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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 180/01)

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

OJ C 167, 18.7.2009

Past publications

OJ C 153, 4.7.2009

OJ C 141, 20.6.2009

OJ C 129, 6.6.2009

OJ C 113, 16.5.2009

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OJ C 90, 18.4.2009

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 4 June 2009 (reference for a preliminary ruling from the Luleå tingsrätt (Sweden)) — Åklagaren v Percy Mickelsson, Joakim Roos

(Case C-142/05) [1]

(Directive 94/25/EC — Approximation of laws — Recreational craft — Prohibition of using personal watercraft on waters other than general navigable waterways — Articles 28 EC and 30 EC — Measures having equivalent effect — Access to the market — Impediment — Protection of the environment — Proportionality)

(2009/C 180/02)

Language of the case: Swedish

Referring court

Luleå tingsrätt

Parties to the main proceedings

Applicant: Åklagaren

Defendant: Percy Mickelsson, Joakim Roos

Re:

Reference for a preliminary ruling — Luleå tingsrätt — Interpretation of Articles 28 to 30 EC and of Directive 2003/44/EC of the European Parliament and of the Council of 16 June 2003 amending Directive 94/25/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft (OJ 2003 L 214, p. 18) — Prohibition of using personal watercraft on waters other than general navigable waterways

Operative part of the judgment

Directive 94/25/EC of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft, as amended by Directive 2003/44/EC of the European Parliament and of the Council of 16 June 2003, does not preclude national regulations which, for reasons relating to the protection of the environment, prohibit the use of personal watercraft on waters other than designated waterways.

Articles 28 EC and 30 EC do not preclude such national regulations provided that:

— *the competent national authorities are required to adopt the implementing measures provided for in order to designate waters other than general navigable waterways on which personal watercraft may be used;*

— *those authorities have actually made use of the power conferred on them in that regard and designated the waters which satisfy the conditions laid down in the national regulations, and*

— *such measures have been adopted within a reasonable period after the entry into force of those regulations.*

It is for the national court to ascertain whether those conditions have been satisfied in the main proceedings.

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[1] OJ C 143, 11.06.2005.

Judgment of the Court (Grand Chamber) of 9 June 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-480/06) [1]

(Failure of a Member State to fulfil obligations — Directive 92/50/EEC — No formal European tendering procedure for the award of waste treatment services — Cooperation between local authorities)

(2009/C 180/03)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: X. Lewis and B. Schima, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Schulze-Bahr, Agents, C. von Donat, Rechtsanwalt)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 8 in conjunction with Titles III, IV, V and VI of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) — Failure to organise a formal European award procedure for the award of waste disposal services by four local authorities (Landkreise) to a public body

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 20, 27.01.2007.

Judgment of the Court (Second Chamber) of 4 June 2009 (reference for a preliminary ruling from the Riigikohus — Republic of Estonia) — JK Otsa Talu OÜ v Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

(Case C-241/07) ([1])

(EAGGF — Regulation (EC) No 1257/1999 — Community support for rural development — Support for agri-environmental production methods)

(2009/C 180/04)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: JK Otsa Talu OÜ

Defendant: Põllumajanduse Registrite ja Informatsiooni Amet (PRIA)

Re:

Reference for a preliminary ruling — Riigikohus — Interpretation of Articles 22, 23, 24(1), 37(4) and 39 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80) — National legislation reserving agri-environmental support solely to applicants who have already been granted support in the previous year and excluding new applicants who commit themselves to organising their production in accordance with agri-environmental requirements

Operative part of the judgment

The provisions of Article 24(1) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Council Regulation (EC) No 2223/2004 of 22 December 2004, read in conjunction with Articles 37(4) and 39 thereof, do not preclude a Member State from restricting, on account of insufficient budgetary resources, the class of recipients of rural development support to farmers already concerned by a decision to grant such support in the previous budgetary year.

([1]) OJ C 170, 21.07.2007.

Judgment of the Court (First Chamber) of 4 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-250/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 93/38/EEC — Public contracts in the water, energy, transport and telecommunications sectors — Award of a contract without a prior call for competition — Conditions — Communication of the reasons for the rejection of a tender — Time-limit)

(2009/C 180/05)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Kukovec, agents)

Defendant: Hellenic Republic (represented by: D. Tsagkaraki, agent, V. Christianos, dikigoros)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 4, 20(2) and 41(4) of 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) — Tender

procedure for the study, supply, transport, installation and bringing into operation of two thermoelectric units for the thermoelectric station at Atherinolakkos, Crete

Operative part of the judgment

The Court:

1. *Declares that, by being unjustifiably late in replying to a tenderer's request for information concerning the reasons for the rejection of its tender, the Hellenic Republic has failed to fulfil its obligation under Article 41(4) of Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Commission Directive 2001/78/EC of 13 September 2001;*

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

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

([1]) OJ C 155, 7.07.2007.

Judgment of the Court (Fourth Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Hans & Christophorus Oymanns GbR, Orthopädie Schuhtechnik v AOK Rheinland/Hamburg

(Case C-300/07) ([1])

(Directive 2004/18/EC — Public supply contracts and public service contracts — Statutory sickness insurance funds — Bodies governed by public law — Contracting authorities — Invitation to tender — Manufacture and supply of orthopaedic footwear individually tailored to patients' needs — Detailed advice provided to patients)

(2009/C 180/06)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Hans & Christophorus Oymanns GbR, Orthopädie Schuhtechnik

Defendant: AOK Rheinland/Hamburg

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of Article 1(2)(c) and (d), (4), (5), and (9), second subparagraph, (c), of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Call for tenders by a sickness insurance fund within a statutory insurance scheme relating to the supply of orthopaedic shoes for insured persons — Meaning of 'body governed by public law' — Services comprising the supply of shoes manufactured according to the individual requirements of each insured person together with detailed consultation concerning the use of the product — Whether classified as 'public supply contracts' or 'public services contracts'

Operative part of the judgment

1. *The first alternative of letter (c) of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that there is financing, for the most part, by the State when the activities of statutory sickness insurance funds are chiefly financed by contributions payable by members, which are imposed, calculated and collected according to rules of public law such as those in the main proceedings. Such sickness insurance funds are to be regarded as bodies governed by public law and therefore as contracting authorities for the purposes of the application the rules in that directive.*

2. *When a mixed public contract concerns both products and services, the criterion to be applied in order to determine whether the contract in question is a supply contract or a service contract is the respective value of the products and services covered by the contract. Where the products supplied are individually manufactured and tailored to the needs of each customer and where each customer must receive individual advice on the use of the products, the manufacture of those products must be classified in the 'supply' part of the said contract for the purposes of calculating the value of each part thereof.*

3. *If the provision of services is regarded as being more important than the supply of products in the contract in question, an agreement such as the one at issue in the main proceedings, concluded between a statutory sickness insurance fund and a trader, in which payment for the various types of service to be provided by the trader and the duration of the agreement are determined, with the trader undertaking an obligation to implement the agreement in regard to insured persons who ask him to do so and the abovementioned fund alone paying that trader for its services, must be regarded as a framework agreement within the meaning of Article 1(5) of Directive 2004/18.*

([1]) OJ C 235, 6.10.2007.

Judgment of the Court (First Chamber) of 18 June 2009 (Reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Aberdeen Property Fininvest Alpha Oy

(Case C-303/07) [1]

(Freedom of establishment — Directive 90/435/EEC — Corporation tax — Distribution of dividends — Withholding tax charged on dividends paid to non-resident companies other than companies within the meaning of that directive — Exemption for dividends paid to resident companies)

(2009/C 180/07)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Party to the main proceedings

Applicant: Aberdeen Property Fininvest Alpha Oy

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 43 EC, 48 EC, 56 EC and 58 EC and Article 2(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Retention at source on dividends distributed to a parent company established in another Member State, but exemption for dividends distributed to a parent company established on national territory — Taxable person not mentioned in the directive on parent companies and subsidiaries — Tax convention — Restriction of fundamental freedoms — Comparable situation.

Operative part of the judgment

Articles 43 EC and 48 EC must be interpreted as precluding legislation of a Member State which exempts from withholding tax dividends distributed by a subsidiary resident in that State to a share company resident in that State, but charges withholding tax on similar dividends paid to a parent company in the form of an open-ended investment company (SICAV) resident in another Member State which has a legal form unknown in the law of the former State, does not appear on the list of companies referred to in Article 2(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003, and is exempt from income tax under the law of the other Member State.

[1] OJ C 211, 8.9.2007.

Judgment of the Court (Fourth Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Gerechtshof te Amsterdam — The Netherlands) — Inspecteur van de Belastingdienst v X BV

(Case C-429/07) [1]

(Competition policy — Articles 81 EC and 82 EC — Article 15(3) of Regulation (EC) No 1/2003 — Written observations submitted by the Commission — National dispute concerning the deductibility from tax of a fine imposed by a Commission decision)

(2009/C 180/08)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Inspecteur van de Belastingdienst

Defendant: X BV

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Article 15(3) of 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) — Submission by the Commission of written observations in the course of national proceedings concerning the deductibility for tax purposes of a fine imposed by the Commission

Operative part of the judgment

The third sentence of the first subparagraph of Article 15(3) of 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 must be interpreted as meaning that it permits the Commission of the European Communities to submit on its own initiative written observations to a national court of a Member State in proceedings relating to the deductibility from taxable profits of the amount of a fine or a part thereof imposed by the Commission for infringement of Articles 81 EC or 82 EC.

[1] OJ C 297, 8.12.2007.

Judgment of the Court (First Chamber) of 18 June 2009 (Reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) — United Kingdom — L'Oréal SA, Lancôme parfums et beauté & Cie SNC, Laboratoire Garnier & Cie v Bellure NV, Malaika Investments Ltd, trading as 'Honey pot cosmetic & Perfumery Sales', Starion International Ltd,

(Case C-487/07) [1]

(Directive 89/104/EEC — Trade marks — Article 5(1) and (2) — Use in comparative advertising — Right to have such use prevented — Taking unfair advantage of the repute of a trade mark — Impairment of the functions of the trade mark — Directive 84/450/EEC — Comparative advertising — Article 3a(1)(g) and (h) — Conditions under which comparative advertising is permitted — Taking unfair advantage of the reputation of a trade mark — Presentation of goods as imitations or replicas)

(2009/C 180/09)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: L'Oréal SA, Lancôme parfums et beauté & Cie SNC, Laboratoire Garnier & Cie

Defendants: Bellure NV, Malaika Investments Ltd, trading as 'Honey pot cosmetic & Perfumery Sales', Starion International Ltd,

Re:

Reference for a preliminary ruling — Court of Appeal, Civil Division — Interpretation of Article 5(1)(a) and (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) and of Article 3a(1)(g) and (h) of Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17), as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 (OJ 1997 L 290, p. 18) — Use by a trader, in advertising for his own goods or services, of a trade mark belonging to a competitor in order to compare the characteristics, in particular the smell, of the goods placed on the market by the competitor.

Operative part of the judgment

1. *Article 5(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the taking of unfair advantage of the distinctive character or the repute of a mark, within the meaning of that provision, does not require that there be a likelihood of confusion or a likelihood of detriment to the distinctive character or the repute of the mark or, more generally, to its proprietor. The advantage arising from the use by a third party of a sign similar to a mark with a reputation is an advantage taken unfairly by that third party of the distinctive character or the repute of that mark where that party seeks by that use to ride on the coat-tails of the mark with a reputation in order to benefit from the power of attraction, the reputation and the prestige of that mark and to exploit, without paying any financial compensation, the marketing effort expended by the proprietor of the mark in order to create and maintain the mark's image.*

2. *Article 5(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of a registered trade mark is entitled to prevent the use by a third party, in a comparative advertisement which does not satisfy all the conditions, laid down in Article 3a(1) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, under which comparative advertising is permitted, of a sign identical with that mark in relation to goods or services which are identical with those for which that mark was registered, even where such use is not capable of jeopardising the essential function of the mark, which is to indicate the origin of the goods or services, provided that such use affects or is liable to affect one of the other functions of the mark.*

3. *Article 3a(1) of Directive 84/450, as amended by Directive 97/55, must be interpreted as meaning that an advertiser who states explicitly or implicitly in comparative advertising that the product marketed by him is an imitation of a product bearing a well-known trade mark presents 'goods or services as imitations or replicas' within the meaning of Article 3a(1)(h). The advantage gained by the advertiser as a result of such unlawful comparative advertising must be considered to be an advantage taken unfairly of the reputation of that mark within the meaning of Article 3a(1)(g).*

[1] OJ C 8, 12.1.2008.

Judgment of the Court (Second Chamber) of 11 June 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-521/07) [1]

(Failure of a Member State to fulfil obligations — Agreement on the European Economic Area — Article 40 — Free movement of capital — Discrimination in the treatment of dividends paid by Netherlands companies — Deduction at source — Exemption — Beneficiary companies established in Member States of the Community — Beneficiary companies established in Iceland or Norway)

(2009/C 180/10)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: P. van Nuffel and R. Lyal, Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels and D.J.M. de Grave, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 40 EEA — Dividends paid to companies established in Norway or Iceland from withholding tax on dividends not exempted under the same conditions as dividends paid to Netherlands companies

Operative part of the judgment

1. *By not exempting dividends paid by Netherlands companies to companies established in Iceland or Norway from deduction at source of the tax on dividends under the same conditions as dividends paid to Netherlands companies or companies of other Member States of the Community, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 40 of the Agreement on the European Economic Area.*

2. *The Kingdom of the Netherlands is ordered to pay the costs.*

[1] OJ C 37, 09.02.2008.

