorisation to practise her profession as a doctor in another Member State where she resides lawfully with her spouse, a Community national

Operative part of the order

Article 23 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC does not preclude a Member State from refusing to allow a national of a non-Member State, who is married to a Community national who has not exercised his right to freedom of movement, to rely on the Community rules relating to the mutual recognition of diplomas and to the freedom of establishment, and does not require the competent authorities of the Member State, from which authorisation to practise a regulated profession is sought, to take into consideration all the diplomas, certificates and other evidence of formal qualifications, even if they were obtained outside the European Union but if, at least, they have been recognised in another Member State, and the relevant experience of the person concerned, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules.

([1]) OJ C 155, 7.7.2007.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 9 January 2008 — Har Vaessen Douane Service B.V. v Staatssecretaris van Financiën

(Case C-7/08)

(2008/C 92/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Har Vaessen Douane Service B.V. and Staatssecretaris van Financiën

Questions referred

1. Is Article 27 of Regulation (EEC) No 918/83 of 28 March 1983 ([1]), as amended by Regulation (EEC) No 3357/91 of 7 November 1991 ([2]), to be interpreted as meaning that the relief referred to in that Article may be claimed in respect of consignments made up of goods which are individually of negligible value but are dispatched as a grouped consignment with a combined intrinsic value which exceeds the value threshold in Article 27?

2. Should Article 27 of the regulation referred to be applied on the basis that 'dispatched direct from a third country to a consignee in the Community' also covers a situation in which the goods are in a third country before being dispatched to the consignee but the consignee's contractual partner is established in the Community?

([1]) Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1).
([2]) OJ 1991 L 318, p. 3.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 9 January 2008 — 1. T-Mobile Netherlands, 2. KPN Mobile NV, 3. Raad van bestuur van de Nederlandse Mededingingsautoriteit, 4. Orange Nederland NV, Intervener: Vodafone Libertel BV

(Case C-8/08)

(2008/C 92/19)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants:

1. T-Mobile Netherlands BV

2. KPN Mobile NV

3. Raad van bestuur van de Nederlandse Mededingingsautoriteit

4. Orange Nederland NV

Intervener: Vodafone Libertel BV

Questions referred

1. When applying Article 81(1) EC, which criteria must be applied when assessing whether a concerted practice has as its object the prevention, restriction or distortion of competition within the common market?

2. Is Article 81 EC to be interpreted as meaning that, when a national court applies that provision, the evidence of a causal connection between concerted practice and market conduct must be adduced and appraised in accordance with the rules of national law, provided that those rules are not less favourable than the rules governing similar domestic actions and they do not make the exercise of the rights granted by Community law in practice impossible or excessively difficult?

3. When applying the concept of concerted practices in Article 81 EC, is there always a presumption of a causal connection between concerted practice and market conduct even if the concerted practice is an isolated event and the undertaking which took part in the practice remains active on the market or only in those cases in which the concerted practice has taken place with a certain degree of regularity over a lengthy period?

Reference for a preliminary ruling from the Bundesgerichtshof lodged on 14 January 2008 — Agricultural matter involving Erich Stamm, Anneliese Hauser and Regierungspräsidium Freiburg

(Case C-13/08)

(2008/C 92/20)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Erich Stamm, Anneliese Hauser and Regierungspräsidium Freiburg

Question referred

Must Article 15(1) of Annex I to 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 ([1]) be interpreted as meaning that, as regards access to a self-employed activity and the pursuit thereof, only self-employed persons within the meaning of Article 12(1) of Annex I to the agreement are to be afforded no less favourable treatment in the host country than that accorded to its own nationals, or does this also apply to self-employed frontier workers within the meaning of Article 13(1) of Annex I to the agreement.

([1]) OJ 2002 L 114, p. 6.

Reference for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción nº 5 San Javier (Spain) lodged on 14 January 2008 — Roda Golf & Beach Resort SL

(Case C-14/08)

(2008/C 92/21)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción (Court of First Instance and Preliminary Investigations) nº 5 San Javier

Parties to the main proceedings

Applicant: Roda Golf & Beach Resort SL

Questions referred

1. Does the scope of Regulation (EC) No 1348/2000 ([1]) extend to the service of extrajudicial documents exclusively by and on private persons using the physical and personal resources of the courts and tribunals of the European Union and the regulatory framework of European law even when no court proceedings have been commenced? Or,

2 Does Regulation (EC) No 1348/2000 on the contrary apply exclusively in the context of judicial cooperation between Member States and court proceedings in progress (Articles 61(c), 67(1) and 65 EC and recital 6 of the preamble to Regulation 1348/2000)?

([1]) Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ 2000 L 160, p. 37).

Reference for a preliminary ruling from the Administratīvā apgabaltiesa (Republic of Latvia) lodged on 15 January 2008 — SIA Schenker v Valsts ieņēmumu dienests

(Case C-16/08)

(2008/C 92/22)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: SIA Schenker

Defendant: Valsts ieņēmumu dienests

Question referred

Must heading 8528 21 90 of the Combined Nomenclature be interpreted as meaning that, as at 29 December 2004, it was also applicable to active matrix liquid crystal devices (TFT LCD — LTA320W2-L01, LTA260W1-L02, LTM170W1-L01) principally made up of the following elements:

(1) two glass plates;

(2) a layer of liquid crystal inserted between the two plates;

(3) vertical and horizontal signal drivers;

(4) backlight;

(5) inverter providing high voltage power for backlight;

(6) control block — data transmission interface (control PCB or PWB) to ensure sequential transmission of data to each pixel (dot) of the LCD unit using specific technology — LVDS (low voltage differential signalling)?

Action brought on 24 January 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-26/08)

(2008/C 92/23)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson and H. Krämer, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by failing to develop and implement waste reception and handling plans for all its ports, the Federal Republic of Germany has failed to fulfil its obligations under Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ([1]);

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

Pleas in law and main arguments

The period prescribed for transposing the Directive into national law expired on 28 December 2002.

([1]) OJ 2000 L 332, p. 81.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 25 January 2008 — BIOS Naturprodukte GmbH v Saarland

(Case C-27/08)

(2008/C 92/24)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: BIOS Naturprodukte GmbH

Defendant: Saarland

Question referred

Is the definition of medicinal product in Article 1(2) of Directive 2001/83/EC ([1]) in the version in Directive 2004/27/EC ([2]) to be interpreted to the effect that a product intended for human consumption and described as a food supplement is a functional medicinal product if it contains substances which pose a risk to health in the low dose contained in the product when the recommended intake printed on the packaging is observed, without being capable of producing therapeutic effects, but have therapeutic effects in high doses?

([1]) OJ L 311, p. 67.
([2]) OJ L 136, p. 34.

Reference for a preliminary ruling from the Juzgado de lo Mercantil Número Uno, Alicante, (Spain), lodged on 28 January 2008 — Fundación Española para la Innovación de la Artesanía (FEIA) v Cul de Sac Espacio Creativo, S.L. and Acierta Product & Position, S.A.

(Case C-32/08)

(2008/C 92/25)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil Número Uno, Alicante

Parties to the main proceedings

Applicant: Fundación Española para la Innovación de la Artesanía (FEIA)

Defendant: Cul de Sac Espacio Creativo, S.L. and Acierta Product & Position, S.A.

Questions referred

1. Must Article 14(3) of [Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs ([1])] be interpreted as referring only to Community designs developed in the context of an employment relationship where the designer is bound by a contract governed by employment law whose provisions are such that the designer works under the direction and in the employ of another? or

2. Must the terms 'employee' and 'employer' in Article 14(3) of Regulation No 6/2002 be interpreted broadly so as to include situations other than employment relationships, such as a relationship where, in accordance with a civil/commercial contract (and therefore one which does not provide that an individual habitually works under the direction and in the employ of another), an individual (designer) undertakes to execute a design for another individual for a settled price and, as a result, it is understood that the design belongs to the person who commissioned it, unless the contract stipulates otherwise?

3. In the event that the answer to the second question is in the negative, on the ground that the production of designs within an employment relationship and the production of designs within a non-employment relationship constitute different factual situations,

   (a) is it necessary to apply the general rule in Article 14(1) of Regulation No 6/2002 and, consequently, must the designs be construed as belonging to the designer, unless the parties stipulate otherwise in the contract? or

   (b) must the Community design court rely on national law governing designs in accordance with Article 88(2) of Regulation No 6/2002?

4. In the event that national law is to be relied on, is it possible to apply national law where it places on an equal footing (as Spanish law does) designs produced in the context of an employment relationship (the designs belong to the employer, unless it has been agreed otherwise) and designs produced as a result of a commission (the designs belong to the party who commissioned them, unless it has been agreed otherwise)?

5. In the event that the answer to the fourth question is in the affirmative, would such a solution (the designs belong to the party who commissioned them, unless it has been agreed otherwise) conflict with the negative answer to the second question?

([1]) OJ 2002 L 3, p. 1.

Reference for a preliminary ruling from the Verwaltungsgerichtshof, Austria lodged on 28 January 2008 — AGRANA Zucker GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-33/08)

(2008/C 92/26)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: AGRANA Zucker GmbH

Defendant: Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

Questions referred

1. Must Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 be interpreted as meaning that even a sugar quota which cannot be utilised as a consequence of a preventive withdrawal in accordance with Article 3 of Commission Regulation (EC) No 493/2006 of 27 March 2006 must be included in the assessment of the temporary restructuring amount?

2. In the event that the first question is answered in the affirmative:

   Is Article 11 of Regulation No 320/2006 compatible with primary law, in particular with the principle of non-discrimination and the principle of the protection of legitimate expectations derived from Article 34 EC?

Reference for a preliminary ruling from the Tribunale Ordinario di Padova, Italy lodged on 28 January 2008 — Azienda Agricola Disarò Antonio v Cooperativa Milka 2000 S.C. a r.l.

(Case C-34/08)

(2008/C 92/27)

Language of the case: Italian

Referring court

Tribunale Ordinario di Padova

Parties to the main proceedings

Applicant: Azienda Agricola Disarò Antonio

Defendant: Cooperativa Milka 2000 Soc. coop. arl

Questions referred

1. Is Council Regulation (EC) No 1788/2003 ([1]) of 29 September 2003, which imposes an additional levy on production of milk and milk products in excess of the national quota allocated, without taking account of periodical updating of the quantity allocated to each Community country following specific verification of the respective quantities produced, compatible with Article 32 of the Treaty and with the aims of the common agricultural policy which that article sets out, such as increasing agricultural productivity, developing technical progress, ensuring rational development of agriculture and also optimising utilisation of the factors of production, in particular labour, since that mechanism also has an impact on Italian milk and milk products producers, detracting from a fair standard of living and from development as a result of inadequate remuneration of the factors of production and since Italy is in fact a milk-deficit country (see the government report cited above, paragraph 6.5), forced to import raw material to sustain the industries engaged in the processing and marketing of quality products (see the agricultural report of 15 February 2004, annexed hereto)?

2. Is Council Regulation (EC) No 1788/2003 compatible with Article 33 EC, in so far as the latter provides for organisation of the common market yet at the same time excludes all discrimination between producers or consumers in the Community, but nevertheless the uniform application of the additional levy, without identification of those producers who are in deficit as compared with those who are producing surpluses, ultimately discriminates against Italian producers belonging to a milk-deficit country?

3. Is Council Regulation (EC) No 1788/2003 compatible with Article 34 EC in so far as it provides that pursuit of the objectives set out in Article 33 'shall exclude any discrimination between producers or consumers within the Community', whereas such discrimination is created by the regulation, which, for the purpose of the additional levy, requires a uniform contribution both from producers belonging to milk-surplus countries and from those belonging to milk-deficit countries such as Italy?

4. Is Council Regulation (EC) No 1788/2003 of 29 September 2003 compatible with the principle of proportionality laid down in Article 5 of the Treaty in so far as the latter states that Community action 'shall not go beyond what is necessary to achieve the objectives of this Treaty', whereas the uniform application of the additional levy goes further than the aim of creating a common organisation of the market because it perpetuates for average Italian farmers low productivity, low income and the need for permanent reliance on public support?

([1]) OJ L 270, p. 123.

Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 31 January 2008 — Grundstücksgemeinschaft Busley/Cibrian v Finanzamt Stuttgart-Körperschaften

(Case C-35/08)

(2008/C 92/28)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Grundstücksgemeinschaft Busley/Cibrian

Defendant: Finanzamt Stuttgart-Körperschaften

Questions referred

1. (a) Is it contrary to Article 56 EC for a natural person with unlimited tax liability in Germany to be unable to deduct losses from the letting or leasing of real estate located in another Member State — in contrast to a loss from real estate on national territory — when calculating taxable income in Germany in the year in which the loss arises?