Judgment of the Court (First Chamber) of 18 June 2009 (Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom)) — The Queen, on the application of Generics (UK) Ltd v Licensing Authority (acting through the Medicines and Healthcare products Regulatory Agency)

(Case C-527/07) [1]

(Reference for a preliminary ruling — Directive 2001/83/EC — Medicinal products for human use — Marketing authorisation — Grounds of refusal — Generic medicinal products — Concept of 'reference medicinal product')

(2009/C 180/11)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: The Queen, on the application of Generics (UK) Ltd

Defendant: Licensing Authority, acting through the Medicines and Healthcare products Regulatory Agency

Supported by: Shire Pharmaceuticals Ltd, Janssen-Cilag AB

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Interpretation of Article 10(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67) — Marketing authorisation — Abridged procedure — Application for authorisation of a generic of a reference medicinal product — Concept of reference medicinal product when examining the application

Operative part of the judgment

A medicinal product, such as Nivalin at issue in the main proceedings, which falls outside the scope of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, and the placing of which on the market in a Member State was not authorised in accordance with the applicable Community law, cannot be considered to be a reference medicinal product within the meaning of Article 10(2)(a) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive

2004/27/EC of the European Parliament and of the Council of 31 March 2004.

(1) OJ C 22, 26.1.2008.

Judgment of the Court (First Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH

(Case C-529/07) (1)

(Three-dimensional Community trade mark — Regulation (EC) No 40/94 — Article 51(1)(b) — Criteria relevant to determining whether an applicant is 'acting in bad faith' when filing an application for a Community trade mark)

(2009/C 180/12)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Chocoladefabriken Lindt & Sprüngli AG

Defendant: Franz Hauswirth GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 51(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Concept of the applicant for a mark 'acting in bad faith' — Trade mark application intended to prevent competitors from continuing to market similar goods which have previously acquired a certain reputation — Chocolate Easter bunnies.

Operative part of the judgment

In order to determine whether the applicant is acting in bad faith within the meaning of Article 51(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, the national court must take into consideration all the relevant factors specific to the particular case which pertained at the time of filing the application for registration of the sign as a Community trade mark, in particular:

— *the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for an identical or similar product capable of being confused with the sign for which registration is sought;*

— *the applicant's intention to prevent that third party from continuing to use such a sign; and*

— *the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought.*

(1) OJ C 37, 9.2.2008.

Judgment of the Court (Fifth Chamber) of 11 June 2009 — Imagination Technologies Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-542/07 P) (1)

(Appeal — Community trade mark — Refusal to register — Regulation (EC) No 40/94 — Article 7(3) — Distinctive character acquired through use — Use after the date on which the application for registration was filed)

(2009/C 180/13)

Language of the case: English

Parties

Appellant: Imagination Technologies Ltd (represented by: M. Edenborough, Barrister, instructed by P. Brownlow and N. Jenkins, Solicitors)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 20 September 2007 in Case T-461/04 *Imagination Technologies* v *OHIM (Pure Digital)*, by which the Court dismissed an action for the annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 16 September 2004 in Case R 108/2004-2 dismissing the appeal against the examiner's decision refusing to register the word mark 'PURE DIGITAL' for goods and services in Classes 9 and 38

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Imagination Technologies Ltd to pay the costs.*

(1) OJ C 37, 9.2.2008.

Judgment of the Court (Third Chamber) of 4 June 2009 (reference for a preliminary ruling from the Tallinna Halduskohus (Republic of Estonia)) — Balbiino AS v Põllumajandusminister, Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

(Case C-560/07) [1]

(Accession of Estonia — Transitional measures — Agricultural products — Sugar — Surplus stocks — Regulations (EC) Nos 1972/2003, 60/2004 and 832/2005)

(2009/C 180/14)

Language of the case: Estonian

Referring court

Tallinna Halduskohus

Parties to the main proceedings

Applicant: Balbiino AS

Defendants: Põllumajandusminister, Maksu- ja Tolliameti Põhja maksu- ja tollikeskus

Re:

Reference for a preliminary ruling — Tallinna Halduskohus (Estonia) — Interpretation of Article 6 of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2004 L 9, p. 8), Article 4 of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3), and Commission Regulation (EC) No 832/2005 of 31 May 2005 on the determination of surplus quantities of sugar, isoglucose and fructose for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2005 L 138, p. 3) — Charge on surplus stocks of agricultural products held by operators — Method of determining the amount of the transitional stock and surplus stock for the purpose of that charge

Operative part of the judgment

1. *Article 4(1) and (2) of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, Article 6(3) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and Commission Regulation (EC) No 832/2005 of 31 May 2005 on the determination of surplus quantities of sugar, isoglucose and fructose for the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia do not preclude a national measure, such as the Law on the surplus stock charge (Üleliigse laovaru tasu seadus) of 7 April 2004, as amended on 25 January 2007, under which an operator's surplus stock is determined by deducting from the stock actually held on 1 May 2004 the transitional stock defined as the average stock on 1 May of the previous four years of activity multiplied by a coefficient of 1.2 corresponding to the growth of agricultural production observed in the Member State in question during that period.*

2. *Regulation No 1972/2003 does not preclude the entire stock held by an operator on 1 May 2004 from being regarded as surplus stock if it is shown, on the basis of consistent evidence, that that stock is not normal in relation to the operator's activity and has been built up for speculative purposes.*

3. *Article 4 of Regulation No 1972/2003 and Article 6 of Regulation No 60/2004 do not preclude a national measure under which an operator who has commenced an activity less than one year before 1 May 2004 is required to prove that the amount of stock he held at that date corresponds to the stock normally produced, sold, transferred or acquired for payment or without payment.*

4. *Regulations Nos 1972/2003 and 60/2004 do not preclude the levying of a charge on an operator's surplus stock even if he is able to prove that he obtained no advantage when marketing that stock after 1 May 2004.*

5. *Article 6(3) of Regulation No 60/2004 cannot be interpreted as meaning that an increase in an operator's storage capacity in the year preceding accession justifies a reduction of the surplus stock, regardless of the subsequent development of the economic activity of the holder of the stock, the volume processed and the amount of the stock.*

6. *Article 10 of Regulation No 1972/2003 does not preclude the validity of a tax notice received by an operator who is liable to pay the surplus stock charge after 30 April 2007, where it is shown that the notice was issued by the national authorities on or before that date.*

[1] OJ C 64, 08.03.2008.

Judgment of the Court (Second Chamber) of 11 June 2009 — Commission of the European Communities v Italian Republic

(Case C-561/07) [1]

(Failure of a Member State to fulfil obligations — Directive 2001/23/EC — Transfers of undertakings — Safeguarding of employees' rights — National legislation providing for non-application to transfers of undertakings in 'critical difficulties')

(2009/C 180/15)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: R. Adam, Agent, and by W. Ferrante, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — National legislation providing for the non-application of Articles 3 and 4 of the directive to transfers of undertakings in a 'situation of crisis'

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in force the provisions of Article 47(5) and (6) of Law No 428 of 29 December 1990 where an undertaking is in critical difficulties within the meaning of subparagraph (c) of the fifth paragraph of Article 2 of Law No 675 of 12 August 1977 so that the rights of employees set out in Articles 3 and 4 of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses are not safeguarded in the event of the transfer of an undertaking which has been declared to be in critical difficulties, the Italian Republic has failed to fulfil its obligations under that directive.*

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

[1] OJ C 64, 8.3.2008.

Judgment of the Court (Third Chamber) of 11 June 2009 — Commission of the European Communities v Republic of Austria

(Case C-564/07) [1]

(Failure of a Member State to fulfil obligations — Article 49 EC — Freedom to provide services — Patent lawyers — Obligation to take out professional indemnity insurance — Obligation to appoint an approved agent in the Member State in which the services are to be performed)

(2009/C 180/16)

Language of the case: German

Parties

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

Defendant: Republic of Austria (represented by: E. Riedl and G. Kunnert, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC — Requirements imposed by national legislation on patent lawyers lawfully established in other Member States in relation to the performance of services, on a temporary basis, in the Member State concerned — Obligation to enrol in the national register, to hold for those purposes professional indemnity insurance, to agree to be bound by all the national disciplinary rules other than those related to professional qualifications and to act in cooperation with a local agent

Operative part of the judgment

The Court:

1. *Declares that, by obliging patent lawyers lawfully established in another Member State who wish temporarily to perform services in Austria to appoint an approved agent resident in Austria, the Republic of Austria has failed to fulfil its obligations under Article 49 EC;*

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

3. *Orders each party to bear its own costs.*

[1] OJ C 79, 29.03.2008.

Judgment of the Court (Third Chamber) of 18 June 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden Den Haag (Netherlands)) — Staatssecretaris van Financiën v Stadeco BV

(Case C-566/07) [1]

(Sixth VAT Directive — Article 21(1)(c) — Tax due solely as a result of being mentioned on the invoice — Refund of tax improperly invoiced — Unjust enrichment)

(2009/C 180/17)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden Den Haag

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Stadeco BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden Den Haag — Interpretation of Article 21(1)(c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Tax not payable in the Member State of residence of the issuer of an invoice in respect of an activity in another Member State or in a non-member country — Correction of the erroneously invoiced tax

Operative part of the judgment

1. *Article 21(1)(c) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991 must be interpreted as meaning that turnover tax is due, in accordance with that provision, to the Member State to which the VAT mentioned on an invoice or other document serving as invoice relates, even if the transaction in question was not taxable in that Member State. It is for the national court to ascertain, taking into account all the relevant circumstances of the case, to which Member State the VAT mentioned on the invoice in question is due. In particular, the rate mentioned, the currency in which the amount to be paid is expressed, the language in which the invoice was drawn up, the content and context of the invoice at issue, the place of establishment of the issuer of that invoice and the beneficiary of the services performed, as well as their behaviour, can be relevant in that regard.*

2. *The principle of fiscal neutrality does not generally preclude Member States from making the refund of VAT due in that Member State merely because it was erroneously mentioned on the invoice subject to the requirement that the taxable person have sent the beneficiary of the services performed a corrected invoice not mentioning that VAT, if the taxable person has not completely eliminated in sufficient time the risk of the loss of tax revenue.*

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[1] OJ C 64, 8.3.2008.

Judgment of the Court (Second Chamber) of 4 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-568/07) [1]

(Failure of a Member State to fulfil obligations — Articles 43 EC and 48 EC — Opticians — Conditions of establishment — Establishment and operation of opticians' shops — Incomplete compliance with a judgment of the Court — Lump sum)

(2009/C 180/18)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to comply fully with the Court's judgment of 21 April 2005 in Case C-140/03 *Commission* v *Greece* concerning infringement of Articles 43 and 48 EC with regard to the ownership, establishment and operation of shops for the sale of optical articles — National law allowing only authorised opticians to own opticians' shops — Application for the setting of a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, by the date on which the time-limit set in the reasoned opinion issued by the Commission pursuant to Article 228 EC expired, all the measures necessary to comply with the judgment of 21 April 2005 in Case*

C-140/03 Commission v Greece, the Hellenic Republic has failed to fulfil its obligations under Article 228(1) EC.

2. *Orders the Hellenic Republic to pay into the 'European Community own resources' account of the Commission of the European Communities a lump sum of EUR 1 million.*

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

(1) OJ C 64, 8.3.2008.

Judgment of the Court (Second Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Krajský soud v Ústi nad Labem — Czech Republic) — RLRE Tellmer Property s.r.o. v Finanční ředitelství v Ústí nad Labem

(Case C-572/07) (1)

(Preliminary references — VAT — Exemption for lettings of immovable property — Cleaning of common parts related to the letting — Ancillary supplies)

(2009/C 180/19)

Language of the case: Czech

Referring court

Krajský soud v Ústi nad Labem

Parties to the main proceedings

Applicant: RLRE Tellmer Property s.r.o.

Defendant: Finanční ředitelství v Ústí nad Labem

Re:

Reference for a preliminary ruling — Krajský soud v Ústí nad Labem (Czech Republic) — Interpretation of Articles 6 and 13 B(b) 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) — Scope of the VAT exemption on the letting of immovable property — Inclusion of costs for cleaning the common parts of an apartment block.

Operative part of the judgment

For the purposes of applying Article 13B(b) 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, the letting of immovable property and the cleaning service of the common parts of the latter must, in circumstances such as those at issue in the main proceedings, be regarded as independent, mutually divisible operations, so that the said service does not fall within that provision.

(1) OJ C 79, 29.3.2008.

Judgment of the Court (Third Chamber) of 4 June 2009 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV, Vodafone Libertel NV v Raad van bestuur van de Nederlandse Mededingingsautoriteit

(Case C-8/08) (1)

(Reference for a preliminary ruling — Article 81(1) EC — Concept of 'concerted practice' — Causal connection between concerted action and the market conduct of undertakings — Appraisal in accordance with the rules of national law — Whether a single meeting is sufficient or whether concerted action on a regular basis over a long period is necessary)

(2009/C 180/20)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: T-Mobile Netherlands BV, KPN Mobile NV, Orange Nederland NV, Vodafone Libertel NV

Defendant: Raad van bestuur van de Nederlandse Mededingingsautoriteit

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Article 81 EC — Concept of concerted practice — Need for a causal link between the concerted action and the conduct of the undertakings on the market — Whether appraisal is to be carried out in accordance with the rules of national law — Whether one instance of concerted action is sufficient or whether concerted action on a regular basis over a lengthy period is necessary

Operative part of the judgment

1. *A concerted practice pursues an anti-competitive object for the purposes of Article 81(1) EC where, according to its content and objectives and having regard to its legal and economic context, it is capable in an individual case of resulting in the prevention, restriction or distortion of competition within the common market. It is not necessary for there to be actual prevention, restriction or distortion of competition or a direct link between the concerted practice and consumer prices. An exchange of information between competitors is tainted with an anti-competitive object if the exchange is capable of removing uncertainties concerning the intended conduct of the participating undertakings.*

2. *In examining whether there is a causal connection between the concerted practice and the market conduct of the undertakings participating in the practice — a connection which must exist if it is to be established that there is concerted practice within the meaning of Article 81(1) EC — the national court is required, subject to proof to the contrary, which it is for the undertakings concerned to adduce, to apply the presumption of a causal connection established in the Court's case-law, according to which, where they remain active on that market, such undertakings are presumed to take account of the information exchanged with their competitors.*

3. *In so far as the undertaking participating in the concerted action remains active on the market in question, there is a presumption of a causal connection between the concerted practice and the conduct of the undertaking on that market, even if the concerted action is the result of a meeting held by the participating undertakings on a single occasion.*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Sixth Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Administratīvā apgabaltiesa — Republic of Latvia) — Schenker SIA v Valsts ieņēmumu dienests

(Case C-16/08) ([1])

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Active matrix liquid crystal devices)

(2009/C 180/21)

Language of the case: Latvian

Referring court

Administratīvā apgabaltiesa

Parties to the main proceedings

Applicant: Schenker SIA

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Administratīvā apgabaltiesa — Interpretation of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) — Active matrix liquid crystal device (LCD) — Classification in heading 8528 21 90 or 9013 80 20 of the Combined Nomenclature — Whether an article has or not the essential characteristics of a complete or finished product.

Operative part of the judgment

Subheading 8528 21 90 of the Combined Nomenclature constituting Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003, must be interpreted as not applying, as at 29 December 2004, to active matrix liquid crystal devices (LCD) principally made up of the following elements:

— *two glass plates;*

— *a layer of liquid crystal inserted between the two plates;*

— *vertical and horizontal signal drivers;*

— *backlight;*

— *inverter providing high-voltage power for backlight;*

and

— *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).*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Third Chamber) of 4 June 2009 (reference for a preliminary ruling from the Sozialgericht Nürnberg — Germany) — Athanasios Vatsouras (C-22/08), Josif Koupatantze (C-23/08) v Arbeitsgemeinschaft (ARGE) Nürnberg 900

(Joined Cases C-22/08 and C-23/08) ([1])

(European citizenship — Free movement of persons — Articles 12 EC and 39 EC — Directive 2004/38/EC — Article 24(2) — Assessment of validity — Nationals of a Member State — Professional activity in another Member State — Level of remuneration and duration of the activity — Retention of the status of 'worker' — Right to receive benefits in favour of job-seekers)

(2009/C 180/22)

Language of the case: German

Referring court

Sozialgericht Nürnberg

Parties to the main proceedings

Applicants: Athanasios Vatsouras (C-22/08), Josif Koupatantze (C-23/08)

Defendant: Arbeitsgemeinschaft (ARGE) Nürnberg 900

Re:

Reference for a preliminary ruling — Sozialgericht Nürnberg — Legality of Article 24(2) of Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p.77) — Interpretation of Article 12 EC and Article 39 EC — Right to social assistance benefits of a national of another Member State who is unemployed and has previously been in minor employment in the Member State concerned — National rules excluding nationals of other Member States from receipt of social assistance where the maximum period of residence referred to in Article 6 of Directive 2004/38/EC has been exceeded and there is no other right of residence.

Operative part of the judgment

1. *With respect to the rights of nationals of Member States seeking employment in another Member State, the consideration of the first question has not disclosed any factor which might affect the validity of Article 24(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC;*

2. *Article 12 EC does not preclude national rules which exclude nationals of Member States of the European Union from receipt of the social assistance benefits granted to nationals of third countries.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court (Second Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria)) — Agrana Zucker GmbH v Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-33/08) ([1])

(Sugar — Temporary scheme for the restructuring of the sugar industry — Article 11 of Regulation (EC) No 320/2006 — Calculation of the temporary restructuring amount — Inclusion of the part of the quota subject to a preventive withdrawal — Principles of proportionality and non-discrimination)

(2009/C 180/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Agrana Zucker GmbH

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

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 34 EC and, in particular, the principle of non-discrimination and the principles of the protection of legitimate expectations and proportionality — Interpretation and validity of Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42) — Common organisation of the markets in the sugar sector — Whether the part of the quota subject to preventive withdrawal pursuant to Article 3 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 (OJ 2006 L 89, p. 11) should be included in the calculation of the temporary restructuring amount.

Operative part of the judgment

1. *Article 11 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy must be interpreted as meaning that the part of the sugar quota allocated to an undertaking, which has been subject to a preventive withdrawal pursuant to Article 3 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002, as amended by Commission Regulation (EC) No 1542/2006 of 13 October 2006, is to be included in the basis for the calculation of the temporary amount.*

2. *Examination of the second question has not revealed anything which might affect the validity of Article 11 of Regulation No 320/2006.*

([1]) OJ C 92, 12.4.2008.

Judgment of the Court (Third Chamber) of 18 June 2009 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — David Hütter v Technische Universität Graz

(Case C-88/08) ([1])

(Directive 2000/78/EC — Equal treatment in employment and occupation — Age discrimination — Determining the pay of contractual employees of the State — Exclusion of professional experience acquired before the age of 18)

(2009/C 180/24)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: David Hütter

Defendant: Technische Universität Graz

Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of all discrimination on grounds of age — National legislation which excludes periods of employment completed before the age of 18 from being taken into account for the purpose of determining the remuneration of contractual public servants

Operative part of the judgment

Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation which, in order not to treat general education less favourably than vocational education and to promote the integration of young apprentices into the labour market, excludes periods of employment completed before the age of 18 from being taken into account for the purpose of determining the incremental step at which contractual public servants of a Member State are graded.

([1]) OJ C 128, 24.5.2008.

Judgment of the Court (Third Chamber) of 4 June 2009 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Düsseldorf-Süd v SALIX Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Offenbach KG

(Case C-102/08) ([1])

(Sixth VAT Directive — Second and fourth subparagraphs of Article 4(5) — Option of Member States to consider activities of bodies governed by public law exempted under Article 13 and Article 28 of the Sixth Directive as activities of public authorities — Rules governing exercise of that option — Right to deduct — Significant distortions of competition)

(2009/C 180/25)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Düsseldorf-Süd

Defendant: SALIX Grundstücks-Vermietungsgesellschaft mbH & Co. Objekt Offenbach KG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the second and fourth subparagraphs of Article 4(5) and Article 13 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) — Classification of long-term letting of offices and parking

spaces by a body governed by public law as an economic activity or as property management — Detailed rules for exercising the power of Member States to treat activities of bodies governed by public law which are exempt from tax under Article 13 or Article 28 of Directive 77/388/EEC as activities in which they engage as public authorities

Operative part of the judgment

1. *The Member States must lay down an express provision in order to be able to rely on the option provided for in the fourth subparagraph of Article 4(5) 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, according to which specific activities of bodies governed by public law that are exempt under Article 13 or Article 28 of that directive are considered as activities of public authorities*

2. *The second subparagraph of Article 4(5) of Sixth Directive 77/388 must be interpreted as meaning that bodies governed by public law are to be considered taxable persons in respect of activities or transactions in which they engage as public authorities not only where their treatment as non-taxable persons under the first or fourth subparagraphs of that provision would lead to significant distortions of competition to the detriment of their private competitors, but also where it would lead to such distortions to their own detriment.*

([1]) OJ C 142, 07.06.2008.

Judgment of the Court (Second Chamber) of 4 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-109/08) ([1])

(Failure of a Member State to fulfil obligations — Articles 28 EC, 43 EC and 49 EC — Directive 98/34/EC — Technical standards and regulations — National rules applicable to electrical, electromechanical and electronic computer games — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Non-implementation — Article 228 EC — Financial penalties)

(2009/C 180/26)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and M. Konstantinidis, Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou, V. Karra and P. Mylonopoulos, Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to comply with the judgment of the Court of 26 October 2006 in Case C-65/05 — Infringement of Articles 28 EC, 43 EC and 49 EC and Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ 1998 L 204, p. 37) — National rules applicable to electronic computer games — Application for the setting of a penalty payment

Operative part of the judgment

The Court:

1. *Declares that, by not amending Articles 2(1) and 3 of Law No 3037/2002, laying down a prohibition, subject to the criminal and administrative penalties set out in Articles 4 and 5 of that law, on the installation and operation on all public or private premises, apart from casinos, of all electrical, electromechanical and electronic games, including all computer games, in accordance with Articles 28 EC, 43 EC and 49 EC and Article 8 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, the Hellenic Republic has not taken all the measures necessary to comply with the judgment of the Court of 26 October 2006 in Case C-65/05 Commission v Greece and has thus failed to fulfil its obligations under Article 228 EC;*

2. *Orders the Hellenic Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a penalty payment of EUR 31 536 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-65/05 Commission v Greece, from delivery of the present judgment until the judgment in Case C-65/05 Commission v Greece has been complied with;*

3. *Orders the Hellenic Republic to pay to the Commission of the European Communities, into the 'European Community own resources' account, a lump sum of EUR 3 million;*

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

([1]) OJ C 116, 09.05.2008.

Judgment of the Court (Eighth Chamber) of 4 June 2009 — Commission of the European Communities v Republic of Finland

(Case C-144/08) [1]

(Failure of a Member State to fulfil obligations — Directive 83/182/EEC — Tax exemptions — Temporary import of vehicles — Normal residence)

(2009/C 180/27)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: I. Koskinen and D. Triantafyllou, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 7(1) of Council Directive 83/112/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59) — Incomplete definition of normal residence for the purposes of determining whether there is an entitlement to an exemption

Operative part of the judgment

The Court:

1. *Declares that, by using an incomplete definition of normal residence for the purposes of determining whether there is an entitlement to a tax exemption in respect of the temporary import of vehicles, the Republic of Finland has failed to fulfil its obligations under Article 7(1) of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another;*

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

[1] OJ C 171, 5.7.2008.

Judgment of the Court (Fourth Chamber) of 11 June 2009 (Reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X (C-155/08), E.H.A. Passenheim-van Schoot (C-157/08) v Staatssecretaris van Financiën

(Case C-155/08 and C-157/08) [1]

(Freedom to provide services — Free movement of capital — Wealth tax — Income tax — Savings deposited in a Member State other than the Member State of residence — No declaration — Recovery period — Extension of the recovery period in the case of assets held outside the Member State of residence — Directive 77/799/EEC — Mutual assistance of the competent authorities of the Member States in the field of direct and indirect taxation — Banking secrecy)

(2009/C 180/28)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: X (C-155/08), E.H.A. Passenheim-van Schoot (C-157/08)

Defendant: Staatssecretaris van Financiën

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 49 EC and 56 EC — Taxation by a Member State of income (from capital) of a national resident held in an account in an establishment situated in another Member State — Income not declared in the Member State of residence — Rules of national law providing for a 12-year recovery period in respect of income from another Member State and a 5-year recovery period in respect of income from national sources — Proportional fine — Possible relevance of the fact that banking secrecy applies in the Member State in which the income originated.

Operative part of the judgment

1. *Articles 49 EC and 56 EC must be interpreted as not precluding the application by a Member State, where savings balances and income from those balances are concealed from the tax authorities of that Member State and the latter have no evidence of their existence which would enable an investigation to be initiated, of a longer recovery period when the balances are held in another Member State than when they are held in the first Member State. The fact that that other Member State applies banking secrecy is not relevant in that regard.*

2. *Articles 49 EC and 56 EC must be interpreted as not precluding, when a Member State applies a longer recovery period in the case of assets held in another Member State than in the case of assets held in the first Member State and such foreign assets and the income therefrom were concealed from the first Member State's tax authorities which had no evidence of their existence enabling an investigation to be initiated, the fine imposed for concealment of the foreign assets and income from being calculated as a proportion of the amount to be recovered and over that longer period.*

([1]) OJ C 158, 21.6.2008.
OJ C 171, 5.7.2008

Judgment of the Court (Second Chamber) of 4 June 2009 (reference for a preliminary ruling from the Commissione Tributaria Regionale di Trieste (Italy)) — Agenzia Dogane Ufficio delle Dogane di Trieste v Pometon SpA

(Case C-158/08) ([1])

(Community customs code — Regulation (EC) No 384/96 — Protection against dumped imports from countries not members of the European Community — Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests — Processing under the inward processing procedure — Irregular practice)

(2009/C 180/29)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale di Trieste

Parties to the main proceedings

Applicant: Agenzia Dogane Ufficio delle Dogane di Trieste

Defendant: Pometon SpA

Re:

Reference for a preliminary ruling — Commissione Tributaria Regionale di Trieste — Interpretation of Articles 114, 117(c), 202, 204, 212 and 240 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and of Article 13 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) — Imports into the Community customs territory of unwrought magnesium originating in China — Imports through a company having its registered office in a non-member country and not subject to anti-dumping measures — Processing of the magnesium, under the inward processing procedure, by a company with its registered office in a Member State and connected to the company in the non-member country — Re-export in the form of compensating products to the said non-member country without being subjected to import duties — Immediate sale of the product by the non-member country company to the Member State company which carried out the processing

Operative part of the judgment

1. *Article 13 of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community is inapplicable in the absence of a Council decision, adopted on a proposal from the Commission, to extend the application of anti-dumping duties to imports from third countries of like products or parts thereof.*

2. *An operation which consists in merely sending goods over the border after processing them into a product which is not subject to anti-dumping duties without any actual intention to re-export them and re-importing them shortly after cannot lawfully be placed under inward processing procedure. An importer who improperly brings himself within that procedure and benefits from it is required to pay the duties on the products concerned, without prejudice, where appropriate, to administrative, civil or criminal sanctions provided for by national law. It is for the national court having jurisdiction in the matter to determine whether the operation concerned in the main proceedings must, in the light of the considerations set out above, be regarded as irregular in the light of Community law.*

([1]) OJ C 158, 21.06.2008.