   (b) Is it relevant whether the natural person made the real estate investment himself or does an infringement arise also where the natural person has become the owner of the real estate located in another Member State by way of inheritance?

2. Is it contrary to Article 56 EC for a natural person with unlimited tax liability in Germany to be able to apply only the normal method of depreciation in calculating income from the letting or leasing of real estate located in another EU Member State, whilst being able to apply the higher decreasing balance method of depreciation in the case of real estate on national territory?

3. If Questions 1 and 2 must be answered in the negative, are the national provisions at issue contrary to the freedom of movement laid down in Article 18 EC?

Action brought on 31 January 2008 — Commission of the European Communities v Hellenic Republic

(Case C-36/08)

(2008/C 92/29)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and H.Støvlbæk, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— Declare that, by adopting and maintaining in force rules such as Article 29(d.1) and (d.2) of Law 3209/03 (Government Gazette 304/A) which are not in compliance with Articles 30, 31 and 36 of Council Directive 93/16/EEC ([1]) [of 5 April 1993 to facilitate the free movement of doctors and the mutual recognition of their diplomas, certificates and other evidence of formal qualifications], and by not withdrawing diplomas issued although the conditions set out in that directive were not satisfied, the Hellenic Republic has failed to fulfil its obligations under Articles 30, 31 and 36 of that directive.

— Order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In the opinion of the Commission, the doctors who are referred to in Article 29(d.1) and (d.2) of Law 3209/03 have acquired rights within the meaning of Article 36 of Council Directive 93/16/EEC, and accordingly are allowed to practise as doctors under the national social security scheme and to receive a certificate attesting to their acquired rights. However, to grant them the qualification of general practitioner without their undergoing the relevant specific training is contrary to Articles 30 and 31 of the Directive. Accordingly, the Greek authorities must withdraw the diplomas issued although the conditions of the Directive were not satisfied.

([1]) OJ L 165, 7.7.1993, p. 1.

Reference for a preliminary ruling from VAT and Duties Tribunal, London (United Kingdom) made on 31 January 2008 — RCI Europe v Commissioners of HM Revenue and Customs

(Case C-37/08)

(2008/C 92/30)

Language of the case: English

Referring court

VAT and Duties Tribunal, London

Parties to the main proceedings

Applicant: RCI Europe

Defendant: Commissioners of HM Revenue and Customs

Questions referred

1. In the context of the services supplied by the Appellant for:

   — the enrolment fee;

   — the subscription fee; and

   — the exchange fee

   paid by members of the Appellant's Weeks Scheme, what are the factors to be considered when determining whether the services are 'connected with' immovable property within the meaning of Article 9(2)(a) of the Sixth VAT Directive ([1]) (now Article 45 of the Recast VAT Directive ([2]))?

2. If any or all of the services supplied by the Appellant are 'connected with' immovable property within the meaning of Article 9(2)(a) of the Sixth VAT Directive (now Article 45 of the Recast VAT Directive), is the immovable property with which each or all of the services are connected the immovable property deposited into the pool, or the immovable property requested in exchange for the deposited immovable property, or both of these properties?

3. If any of the services are 'connected with' both immovable properties, how are the services to be classified under the Sixth VAT Directive (now the Recast VAT Directive)?

4. In light of the divergent solutions found by different Member States how does the Sixth VAT Directive (now the Recast VAT Directive) characterise the 'exchange fee' income of a taxable person received for the following supplies:

   — facilitating the exchange of holiday usage rights held by one member of a scheme run by the taxable person for the holiday usage rights held by another member of that scheme; and/or

   — supplying usage rights in accommodation purchased by the taxable person from taxable third parties to supplement the pool of accommodation available to members of that scheme.

(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 L 145, p. 1).
(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, p. 1).

Reference for a preliminary ruling from the Juzgado de Primera Instancia nº 4, Bilbao (Spain) lodged on 5 February 2008 — Asturcom Telecomunicaciones S.L. v Cristina Rodríguez Nogueira

(Case C-40/08)

(2008/C 92/31)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia nº 4, Bilbao

Parties to the main proceedings

Applicant: Asturcom Telecomunicaciones S.L.

Defendant: Cristina Rodríguez Nogueira

Question referred

May the protection of consumers under Council Directive 93/13/EEC (1) of 5 April 1993 on unfair terms in consumer contracts require the court hearing an action for enforcement of a final arbitration award, made in the absence of the consumer, to determine of its own motion whether the arbitration agreement is void and accordingly to annul the award if it finds that that arbitration agreement contains an unfair term to the detriment of the consumer?

(1) OJ 1993 L 95, p. 29.

Action brought on 5 February 2008 — Commission of the European Communities v Czech Republic

(Case C-41/08)

(2008/C 92/32)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and P. Ondrůšek, acting as Agents)

Defendant: Czech Republic

Form of order sought

The Commission asks the Court to:

— declare that, in so far as the Czech Republic has failed to adopt (all) the laws, regulations and administrative provisions necessary to comply with Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (1), or in any case has failed to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 12 of that directive and Article 54 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;

— declare that, in so far as the Czech Republic has failed to adopt (all) the laws, regulations and administrative provisions necessary to comply with Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes ([2]), or in any case has failed to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 3 of that directive and Article 54 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;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for implementing the directive in the domestic legal order expired on 30 April 2004.

([1]) OJ 1986 L 225, p. 40.
([2]) OJ 1997 L 46, p. 20.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden lodged on 7 February 2008 — M. Ilhan v Staatssecretaris van Financiën

(Case C-42/08)

(2008/C 92/33)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: M. Ilhan

Respondent: Staatssecretaris van Financiën

Question referred

Do the provisions of the EC Treaty on the freedom to provide services (Articles 49 EC to 55 EC) or the principle of proportionality preclude a Member State from applying a statutory rule that requires a person who is resident or established in that Member State, and who has at his disposal a car registered in another Member State which has been leased for a period of three years by a leasing undertaking established in that other Member State, and who uses that car essentially in the first Member State for business and private purposes, to pay a tax on the basis of commencement of use (with that car) of the public highway in the first Member State, without account being taken of the duration of future actual use in that Member State?

Action brought on 11 February 2008 — Commission of the European Communities v Ireland

(Case C-48/08)

(2008/C 92/34)

Language of the case: English

Parties

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

Defendant: Ireland

The applicants claims that the Court should:

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

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 10 September 2006.

([1]) OJ L 226, p. 4.

Reference for a preliminary ruling from the Tribunal Judicial da Comarca do Porto (Portugal) lodged on 13 February 2008 — Santa Casa da Misericórdia de Lisboa v Liga Portuguesa de Fuetbol Profissional (CA/LPFP), Baw International Ltd e Betandwin.Com Interactive Entertainment

(Case C-55/08)

(2008/C 92/35)

Language of the case: Portuguese

Referring court

Tribunal Judicial da Comarca do Porto (Portugal)

Parties to the main proceedings

Applicant: Santa Casa da Misericórdia de Lisboa

Defendants: Liga Portuguesa de Fuetbol Profissional (CA/LPFP), Baw International Ltd and Betandwin.Com Interactive Entertainment

Questions referred

1. Is the fact that the State reserves to itself the 'right to run games of luck or chance' (Article 9 of DL 422/89 of 2 December, amended by DL 10/95 of 19 January 1995 and by DL 40/2005 of 17 February 2005) and the right to 'organise pool betting systems' (Article 1 of DL 84/85 of 17 December 1985, amended by DL 317/2002) compatible with the rules of Community law … laying down the principles of the freedom to provide services, free competition and prohibition of State monopolies?

2. What criteria should guide interpretation of national legislation restricting those principles, for the purposes of determining whether such restriction is admissible in light of the rules of Community law …?

3. Is the prohibition of advertising games of luck and chance when forming the substantive content of the message, having regard to the exception relating to the advertising of games organised by the Santa Casa da Misericórdia de Lisboa, compatible with the rules of Community law … laying down the principles of the freedom to provide services, free competition and prohibition of State monopolies?

Reference for a preliminary ruling from the Tallinna Halduskohus (Estonia) lodged on 13 February 2008 — Pärlitigu OÜ v Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

(Case C-56/08)

(2008/C 92/36)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Pärlitigu OÜ

Defendant: Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

Questions referred

(1) Must the Combined Nomenclature for the Common Customs Tariff which forms Annex I to Council Regulation (EEC) No 2658/87 [1] of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff be interpreted as meaning that frozen backbones (bones with fish meat) of farmed Atlantic salmon (*Salmo salar*), obtained after filleting the fish, fit for human consumption and normally marketed as a foodstuff, come under

   (a) subheading 0511 91 10, 'fish waste',

   or

   (b) subheading 0303 22 00 15, 'Atlantic salmon (*Salmo salar*) — other — other'?

(2) If the answer to Question 1 is alternative (b), is the table in Article 1(5) of Council Regulation (EC) No 85/2006 [2] of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway void as contrary to the principle of proportionality laid down in Article 5 of the EC Treaty in so far as, according to that table, the minimum import price established for frozen salmon backbones is higher than the minimum import price for whole fish and gutted head-on fish?

[1] OJ 1987 L 256, p. 1.
[2] OJ 2006 L 15, p. 1.

Reference for a preliminary ruling from the Cour de Cassation (France) lodged on 15 February 2008 — Copad SA v 1. Christian Dior couture SA, 2. Vincent Gladel, acting as receiver of Société industrielle de lingerie (SIL), 3. Société industrielle de lingerie (SIL)

(Case C-59/08)

(2008/C 92/37)

Language of the case: French

Referring court

Cour de Cassation (France)

Parties to the main proceedings

Claimant: Copad SA

Defendants: 1. Christian Dior couture SA, 2. Vincent Gladel, acting as receiver of Société industrielle de lingerie (SIL), 3. Société industrielle de lingerie (SIL)

Questions referred

1. Must Article 8(2) of First Council Directive No 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]) be interpreted as meaning that the proprietor of a trade mark can invoke the rights conferred by that trade mark against a licensee who contravenes a provision in the licensing contract prohibiting, on grounds of the trade mark's prestige, sale to discount stores?

2. Must Article 7(1) of that directive be interpreted as meaning that a licensee who puts goods bearing a trade mark on the market in the European Economic Area in disregard of a provision of the licensing contract prohibiting, on grounds of the trade mark's prestige, sale to discount stores, does so without the consent of the trade mark proprietor?

3. If not, can the proprietor invoke such a provision to oppose further commercialisation of the goods, on the basis of Article 7(2) of that directive?

([1]) OJ 1989 L 40, p. 1.

Action brought on 18 February 2008 — Commission of the European Communities v Hellenic Republic

(Case C-61/08)

(2008/C 92/38)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and H. Støvlbæk)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that, by laying down and maintaining in operation Article 19(1) of the Notaries' Code (Law 2830/2000), the Hellenic Republic is in breach of its obligations pursuant to the Treaty establishing the European Community, in particular under Articles 43 and 45 EC and Council Directive 89/48/EEC ([1]) of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The Greek authorities maintain that the activities of notaries are excluded from the application of Article 43 EC because they fall with the scope of application of Article 45 EC. They rely upon the status of notaries as public officials who confer on a notarised document increased evidential and executory force, similar to that of a judicial decision, with the use of the State seal, the status of notaries as judicial officials, their role as legal advisers, and a whole series of other activities. They also rely on the principle of territoriality, whereby Greek notaries are not permitted to establish themselves in other districts.

2. The Commission considers that Article 43 EC constitutes one of the fundamental provisions of the Community and has direct application in the Member States from the end of the transitional period. It is aimed at ensuring the benefit of national treatment to every citizen of a Member State who establishes him or herself in another Member State, even as a secondary residence, to exercise a liberal profession and prohibits any discrimination on the ground of nationality created by national legislation.

3. The derogation to freedom of establishment provided for in the first paragraph of Article 45 must be restricted to activities which in themselves 'are directly and specifically connected with the exercise of official authority' ([2]). In the Commission's view, none of the special features or activities relied upon by the Greek authorities constitute a direct and specific connection with the exercise of official authority as referred to in the case-law of the Court of Justice of the European Communities and accordingly could not justify the nationality requirement.