Judgment of the Court (Fifth Chamber) of 11 June 2009 (Reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — H.J. Nijemeisland v Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-170/08) ([1])

(Common agricultural policy — Beef and veal — Regulation (EC) No 795/2004 — Article 3a — Integrated administration and control system for certain Community aid schemes — Single payment — Determination of reference amount — Reductions and exclusions)

(2009/C 180/30)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicant: H.J. Nijemeisland

Defendant: Minister van Landbouw, Natuur en Voedselkwaliteit

Re:

Reference for a preliminary ruling College van Beroep voor het Bedrijfsleven — Interpretation of Article3a of Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p.1) and of Article 2 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 — Integrated administration and control system for certain aid schemes — Single payment scheme — Fixing of the reference amount — Reductions and exclusions.

Operative part of the judgment

Article 3a of Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, as amended by Commission Regulation (EC) No 1974/2004 of 29 October 2004, must be interpreted as meaning that reductions and exclusions based on Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal are not to be taken into account in the calculation provided for in Article 37(1) of Regulation No 1782/2003.

(1) OJ C 197, 2.8.2008.

Judgment of the Court (Fifth Chamber) of 18 June 2009 (reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands)) — Kloosterboer Services BV v Inspecteur van de Belastingdienst/Douane Rotterdam

(Case C-173/08) (1)

(Common Customs Tariff — Tariff headings — Cooling systems for computers composed of a heat sink and a fan — Classification in the Combined Nomenclature)

(2009/C 180/31)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: Kloosterboer Services BV

Defendant: Inspecteur van de Belastingdienst/Douane Rotterdam, kantoor Laan op Zuid

Re:

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Commission Regulation (EC) No 384/2004 of 1 March 2004 concerning the classification of certain goods in the Combined Nomenclature (OJ 2004 L 64, p. 21) — Classification of cooling systems for computers composed of a 'heat sink' and a fan

Operative part of the judgment

Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003, must be interpreted as meaning that goods, such as those at issue in the main proceedings, made up of a heat sink and a fan and which are solely intended to be incorporated in a computer must be classified under subheading 8473 30 90 of the Combined Nomenclature in Annex I to that regulation.

(1) OJ C 183, 19.7.2008.

Judgment of the Court (Fourth Chamber) of 4 June 2009 (Reference for a preliminary ruling from the Budaörsi Városi Bíróság (Hungary)) — Pannon GSM Zrt v Erzsébet Sustikné Győrfi

(Case C-243/08) (1)

(Directive 93/13/EEC — Unfair terms in consumer contracts — Legal effects of an unfair term — Power of and obligation on the national court to examine of its own motion the unfairness of a term conferring jurisdiction — Criteria for assessment)

(2009/C 180/32)

Language of the case: Hungarian

Referring court

Budaörsi Városi Bíróság

Parties to the main proceedings

Applicant: Pannon GSM Zrt

Defendant: Erzsébet Sustikné Győrfi

Re:

Reference for a preliminary ruling — Budaörsi Városi Bíróság — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Clause conferring jurisdiction on a court in the territorial jurisdiction of which the seller or supplier has his principal place of business — Power of the national court to examine of its own motion, and in the context of the examination of its own jurisdiction, whether the clause conferring jurisdiction is unfair — Criteria to be applied in determining whether the clause is unfair

Operative part of the judgment

1. *Article 6(1) of Council Directive 93/13/EEC of 5 April 1993, on unfair terms in consumer contracts, must be interpreted as meaning that an unfair contract term is not binding on the consumer, and it is not necessary, in that regard, for that consumer to have successfully contested the validity of such a term beforehand.*

2. *The national court is required to examine, of its own motion, the unfairness of a contractual term where it has available to it the legal and factual elements necessary for that task. Where it considers such a term to be unfair, it must not apply it, except if the consumer opposes that non-application. That duty is also incumbent on the national court when it is ascertaining its own territorial jurisdiction.*

3. *It is for the national court to determine whether a contractual term, such as that which is the subject-matter of the dispute in the main proceedings, satisfies the criteria to be categorised as unfair within the meaning of Article 3(1) of Directive 93/13. In so doing, the national court must take account of the fact that a term, contained in a contract concluded between a consumer and a seller or supplier, which has been included without being individually negotiated and which confers exclusive jurisdiction on the court in the territorial jurisdiction of which the seller or supplier has his principal place of business may be considered to be unfair.*

(1) OJ C 247, 27.9.2008.

Judgment of the Court (First Chamber) of 4 June 2009 (reference for a preliminary ruling from the Cour de cassation (France)) — Société Moteurs Leroy Somer v Société Dalkia France, Société Ace Europe

(Case C-285/08) (1)

(Liability for defective products — Directive 85/374/EEC — Scope — Damage to an item of property intended for professional use and employed for that purpose — National system permitting the injured person to seek compensation for such damage, where he simply proves the damage, the defect and the causal link — Compatibility)

(2009/C 180/33)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Société Moteurs Leroy Somer

Defendants: Société Dalkia France, Société Ace Europe

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Articles 9 and 13 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29) — Material scope of application of the directive — Lawfulness of a national system of liability permitting compensation to be obtained for damage to an item of property intended for professional use and employed for that purpose — Damage to a hospital generator due to the fact that an alternator overheated.

Operative part of the judgment

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products must be interpreted to mean that it does not preclude the interpretation of domestic law or the application of settled domestic case-law according to which an injured person can seek compensation for damage to an item of property intended for professional use and employed for that purpose, where that injured person simply proves the damage, the defect in the product and the causal link between that defect and the damage.

(1) OJ C 223, 30.08.2008.

Judgment of the Court (Third Chamber) of 11 June 2009 — Commission of the European Communities v French Republic

(Case C-327/08) [1]

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

(2009/C 180/34)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet, D. Kukovec and M. Konstantinidis, Agents)

Defendant: French Republic (represented by: G. de Bergues and J.-Ch. Gracia, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 2(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Directive 92/50/EEC (OJ 1992 L 209, p. 1), and of Article 2(1) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14) — Minimum period to be ensured between notification to the candidates and tenderers of the decision to award a contract and the signature of the contract concerned

Operative part of the judgment

The Court hereby:

1. *Declares that, by adopting and maintaining in force Article 1441-1 of the new Code of Civil Procedure, as amended by Article 48-1º of Decree No 2005-1308 of 20 October 2005 concerning contracts awarded by the contracting authorities referred to in Article 4 of Order No 2005-649 of 6 June 2005 on contracts awarded by certain public bodies or private persons not subject to the Public Procurement Code, in so far as that provision imposes on the contracting authority or entity a ten-day period within which to respond to a formal challenge — the bringing of any precontractual proceedings before that response being precluded — and where that period does not have the effect of suspending the period which must be ensured between the notification to the unsuccessful candidates and tenderers of the decision to award the contract and the signature of that contract, the French Republic has failed to fulfil its obligations under Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors;*

2. *Dismisses the remainder of the action;*

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

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[1] OJ C 285, 8.11.2008.

Judgment of the Court (Third Chamber) of 11 June 2009 — Transports Schiocchet — Excursions SARL v Commission of the European Communities

(Case C-335/08 P) [1]

(Appeal — Action for damages — Regulations (EEC) Nos 517/72 and 684/92 — International carriage of passengers by coach and bus — Conditions for the Community to incur non-contractual liability — Limitation period)

(2009/C 180/35)

Language of the case: French

Parties

Appellant: Transports Schiocchet — Excursions SARL (represented by: D. Schönberger, avocat)

Other party to the proceedings: Commission of the European Communities (represented by: J.-F. Pasquier and N. Yerrell, agents.)

Re:

Appeal against the order of the Court of First Instance (Fourth Chamber) of 19 May 2008 in Case T-220/07 *Transport Schiocchet* v *Commission* dismissing as inadmissible, on the ground of limitation, the action brought by the appellant seeking a declaration of non-contractual liability and compensation for harm sustained as a result of various illegal acts committed by the Community institutions — Conditions for bringing an action for damages — Concepts of regular service and special regular service within the meaning of Regulation (EEC) No 517/72 of the Council of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States (OJ 1972 L 67, p. 19), repealed and replaced by Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1)

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders Transports Schiocchet — Excursions SARL to pay the costs.*

([1]) OJ C 285, 8.11.2008.

Judgment of the Court (Fifth Chamber) of 18 June 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-417/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/35/EC — Environmental liability with regard to the prevention and remedying of environmental damage — Failure to transpose)

(2009/C 180/36)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.-A. Gilly and U. Wölker, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the prescribed period, the necessary measures to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 19 of that directive.*

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

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Seventh Chamber) of 18 June 2009 — Commission of the European Communities v Republic of Austria

(Case C-422/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/35/EC — Environmental liability — Prevention and remedying of environmental damage — Failure to transpose within the prescribed period)

(2009/C 180/37)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and B. Schöfer, acting as Agents)

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

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt within the prescribed period the measures necessary to comply with Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56)

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 in order to transpose Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, the Republic of Austria has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 301 of 22.11.2008.

Judgment of the Court (Fifth Chamber) of 4 June 2009 — Commission of the European Communities v Hellenic Republic

(Case C-427/08) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/100/EC — Failure to transpose within the prescribed period)

(2009/C 180/38)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: M. Michelogiannaki, agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania (OJ 2006 L 363, p. 141)

Operative part of the judgment

The Court:

1. *declares that, by not adopting, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania, the Hellenic Republic has failed to fulfil its obligations under Article 2 of that directive;*

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

[1] OJ C 285, 8.11.2008.

Judgment of the Court (Seventh Chamber) of 11 June 2009 — Commission of the European Communities v Kingdom of Sweden

(Case C-546/08) [1]

(Failure of a Member State to fulfil obligations — Directive 2005/60/EC — Prevention of the use of the financial system for the purpose of money laundering and terrorist financing — Failure to transpose within the prescribed period)

(2009/C 180/39)

Language of the case: Swedish

Parties

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

Defendant: Kingdom of Sweden (represented by: A. Falk, Agent)

Re:

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

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, the Kingdom of Sweden has failed to fulfil its obligations under Article 45(1) of that directive;*

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

[1] OJ C 32, 7.2.2009.

Judgment of the Court (Seventh Chamber) of 4 June 2009 — Commission of the European Communities v Kingdom of Sweden

(Case C-555/08) [1]

(Failure by a Member State to fulfil obligations — Directive 2005/56/EC — Cross-border mergers of limited liability companies — Failure to transpose within the prescribed period)

(2009/C 180/40)

Language of the case: Swedish

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the measures necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ 2005 L 310, p. 1) — Financial institutions which require authorisation by a public body, in particular banks and insurance companies

Operative part of the judgment

The Court:

1. *Declares that, by not adopting, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies, with regard to financial institutions which require authorisation by a public authority, in particular certain banks and insurance companies, the Kingdom of Sweden has failed to fulfil its obligations under that directive;*

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

[1] OJ C 32, 7.2.2009.

Order of the Court (Seventh Chamber) of 17 March 2009 (reference for a preliminary ruling from the Tribunale ordinario di Milano, Italy) — Rita Mariano v Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL)

(Case C-217/08) [1]

(Article 104(3) of the Rules of Procedure — Equal treatment in employment matters — Articles 12 EC and 13 EC — Grant of survivor's benefit — National provision laying down differences in treatment between surviving spouses and surviving cohabitees)

(2009/C 180/41)

Language of the case: Italian

Referring court

Tribunale ordinario di Milano

Parties to the main proceedings

Applicant: Rita Mariano

Defendant: Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro (INAIL)

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Milano — Interpretation of Articles 12 and 13 EC — Equal treatment in employment matters — Grant of survivor's benefit — National provision laying down differences in treatment between surviving spouses and surviving partners who were in a life partnership.

Operative part

The application, which the courts of Member States must ensure, of the prohibition under Community law of all discrimination is not mandatory where the allegedly discriminatory treatment contains no link with Community law. In circumstances such as those at issue in the main proceedings, no such link arises from Articles 12 EC and 13 EC in themselves.

Those articles do not preclude, in those circumstances, national rules under which, in the event of the death of a person as a result of an accident, a pension amounting to 50 % of the remuneration received by that person before his death is paid solely to his surviving spouse and the infant child of the deceased receives only a pension amounting to 20 % of that remuneration.

[1] OJ C 197, 02.08.2008.

Reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Germany) lodged on 4 May 2009 — Agrargut Bäbelin GmbH & Co KG v Amt für Landwirtschaft Bützow

(Case C-153/09)

(2009/C 180/42)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Claimant: Agrargut Bäbelin GmbH & Co KG

Defendant: Amt für Landwirtschaft Bützow

Questions referred

1. Is a farmer prevented from activating payment entitlements based on permanent pasture before activating all payment entitlements based on set-aside, even if he does not hold any other (arable) areas eligible for set-aside?

2. If the first question should be answered in the affirmative: Do the sanctions under Article 51 of Regulation (EC) No 796/2004 ([1]) also apply to a farmer who before 29 December 2006 (in the absence of areas eligible for set-aside) infringes the obligation first to activate completely payment entitlements based on set-aside?

([1]) OJ 2004 L 141, p. 18.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 6 May 2009 — Finanzamt Leverkusen v Verigen Transplantation Service International AG

(Case C-156/09)

(2009/C 180/43)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt Leverkusen

Respondent: Verigen Transplantation Service International AG

Questions referred

1. Is the first paragraph of Article 28bF of Sixth Council Directive 77/388/EEC of 17 May 1977 ([1]) on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as meaning that:

   (a) cartilage material ('biopsy material') which is taken from a human being and entrusted to an undertaking for the purpose of cell multiplication and subsequent return as an implant for the patient concerned constitutes 'movable tangible property' for the purposes of this provision,

   (b) the removal of joint cartilage cells from the cartilage material and the subsequent cell multiplication constitute 'work' on movable tangible property for the purposes of this provision,

   (c) the service has been supplied to a customer 'identified for valued added tax purposes' simply if the value added tax identification number is stated in the invoice of the supplier of the service, without any express written agreement as to its use having been made?

2. If any of the above questions is answered in the negative:

   Is Article 13A(1)(c) 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 to be interpreted as meaning that the removal of the joint cartilage cells from the cartilage material taken from a human being and the subsequent cell multiplication constitute the 'provision of medical care' where the cells obtained from the cell multiplication are reimplanted in the donor?

([1]) OJ 1977 L 145, p. 1.

Action brought on 7 May 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-157/09)

(2009/C 180/44)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and W. Roels, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by approving and maintaining in force Article 6(1) of the Law of 3 April 1999 on the statutory regulation of the notary profession, the Kingdom of the Netherlands has failed to fulfil its obligations under the Treaty establishing the European Community, in particular Articles 43 EC and 45 EC;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission objects, first, to the fact that the nationality requirement for access to, and practice of, the profession of notary represents a disproportionate impediment to the freedom of establishment of notaries who are nationals of another Member State that is enshrined in Article 43 EC. Although Article 45 EC provides for an exemption from the rules concerning the freedom of establishment, it does so only in respect of activities which are directly and specifically connected with the exercise of official authority. The Commission takes the view that the duties carried out by notaries under Netherlands law represent the exercise of official authority to only a very limited extent, and therefore that factor cannot serve to justify the impediment in the light of settled case-law relating to Article 45 EC.

Second, the Commission submits that the nationality requirement is in any event inappropriate, in the light of Article 43 EC, for safeguarding a certain level of professional qualification that will ensure that consumers are protected. There is in fact another method — one that is far less of a hindrance to free movement — of guaranteeing the high level of qualification required for the work of a notary: the possibility of the host Member State demanding one of the compensatory measures provided for in Article 4 of Regulation 89/48/EEC. ([1])

([1]) Council Directive 89/48/EEC 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 (OJ 1989 L 19, p. 16).

Action brought on 7 May 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-158/09)

(2009/C 180/45)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: I. Martinez del Peral Cagigal and M. van Beek, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that by failing to adopt the legislative or regulatory measures necessary to transpose Directive 2003/88/EC ([1]) in respect of non-civilian personnel in public authorities, the Kingdom of Spain has failed to fulfil its obligations under Article 1(3) of Directive 2003/88/EC, and under Article 18(a) of Directive 93/104/EC ([2]) retained by Article 27(1) of Directive 2003/88/EC in conjunction with Annex I, part B, to that directive;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The purpose of Directive 2003/88/EC is to lay down minimum safety and health requirements for the organisation of working time. As a codifying directive it replaces Directive 93/104/EC without prejudice to the obligations of the Member States in respect of the deadlines for transposition.

The transposition measures for Directive 2003/88/EC notified to the Commission by the Spanish authorities do not include the legislative or regulatory measures necessary for the transposition of the directive in respect of non-civilian personnel in public authorities.

Article 1(3) of Directive 2003/88/EC provides that that directive is to apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC ([3]) which contains certain exceptions on account of characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services. In accordance with the case-law of the Court of Justice, the criterion used by the Community legislature to determine the scope of application of Directive 89/391/EEC is not based on the fact of the workers belonging to the specific sectors of activity referred to in Article 2, considered as a whole, but rather is based exclusively on the specific nature of certain special tasks carried out by the workers in those sectors.

Consequently, the applicant takes the view that there is no doubt that Directive 2003/88/EC applies to non-civilian personnel in public authorities and, within that sector, to the Guardia Civil (Civil Guard), as a consequence of which the failure to take the necessary transposition measures in that area constitutes an infringement of that directive.

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

([2]) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18).

([3]) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

Reference for a preliminary ruling from the Tribunal de commerce de Bourges (France) lodged on 8 May 2009 — Lidl SNC v Vierzon Distribution SA

(Case C-159/09)

(2009/C 180/46)

Language of the case: French

Referring court

Tribunal de commerce de Bourges

Parties to the main proceedings

Applicant: Lidl SNC

Defendant: Vierzon Distribution SA

Question referred

Is Article 3a of Directive 84/450 [1], as amended by Directive 97/55 [2], to be interpreted as meaning that it is unlawful to engage in comparative advertising on the basis of the price of products meeting the same needs or intended for the same purpose, that is to say, products which are sufficiently interchangeable, on the sole ground that, in regard to food products, the extent to which consumers would like to eat those products, or, in any case, the pleasure of consuming them, is completely different according to the conditions and the place of production, the ingredients used and the experience of the producer?

[1] Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p. 17).

[2] Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ 1997 L 290, 23.10.1997, p. 18).

Reference for a preliminary ruling from First-tier Tribunal (Tax) (United Kingdom) made on 8 May 2009 — Repertoire Culinaire Ltd v The Commissioners of Her Majesty's Revenue & Customs

(Case C-163/09)

(2009/C 180/47)

Language of the case: English

Referring court

First-tier Tribunal (Tax) (United Kingdom)

Parties to the main proceedings

Applicant: Repertoire Culinaire Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Are cooking wine and cooking port subject to excise duty under Directive 92/83/EEC [1] in the Member State of importation on the grounds that they are within the definition of 'ethyl alcohol' under the first indent of article 20 of Directive 92/83?

2. Is it consistent with the Member State's obligation to give effect to the exemption contained in article 27.1(f) of Directive 92/83, when read with article 27(6), and/or with article 28 EC and/or with the direct effect of those obligations and/or with the principles of equal treatment and proportionality to restrict the exemption for cooking wine, cooking port and cooking cognac to cases where alcoholic beverages have been used as an ingredient and to restrict the applicants for exemption to those persons who have used the alcoholic beverages as an ingredient in products and/or those persons who carry on business as wholesalers of such products and/or they produced or manufactured such products for the purposes of that business and subject to the further conditions that claims be made within an overall period of four months from the payment of duty and that the amount of the repayment be not less than £250?

3. Should the cooking wine and cooking port, if liable to duty under the first indent of article 20 of Directive 92/83, and/or the cooking cognac, subject to the present appeal, be treated as exempt from excise duty at the point of manufacture under article 27.1(f), alternatively article 27.1(e), of Directive 92/83?

4. In the light of articles 10 and 28 EC. what effect, if any does it have on Member States' obligations under articles 20 and 27.1(f), alternatively article 27.1(e), of Directive 92/83 if cooking wine, cooking port and cooking cognac have been released by the Member State of manufacture from the excise movement system under Directive 92/12 into free movement within the European Union?

[1] Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages OJ L 316, p. 21

Action brought on 8 May 2009 — Commission of the European Communities v Italian Republic

(Case C-164/09)

(2009/C 180/48)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Zadra and D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

— Declare that the Italian Republic has failed to fulfil its obligations under Article 9 of Directive 79/409/EEC, ([1]) since the Veneto Region has adopted and applies rules concerning authorisation to derogate from the system of protection for wild birds which fail to satisfy the conditions laid down in Article 9 of Directive 79/409;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that the legislation adopted by the Veneto Region does not comply with the requirements laid down in Article 9 of Directive 79/409.

Law No 13 of 2005, in force at the time of expiry of the reasoned opinion, does not comply with the requirements laid down in Article 9 of Directive 79/409 in so far as:

— it identifies generally and in the abstract, without imposing any temporal limits, the species and the numbers covered by the derogation;

— the derogations for individual species of birds are provided for collectively on the basis of a general reference to all the circumstances listed in points (a) and (c) of Article 9, without appropriate explanations being given concerning the specific reasons;

— it does not lay down the requirement that it must be ascertained that there is no other satisfactory solution, or that the individual derogation measures must specify the conditions of risk, the circumstances of place and those who are authorised to apply the derogations;

— it allows the small numbers to be determined without an adequate scientific basis.

The Commission submits that the measures adopted after the expiry of the period prescribed in the reasoned opinion not only fail to cure the defects already identified, but actually reproduce them in substance. The measures concerned are, inter alia, Decree No 140 of the President of the Regional Council of 20 June 2006, Decree No 230 of the President of the Regional Council of 18 October 2006, Regional Law No 24 of 16 August 2007, Decree No 167 of the President of the Regional Council of 4 September 2007, and Regional Law No 13 of 14 August 2008.

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

Reference for a preliminary ruling from the Administrativen sad Sofia — grad (Bulgaria). lodged on 14 May 2009 — Georgi Ivanov Elchinov v National Health Insurance Fund

(Case C-173/09)

(2009/C 180/49)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia — grad

Parties to the main proceedings

Applicant: Georgi Ivanov Elchinov

Defendant: National Health Insurance Fund

Interested party: Ministry of Health

Questions referred

1. Is the second subparagraph of Article 22(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 ([1]) … to be interpreted as meaning that, where it is impossible to give in a Bulgarian healthcare institution the specific treatment that has been the subject of an application for the issue of form E 112, it is to be assumed that this treatment is not financed from the budget of the National Health Insurance Fund (NZOK) or the Ministry of Health and, conversely, where such treatment is financed from the budget of the NZOK or the Ministry of Health it is to be assumed that it can be given in a Bulgarian healthcare institution?

2. Is the phrase 'the treatment in question cannot be provided for the person concerned within the territory of the Member State in which he resides' in the second paragraph of Article 22(2) of Regulation (EEC) No 1408/71 to be interpreted as encompassing cases in which the treatment that is given in the territory of the Member State in which the insured person resides is much less effective and more radical than the treatment that is given in another Member State, or does it encompass only those cases in which the person concerned cannot be treated without undue delay?

3. Having regard to the principle of procedural autonomy: is the national court obliged to take account of binding directions given to it by a higher court when its decision is set aside and the case referred back for reconsideration if there is reason to assume that such directions are inconsistent with Community law?

4. If the particular treatment concerned cannot be given on the territory of the Member State in which the person with medical insurance resides is it then sufficient, in order for that Member State to be obliged to issue authorisation for treatment in another Member State under Article 22(1)(c) of Regulation (EEC) No 1408/71, for the type of treatment concerned to be included within the benefits provided for under the legislation of the first mentioned Member State even if that legislation does not expressly stipulate the specific method of treatment?

5. Are Article 49 EC and Article 22 of Regulation (EEC) No 1408/71 inconsistent with a national provision such as Article 36(1) of the Law on health insurance, according to which persons insured under the compulsory scheme have the right to receive partially or in full the value of the expenses for medical care abroad only if they have received a preliminary permit?

6. Must the national court oblige the competent institution of the State in which the patient has medical insurance to issue the document for treatment abroad (form E 112) if it considers the refusal to issue such a document to be unlawful, where the application for the issue of the document has been lodged before the treatment was carried out abroad and the treatment has been completed by the date on which the court decision is pronounced?

7. If the aforementioned question should be answered in the affirmative and the court should consider the refusal of authorisation for treatment abroad to be unlawful how is the person with medical insurance to be reimbursed the costs of his treatment:

   a) directly by the State in which he is insured or by the State in which the treatment has been given, following submission of authorisation for treatment abroad;

   b) to what extent, if the range of benefits that are provided for under the legislation of the Member State where he resides should differ from the range of benefits provided for under the legislation of the Member State in which the treatment is given; in the light of Article 49 EC, which prohibits restrictions on freedom to provide services?

(1) Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1974 L 148, p. 35) as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1)

Action brought on 15 May 2009 — Grand Duchy of Luxembourg v European Parliament and Council of the European Union

(Case C-176/09)

(2009/C 180/50)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent and P. Kinsch, avocat)

Defendants: European Parliament and Council of the European Union

Form of order sought

— Delete, in Article 1(2) of Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (1), the following phrase: 'and to the airport with the highest passenger movement in each Member State';

— Alternatively, annul the directive in its entirety;

— Order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

The Grand Duchy of Luxembourg raises two pleas in support of its action.

By its first plea, the applicant alleges a breach of the principle of non discrimination in so far as an airport such as that of Luxembourg-Findel, as a result of the extension of the scope of Directive 2009/12/EC to airports 'with the highest passenger movement in each Member State', finds itself subject to administrative and financial obligations which other airports in a comparable situation are able to avoid, without such difference in treatment being objectively justified. The applicant invokes in particular, in that regard, the situation of Hahn and Charleroi airports, serving the same catchment area as Findel airport and each generating a higher volume of passengers than Findel, but which are not subject to the same obligations. The existence of borders between the three airports can in no way justify that they be treated differently.

By its second plea, the applicant claims furthermore that the provision at issue does not comply with the principles of

subsidiarity and proportionality. First, action at European level is not necessary so as to regulate a situation which could perfectly well have been regulated at national level as long as the threshold of 5 million passengers is not reached. Secondly, the application of the directive would result in supplementary procedures and costs which are not justified for an airport such as Findel, which has the sole particularity of having the highest passenger movement in a Member State, without that having a real relevance with regard to the objectives of the directive.

(1) OJ 2009 L 70, p. 11.

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 15 May 2009 — Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Jean-Marie Solvay de la Hulpe, Alix Walsh v Région wallonne

(Case C-177/09)

(2009/C 180/51)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Jean-Marie Solvay de la Hulpe, Alix Walsh

Defendant: Région wallonne

Questions referred

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

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

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

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

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

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

(3) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17).