4. The Court of Justice considers that the criterion of being 'directly and specifically connected' does not cover the exercise of ancillary and preparatory duties in relation to those of the public authority, which takes the final decision. In addition, the Court of Justice, examining the regime of firms supplying private security, has held that in order for them to be directly and specifically connected to the exercise of official authority, those involved had to have been given 'powers of constraint' ([3]), which is not the case in this instance.

5. As is clear from an examination of the case-law of the Court of Justice, the exercise of official authority should not be confused with an activity which is merely carried out on behalf of the public interest. The mere fact that an individual or an undertaking is to some degree bound to act on behalf of the public interest is not sufficient to characterise that function as the exercise of official authority.

6. According to the Commission, Directive 89/48 applies to the profession of notary in so far as it is a profession the required qualifications for which are laid down by legislation, and its application cannot be circumvented by citing the assigning of sovereign rights to notaries for the following reasons:

   (a) such assignment does not constitute a direct and specific connection with the exercise of official authority which would justify imposition of the nationality condition; and

   (b) even supposing that notaries could be regarded as proper civil servants, which they are not, there is no relationship of dependency and salary as public servants and indeed they would not be exempted from the application of that directive, since that directive applies also, in principle, to the public service.

([1]) OJ L 19 of 24.1.1989, p. 16.
([2]) Case C-114/97 *Commission* v *Spain* [1998] ECR I-6717, paragrap 35.
([3]) Ibid., paragraph 37.

Reference for a preliminary ruling from the Tribunal du Travail d'Esch-sur-Alzette, Grand Duchy of Luxembourg lodged on 18 February 2008 — Virginie Pontin v T-Comalux S.A.

(Case C-63/08)

(2008/C 92/39)

Language of the case: French

Referring court

Tribunal du travail d'Esch-sur-Alzette

Parties to the main proceedings

Applicant: Virginie Pontin

Defendant: T-Comalux S.A.

Question referred

1. Are Articles 10 and 12 of Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC ([1])) to be interpreted as not precluding the national legislature from making a legal action brought by a pregnant employee who has been dismissed during her pregnancy subject to time-limits fixed in advance, such as the eight-day period laid down in the second subparagraph of Article [L.] 337(1) of the [Luxembourg] Code du Travail or the fifteen-day period laid down in the fourth subparagraph of that provision?

2. If the answer to the first question is in the affirmative, are the eight- and fifteen-day periods to be regarded as being too short to allow a pregnant employee who has been dismissed during her pregnancy to take legal proceedings to safeguard her rights?

3. Is Article 2 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ([2]), to be interpreted as not precluding the national legislature from denying a pregnant employee who has been dismissed during her pregnancy the right to bring an action for damages for wrongful dismissal, which is reserved, under Articles L. 124-11(1) and (2) of the Code du Travail, to other employees who have been dismissed?

([1]) OJ 1992 L 348, p. 1.
([2]) OJ 1976 L 39, p. 40.

Action brought on 19 February 2008 — Commission of the European Communities v Republic of Estonia

(Case C-68/08)

(2008/C 92/40)

Language of the case: Estonian

Parties

Applicant: Commission of the European Communities (represented by: E. Randvere and K. Simonsson, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that the Republic of Estonia has failed to fulfil its obligations under Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues ([1]);

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The time-limit for transposing the directive into national law expired on 28 December 2002.

([1]) OJ 2000 L 332, p. 81.

Action brought on 20 February 2008 — Commission of the European Communities v Czech Republic

(Case C-71/08)

(2008/C 92/41)

Language of the case: Czech

Parties

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

Defendant: Czech Republic

Form of order sought

The Commission asks the Court to:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC ([1]), most recently amended by Directive 2006/31/EC of the European Parliament and of the Council of 5 April 2006 amending Directive 2004/39/EC on markets in financial instruments, as regards certain deadlines ([2]), or in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 70 of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for implementing the directive in the domestic legal order expired on 31 January 2007.

([1]) OJ 2004 L 145, p. 1.
([2]) OJ 2006 L 114, p. 60.

Action brought on 20 February 2008 — Commission of the European Communities v Republic of Poland

(Case C-72/08)

(2008/C 92/42)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: R. Vidal Puig and A. Stobiecka-Kuik, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2004/36/EC of the European Parliament and of the Council of 21 April 2004 on the safety of third-country aircraft using Community airports ([1]) or, in any event, not informing the Commission thereof, the Republic of Poland has failed to fulfil its obligations under Article 11 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2004/36/EC expired on 30 April 2006.

([1]) OJ L 143, 30.4.2004, p. 76.

Action brought on 25 February 2008 — Commission of the European Communities v Republic of Malta

(Case C-76/08)

(2008/C 92/43)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and D. Lawunmi, Agents)

Defendant: Republic of Malta

The applicant claims that the Court should:

— declare that, by failing to meet the conditions set out in Article 9 of Council Directive 79/409/EEC on the conservation of wild birds ([1]) the Republic of Malta has failed to fulfil its obligations under Article 7 of the said Directive for the hunting of Quails (*coturnix coturnix*) and Turtle Doves (*streptopelia turtur*) on spring migration;

— order the Republic of Malta to pay the costs.

Pleas in law and main arguments

Council Directive 79/409/EEC on the conservation of wild birds concerns the conservation of all species of naturally occurring birds in the wild state in the European Territory of the Member States to which the Treaty applies. It establishes measures for the protection, management and control of these species and lays down the rules for their exploitation. Since accession to European Union on 1 May 2004, the Maltese authorities have exercised the right to apply the derogation in Article 9(1) of the directive for the hunting of Quails and Turtle Doves during the spring migration period when they return to their rearing ground in a number of countries north of the Mediterranean Sea. The question raised in the present proceedings is whether the Maltese authorities fall within the scope of the derogation in Article 9(1) which would permit the hunting of the species in question in Malta during the spring migration on the basis that there is no other satisfactory solution.

([1]) OJ L 103, p. 1.

Action brought on 25 February 2008 — Commission of the European Communities v Hellenic Republic

(Case C-82/08)

(2008/C 92/44)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— Declare that, by not adopting the laws regulations and administrative provisions necessary to comply with Council Directive 2003/72/EC ([1]) of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, and in any event by not informing the Commission of such measures, the Hellenic Republic has failed to fulfil its obligations under that directive.

— Order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The period allowed for the transposition of Directive 2003/72/EC into national law expired on 18 August 2006.

([1]) OJ L 207, 18.8.2003, p. 25.

Action brought on 26 February 2008 — Commission of the European Communities v Czech Republic

(Case C-87/08)

(2008/C 92/45)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: P. Dejmek, Agent)

Defendant: Czech Republic

Form of order sought

— declare that, by failing to adopt all such laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive ([1]), or in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 53(1) of that directive;

— order Czech Republic to pay the costs.

Pleas in law and main arguments

The period for implementing the directive into the domestic legal order expired on 31 January 2007.

([1]) OJ 2006 L 241, p. 26.

Order of the President of the Court of 11 February 2008 — Commission of the European Communities v Republic of Poland

(Case C-423/06) ([1])

(2008/C 92/46)

Language of the case: Polish

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

([1]) OJ C 326, 30.12.2006.

Order of the President of the Fifth Chamber of the Court of 13 February 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-8/07) ([1])

(2008/C 92/47)

Language of the case: Dutch

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

([1]) OJ C 69, 24.3.2007.

Order of the President of the Eighth Chamber of the Court of 30 January 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-22/07) ([1])

(2008/C 92/48)

Language of the case: Spanish

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

([1]) OJ C 56, 10.3.2007.

Order of the President of the Court of 6 December 2007 — Ter Lembeek International NV v Commission of the European Communities

(Case C-28/07 P) ([1])

(2008/C 92/49)

Language of the case: Dutch

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

([1]) OJ C 82, 14.4.2007.

Order of the President of the Court of 14 December 2007 — Commission of the European Communities v Republic of Slovenia

(Case C-267/07) [1]

(2008/C 92/50)

Language of the case: Slovenian

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

[1] OJ C 170, 21.7.2007.

Order of the President of the Court of 28 January 2008 — Commission of the European Communities v Portuguese Republic

(Case C-399/07) [1]

(2008/C 92/51)

Language of the case: Portuguese

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

[1] OJ C 247, 20.10.2007.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 27 February 2008 — Citigroup v OHIM — Link Interchange Network (WORLDLINK)

(Case T-325/04) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark WORLDLINK — Earlier national figurative mark LiNK — Relative ground for refusal — Likelihood of confusion — Restriction of services covered in the trade mark application — Identity of services — Similarity of signs — Articles 73 and 74 of Regulation (EC) No 40/94)

(2008/C 92/52)

Language of the case: English

Parties

Applicant: Citigroup, Inc. formerly Citicorp (New York, New York, United States) (represented initially by: V. von Bomhard, A. Renck, A. Pohlmann, lawyers and C. Schulte, Solicitor, and subsequently by V. von Bomhard and A. Renck)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Link Interchange Network Ltd (London, United Kingdom) (represented by: D. McFarland, Barrister, and R. Brown, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 18 May 2004 (Case R 789/2002-1) relating to opposition proceedings between Link Interchange Network Ltd and Citigroup, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Citigroup, Inc. to pay the costs.*

([1]) OJ C 273, 6.11.2004.

Judgment of the Court of First Instance of 28 February 2008 — American Clothing Associates v OHIM (Representation of a maple leaf)

(Case T-215/06) ([1])

(Community trade mark — Application for a figurative Community trade mark representing a maple leaf — Absolute ground for refusal — Service mark — Article 7(1)(h) of Regulation (EC) No 40/94 — Article 6ter of the Paris Convention — Matters of law brought before the departments of OHIM and before the Court)

(2008/C 92/53)

Language of the case: French

Parties

Applicant: American Clothing Associates SA (Evergem, Belgium) (represented by: P. Maeyaert and N. Clarembeaux, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 May 2006 (Case R 1463/2005-1) concerning the application for registration of a sign representing a maple leaf as a Community trade mark

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 4 May 2006 (Case R 1463/2005-1) in so far as it relates to the registration of the mark applied for in respect of the services in Class 40 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and corresponding to the following description: 'Tailoring; taxidermy; bookbinding; dressing, processing and finishing of skins, leather, furs and textiles; photographic film development and photographic printing; woodworking; fruit pressing; grain milling; processing, tempering and finishing of metal surfaces';*

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

3. *Orders each of the parties to bear its own costs.*

(1) OJ C 249, 14.10.2006.

Judgment of the Court of First Instance of 5 March 2008 — Combescot v Commisssion

(Case T-414/06 P) (1)

(Appeal — Staff cases — Officials — Inadmissibility of the action before the Civil Service Tribunal — Time-limit for bringing an action)

(2008/C 92/54)

Language of the case: Italian

Parties

Appellant: Philippe Combescot (Popayán, Colombia) (represented by: A. Maritati and V. Messa, lawyers)

Other party to the proceedings: Commisssion of the European Communities (represented by: V. Joris and M. Velardo, Agents, assisted by S. Corongiu, lawyer)

Re:

Appeal against the judgment of the European Civil Service Tribunal (Second Chamber) of 19 October 2006 in Case F-114/05 *Combescot* v *Commisssion*, not yet published in the ECR, seeking the setting aside of that judgment.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Philippe Combescot to bear his own costs and pay those incurred by the Commission.*

(1) OJ C 42, 24.2.2007.

Order of the Court of First Instance of 22 January 2008 — Efkon v Parliament and Council

(Case T-298/04) (1)

(Annulment — Directive 2004/52/EC — Interoperability of electronic road toll systems — Not individually concerned — Inadmissibility)

(2008/C 92/55)

Language of the case: German

Parties

Applicant: Efkon AG (Graz-Andritz, Austria) (represented by: G. Zanger, subsequently by M. Novak, lawyers)

Defendants: European Parliament (represented by: U. Rösslein and A. Neergaard, acting as Agents) and Council of the European Union (represented by: A. Lopes Sabino and M. Bauer, acting as Agents)

Intervener in support of the defendants: Commission of the European Communities (represented by: R. Vidal Puig and G. Braun, acting as Agents)

Re:

Annulment in its entirety or, in the alternative, in part, of Directive 2004/52/EC of the European Parliament and of the Council of 29 April 2004 on the interoperability of electronic road toll systems in the Community (OJ 2004 L 166, p. 124, corrigendum OJ 2004 L 200, p. 50)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Efkon AG shall bear its own costs and pay those of the Council.*

3. *The Parliament and the Commission shall bear their own costs.*

(1) OJ C 262, 23.10.2004.

Order of the Court of First Instance of 31 January 2008 — Aluminium Silicon Mill Products v Commission

(Case T-151/06) ([1])

(Dumping — Reimbursement of anti-dumping duties — Annulment of the regulation imposing a definitive anti-dumping duty — No need to adjudicate — Rules governing costs)

(2008/C 92/56)

Language of the case: English

Parties

Applicant: Aluminium Silicon Mill Products GmbH (Zug, Switzerland) (represented by: L. Ruessmann and A. Willems, lawyers)

Defendant: Commission of the European Communities (represented by: P. Stancanelli and T. Scharf, Agents)

Re:

APPLICATION for annulment of Commission Decision C(2006) 1183 final of 3 April 2006 rejecting in part the applications for reimbursement of anti-dumping duties levied on imports of silicon originating in Russia

Operative part of the order

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

2. *The Commission is ordered to pay the costs.*

([1]) OJ C 178, 29.7.2006.

Order of the Court of First Instance of 18 February 2008 — Altana Pharma v OHIM — Avensa (PNEUMO UPDATE)

(Case T-327/06) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark PNEUMO UPDATE — Earlier national word mark Pneumo — Action in part manifestly inadmissible and in part manifestly wholly unfounded in law)

(2008/C 92/57)

Language of the case: German

Parties

Applicant: Altana Pharma AG (Constance, Germany) (represented by: H. Becker, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Avensa AG (Zoug, Switzerland)

Re:

Action brought against the decision of the Second Chamber of the Board of Appeal of OHIM of 11 September 2006 (Case R 668/2005-2) concerning opposition proceedings between Avensa AG and Altana Pharma AG.

Operative part of the order

The Court:

1. *The action is dismissed as in part manifestly inadmissible and in part manifestly wholly unfounded in law.*

2. *Altana Pharma AG is ordered to pay the costs.*

([1]) OJ C 326, 31.12.2006.

Order of the President of the Court of First Instance of 18 February 2008 — Jurado Hermanos v OHIM (JURADO)

(Case T-410/07 R)

(Interim measures — Community trade mark — Removal of the trade mark from the register — Application for 'restitutio in integrum' — Inadmissibility)

(2008/C 92/58)

Language of the case: Spanish

Parties

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

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

Re:

Application for suspension of the removal from the register of Community word mark No 240218 and of the legal effects of the decision of the Second Board of Appeal of OHIM of 3 September 2007 (R 866/2007-2) concerning the application for 'restitutio in integrum' brought by Jurado Hermanos, until the Court of First Instance has ruled on the action in the main proceedings

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 19 February 2008 — CPEM v Commission

(Case T-444/07 R)

(Interim measures — Application for stay of execution — Submission of the application — Inadmissibility — Association — Financial loss — Lack of urgency)

(2008/C 92/59)

Language of the case: French

Parties

Applicant: Centre de promotion de l'emploi par la micro-entreprise (CPEM) (Marseilles, France) (represented by: C. Bonnefoi, lawyer)

Defendant: Commission of the European Communities (represented by: L. Flynn and A. Steiblytė, acting as Agents)

Re:

Application for stay of execution of debit note No 3240912189 of 17 December 2007 relating to Commission Decision C(2007) 4645 of 4 December 2007 cancelling the assistance from the European Social Fund (ESF) granted to CPEM by Decision C(1999) 2645 of 17 August 1999.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the Court of First Instance of 13 February 2008 — Buczek Automotive v Commission

(Case T-1/08 R)

(Interim measures — Application for suspension of operation — Article 105(2) of the Rules of Procedure)

(2008/C 92/60)

Language of the case: Polish

Parties

Applicant: Buczek Automotive sp, z o.o. (Sosnowiec, Poland) (represented by: T. Gackowski, lawyer)

Defendant: Commission of the European Communities

Re:

Application for suspension of the operation of Commission Decision C(2007) 5087 final of 23 October 2007 concerning State aid No C 23/2006 (ex NN 35/2006) granted by Poland to the steel producer Grupa Technologie Buczek

Operative part of the order

The Court:

1. *Suspends, until the adoption of the order concluding the present application for interim measures, the operation of Commission Decision C(2007) 5087 final of 23 October 2007 concerning State aid No C 23/2006 (ex NN 35/2006) granted by Poland to the steel producer Grupa Technologie Buczek, insofar as that decision concerns Buczek Automotive sp, z o.o.*

2. *Reserves the costs.*

Action brought on 14 January 2008 — Quest Diagnostics v OHIM — ALK-Abelló (DIAQUEST)

(Case T-22/08)

(2008/C 92/61)

Language in which the application was lodged: English

Parties

Applicant: Quest Diagnostics Inc. (Teterboro, United States) (represented by: R. Niebel, lawyer)

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

Other party to the proceedings before the Board of Appeal: ALK-Abelló A/S (Hørsholm, Denmark)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM dated 25 October 2007;

— annul the decision of the Opposition Division of OHIM dated 11 October 2006; and

— order the intervener to bear the costs of the action.

Pleas in law and main arguments

Applicant for the Community trade mark: ALK-Abelló A/S

Community trade mark concerned: The Community word mark 'DIAQUEST' for goods in classes 1, 5 and 42

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

Mark or sign cited: The Community word marks 'QUEST DIAGNOSTICS' for goods and services in classes 5, 10, 16, 35, 39 and 42 — application No 2 402 980 and No 1 958 589

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTRM.

Action brought on 21 January 2008 — Laboratórios Wellcome de Portugal v OHIM — Serono Genetics Institute (FAMOXIN)

(Case T-26/08)

(2008/C 92/62)

Language in which the application was lodged: English

Parties

Applicant: Laboratórios Wellcome de Portugal Lda (Algés, Portugal) (represented by: R. Gilbey, lawyer)

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

Other party to the proceedings before the Board of Appeal: Serono Genetics Institute SA (Evry, France)

Form of order sought

— Annul the decision of the First Board of Appeal OHIM dated 20 November 2007 (Case R 10/2007-1) and declare the request for invalidation brought by the appellant well founded;

— annul all cost orders made against the appellant by the Office for Harmonisation in the Internal Market and order the latter to bear the costs of the appellant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'FAMOXIN' for goods and services in class 5 — Community trade mark No 2 491 298

Proprietor of the Community trade mark: Serono Genetics Institute SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'LANOXIN' for goods in class 5

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1)(b), 52 and 56(2) and (3) of Council Regulation No 40/94, as the Board of Appeal found the earlier trade mark to be used for 'pharmaceutical preparations with digoxin for cardiovascular illnesses' and not 'pharmaceutical preparations with digoxin' and as it assessed the relevant public, the level of attentiveness of the different parts of the relevant public and the similarity of the conflicting trade marks and goods incorrectly.

Action brought on 21 January 2008 — Wellcome Foundation v OHIM — Serono Genetics Institute (FAMOXIN)

(Case T-27/08)

(2008/C 92/63)

Language in which the application was lodged: English

Parties

Applicant: The Wellcome Foundation Ltd (Greenford, United Kingdom) (represented by: R. Gilbey, lawyer)

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

Other party to the proceedings before the Board of Appeal: Serono Genetics Institute SA (Evry, France)

Form of order sought

— Annul the decision of the First Board of Appeal OHIM dated 19 November 2007 (Case R 9/2007-1) and declare the request for invalidation brought by the appellant well founded;

— annul all cost orders made against the appellant by the Office for Harmonisation in the Internal Market and order the latter to bear the costs of the appellant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'FAMOXIN' for goods and services in class 5 — Community trade mark No 2 491 298

Proprietor of the Community trade mark: Serono Genetics Institute SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word marks 'LANOXIN' for goods in class 5

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1)(b), 52 and 56(2) and (3) of Council Regulation No 40/94, as the Board of Appeal found the earlier trade marks to be used for 'pharmaceutical preparations for cardiovascular illnesses' and not 'pharmaceutical preparations' and as it assessed the relevant market, the relevant public, the level of attentiveness of the different parts of the relevant public and the similarity of the conflicting trade marks and goods incorrectly.

Action brought on 14 January 2008 — Mars v OHIM — Ludwig Schokolade (three dimensional mark representing a chocolate bar)

(Case T-28/08)

(2008/C 92/64)

Language in which the application was lodged: English

Parties

Applicant: Mars, Inc. (McLean, United States) (represented by: A. Bryson, Barrister, and G. Mills, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Ludwig Schokolade GmbH & Co. KG (Bergisch Gladbach, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 October 2007;

— order that OHIM bears its own and pays the applicant's costs.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: A three-dimensional mark representing a chocolate bar for goods in classes 5, 29 and 30 — Community trade mark No 818 864

Proprietor of the Community trade mark: The applicant

Party requesting the declaration of invalidity of the Community trade mark: Ludwig Schokolade GmbH & Co. KG

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

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

Pleas in law: Infringement of Articles 7(1)(b) and (3), 51(2), 73 and 74(1) of Council Regulation No 40/94, as:

— the Board of Appeal ought to have concluded that the shape in issue was a significant departure from the norms and customs of the relevant sector;

— the Board of Appeal required proof that the mark had acquired distinctiveness in every relevant Member State on a country by country basis and not based on whether it had acquired distinctiveness in a substantial part of the Community market for chocolate bars;

— the Board of Appeal relied, in the contested decision, on a point which had not previously been raised either by the Office, or by Ludwig Schokolade.

Action brought on 23 January 2008 — Quantum v OHIM — Quantum Corporation (Quantum CORPORATION)

(Case T-31/08)

(2008/C 92/65)

Language in which the application was lodged: English

Parties

Applicant: Quantum Corp. (San Jose, United States) (represented by: J. Barry, Sollicitor)

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

Other party to the proceedings before the Board of Appeal: Quantum Corporation Ltd (Lefkosia, Cyprus)

Form of order sought

— The decision of the First Board of Appeal of 17 October 2007 in Case R 1271/2006-1 be annulled;

— appeal number R 1271/2006-1 be allowed;

— opposition number B 936 288 be permitted to stand and proceedings to continue;

— OHIM pay Quantum's costs both in these proceedings and in the appeal proceedings before the OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: Quantum Corporation Limited

Community trade mark concerned: The figurative Community trade mark composed of the sign 'Q' containing word elements 'QUANTUM CORPORATION' for goods and services in classes 35, 36 and 42 — Application No 3 773 355

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

Mark or sign cited: The national and Community word marks 'QUANTUM' for goods and services in class 9 and the Community figurative mark 'Q' for goods and services in classes 9 and 42

Decision of the Opposition Division: Declared the opposition inadmissible

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant claims that the contested decision is based on incorrect facts as it fails to take into account the existence and nature of the opposition guidelines. The applicant further submits that the contested decision breached its legitimate expectation that the practice outlined in the opposition guidelines would be factually correct, since other potential opponents could also have relied on them. Further, the applicant contends that it had a legitimate expectation that the guidelines would be followed and that it would receive a 'standard letter 208' requiring it to file a translation of its writ in order to comply with the formal requirements. Finally, the applicant claims that OHIM must incur liability pursuant to Article 114 of Council Regulation (EC) No 40/94 in respect of its failure to comply with its obligations to provide up-to-date and accurate guidelines.

Action brought on 18 January 2008 — Evropaïki Dynamiki v Commission

(Case T-32/08)

(2008/C 92/66)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 65 565;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In support of its claims the applicant argues that, in the framework of the tendering procedure ENV.A.1/SER/2007/0032 for the 'Market analysis in view of developing a new approach for the "Environment for Young Europeans" website' (OJ 2007/S 83-100898) the European Commission failed to comply with its obligations foreseen in the Financial Regulation ([1]), its Implementing Rules and Directive 2004/18/EC ([2]).

The applicant moreover submits that the contracting authority committed several manifest errors of assessment which resulted in the rejection of its bid. Furthermore, the contracting authority allegedly infringed its obligation to state reasons for its decision and, in particular, to inform the applicant on the relative merits of the successful tenderer.

The applicant requests, hence, that the decision of the European Commission to reject its bid and to award the contract to the successful tenderer be annulled and that the defendant is ordered to pay all legal expenses related to the proceedings even in case the application is rejected. In the alternative, since the

contract will most probably have been fully executed by the time the Court reaches its decision or if it is no longer possible to annul the decision, the applicant requests monetary compensation (damages) in accordance with Articles 235 and 288 EC.