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

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 15 May 2009 — Action et défense de l'environnement de la Vallée de la Senne et de ses affluents ASBL (ADESA), Réserves naturelles RNOB ASBL, Stéphane Banneux, Zénon Darquenne v Région wallonne

(Case C-178/09)

(2009/C 180/52)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Action et défense de l'environnement de la Vallée de la Senne et de ses affluents ASBL (ADESA), Réserves naturelles RNOB ASBL, Stéphane Banneux, Zénon Darquenne

Defendant: Région wallonne

Questions referred

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

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

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

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

([1]) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

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

([3]) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17).

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

Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 15 May 2009 — Le Poumon vert de la Hulpe ASBL, Les amis de la Forêt de Soignes ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Alix Walsh v Région wallonne

(Case C-179/09)

(2009/C 180/53)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Le Poumon vert de la Hulpe ASBL, Les amis de la Forêt de Soignes ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Alix Walsh

Defendant: Région wallonne

Questions referred

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

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

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

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

([1]) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

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

([3]) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17).

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

Action brought on 26 May 2009 — Commission of the European Communities v Kingdom of Sweden

(Case C-185/09)

(2009/C 180/54)

Language of the case: Swedish

Parties

Applicant: Commission of the European Communities (represented by: U. Jonsson and L. Balta, acting as Agents)

Defendant: Kingdom of Sweden

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC ([1]) or, in any event, by failing to notify the Commission thereof, the Kingdom of Sweden has failed to fulfil its obligations under Article 15(1) of that directive, and

— order the Kingdom of Sweden to pay the costs.

Pleas in law and main arguments

The period prescribed for implementing the Directive expired on 15 September 2007.

(1) OJ L 105, p. 54.

Action brought on 26 May 2009 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-186/09)

(2009/C 180/55)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek, P. Van den Wyngaert, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claim that the Court should:

— Declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/113/EC (1) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, or in any event, by failing to communicate them to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under the Directive;

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

Pleas in law and main arguments

The period within which the Directive had to be transposed expired on 21 December 2007.

(1) OJ L 373, p. 37.

Action brought on 28 May 2009 — Commission of the European Communities v Republic of Austria

(Case C-189/09)

(2009/C 180/56)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: L. Balta and B. Schöfer, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that, by failure to adopt the laws, regulations and administrative provisions necessary to implement Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, (1) or by failing to notify the commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive;

— order Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the directive expired on the 15 September 2007. At the time the present action was lodged, the defendant had not yet adopted the necessary measures for the implementation of this directive, or had in any case not notified the Commission thereof.

(1) OJ L 105 of 13.4.2006, p. 54.

Action brought on 28 May 2009 — Commission of the European Communities v Republic of Cyprus

(Case C-190/09)

(2009/C 180/57)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: I. Khatzigiannis, A. Margelis, acting as Agents)

Defendant: Republic of Cyprus

Form of order sought

The Court is asked to:

— declare that, by prohibiting the distribution and sale of biofuels produced from genetically modified plants and by enacting section 6 of Law 66(I) of 2005 without previous notification to the European Commission, the Republic of Cyprus is in breach of its obligations under Article 28 EC and Article 8(1) of Directive 98/34/EC [1];

— order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

Cypriot Law No 66(I) of the promotion of the use of biofuels or other renewable fuels for transport transposes into Cypriot law Directive 2003/30/EC on the promotion of the use of biofuels or other reusable fuels for transport. However, section 6 of that Cypriot law contains a clause pursuant to which the distribution and sale of biofuels produced from genetically modified plants is prohibited.

The cultivation of approved varieties of genetically modified (GM) plants in the European Union is lawful on the basis of Directive 2001/18/EC and Regulation (EC) No 1829/2003. Nevertheless, processed fuels produced from genetically modified plants do not fall within the scope of application of that legislation and consequently the compatibility of the clause with Articles 28 to 30 of the EC Treaty falls to be examined.

As regards infringement of Articles 28 to 30 of the EC Treaty, the Commission considers, first, that the Cypriot prohibition is not necessary to protect any kind of public interest and, second, that the national rules which prohibit a product absolutely are contrary to the principle of proportionality.

As regards infringement of Directive 98/34/EC, the Commission considers that section 6 of Law No 66(I) 2005 constitutes a technical regulation within the meaning of Article 1 thereof, and does not fall within the exemption of Article 10(1), first indent. Consequently, the Cypriot authorities were required to inform the Commission of the above provision. Since the Cypriot authorities enacted the provision without prior notification, they were in breach of their obligation under Article 8(1) of Directive 98/34/EC.

[1] OJ L 204 of 21.7.1998, p. 37.

Action brought on 28 May 2009 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-192/09)

(2009/C 180/58)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: L. Balta and H. te Winkel, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC [1] of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, [2] or in any event by not communicating such measures to the Commission, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 15 of that directive;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive into national law expired on 15 September 2007.

[1] OJ 2006 L 105, p. 54.
[2] OJ 2002 L 201, p. 37.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 8 June 2009 — Volvo Car Germany GmbH v Autohof Weidensdorf GmbH

(Case C-203/09)

(2009/C 180/59)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Volvo Car Germany GmbH

Defendant: Autohof Weidensdorf GmbH

Questions referred

1. Is Article 18(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents to be interpreted as precluding national legislation under which a commercial agent [1] is not entitled to an indemnity in the event of contractual termination of the contract by the principal if a serious ground for immediate termination of the contract because of the agent's default existed at the date of contractual termination but was not the cause of the termination?

2. If such national legislation is consistent with the Directive:

Does Article 18(a) of the Directive preclude the application by analogy of the national legislation concerning the exclusion of the indemnity claim to a case where a serious ground for the immediate termination of the contract because of the agent's default arose only after contractual notice of termination was given and the principal became aware of that ground only after the contract ended, so that he was no longer able to give a further notice of immediate termination of the contract based on the agent's default?

(1) OJ 1986 L 382, p. 17.

Action brought on 5 June 2009 — Commission of the European Communities v Italian Republic

(Case C-206/09)

(2009/C 180/60)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Pignataro, Agent)

Defendant: Italian Republic

Forms of order sought

— Declare that the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 2(1) of Commission Directive 2007/68/EC (1) of 27 November 2007 amending Annex IIIa to Directive 2000/13/EC (2) of the European Parliament and of the Council as regards certain food ingredients, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/68/EC or, in any event, by failing to communicate them to the Commission;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period within which Directive 2007/68/EC had to be transposed expired on 31 May 2008.

(1) OJ 2007 L 310, p. 11.
(2) OJ 2000 L 109, p. 29.

Action brought on 11 June 2009 — Commission of the European Communities v Portuguese Republic

(Case C-212/09)

(2009/C 180/61)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: G. Braun, M. Teles Romão and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by maintaining the State's special rights and those of other public bodies or the Portuguese public-sector in GALP Energia, SGPS S.A., the Portuguese Republic has failed to fulfil its obligations under Articles 56 EC and 43 EC.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

Under the Portuguese legislation, the State holds golden shares in GALP. The State has the right to appoint the Chairman of the Board of Directors. In matters within its competence, company resolutions are subject to its approval.

Any resolutions which seek to alter the articles of association, authorise the entering into joint contracts between companies, stipulating a controlling company or joint control, or which may in any way endanger the supply of oil, gas or derivatives thereof to the country, are subject to the State's approval.

The Commission considers that both the State's right to appoint a director with powers to approve resolutions and its right of veto in significant corporate actions severely restrict direct investment and portfolio investment.

Those special rights of the State constitute State measures since the golden shares are not the result of the normal application of company law.

Secondary Community law does not allow the State special rights in retailers of oil and of petroleum products. GALP has no responsibility for guaranteeing supply. The State sought to make GALP a company whose centre of decision-making is in Portugal. In any event, the Portuguese State has failed to comply with the principle of proportionality since the measures in question are not apt to ensure the attainment of the objectives pursued and go beyond what is necessary in order to attain them.

Order of the President of the Seventh Chamber of the Court of 6 March 2009 — Commission of the European Communities v Czech Republic

(Case C-496/07) [1]

(2009/C 180/62)

Language of the case: Czech

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

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[1] OJ C 37, 9.2.2008.

Order of the President of the Court of 24 April 2009 — Commission of the European Communities v Hellenic Republic

(Case C-106/08) [1]

(2009/C 180/63)

Language of the case: Greek

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

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[1] OJ C 128, 24.5.2008.

Order of the President of the Court of 2 April 2009 (Reference for a preliminary ruling from the Raad van State — The Netherlands) — Stichting Greenpeace Nederland (C-359/08 to C-361/08), Stichting ter Voorkoming Misbruik Genetische Manipulatie 'VoMiGen' (C-360/08) v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, other party: Pioneer Hi-Bred Northern Europe Sales Division GmbH

(Joined Cases C-359/08 to C-361/08) [1]

(2009/C 180/64)

Language of the case: Dutch

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

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[1] OJ C 285, 8.11.2008.

Order of the President of the Court of 26 March 2009 — Commission of the European Communities v Republic of Portugal

(Case C-524/08) [1]

(2009/C 180/65)

Language of the case: Portuguese

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

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[1] OJ C 19, 24.1.2009.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 11 June 2009 — Othman v Council and Commission

(Case T-318/01) [1]

(Common foreign and security policy — Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Freezing of funds — Action for annulment — Adaptation of heads of claim — Fundamental rights — Right to respect for property, right to be heard and right to effective judicial review)

(2009/C 180/66)

Language of the case: English

Parties

Applicant: Omar Mohammed Othman (London, United Kingdom) (represented initially by J. Walsh, Barrister, and F. Lindsley and S. Woodhouse, Solicitors, and subsequently by S. Cox, Barrister and H. Miller, Solicitor)

Defendants: Council of the European Union (represented initially by M. Vitsentzatos and M. Bishop, and subsequently by M. Bishop and E. Finnegan, Agents); and the Commission of the European Communities (represented initially by A. van Solinge and C. Brown and subsequently by E. Paasivirta and P. Aalto, Agents)

Interveners in support of the defendants: United Kingdom of Great Britain and Northern Ireland (represented initially by J. Collins, subsequently by C. Gibbs, and then by E. O'Neill, and lastly by I. Rao, Agents, assisted initially by S. Moore, and subsequently by M. Hoskins, Barristers)

Re:

Application, originally for annulment of, first, Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 (OJ 2001 L 67, p. 1) and, second, Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Regulation No 467/2001 (OJ 2001 L 277, p. 25) and, subsequently, for annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation No 467/2001 (OJ 2002 L 139, p. 9), in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Declares that there is no longer any need to adjudicate on the claims for annulment of Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 and of Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Regulation No 467/2001;*

2. *Annuls Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation No 467/2001 in so far as it concerns Mr Omar Mohammed Othman;*

3. *Orders the Council of the European Union to pay, in addition to its own costs, those incurred by Mr Othman, and the sums advanced by way of legal aid by the cashier of the Court of First Instance;*

4. *Orders the Commission of the European Communities and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

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[1] OJ C 68, 16.3.2002.

Judgment of the Court of First Instance of 11 June 2009 — Confservizi v Commission

(Case T-292/02) [1]

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Association of undertakings — Not individually concerned — Inadmissibility)

(2009/C 180/67)

Language of the case: Italian

Parties

Applicant: Confederazione Nazionale dei Servizi (Confservizi) (Rome, Italy) (represented by: C. Tessarolo, A. Vianello, S. Gobbato and F. Spitaleri, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, acting as Agent)

Intervener in support of the defendant: Associazione Nazionale fra gli Industriali degli Acquedotti — Anfida (Rome, Italy) (represented by: P. Alberti, lawyer)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible.*

2. *Orders the Confederazione Nazionale di Servizi (Confservizi) to bear its own costs as well as those incurred by the Commission.*

3. *Orders the Associazione Nazionale fra gli Industriali degli Acquedotti — Anfida to bear its own costs.*

([1]) OJ C 274, 9.11.2002.

Judgment of the Court of First Instance of 11 June 2009 — ACEA v Commission

(Case T-297/02) ([1])

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Individual concern — Admissibility — Existing aid or new aid — Article 87(3)(c) EC)

(2009/C 180/68)

Language of the case: Italian

Parties

Applicant: ACEA SpA (Rome, Italy) (represented by: A. Giardina, L. Radicati di Brozolo and V. Puca, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Interveners in support of the applicant: ACSM Como SpA (Como, Italy) (represented by L. Radicati di Brozolo and M. Merola, lawyers) and AEM — Azienda Energetica Metropolitana Torino SpA (Turin, Italy) (represented by M. Merola and L. Radicati di Brozolo, lawyers)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible in so far as it relates to the Cassa Depositi e Prestiti loans.*

2. *Dismisses the remainder of the action as unfounde.*

3. *Orders ACEA SpA to bear its own costs as well as those incurred by the Commission.*

4. *Orders ACSM Como SpA and AEM — Azienda Energetica Metropolitana Torino SpA to bear their own costs.*

([1]) OJ C 289, 23.11.2002.

Judgment of the Court of First Instance of 11 June 2009 — AMGA v Commission

(Case T-300/02) ([1])

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Not individually concerned — Inadmissibility)

(2009/C 180/69)

Language of the case: Italian

Parties

Applicant: Azienda Mediterranea Gas e Acqua SpA (AMGA) (Genoa, Italy) (represented by: L. Radicati di Brozolo and M. Merola, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Intervener in support of the applicant: ASM Brescia SpA (Brescia, Italy) (represented by G. Caia, V. Salvadori, N. Pisani and F. Capelli, lawyers)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Azienda Mediterranea Gas e Acqua SpA (AMGA) to bear its own costs as well as those incurred by the Commission.*

3. *Orders ASM Brescia SpA to bear its own costs.*

([1]) OJ C 289, 23.11.2002.