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, p. 1).
(2) 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 L 134, p. 114).

Action brought on 24 January 2008 — Codorniu Napa v OHIM — Bodegas Ontañón (ARTESA NAPA VALLEY)

(Case T-35/08)

(2008/C 92/67)

Language in which the application was lodged: Spanish

Parties

Applicant: Codorniu Napa, Inc. (California, United States of America) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bodegas Ontañón, S.A.

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 November 2007 in Case R 747/2006-4, and

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant.

Community trade mark applied for: Figurative mark 'ARTESA NAPA VALLEY' for goods in Class 33 (application No 3.079.159)

Proprietor of the mark or sign cited in the opposition proceedings: Bodegas Ontañón, S.A.

Mark or sign cited in the opposition proceedings: Community figurative trade mark No 2.050.623 'ARTESO' for goods in Classes 33 and 35, Spanish word mark No 844.194 'LA ARTESA' for goods in Class 33.

Decision of the Opposition Division: Upheld the opposition and rejected the application for registration.

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

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (1) given that there is no likelihood of confusion between the signs in conflict.

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

Action brought on 23 January 2008 — Walton v Commission

(Case T-37/08)

(2008/C 92/68)

Language of the case: English

Parties

Applicant: Robert Walton (Oxford, United Kingdom) (represented by: D. Beard, Barrister)

Defendant: Commission of the European Communities

Form of order sought

— A declaration that the decision of the Commission to set-off the sum of EUR 36 551,58 against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 was unlawful; or

— a declaration that the decision of the Commission to set off the sum of EUR 36 551,58 against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 was unlawful in part; or

— a declaration that the sum of EUR 36 551,58 set off by the Commission against the sums due to Mr Walton pursuant to the judgment of the Court in Case T-144/02 should be recalculated so as to remove the Commission's claim for interest; and/or

— an order that (a) the established amount receivable of EUR 13 104,14 plus interest; and/or (b) the established amount receivable of EUR 13 815,16 plus interest be cancelled; and

— an order that the Commission pay the appellant's costs; and

— such further or other measures as the Court may consider just and equitable.

Pleas in law and main arguments

By judgment of 12 July 2007 in Case T-144/02 *Richard J. Eagle and Others* v *Commission* [2007] ECR II-0000 the Commission was ordered by the Court of First Instance to pay the applicant damages of a certain amount.

By payment of 16 November 2007 the Commission paid a reduced amount having set off the sum of EUR 36 551,58. The applicant challenges the decision of the Commission to reduce the sums due to him by this amount.

In support of its application, the applicant submits that the Commission erred in law in reaching the contested decision, as the decision was an unlawful abuse of process since the Commission had withdrawn its claim for set-off during the proceedings before the Court and therefore could not unilaterally pursue the issue subsequently.

The applicant furthermore contends that the contested decision was contrary to a binding legitimate expectation of the applicant, as the Commission had accepted the applicant's figures in correspondence following the judgment of the Court.

Finally, the applicant claims that the debit notes upon which the contested decision relied failed to provide a proper legal basis for the decision and that the decision was based upon a fundamental miscalculation in relation to interest claimed.

Action brought on 22 January 2008 — Evropaïki Dynamiki v Commission

(Case T-39/08)

(2008/C 92/69)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of the Commission to evaluate the applicant's bid as not successful and award the contract to the successful contractor;

— order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 441 564,50;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application.

Pleas in law and main arguments

The applicant submitted a bid in response to the defendant's call for an open tender concerning hosting, management, enhancement, promotion and maintenance of the Commission's Internet portal on eLearning (elearningeuropa.info) (OJ 2007/S 87-105977). The applicant contests the defendant's decision of 12 November 2007 rejecting the applicant's bid and informing the applicant that the contract would be awarded to another tenderer. The applicant further requests compensation for the alleged damages caused by the tender procedure.

In support of its application, the applicant submits that the defendant committed manifest errors of assessment and failed to state reasons in accordance with Article 253 EC. Furthermore, the applicant alleges that the defendant confused evaluation criteria with award criteria when evaluating the bids and used evaluation criteria that were not disclosed to the tenderers before the deadline for submitting the offers. Finally, the applicant contends that the defendant violated the principle of non-discrimination.

Action brought on 1 February 2008 — Vakakis v Commission

(Case T-41/08)

(2008/C 92/70)

Language of the case: English

Parties

Applicant: Vakakis International — Symvouli gia Agrotiki Anaptixi AE (Athens, Greece) (represented by: B. O'Connor, Solicitor)

Defendant: Commission of the European Communities

Form of order sought

— To declare this application admissible;

— to annul the unreasoned decision of the European Commission of 6 December 2007 (Reference No A3 TF TCC(2007) 106233) not to invite the consortium led by Vakakis International SA to be interviewed in respect of the service tender procedure 'Technical Assistance to Support Rural Development Policy' number EuropeAid/125241/C/SER/CY;

— to annul the decision of the European Commission of 21 December 2007 (Reference No A3 TF TCC(2007) 106667) to reject the tender submitted by Vakakis International SA on the basis that it did not meet the technical requirements;

— pursuant to Article 65(b) of the Rules of Procedure of the Court of First Instance, to request the Commission to provide certain documents in relation to the activities of the evaluation committee established to review the tenders submitted in respect of the EuropeAid/125241/C/SER/CY tender procedure as well as the establishment of the short list of tenderers;

— to make any additional order which the Court considers necessary;

— to order the Commission to pay the costs.

Pleas in law and main arguments

The applicant claims that the Commission's letter of 6 December 2007 informing the applicant it would not be invited to interview constitutes a decision which lacks sufficient reasoning in breach of Article 253 EC. Moreover, the applicant submits that this stage is an essential element of the tender procedure to which all tenderers, even those failing to meet the technical standard required, should be invited in order to maintain a competitive environment. Furthermore, the applicant argues that the said decision is legally flawed since it is based on non-compliance with the administrative criteria instead of non-compliance to the technical standard required. This amounts, according to the applicant, to a misuse of powers conferred to the Commission in the framework of the tenders' evaluation procedure.

In addition, and with regards to both the above-mentioned decision and the decision of 21 December 2007, the applicant submits that they are incompatible with the terms of the Practical Guide to Contract Procedures for EC External actions. Finally, the applicant claims that the Commission decision of 21 December 2007 purported to justify an unreasoned earlier decision excluding the applicant from the tender and therefore is legally flawed.

Action brought on 24 January 2008 — Shetland Islands Council v Commission

(Case T-42/08)

(2008/C 92/71)

Language of the case: English

Parties

Applicant: Shetland Islands Council (represented by: E. Whiteford, Barrister, R. Murray, Solicitor and R. Thompson, QC)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Articles 1(2), 3, 4 and 5 of the decision; and

— the costs of this application.

Pleas in law and main arguments

The applicant is a public authority that made payments to the fisheries sector under the scope of two general aid measures, named 'Aid to Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry' consisting of different types of aid schemes. The Commission found that the aid which the United Kingdom implemented on the basis of the 'Fishing Vessel Modernisation Scheme' was incompatible with the common market, in so far as it concerned aid granted for the modernisation projects concerning capacity in terms of tonnage or power.

By means of its application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C 37/2006 (ex NN 91/2005) of 13 November 2007 concerning the Fishing Vessel Modernisation Scheme implemented in the United Kingdom. In particular, the applicant seeks annulment of Article 1(2), 3, 4, and 5 of the contested decision on two grounds:

(1) The Commission allegedly erred in law in finding that payments for replacement or improvement of engines that do not affect the gross tonnage or power of any vessel 'concern capacity in terms of tonnage or power' within the meaning of Article 9(1)(c)(i) of Regulation (EC) No 2792/1999 ([1]), and are thus incompatible with the common market;

(2) The Commission erred in law in finding that recovery of payments would be compatible with:

   (a) Article 14(1) of Council Regulation (EC) No 659/1999 ([2]);

(b) the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

(1) Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ L 337, p. 10).
(2) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).

Action brought on 24 January 2008 — Shetland Islands Council v Commission

(Case T-43/08)

(2008/C 92/72)

Language of the case: English

Parties

Applicant: Shetland Islands Council (represented by: E. Whiteford, Barrister, R. Murray, Solicitor and R. Thompson QC)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Articles 3, 4 and 5 of the decision; and

— the costs of this application.

Pleas in law and main arguments

The applicant is a public authority that made payments to the fisheries sector under the scope of two general aid measures, named 'Aid to Fish Catching and Processing Industry' and 'Aid to the Fish Farming Industry' consisting of different types of aid schemes. The Commission found that the aid which the United Kingdom implemented on the basis of the 'Fish Factory Improvement Scheme' was incompatible with the common market, in so far as it concerned the amount of GBP 92 007, granted on 13 August 1997, 7 January 1999, 25 February 1999, 10 December 1999, 19 January 2001 and 15 December 2004.

By means of its application, the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C 38/2006 (ex NN 93/2005) of 13 November 2007 concerning the 'Fish Factory Improvement Scheme' implemented in the United Kingdom. In particular, the applicant seeks annulment of Articles 3, 4 and 5 of the contested decision on the ground that the Commission erred in finding that recovery of payments would be compatible with:

(1) Article 14(1) of Council Regulation (EC) No 659/1999 ([1]); and

(2) the general principles of legal certainty and the protection of legitimate expectations and of equality of treatment.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, p. 1).

Action brought on 29 January 2008 — Transportes Evaristo Molina v Commission

(Case T-45/08)

(2008/C 92/73)

Language of the case: Spanish

Parties

Applicant: Transportes Evaristo Molina S.A. (Santa María del Águila, Spain) (represented by: A. Hernández Pardo, L. Ruiz Ezquerra and M.C. Flores Hernández, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision of 12 April 2006 relating to a proceeding under Article 81 of the EC Treaty COMP/B-1/38.348 Repsol CPP, and

— order the Commission to pay the costs.

Pleas in law and main arguments

This application was brought against the decision of the Commission of 12 April 2006 because it accepted the commitments proposed by REPSOL CPP in accordance with the provisions of Article 9(1) of Regulation (EC) 1/2003 ([1]).

That decision concerns the procedure initiated following the request by REPSOL CPP for negative clearance or, failing that, an individual exemption with respect to the standard agreements and/or contracts by means of which it carried out its fuel distribution activities for motor vehicles through service stations in Spain.

In the offer of commitments accepted by the Commission, REPSOL CPP undertook, inter alia, to increase the annual number of service stations which may change supplier, for which it undertook to offer the bare owners/operators of the service stations the possibility of recovery of the right *in rem* to the usufruct or over the buildings subject, however, to compliance with a series of conditions by the operator.

The applicant, the owner-operator of a service station which had concluded a supply contract with REPSOL CPP claims that since 19 November 2007, the date on which it received notification from the monitoring trustee of its inclusion in Annex I of REPSOL CPP's commitments, the contested decision directly and individually concerns it.

In support of its claims, the applicant complains, first of all, that the Commission infringed Article 9 of Regulation 1/2003. In particular, the applicant claims that the Commission, although aware of the correct interpretation of the competition rules relating to time limits, accepted the commitments proposed by REPSOL CPP, going beyond and infringing the aim of Article 9 of Regulation 1/2003. In addition, the applicant claims in that context that the contested decision infringes Article 9 of Regulation 1/2003 and the principle of proportionality since the commitments accepted by the Commission were not effective to give an appropriate response to the concerns expressed by the applicant.

Second, the applicant relies on infringement of the principle according to which persons subject to Community law may not benefit from their own unlawful acts or become enriched without just cause.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 28 January 2008 — Fusco v OHIM — Fusco International (FUSCOLLECTION)

(Case T-48/08)

(2008/C 92/74)

Language in which the application was lodged: Italian

Parties

Applicant: Vincenzo Fusco (represented by: B. Saguatti, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Antonio Fusco International SA, Luxembourg (Lugano branch) (Lugano, Switzerland)

Form of order sought

— annul the decision of the Second Board of Appeal of 24 October 2007 and amend it to the effect that the action brought by the applicant before the Board of Appeal should be considered to be well founded and, consequently, the opposition should be upheld;

— order OHIM and the intervening party, Antonio Fusco International SA, to pay the costs of the present proceedings and those of the proceedings before the Board of Appeal and the Opposition Division.