Judgment of the Court of First Instance of 11 June 2009 — AEM v Commission

(Case T-301/02) ([1])

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Individual concern — Admissibility — Existing aid or new aid — Article 87(3)(c) EC)

(2009/C 180/70)

Language of the case: Italian

Parties

Applicant: AEM SpA (Milan, Italy) (represented by: A. Giardina, C. Croff, A. Santa Maria and G. Pizzonia, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Intervener in support of the applicant: ASM Brescia SpA (Brescia, Italy) (represented by: G. Caia, V. Salvadori, N. Pisani and F. Capelli, lawyers)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders AEM SpA to pay its costs and those of the Commission;*

3. *Orders ASM Brescia SpA to bear its own costs.*

([1]) OJ C 289, 23.11.2002.

Judgment of the Court of First Instance of 11 June 2009 — Acegas v Commission

(Case T-309/02) ([1])

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Not individually concerned — Inadmissibility)

(2009/C 180/71)

Language of the case: Italian

Parties

Applicant: Acegas-APS SpA, formerly Acqua, Elettricità, Gas e servizi SpA (Acegas) (Trieste, Italy) (represented by: F. Devescovi, F. Ferletic, L. Daniele, F. Spitareli and S. Gobbato, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Acegas-APS SpA to pay the costs.*

(1) OJ C 289, 23.11.2002.

Judgment of the Court of First Instance of 11 June 2009 — ASM Brescia v Commission

(Case T-189/03) (1)

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Actions for annulment — Individual concern — Admissibility — Article 87(3)(c) EC — Article 86(2) EC)

(2009/C 180/72)

Language of the case: Italian

Parties

Applicant: ASM Brescia SpA (Brescia, Italy) (represented by: F. Capelli, F. Vitale and M. Valcada, lawyers)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ASM Brescia SpA to bear its own costs as well as those incurred by the Commission.*

(1) OJ C 184, 2.8.2003.

Judgment of the Court of First Instance (Third Chamber) of 19 June 2009 — Socratec v Commission

(Case T-269/03) (1)

('Competition — Concentrations — Market in road traffic telematic systems — Applicant declared insolvent in course of proceedings — No longer any legal interest in bringing proceedings — No need to adjudicate')

(2009/C 180/73)

Language of the case: German

Parties

Applicant: Socratec — Satellite Navigation Consulting, Research & Technology GmbH (Regensburg) (represented by: M. Adolf and M. Lüken, lawyers)

Defendant: Commission of the European Communities (represented by: initially S. Rating, then A. Whelan and K. Mojzesowicz, and latterly K. Mojzesowicz and X. Lewis, agents)

Intervener in support of the applicant: Qualcomm Wireless Business Solutions Europe BV (Waarle, Netherlands) (represented by: G. Berrisch and D.W. Hull, lawyers)

Interveners in support of the defendant: Daimler AG, formerly DaimlerChrysler AG (Stuttgart, Germany); Daimler Financial Services AG, formerly DaimlerChrysler Services AG (Berlin, Germany); Deutsche Telekom AG (Bonn, Germany); Toll Collect GmbH (Berlin) (represented by: J. Schütze and A. von Graevenitz, lawyers); and Federal Republic of Germany (represented by: initially C. D. Quassowski and S. Flockermann, then M. Lumma, agents, assisted by U. Karpenstein and A. Rosenfeld, lawyers)

Re:

Annulment of Commission Decision 2003/792/EC of 30 April 2003 declaring a concentration to be compatible with the common market and with the EEA Agreement (Case COMP/M.2903 — DaimlerChrysler/Deutsche Telekom Joint Venture) (OJ 2003 L 300, p. 62).

Operative part of the judgment

The Court:

1. *declares that there is no longer any need to adjudicate on the action;*

2. *orders Socratec — Satellite Navigation Consulting, Research & Technology GmbH to bear its own costs and to pay the costs of the Commission, Daimler AG, Daimler Financial Services AG, Deutsche Telekom AG and Toll Collect GmbH;*

3. *orders Qualcomm Wireless Business Solutions Europe BV to bear its own costs;*

4. *orders the Federal Republic of Germany to bear its own costs.*

(1) OJ C 251, 18.10.2003.

Judgment of the Court of First Instance of 19 June 2009 — Qualcomm v Commission

(Case T-48/04) (1)

(Competition — Concentrations — Market for traffic telematics systems — Decision declaring a concentration compatible with the common market — Commitments — Manifest error of assessment — Misuse of powers — Obligation to state the reasons on which the decision is based)

(2009/C 180/74)

Language of the case: English

Parties

Applicant: Qualcomm Wireless Business Solutions Europe BV (Waarle, Netherlands) (represented by: G. Berrisch, lawyer, and D. Hull, Solicitor)

Defendant: Commission of the European Communities (represented initially by: K. Mojzesowicz and A. Whelan, and subsequently by K. Mojzesowicz and X. Lewis, acting as Agents)

Interveners in support of the defendant: Federal Republic of Germany (represented initially by: C.-D. Quassowski and S. Flockermann, acting as Agents, and subsequently by M. Lumma, acting as Agent, and by U. Karpenstein and A. Rosenfeld, lawyer); Deutsche Telekom AG (Bonn, Germany); Daimler AG, formerly DaimlerChrysler AG (Stuttgart, Germany); Daimler Financial Services AG, formerly DaimlerChrysler Services AG (Berlin, Germany) (represented by J. Schütze and A. von Graevenitz, lawyers)

Re:

Annulment of Commission Decision 2003/792/EC of 30 April 2003 declaring a concentration to be compatible with the common market and the EEA Agreement (Case COMP/M.2903 — DaimlerChrysler/Deutsche Telekom/JV) (OJ 2003 L 300, p. 62)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Qualcomm Wireless Business Solutions Europe BV to bear its own costs and to pay those incurred by the Commission;*

3. *Orders the Federal Republic of Germany to bear its own costs;*

4. *Orders Deutsche Telekom AG, Daimler AG and Daimler Financial Services AG to bear their own costs.*

(1) OJ C 94, 17.4.2004.

Judgment of the Court of First Instance of 11 June 2009 — Italy v Commission

(Case T-222/04) (1)

(State aid — Scheme of aid granted by the Italian authorities to certain public utilities in the form of tax exemptions and loans at preferential rates — Decision declaring the aid incompatible with the common market — Existing aid or new aid — Article 86(2) EC)

(2009/C 180/75)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented: initially, by I. Braguglia and, subsequently, by R. Adam and I. Bruni, Agents, and M. Fiorilli, avvocato dello Stato)

Defendant: Commission of the European Communities (represented by: V. Di Bucci, Agent)

Re:

Application for annulment of Article 2 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Italian Republic to pay its own costs as well as those incurred by the Commission.*

(1) OJ C 233, 28.9.2002 (formerly Case C-290/02).

Judgment of the Court of First Instance of 10 June 2009 — Poland v Commission

(Case T-257/04) [1]

(Agriculture — Common organisation of the markets — Transitional measures to be adopted by reason of the accession of new Member States — Regulation (EC) No 1972/2003 laying down measures in respect of trade in agricultural products — Action for annulment — Period within which proceedings must be commenced — Point from which time starts to run — Delay — Amendment of a provision of a regulation — Re-opening of the action against that provision and against all provisions forming a body of rules with it — Partial admissibility — Proportionality — Principle of non-discrimination — Legitimate expectations — Statement of reasons)

(2009/C 180/76)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented: initially by J. Pietras, and subsequently by E. Ośniecka-Tamecka, T. Nowakowski, M. Dowgielewicz and B. Majczyna, acting as Agents, assisted by M. Szpunar, lawyer)

Defendant: Commission of the European Communities (represented: initially by A. Stobiecka-Kuik, L. Visaggio and T. van Rijn, and subsequently by T. van Rijn, H. Tserepa-Lacombe and A. Szmytkowska, acting as Agents)

Re:

Action for annulment of Article 3, Article 4(3) and the eighth indent of Article 4(5) of Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (OJ 2003 L 293, p. 3), as amended by Commission Regulation (EC) No 230/2004 of 10 February 2004 (OJ 2004 L 39, p. 13) and Commission Regulation (EC) No 735/2004 of 20 April 2004 (OJ 2004 L 114, p. 13).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Poland to bear its own costs and to pay those of the Commission.*

[1] OJ C 251, 9.10.2004.

Judgment of the Court of First Instance (Fourth Chamber) of 17 June 2009 — Zhejiang Xinan Chemical Industrial Group v Council

(Case T-498/04) [1]

(Dumping — Imports of glyphosate originating in China — Status of undertaking operating under market economy conditions — Article 2(7)(b) and (c) of Regulation (EC) No 384/96)

(2009/C 180/77)

Language of the case: English

Parties

Applicant: Zhejiang Xinan Chemical Industrial Group Co. Ltd (Jiande City, China) (represented by: initially D. Horovitz, lawyer, and B. Hartnett, Barrister, and subsequently D. Horovitz)

Defendant: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrisch, lawyer)

Intervener in support of the applicant: Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace) (represented by: J. Flynn QC, and D. Scannell, Barrister)

Intervener in support of the defendant: Commission of the European Communities (represented by: E. Righini and K. Talabér-Ritz, acting as Agents)

Re:

Application for the annulment of Article 1 of Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ 2004 L 303, p. 1), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Annuls, in so far as it concerns Zhejiang Xinan Chemical Industrial Group Co. Ltd, Article 1 of Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China;*

2. *Orders the Council to bear its own costs and to pay those of Zhejiang Xinan Chemical Industrial Group Co. Ltd and of the Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace);*

3. *Orders the Commission to bear its own costs.*

(1) OJ C 57, 5.3.2005.

Judgment of the Court of First Instance of 19 June 2009 — Spain v Commission

(Case T-369/05) (1)

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Aids for restructuring and conversion in the wine sector — Aids for the improvement of the production and marketing of honey — Concept of loss of revenue due to implementation of the plan — Article 13(1)(a) of Regulation (EC) No 1493/1999 — Concept of intervention intended to stabilise the agricultural markets — Article 2(2) of Regulation (EC) No 1258/1999)

(2009/C 180/78)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: F. Díez Moreno, lawyer)

Defendant: Commission of the European Communities (represented by: F. Jimeno Fernández, acting as Agent)

Re:

Application for the partial annulment of Commission Decision 2005/555/EC of 15 July 2005 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2005 L 188, p. 36), in so far as it excludes certain expenditure incurred by Spain in the wine and honey sectors.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 296, 26.11.2005.

Judgment of the Court of First Instance of 10 June 2009 — ArchiMEDES v Commission

(Joined Cases T-396/05 and T-397/05) (1)

(Arbitration clause — Contract concerning a project of renovation of an urban property complex — Reimbursement of a part of the sums advanced — Claim for the Commission to be ordered to pay the balance — Counterclaim by the Commission — Action for annulment — Recovery decision — Debit note — Measures of a contractual nature — Inadmissibility — Set-off of claims)

(2009/C 180/79)

Language of the case: French

Parties

Applicant: Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) (Ganges, France) (represented by: P.-P. Van Gehuchten, J. Sambon and R. Reyniers, lawyers)

Defendant: Commission of the European Communities (represented by: initially K. Kańska and E. Manhaeve and subsequently E. Manhaeve, acting as Agents)

Re:

— In Case T-396/05, application for annulment based on Article 230 EC, first, of the Commission decision to recover the advances paid under its contract with the applicant and, secondly, of the Commission decision to impose a set-off of claims on the applicant;

— In Case T-397/05, application based on contractual liability under Article 238 EC, seeking an order that the Commission pay the balance of the subsidy provided for by that contract.

Operative part of the judgment

1. *In Case T-396/05, the action is dismissed as inadmissible in so far as it is directed against debit note No 3240705638 and the recovery decision contained in the letter of the Commission of the European Communities of 30 August 2005;*

2. *In Case T-396/05, there is no longer any need to adjudicate on the application for annulment of the Commission decision contained in its letter of 5 October 2005 to impose upon Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) a set-off of their mutual claims;*

3. *In Case T-397/05, the action is dismissed;*

4. *In Case T-397/05, ArchiMEDES is ordered to pay to the Commission the sum of EUR 148 256,86 together with default interest at the rate prescribed by French law, without that rate exceeding 5.5 % per annum, until the debt is discharged in full;*

5. *In Case T-396/05, ArchiMEDES is ordered to pay, in addition to its own expenses, half of the expenses incurred by the Commission, including those relating to the interlocutory proceedings in Case T-396/05 R;*

6. *In Case T-397/05, ArchiMEDES is ordered to pay the costs, including those relating to the interlocutory proceedings in Case T-397/05 R.*

(1) OJ C 74, 25.3.2006.

Judgment of the Court of First Instance of 10 June 2009 — Vivartia v OHIM — Kraft Foods Schweiz (milko ΔΕΛΤΑ)

(Case T-204/06) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark milko ΔΕΛΤΑ — Earlier Community figurative mark MILKA — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2009/C 180/80)

Language of the case: English

Parties

Applicant: Vivartia ABEE Proïonton Diatrofis kai Ypiresion Estiasis, formerly Delta Protypos Viomichania Galaktos AE (Tavros, Greece) (represented by: P.-P. Kanellopoulos and V. Kanellopoulos, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Kraft Foods Schweiz Holding AG (Zurich, Switzerland) (represented by: T. de Haan and P. Péters, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 June 2006 (Case R 540/2005-2) relating to opposition proceedings between Kraft Foods Schweiz Holding AG and Delta Protypos Viomichania Galaktos AE.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vivartia ABEE Proïonton Diatrofis kai Ypiresion Estiasis to pay the costs.*

(1) OJ C 224, 16.9.2006.