Pleas in law and main arguments

Applicant for a Community trade mark: Antonio Fusco International SA, Luxembourg (Lugano branch)

Community trade mark concerned: Figurative mark FUSCOLLECTION (application for registration No 1.503.366) in respect of goods in Classes 9, 18 and 25

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

Mark or sign cited in opposition: Community trade mark (No 727.375) and Italian trade mark (No 489.262) ENZO FUSCO in respect of goods in Class 25

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Art 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark

Appeal brought on 5 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 22 November 2007 in Case F-109/06, *Dittert* v *Commission*

(Case T-51/08 P)

(2008/C 92/75)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

Other party to the proceedings: Daniel Dittert (Luxembourg, Grand Duchy of Luxembourg)

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-109/06 *Dittert* v *Commission* and refer the case back to the Civil Service Tribunal;

— order the respondent to pay the costs.

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-109/06 *Dittert* v *Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment.

Firstly, the Commission submits that the CST wrongly applied Article 45 of the Staff Regulations in that it attributed excessive importance to the involvement of the Director General in the procedure for allocating points, thus restricting unduly the discretion of the Appointing Authority following the finding that the lack of such involvement constituted a substantial procedural error.

Secondly, the Commission submits that the CST infringed the jurisdiction of the Appointing Authority in breach of Article 45 of the Regulations and exceeded its powers of judicial control by addressing an instruction to the Appointing Authority.

Thirdly, the Commission alleges that the CST failed to give sufficient reasons for the finding that the allocation to the applicant at first instance of a certain number of priority points by the Promotion Committee did not constitute an adequate remedy for the procedural error classified by the Tribunal as 'substantial' consisting in the lack of involvement of the Director General. Moreover, it claims that the CST based the contested judgment on a distortion of the contents of minutes of a meeting of the Promotion Committee.

Appeal brought on 5 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 22 November 2007 in Case F-110/06, *Carpi Badía* v *Commission*

(Case T-52/08 P)

(2008/C 92/76)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

Other party to the proceedings: José María Carpi Badía (Luxembourg, Grand Duchy of Luxembourg)

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-110/06 *Carpi Badía* v *Commission* and refer the case back to the Civil Service Tribunal;

— order the respondent to pay the costs.

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-110/06 *Carpi Badía* v *Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment identical to those raised in Case T-51/08 P *Commission* v *Dittert*.

Appeal brought on 8 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 27 November 2007 in Case F-122/06, *Roodhuijzen* v *Commission*

(Case T-58/08 P)

(2008/C 92/77)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by J. Currall and D. Martin, acting as Agents)

Other party to the proceedings: Anton Pieter Roodhuijzen (Luxembourg, Grand Duchy of Luxembourg)

Form of order sought by the appellant

— Annul the judgment of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen* v *Commission*;

— dismiss the action brought by Mr Roodhuijzen;

— order that each party shall bear its own costs of the present appeal and of the action before the Court of First Instance.

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen* v *Commission*, which annuls the decision of the Commission refusing to recognise the non-marital partnership of the applicant as regards the Joint Sickness Insurance Scheme of the European Communities.

In support of its appeal, the Commission raises three pleas in law seeking annulment.

By its first plea, the Commission submits that the CST ruled *ultra vires* in breach of Article 1(2) of Annex VII to the Staff Regulations and in breach of the principle of non-discrimination, in that it rejected the appellant's argument relating thereto and substituted its own without, however, permitting the Commission to respond thereto, accordingly failing to respect the rights of the defence.

The second plea alleges an error of law in the interpretation of the notion of 'partnership' as contained in Article 1(2) of Annex VII to the Staff Regulations, entitling the partner of an official to be covered by the Joint Sickness Insurance Scheme.

The third plea, raised in the alternative, alleges incorrect interpretation of the principle of non-discrimination.

Action brought on 7 February 2008 — Nute Partecipazione and La Perla v OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)

(Case T-59/08)

(2008/C 92/78)

Language in which the application was lodged: Italian

Parties

Applicants: Nute Partecipazione Spa (Bologna, Italy) and La Perla Srl (Bologna, Italy) (represented by: R. Morresi and A. del Ferro, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Worldgem Brands Srl (Olmo di Creazzo, Italy)

Form of order sought

— Annul and alter the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(5) and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;

— in the alternative, annul the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(5) and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;

— in the further alternative, annul and/or alter the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(1)(b) of the regulation on the Community trade mark and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;

— in any event, order OHIM and Worldgem Brands Srl, jointly and severally, to pay the costs of all the proceedings, including the costs relating to the proceedings before the Second Board of Appeal of OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community word mark 'NIMEI LA PERLA MODERN CLASSIC' (application for registration No 713.446) for goods in Class 14. That trade mark has already been the subject of an earlier application for a declaration of invalidity. The decision rejecting that earlier application by the First Board of Appeal was annulled by judgment of the Court of First Instance in Case T-137/05 *La Perla* v *OHIM — Worldgem Brands* ([1]).

Proprietor of the Community trade mark: WORLDGEM BRANDS Srl

Applicant for the declaration of invalidity: the applicant.

Trade mark right of applicant for the declaration: the reputation of a number of 'PERLA' Italian figurative marks for goods in Classes 3, 9, 14, 16, 18, 24, 25 and 35.

Decision of the Cancellation Division: granted the application and declared that the registration of the Community trade mark in question was invalid.

Decision of the Board of Appeal: annulled the contested decision and granted in part the application for a declaration of invalidity.

Pleas in law: infringement of provisions of law and misinterpretation and misapplication of Articles 63, 73 and 74 of Regulation (EC) No 40/94 on the Community trade mark. In the alternative: infringement of provisions of law and misapplication of Article 8(1)(b) of that regulation.

([1]) Not yet published in the ECR.

Action brought on 6 February 2008 — ThyssenKrupp Acciai Speciali Terni v Commission

(Case T-62/08)

(2008/C 92/79)

Language of the case: Italian

Parties

Applicant: ThyssenKrupp Acciai Speciali Terni SpA (Terni, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino, G. Barone, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare that the contested decision is unlawful and annul that decision in its entirety inasmuch as it regards as State aid the contested measure, which in fact constitutes a lawful continuation of the measure by which the Italian State granted compensation to Terni SpA (and its assignees) for the expropriation of its electricity plants which occurred in 1962-63;

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

— in the alternative, annul the decision insofar as it:

(a) states that Italy unlawfully paid State aid to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche in breach of Article 88(3) of the EC Treaty;

(b) states that there are amounts to be recovered from ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche; and consequently

(c) orders Italy to recover those amounts plus interest without delay;

— in the further alternative, annul the contested decision insofar as it orders Italy to recover the State aid plus interest without delay, since that recovery infringes the general principle of the protection of legitimate expectations.

Pleas in law and main arguments

The contested decision in the present case is the same as that in Case T-53/08 *Italy* v *Commission*.

The pleas and the main arguments relied on are similar to those put forward in that case. In addition to infringement of Articles 87 and 88 of the EC Treaty on account of erroneous interpretation of the extension of the compensatory tariff for the former Terni companies, in the alternative the applicant also pleads:

— infringement of Article 88 of the EC Treaty in relation to failure to consider that the contested measure had in fact not yet been implemented and therefore the obligation of prior notification had not been infringed and there were no amounts to recover;

— infringement of Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and unlawfulness of the order for recovery in the contested decision owing to breach of the principle of the protection of legitimate expectations.

Action brought on 6 February 2008 — Cementir Italia v Commission

(Case T-63/08)

(2008/C 92/80)

Language of the case: Italian

Parties

Applicant: Cementir Italia Srl (Rome, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino, G, Barone, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare that the contested decision is unlawful and annul that decision in its entirety inasmuch as it regards as State aid the contested measure, which in fact constitutes a lawful continuation of the measure by which the Italian State granted compensation to Terni SpA (and its assignees) for the expropriation of its electricity plants which occurred in 1962-63;

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

— in the alternative, annul the decision insofar as it:

(a) states that Italy unlawfully paid State aid to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche in breach of Article 88(3) of the EC Treaty;

(b) states that there are amounts to be recovered from ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche; and consequently

(c) orders Italy to recover those amounts plus interest without delay;

— in the further alternative, annul the contested decision insofar as it orders Italy to recover the State aid plus interest without delay, since that recovery infringes the general principle of the protection of legitimate expectations.

Pleas in law and main arguments

The pleas and main arguments are the same as those relied on in Case T-62/08 *ThyssenKrupp* v *Commission*.

Action brought on 6 February 2008 — Nuova Terni Industrie Chimiche v Commission

(Case T-64/08)

(2008/C 92/81)

Language of the case: Italian

Parties

Applicant: Nuova Terni Industrie Chimiche SpA (Milan, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino, G, Barone, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare that the contested decision is unlawful and annul that decision in its entirety inasmuch as it regards as State aid the contested measure, which in fact constitutes a lawful continuation of the measure by which the Italian State granted compensation to Terni SpA (and its assignees) for the expropriation of its electricity plants which occurred in 1962-63;

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

— in the alternative, annul the decision insofar as it:

  (a) states that Italy unlawfully paid State aid to ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche in breach of Article 88(3) of the EC Treaty;

  (b) states that there are amounts to be recovered from ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche; and consequently

  (c) orders Italy to recover those amounts plus interest without delay;

— in the further alternative, annul the contested decision insofar as it orders Italy to recover the State aid plus interest without delay, since that recovery infringes the general principle of the protection of legitimate expectations.

Pleas in law and main arguments

The pleas and main arguments are the same as those relied on in Case T-62/08 *ThyssenKrupp* v *Commission*.

Action brought on 13 February 2008 — Spain v Commission

(Case T-65/08)

(2008/C 92/82)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision of 5 December 2007 in relation to a procedure pursuant to Article 21 of Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (Case No Comp/M.4685 — Enel/Acciona/Endesa), and

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against Commission Decision C(2007) 5913 Final of 5 December 2007 in relation to a procedure pursuant to Article 21 of Regulation (EC) No 139/2004 [1] (Case No COMP/M.4685 Enel/Acciona/Endesa). In the contested decision the Commission found that the applicant had infringed Article 21 of Regulation No 139/2004 in subjecting the acquisition of joint control over Endesa, by Enel and Acciona, to a series of conditions, given that those conditions are incompatible with Articles 28, 43 and 56 EC, and thereby unduly interfere with the exclusive competence of the Commission to rule on a concentration at the Community level. Furthermore, the defendant forced the applicant to withdraw those conditions found to be incompatible with Community law.

In support of its claims, the applicant alleges, first, that the Commission lacks the competence to adopt the contested decision on the basis of the procedure pursuant to Article 21 of Regulation No 139/2004. According to the applicant, where the Commission takes the view that a Member State has infringed Article 21 of Regulation No 139/2004, it should initiate infringement proceedings against that Member State on the basis of Article 226 EC.

Second, the applicant claims that the contested decision is vitiated by a lack of reasoning in that the Commission did not examine the grounds of public security on which the Spanish Government relied, as laid down in Article 21(4) of Regulation No 139/2004, to adopt measures in relation to the public bid by Enel and Acciona for the purchase of Endesa.

Finally, the applicant alleges the Commission infringed Article 21(4) of Regulation No 139/2004 given that the Spanish authorities were not obliged to communicate the conditions imposed on the public bid for the purchase of Endesa, by Enel and Acciona, to the Commission, since those conditions sought to protect a legitimate interest, namely public security.

(1) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ 2004 L 24, p. 1).

Action brought on 12 February 2008 — Poland v Commission

(Case T-69/08)

(2008/C 92/83)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Dowgielewicz, acting as Agent)

Defendant: Commission of the European Communities

Form of order sought

— annul Commission Decision 2008/62/EC of 12 October 2007 relating to Articles 111 and 172 of the Polish Draft Act on Genetically Modified Organisms, notified by the Republic of Poland pursuant to Article 95(5) of the EC Treaty as derogations from the provisions of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms (decision notified under document number C(2007) 4697) (1);

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision 2008/62/EC of 12 October 2007 which rejects proposed national provisions laying down a derogation from Directive 2001/18/EC (2) that were notified by the Republic of Poland pursuant to Article 95(5) EC. The applicant states that it was notified by the Commission of the contested decision on 4 December 2007, that is to say after expiry of the six-month period laid down in Article 95(6) EC, meaning that, in accordance with that article, those provisions should be considered to have been approved upon expiry of the six-month period.

The applicant submits that the fact that the decision was adopted on 12 October 2007 is immaterial as regards observance of that time-limit; it is the date of notification of the contested decision, and that alone, which is decisive in this regard.

The applicant therefore puts forward the following pleas in support of its application:

— breach of Article 95(6) EC, in conjunction with Article 254(3) EC;

— breach of an essential procedural requirement consisting in the obligation to notify a decision to those to whom it is addressed within the period laid down by law and thus to enable them to become aware of the decision's content;

— breach of the principle of legal certainty.

(1) OJ 2008 L 16, p. 17.
(2) Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1).

Action brought on 13 February 2008 — Promat v OHIM — Prosima Comercial (PROSIMA PROSIMA COMERCIAL S.A.)

(Case T-71/08)

(2008/C 92/84)

Language in which the application was lodged: German

Parties

Applicant: Promat GmbH (Ratingen, Germany) (represented by: S. Beckmann, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Prosima Comercial SA (Barcelona, Spain)

Form of order sought

— annul the decision of the Office for Harmonisation in the Internal Market in Case R 574/2007-2;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Prosima Comercial SA

Community trade mark concerned: Figurative mark PROSIMA PROSIMA COMERCIAL S.A. for goods and services in Classes 6, 7, 11, 16, 17, 20, 22, 35 to 39, 41 and 42 (Application No 2 423 176)

Proprietor of the mark or sign cited in the opposition proceedings: Promat GmbH

Mark or sign cited in opposition: Word mark PROMINA for goods and services in Class 7 (German trade mark No 847 011)

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]) as the Office for Harmonisation in the Internal Market was incorrect to take as a basis that the goods were not similar.

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

Action brought on 6 February 2008 — *Now Pharma* v *Commission*

(Case T-74/08)

(2008/C 92/85)

Language of the case: German

Parties

Applicant: Now Pharma AG (Luxembourg, Luxembourg) (represented by: C. Kaletta and I.J. Tegebauer, Rechtsanwälte)

Defendant: Commission of the European Communities

Form of order sought

The Court is asked to:

— annul Commission Decision C(2007) 6132 of 4 December 2007;

— hold that the Commission should take a new decision in relation to the applicant's application of 6 February 2007, taking into consideration the Court's view of the law;

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

Pleas in law and main arguments

The applicant challenges the Commission's Decision of 4 December 2007 refusing the applicant's request for designation of the medicinal product 'Extrait liquide spécial de Chelidonii radix' ('Chelidonii radix special liquid extract') as an orphan medicinal product within the meaning of Regulation (EC) No 141/2000 ([1]).

In support of its application, the applicant submits that the contested decision infringes Article 3 of Regulation No 141/2000. In this respect, the applicant submits, in particular, that the final negative opinion of the European Medicines Agency was based on a wrong standard, namely the requirements for marketing authorisation in respect of a medicinal product pursuant to Article 8(3)(c) of Regulation No 141/2000. However, according to the applicant, whether a medicinal product is to be designated as an orphan medicinal product depends on whether the medicinal product will be of significant benefit to those affected by the particular condition, within the meaning of Article 3(2) of Regulation (EC) No 847/2000 ([2]). According to the applicant, the requirements of Article 3(1)(b) of Regulation No 141/2000 are fulfilled, because the medicinal product constitutes an orphan medicinal product and will be of significant benefit.

In addition, the applicant takes issue with the lack of qualifications and the bias of the expert.

([1]) Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1).

([2]) Commission Regulation (EC) No 847/2000 of 27 April 2000 laying down the provisions for implementation of the criteria for designation of a medicinal product as an orphan medicinal product and definitions of the concepts similar medicinal product and clinical superiority (OJ 2000 L 103, p. 5).

Action brought on 22 February 2008 — Centre de coordination Carrefour v Commission

(Case T-94/08)

(2008/C 92/86)

Language of the case: French

Parties

Applicant: Centre de coordination Carrefour SNC (Brussels, Belgium) (represented by: X. Clarebout and K. Platteau, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision in as much as it does not lay down a transitional period as required by the *Forum 187* ([1]) judgment;

— order the Commission to pay the costs.

Pleas in law and main arguments

By decision 2003/755/EC of 17 February 2003, the Commission and declared the aid scheme implemented by Belgium in favour of coordination centres established in Belgium incompatible with the internal market ([2]). That decision was annulled by judgment of the Court of 22 June 2006 ([3]) ('the judgment in *Belgium and Forum 187* v *Commission*') in that it did not provide for transitional measures with regard to certain of the

coordination centres whose applications to benefit from the scheme in question were pending at the time of notification of that decision or whose approval expired at that time or shortly after notification of the decision. The applicant in the present case was one of the coordination centres referred to in the operative part of the judgment.

On 13 November 2007, the Commission adopted a new decision, Decision C(2007) 5416 final, by which it amended Decision 2003/757/EC by declaring the Belgian law adopted following the judgment in *Belgium and Forum 187* v *Commission* incompatible with the internal market and seeking to permit extension until the end of 2010 of the transitional period during which the centres referred to in that judgment could benefit from the scheme. Decision C(2007) 5416 final also provided that the transitional period expires on 31 December 2005. This is the contested decision in the context of the present action.

In support of its action, the applicant raises three pleas in law.

As a principal plea, it submits that the contested decision infringes the principle of equal treatment and the obligation on the Commission to implement the measures contained in the judgment in *Belgium and Forum 187* v *Commission*, in that it would not put an end to the unequal treatment referred to in that judgment since the transitional period granted to the applicant is much shorter than that granted to centres in a similar situation according to the indication given by the Court. It submits that it should have benefited from a transitional period expiring on 31 December 2010.

As an alternative plea, the applicant raises a plea alleging breach of the principles of legal certainty and of legitimate expectations in that the contested decision establishes a transitional period limited to 31 December 2005, which produces retroactive effects and results in the applicant being unable in good time to take the steps necessary to adapt to the change in the scheme before that date. On that basis, and in the alternative, the applicant claims that it should benefit from a transitional period expiring on 31 December 2009 at the earliest.

As a further alternative plea, the applicant raises a plea alleging breach of the principle of equal treatment in that the contested decision treats it differently from four coordination centres which were, at the time of the first decision, 2003/757/EC, in an identical situation but which obtained a renewal of their approval for an indefinite period. On the basis of that plea, and in the alternative, the applicant submits that it should have benefited from a transitional period expiring on 31 December 2006 at the earliest.

(1) Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479.
(2) OJ L 282, p. 25, corrected version OJ 2003 L 285, p. 52.
(3) See footnote 1.

Action brought on 22 February 2008 — Italy v Commission

(Case T-95/08)

(2008/C 92/87)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2007) 6514 of 20 December 2007, notified on 21 December 2007, in so far as it excludes from Community financing and charges to the budget of the Italian Republic the financial consequences to be applied in connection with clearance of the expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

— Order the defendant to pay the costs.

Pleas in law and main arguments

The Italian Government brings the present action against Commission Decision C(2007) 6514 of 20 December 2007 in so far as it excludes from Community financing and charges to the budget of the applicant the financial consequences to be applied in connection with clearance of the expenditure financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

In support of its claims, the applicant submits:

— As regards aid for products processed from fruit and vegetables, infringement of Article 30(1) of Commission Regulation (EC) No 1535/2003 of 29 August 2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables (OJ 2003 L 218, p. 14).

— As regards the purchase of bovine animals aged over 30 months intended for destruction, infringement of Article 5(5) of Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market (OJ 2000 L 321, p. 47) and of Article 4 of Commission Decision 97/735/EC of 21 October 1997 concerning certain protection measures with regard to trade in certain types of mammalian animal waste (OJ 1997 L 294, p. 7).

— As regards the tobacco premium system, infringement of Article 9(3) of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco (OJ 1992 L 215, p. 70) and Articles 11 and 12 of Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 075/92 (OJ 1998 L 358, p. 17).

Action brought on 20 February 2008 — Polimeri Europa and Eni v Commission

(Case T-103/08)

(2008/C 92/88)

Language of the case: Italian

Parties

Applicants: Polimeri Europa SpA (Brindisi, Italy), Eni SpA (Rome, Italy) (represented by: M. Siragusa, G.M. Roberti, F. Moretti, I. Perego, F. Cannizzaro, V. Ruotolo, V. Larocca and D. Durante, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the Decision, in whole or in part, in particular so far as it concerns the applicants, with all the consequential implications for the level of the fine;

— in the alternative, annul or reduce the fine;

— order the Commission to pay the costs and associated expenses.

Pleas in law and main arguments

By Decision C(2007) 5910 final of 5 December 2007 in Case CONP/F/38629 — *Chloroprene rubber* ('CRr') — ('the Decision'), the Commission found Polimeri Europa and Eni jointly and severally liable, together with other undertakings, for breach of Article 81 EC, by having (i) agreed to share and fix markets, market shares and sales, (ii) fixed and increased prices for Chloroprene rubber, as well as set minimum prices, (iii) shared customers and (iv) exchanged restricted commercial information.

In support of their action challenging that decision, Polimeri Europa and Eni allege that the Decision is vitiated by the following substantive defects:

— Breach of Article 81 EC and failure to state reasons for the wrongful imputation to Eni of liability for the acts of a subsidiary company. It is submitted in this regard that the liability of the parent company cannot be established solely on the basis of its ownership of 100 % of the share capital and that the defendant failed correctly to assess the evidence which demonstrated the *de facto* independence of the subsidiaries vis-à-vis their parent company.

— Inconsistency with the letter closing the procedure against the undertaking responsible, until 1 January 2002, for the CR business, Syndial S.p.A. ('Syndial'), and infringement of the rights of the defence.

— Breach of Article 81 EC and lack of an adequate statement of reasons by virtue of the erroneous attribution to Polimeri Europa of liability for facts relating to a period during which another company (and not Polimeri Europa) was managing the CR business.

— Insufficiency and inconsistency in the statement of reasons, lack of a proper preliminary investigation and breach of Article 81 EC in regard to the appraisal of the facts and evidence.

— Insufficiency and inconsistency in the statement of reasons in the Decision, lack of a proper preliminary investigation and breach of Article 81 EC as regards the evaluation of the breach as a single and continuous infringement.

— Erroneous calculation of the duration of the infringement in the light of the evidence available.

The applicants then allege that the fine imposed on them is unlawful as being contrary to Article 81 EC and Article 23 of Regulation (EC) No 1/2003, as well as being at variance with the *Guidelines for the calculation of fines*.

It is argued in that regard that there was both an infringement of the principle of proportionality by the increases imposed for repeat offending and purposes of deterrence and an insufficient statement of reasons for refusing to give credit for the mitigating circumstances, in relation to the passive or minor role played in the infringement, to the limited participation in the unlawful conduct, to the cessation of such participation and to the failure to implement the agreements. Polimeri Europa and Eni also complain of the failure to take account of the cooperation provided by Syndial and Polimeri Europa for the purpose of reducing the fine in accordance with the abovementioned *Guidelines*.

The applicants plead, finally, a breach of Article 81 EC and of the *Commission Notice on immunity from fines and reduction of fines in cartel cases* by the Commission's erroneous assessment of the value of the evidence provided by Syndial and Polimeri Europa and its refusal to grant a reduction in the fine in accordance with that Notice.

Order of the Court of First Instance of 1 February 2008 — Nomura Principal Investment and Nomura v Commission

(Case T-430/04) [1]

(2008/C 92/89)

Language of the case: English

The President of the Court of First Instance (Fifth Chamber) has ordered that the case be removed from the register.

[1] OJ C 31, 5.2.2005.

Order of the Court of First Instance (Fifth Chamber) of 1 February 2008 — Nomura Principal Investment and Nomura International v Commission

(Case T-233/05) ([1])

(2008/C 92/90)

Language of the case: English

The President of the Court of First Instance (Fifth Chamber) has ordered that the case be removed from the register.

([1]) OJ C 217, 3.9.2005.

Order of the Court of First Instance of 28 February 2008 — EAEPC v Commission

(Case T-153/06) ([1])

(2008/C 92/91)

Language of the case: English

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

([1]) OJ C 178, 29.7.2006.

Order of the Court of First Instance of 12 February 2008 — Otsuka Chemical v EFSA

(Case T-313/06) ([1])

(2008/C 92/92)

Language of the case: English

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

([1]) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 12 February 2008 — IXI Mobile v OHIM — Klein (IXI)

(Case T-78/07) ([1])

(2008/C 92/93)

Language of the case: English

The President of the Court of First Instance (Seventh Chamber) has ordered that the case be removed from the register.

([1]) OJ C 95, 28.4.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 21 February 2008 — Skoulidi v Commission

(Case F-4/07) ([1])

(Staff cases — Officials — Exchanges of officials between the Commission and the Member States — Making available an EU official to the Greek administration — Refusal — Action for damages — Non-pecuniary loss — Pre-litigation procedure — Admissibility — Substantive conditions giving rise to the non-contractual liability of the Community)

(2008/C 92/94)

Language of the case: French

Parties

Applicant: Eleni-Eleftheria Skoulidi (Brussels, Belgium) (represented by: G. Vandersanden, lawyer)

Defendant: Commission of the European Communities (represented by: M.D. Martin and M. Velardo, Agents)

Re:

Action for compensation for non-pecuniary damage suffered by the applicant as a result of the decision of the appointing authority of 28 March 2006, refusing to allow her secondment to the Greek Ministry of National Education and Religious Affairs under the Scheme of Exchanges of officials between the Commission and the Member States

Operative part of the judgment

The Tribunal

1. *Dismisses the action;*

2. *Orders each party to pay its own costs.*

([1]) OJ C 56, 10.3.2007, p. 44.

Judgment of the Civil Service Tribunal (First Chamber) of 21 February 2008 — Putterie-De-Beukelaer v Commission

(Case F-31/07) ([1])

(Staff cases — Officials — Promotion — Appraisal procedure — Attestation procedure — Appraisal of potential — Breach of the scope of the law — Raised by the Court of its own motion)

(2008/C 92/95)

Language of the case: French

Parties

Applicant: Françoise Putterie-De-Beukelaer (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, Agents)

Re:

Annulment of the applicant's Career Development Report concerning the period from 1 January 2005 to 31 December 2005, in particular in respect of section 6.5 'Potential', in so far as that report does not acknowledge the applicant's potential to carry out duties in category B* for the purposes of the attestation procedure.

Operative part of the judgment

The Tribunal

1. *Annuls the Career Development Report of Ms Putterie-De-Beukelaer concerning the period from 1 January 2005 to 31 December 2005 in so far as it does not acknowledge the applicant's potential to carry out duties in category B*;*

2. *Orders the Commission of the European Communities to pay all the costs.*

([1]) OJ C 117, 26.5.2007, p. 38.

Order of the Civil Service Tribunal (First Chamber) of 25 February 2008 — Anselmo v Council

(Case F-85/07) ([1])

(Staff case — Officials — Recruitment — Appointment — Grading — Successful candidates in an internal competition — New evidence — Lack — Manifestly inadmissible)

(2008/C 92/96)

Language of the case: French

Parties

Applicants: Anselmo (Brussels, Belgium) and Others (represented by: S.A. Pappas, lawyer)

Defendant: Council of the European Union

Re:

Annulment of the decisions of the appointing authority rejecting the complaints introduced by the applicants, successful candidates in internal competition B/277, because of discrimination which they maintain that they suffered in comparison with officials who benefited from the attestation procedure.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Each party is ordered to pay its own costs.*

([1]) OJ C 269, 10.11.2007, p. 71.

Action brought on 9 November 2007 — Hecq v Commission

(Case F-133/07)

(2008/C 92/97)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

(i) annulment of the decision of the appointing authority of 12 July 2007 to the extent that it dismisses a complaint brought by the applicant against a decision of the appointing authority which refused him entitlement to certain benefits, and (ii) order that the defendant pay compensation and default interest

Form of order sought

— Annul in part the decision of the appointing authority of 12 July 2007 to the extent that it dismisses the application for benefits brought by the applicant in terms of his complaint of 19 March 2007, and to the extent that it rejects the principle of default interest calculated, from 29 April 2003 on benefits which might be awarded to the applicant under Article 73 of the Staff Regulations;

— Order the defendant to pay compensation of EUR 2 000, with the addition of interest at the rate of 6 %, to date from 19 March 2007, but subject to any subsequent increase, decrease or specification;

— Order the defendant to pay to the applicant default interest, at the rate of 6 % *per annum*, on all benefits which might subsequently be awarded to him under Article 73 of the Staff Regulations;

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

Action brought on 6 December 2007 — Van Arum v Parliament

(Case F-138/07)

(2008/C 92/98)

Language of the case: Dutch

Parties

Applicant: Rinse van Arum (Winksele, Belgium) (represented by: W. van den Muijsenbergh, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

(i) The applicant seeks an alteration of the decision of the appointing authority to award him one merit point to a decision to award him two merit points, and alternatively, annulment of that decision and an order that the appointing authority send to the Tribunal all of the papers and documents on the basis of which the contested decision was taken. (ii) The applicant seeks an order that the defendant pay to him the token sum of one euro in compensation.

Form of order sought

— alter the decision to award him one merit point to a decision to award him two merit points;

— alternatively, order the appointing authority to send to the Tribunal all of the papers and documents on the basis of which the Director General made his decisions of 7 September and 23 November 2006 and annul those decisions together with the decision of the joint committee;

— order the appointing authority to pay to the applicant in compensation a token sum of one euro;

— order the European Parliament to pay the costs.

Action brought on 10 December 2007 — Van Arum v Parliament

(Case F-139/07)

(2008/C 92/99)

Language of the case: Dutch

Parties

Applicant: Rinse Van Arum (Winksele, Belgium) (represented by: W. van den Muijsenbergh, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

(i) The applicant seeks alteration of his Staff Report and, alternatively, its annulment. As a further alternative, the applicant seeks an order that all evidence supporting certain contested remarks in his Staff Report be disclosed to him and that the Tribunal rule on the contested facts and marking. (ii) The applicant seeks an order that the appointing authority pay to him a token sum of one euro in compensation.

Form of order sought

— Alter the Staff Report;

— Alternatively, annul the report in its entirety;

— As a further alternative, order that all evidence supporting certain contested remarks in the Staff Report be disclosed to the applicant and rule on the contested facts and marking;

— Order the appointing authority to pay to him a token sum of one euro in compensation;

— Order the European Parliament to pay the costs.

Action brought on 20 December 2007 — Maniscalco v Commission

(Case F-141/07)

(2008/C 92/100)

Language of the case: Italian

Parties

Applicant: Daniele Maniscalco (Rome, Italy) (represented by: C. Cardarello and F. D'amora, avvocati)

Defendant: Commission of the European Communities

Re

Annulment of the decision to recruit the applicant in Function Group IV, at Grade 13, step 1.

Forms of order sought

— annul decision ADMIN.B.2/OG/jmt/D(07)23504;

— declare the claim for recruitment at a higher grade and for payment of the resulting difference in salary as at the date of establishment of the report recognising the applicant's entitlement to recruitment at grade 16 to be well founded

— order the Directorate General for Personnel and administration — Directorate A — Staff and Careers to pay the sum owed, with interest and costs, corresponding to the difference between a grade 13 salary and the grade 16 salary to which the applicant was entitled;

— appoint the applicant for the future at grade 16 as a member of the contract staff in the appropriate step for the number of years' experience he has.

Action brought on 21 December 2007 — Yannoussis v Commission

(Case F-143/07)

(2008/C 92/101)

Language of the case: French

Parties

Applicant: Georgios Yannoussis (Brussels, Belgium) (represented by: A. Pappas, lawyer)

Defendant: Commission of the European Communities

Re:

Annulment of the decision of the appointing authority of 21 December 2006 rejecting the applicant's candidature for the vacant position of Head of the Representation of the Commission in Greece.

Form of order sought

— Annul the decision of the appointing authority of 21 December 2006;

— Order the Commission to pay the costs.

Action brought on 24 December 2007 — Efstathopoulos v Parliament

(Case F-144/07)

(2008/C 92/102)

Language of the case: Greek

Parties

Applicant: Spyridon Efstathopoulos (Chalandri, Greece) (represented by: N. Korogiannakis and M. Michi, lawyers)

Defendant: European Parliament

Re:

Annulment of the decision of the European Parliament of 18 April 2007, in those parts concerning the taking into account of a 'productivity allowance' in the applicant's gross salary; the recovery, already effected, of the sum of EUR 390 from the applicant's retirement pension; the obligation to recover the sum of EUR 10 036,99 for the period from March 2005 to March 2007; and the monthly reduction of the applicant's pension by EUR 600 for the entire period during which he was paid the allowance in issue of EUR 670, namely between March 2005 and September 2007.

Form of order sought

— Annul the decision of the European Parliament of 18 April 2007, PERS-B-AFF-SOCIAL D(2007) 22300 in those parts which relate to the inclusion of the 'productivity allowance' in the applicant's gross salary; the recovery, already effected, of the sum of EUR 390 from the applicant's retirement pension; the obligation to recover the sum of EUR 10 036,99 for the period from March 2005 to March 2007; and the monthly reduction of the applicant's pension by EUR 600 for the entire period during which he was paid the allowance in issue of EUR 670, namely between March 2005 and September 2007;

— Annul the decision of the appointing authority of the European Parliament of 14 September 2007 rejecting the complaint of 9 May 2007 brought by the applicant against the decision of 18 April 2007;

— Annul any other decision connected or subsequent to those decisions or taken in execution of them;

— Order the European Parliament to pay the costs.

Action brought on 5 January 2008 — Hambura v Parliament

(Case F-4/08)

(2008/C 92/103)

Language of the case: German

Parties

Applicant: Johannes Hambura (Soultzbach, France) (represented by: S. Hambura, lawyer)

Defendant: European Parliament

The subject-matter and description of the proceedings

Annul the decision of the Directorate-General for Personnel of 5 December 2007 to disallow the applicant from taking part in selection procedure PE/95/S, annul that selection procedure and carry out that selection procedure again.

Form of order sought

— declare the invalidity of the decision of the Directorate-General for Personnel (Competitions Unit) of the European Parliament of 5 December 2007, which refuses the use of electronic application forms in connection with a selection procedure;

— annul selection procedure PE/95/S, in respect of a female or male Doctor, published in the OJ C 244 A, 18.10.2007, and carry out the procedure again using electronic application forms;

— in the alternative, decide the order in which the case is to be dealt with in accordance with Article 47(2) of the Rules of Procedure so that the applicant is still able to take part in selection procedure PE/95/S.

Action brought on 25 January 2008 — Jörg Mölling v Europol

(Case F-11/08)

(2008/C 92/104)

Language of the case: Dutch

Parties

Applicant: Jörg Mölling (The Hague, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: Europol

The subject-matter and description of the proceedings

Annulment of Europol's decision of 10 October 2007 refusing the applicant permission to participate in the selection procedure for the position of 'first officer' in the drugs unit and the decision of 23 October 2007 rejecting his complaint.

Form of order sought

The applicant claims that the Tribunal should:

— annul Europol's decision of 10 October 2007 refusing him permission to participate in the selection procedure for the position of 'first officer' in the drugs unit and the decision of 23 October 2007 rejecting his complaint;

— order Europol to pay the costs.

Action brought on 8 February 2008 — Wiame v Commission

(Case F-15/08)

(2008/C 92/105)

Language of the case: French

Parties

Applicant: Valérie Wiame (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the decision of the EPSO/AST/7/05 selection board to award to the applicant a mark which was insufficient for entry on the reserve list.

Form of order sought

— Annul the decision of the EPSO/AST/7/05 selection board awarding to the applicant a mark which was insufficient for entry on the list of successful candidates;

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

Action brought on 18 February 2008 — Ritto v Commission

(Case F-18/08)

(2008/C 92/106)

Language of the case: French

Parties

Applicant: Luis Ritto (Rome, Italy) (represented by: J. Deliens and C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the appointing authority's decision of 14 May 2007 cancelling the applicant's household allowance as from 1 September 2001 and claiming recovery of the sums overpaid since that date, and annulment of all the decisions stemming from it.

Form of order sought

The applicant claims that the Tribunal should:

— annul the appointing authority's decision of 14 May 2007 and all decisions stemming from it;

— annul as far as necessary the appointing authority's decision rejecting the applicant's complaint;

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

Action brought on 19 February 2008 — Aparicio and Others v Commission

(Case F-20/08)

(2008/C 92/107)

Language of the case: French

Parties

Applicants: Jorge Aparicio and Others (Antiguo Cuscatlan, Salvador) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

The subject-matter and description of the proceedings

Annulment of the decisions of the European Personnel Selection Office not to include the applicants' names in the list of successful candidates and in the CAST 27/Relex database

Form of order sought

The applicant claims that the Tribunal should:

— annul the decisions of the European Personnel Selection Office not to include the applicants' names in the list of successful candidates and in the CAST 27/Relex database;

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