Judgment of the Court of First Instance of 11 June 2009 — Greece v Commission

(Case T-33/07) (1)

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Olive oil, cotton, dried grapes and citrus fruits — Non-compliance with payment deadlines — Period of 24 months — Assessment of the expenditure to be excluded — Key controls — Principle of proportionality — Principle of ne bis in idem — Extrapolation of the findings of default)

(2009/C 180/81)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias and G. Kanellopoulos, Agents)

Defendant: Commission of the European Communities (represented by: H. Tserepa-Lacombe, F. Jimeno Fernández, Agents, assisted by N. Korogiannakis, lawyer)

Re:

Application for partial annulment of Commission Decision 2006/932/EC of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 355, p. 96), in so far as it relates to certain expenditure incurred by the Hellenic Republic in the sectors of olive oil, dried grapes, citrus fruit and financial control.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

(1) OJ C 82, 14.4.2007.

Judgment of the Court of First Instance of 17 June 2009 — Portugal v Commission

(Case T-50/07) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Arable crops — Durum wheat — Period of 24 months — First communication referred to in Article 8(1) of Regulation (EC) No 1663/95 — On-the-spot checks — Remote sensing — Effectiveness of checks — Results of checks — Corrective action to be taken by the Member State concerned — Existence of financial harm to the EAGGF)

(2009/C 180/82)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Fernandes, P. Barros da Costa, Agents, assisted by M. Figueiredo, lawyer)

Defendant: Commission of the European Communities (represented by: P. Guerra e Andrade and F. Jimeno Fernández, Agents)

Re:

Application for partial annulment of Commission Decision 2006/932/EC of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 355, p. 96), in so far as it excludes from Community financing certain expenditure incurred by the Portuguese Republic in the sector of arable crops (durum wheat).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2006/932/EC of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund EAGGF in so far as that decision excludes in respect of the Portuguese Republic certain expenditure incurred in the sector of arable crops (durum wheat) during the marketing year 2003;*

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

3. *Orders each party to bear its own costs.*

[1] OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 11 June 2009 — Last Minute Network v OHIM — Last Minute Tour (LAST MINUTE TOUR)

(Joined Cases T-114/07 and T-115/07) [1]

(Community trade mark — Cancellation proceedings — Community figurative mark LAST MINUTE TOUR — Earlier unregistered national mark LASTMINUTE.COM — Relative ground for refusal — Reference to the national law governing the earlier mark — Action for passing off — Article 8(4) and Article 52(1)(c) of Regulation (EC) No 40/94 (now Article 8(4) and Article 53(1)(c) of Regulation (EC) No 207/2009))

(2009/C 180/83)

Language of the case: English

Parties

Applicant: Last Minute Network Ltd (London, United Kingdom) (represented by: P. Brownlow, Solicitor, and S. Malynicz, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: Last Minute SpA (Milan, Italy) (represented by: D. Caneva and G. Locurto, lawyers)

Re:

Two actions brought against the Decisions of the Second Board of Appeal of OHIM of 8 February 2007 (Cases R 256/2006-2 and R 291/2006-2), concerning cancellation proceedings between Last Minute Network Ltd and Last Minute Tour SpA.

Operative part of the judgment

The Court:

1. *Annuls the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 February 2007 (Cases R 256/2006-2 and R 291/2006-2);*

2. *Declares that there is no need to adjudicate on the second head of claim of Last Minute Network Ltd;*

3. *Orders OHIM to pay the costs incurred by Last Minute Network;*

4. *Orders Last Minute Tour SpA to bear its own costs.*

[1] OJ C 129, 9.6.2007.

Judgment of the Court of First Instance of 18 June 2009 — LIBRO Handelsgesellschaft mbH v OHIM — Dagmar Causley (LiBRO)

(Case T-418/07) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark LiBRO — Earlier Community figurative mark LIBERO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/09) — Partial refusal of registration — Application for annulment brought by the intervener — Article 134(3) of the Rules of Procedure of the Court of First Instance — Signature of the response setting out grounds of appeal before the Board of Appeal — Admissibility of the appeal before the Board of Appeal)

(2009/C 180/84)

Language of the case: German

Parties

Applicant: LIBRO Handelsgesellschaft mbH (Guntramsdorf, Austria) (represented by: G. Prantl, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Dagmar Causley (Pleidelsheim, Germany) (represented by: W. Günther, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 September 2007 (Case R 1454/2005-4) concerning opposition proceedings between Dagmar Causley and LIBRO Handelsgesellschaft mbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the application of Dagmar Causley;*

3. *Orders LIBRO Handelsgesellschaft mbH to pay the costs, with the exception of those of Dagmar Causley;*

4. *Orders Dagmar Causley to bear her own costs.*

[1] OJ C 8, 12.01.2008.

Judgment of the Court of First Instance of 12 June 2009 — Harwin International v OHIM — Cuadrado (Pickwick COLOUR GROUP)

(Case T-450/07) [1]

(Community trade mark — Invalidity proceedings — Figurative Community trade mark Pickwick COLOUR GROUP — Earlier national trade marks PicK OuiC and PICK OUIC Cuadrado, S.A. VALENCIA — Request for proof of use — Article 56(2) and (3) of Regulation (EC) No 40/94 (now Article 57(2) and (3) of Regulation (EC) No 207/2009))

(2009/C 180/85)

Language of the case: English

Parties

Applicant: Harwin International LLC (Albany, New York, United States) (represented by: D. Przedborski, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Cuadrado, SA (Paterna, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 10 September 2007 (Case R 1245/2006-2), relating to invalidity proceedings between Cuadrado SA and Harwin International LLC

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 10 September 2007 (Case R 1245/2006-2);*

2. *Orders OHIM to bear its own costs and pay those incurred by Harwin International LLC.*

[1] OJ C 37, 9.2.2008.

Judgment of the Court of First Instance of 17 June 2009 — Korsch v OHIM (PharmaResearch)

(Case T-464/07) ([1])

(Community trade mark — Application for the community word mark PharmaResearch — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009) — Restriction of the goods designated in the trade mark application)

(2009/C 180/86)

Language of the case: German

Parties

Applicant: Korsch AG (Berlin, Germany) (represented by: J. Grzam, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 October 2007 (Case R 924/2007-4) concerning an application for registration of the word sign PharmaResearch as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Korsch AG to pay the costs.*

([1]) OJ C 51, 23.02.2008.

Judgment of the Court of First Instance of 11 June 2009 — Bastos Viegas v OHIM — Fabre Médicament (OPDREX)

(Case T-33/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark OPDREX — Earlier national word mark OPTREX — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2009/C 180/87)

Language of the case: Spanish

Parties

Applicant: Bastos Viegas, SA (Penafiel, Portugal) (represented by: G. Marín Raigal and P. López Ronda, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Pierre Fabre médicament (Boulogne Billancourt, France) (represented by: J. Grau Mora, A. Angulo Lafora and M. Ferrándiz Avendaño, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 14 November 2007 (Case R 1238/2006-4), relating to opposition proceedings between Pierre Fabre Médicament SA and Bastos Viegas, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bastos Viegas, SA to pay the costs.*

([1]) OJ C 79, 29.3.2008.

Judgment of the Court of First Instance of 11 June 2009 — Hedgefund Intelligence v OHIM — Hedge Invest (InvestHedge)

(Case T-67/08) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark InvestHedge — Earlier Community figurative mark HEDGE INVEST — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2009/C 180/88)

Language of the case: English

Parties

Applicant: Hedgefund Intelligence Ltd (London, United Kingdom) (represented by: J. Reed, Barrister, and G. Crofton Martin, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Hedge Invest SpA (Milan, Italy)

Re:

Action against the decision of the Second Board of Appeal of OHIM of 28 November 2007 (Case R 148/2007-2) relating to opposition proceedings between Hedge Invest SpA and Hedgefund Intelligence Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hedgefund Intelligence Ltd to pay the costs.*

([1]) OJ C 107, 26.4.2008.

Judgment of the Court of First Instance of 11 June 2009 — Baldesberger v OHIM (Shape of tweezers)

(Case T-78/08) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of tweezers — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2009/C 180/89)

Language of the case: German

Parties

Applicant: Fides B. Baldesberger (represented by: F. Nielsen, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 December 2007 (Case R 1405/2007-4) regarding an application for registration of a three-dimensional sign in the shape of tweezers as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms Fides B. Baldesberger to pay the costs.*

([1]) OJ C 107 of 26.4.2008.

Judgment of the Court of First Instance of 11 June 2009 — ERNI Electronics v OHIM (Maxibridge)

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

(Community trade mark — Application for the Community word mark MaxiBridge — Absolute ground for refusal — Descriptiveness of the function of the goods indicated in the trade mark application — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation No 207/2009))

(2009/C 180/90)

Language of the case: German

Parties

Applicant: ERNI Electronics GmbH (Adelberg, Germany) (represented by: N. Breitenbach and W. Schaller, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 January 2008 (Case R 1530/2006-4) regarding the registration of the word sign Maxibridge as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ERNI Electronics GmbH to pay the costs.*

([1]) OJ C 142 of 7.6.2008

Judgment of the Court of First Instance of 11 June 2009 — Guedes — Indústria e Comércio v OHIM — Espai Rural de Gallecs (Gallecs)

(Case T-151/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Gallecs — Earlier national and Community figurative marks GALLO, GALLO AZEITE NOVO, GALLO AZEITE — Relative ground for refusal — No likelihood of confusion — Lack of similarity between the signs — Article 8(1)(b) and (5) of Regulation (EC) No 40/94 (now Article 8(1)(b) and (5) of Regulation (EC) No 207/2009))

(2009/C 180/91)

Language of the case: English

Parties

Applicant: Victor Guedes — Indústria e Comércio SA (Lisbon, Portugal) (represented by: B. Braga da Cruz, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Consorci de l'Espai Rural de Gallecs (Gallecs, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 16 January 2008 (Case R 986/2007-2) relating to opposition proceedings between Victor Guedes — Indústria e Comércio SA and Consorci de l'Espai Rural de Gallecs.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Victor Guedes — Indústria e Comércio SA to pay the costs.*

([1]) OJ C 171, 5.7.2008.

Judgment of the Court of First Instance of 18 June 2009 — Commission v Traore

(Case T-572/08 P) ([1])

(Appeal — Public service — Officials — Recruitment — Notice of vacancy — Appointment to the post of Head of Operations at the Commission Delegation in Tanzania — Determination of the level of the post to be filled — Principle of separation of the grade and the function)

(2009/C 180/92)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: J. Currall, G. Berscheid and B. Eggers, Agents)

Other party to the proceedings: Amadou Traore (Rhode-St-Genèse, Belgium) (represented by: É. Boigelot, lawyer)

Interveners in support of the appellant: European Parliament (represented by: C. Burgos and K. Zejdová, Agents); Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, Agents); and Court of Auditors of the European Communities (represented by T. Kennedy and J.-M. Stenier, Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 13 November 2008 in Case F-90/07 *Traore* v *Commission*, seeking annulment of that judgment.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union of 13 November 2008 in Case F-90/07 Traore v Commission in so far as it annuls the decision of the of the Director of Resources of the EuropeAid Co-operation Office of the Commission of 12 December 2006 rejecting Mr Amadou Traore's candidature for the post of Head of Operations at the Commission Delegation in Tanzania and the decision to appoint Mr S to that post;*

2. *Dismisses the action brought by Mr Traore before the Civil Service Tribunal in Case F 90/07.*

3. *Orders Mr Traore and the Commission of the European Communities to pay their own costs relating to the proceedings at first instance and the appeal proceedings.*

4. *Orders the European Parliament, the Council of the European Union and the Court of Auditors of the European Communities to pay their own costs.*

(1) OJ C 44, 21.2.2009.

Order of the Court of First Instance of 19 May 2009 — Mayer-Falk v Commission

(Case T-251/06) (1)

(Regulation (EC) No 1049/2001 — Documents concerning the fight against organised crime and the judicial reform in Bulgaria — Refusal of access — Disappearance of the subject-matter of the dispute — No need to adjudicate)

(2009/C 180/93)

Language of the case: German

Parties

Applicant: Thomas Mayer-Falk (Bruchsal, Germany) (represented by: S. Crosby, solicitor)

Defendant: Commission of the European Communities (represented by: P. Costa de Oliveira and A. Antoniadis, Agents)

Re:

Annulment of the Commission's decision of 6 November 2006 refusing to grant the applicant access to two documents relating to the fight against organised crime and to judicial reform in Bulgaria.

Operative part of the order

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

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

(1) OJ C 236, 13.09.2008.

Order of the Court of First Instance of 4 June 2009 — UniCredit v OHIM — Union Investment Privatfonds (UniCredit)

(Case T-4/09) (1)

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

(2009/C 180/94)

Language of the case: Italian

Parties

Applicant: UniCredit SpA (Rome, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Union Investment Privatfonds GmbH (Frankfurt, Germany) (represented by: J. Zindel, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 3 November 2008 (Case R 1449/2006-2) concerning opposition proceedings between UniCredit SpA and Union Investment Privatfonds GmbH.

Operative part of the order

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

2. *The applicant is ordered to bear its own costs and to pay those incurred by the defendant.*

(1) OJ C 55, 07.03.2009.

Order of the President of the Court of First Instance of 28 April 2009 — United Phosphorus v Commission

(Case T-95/09 R)

(Application for interim relief — Directive 91/414/EEC — Decision concerning the non-inclusion of napropamide in Annex I to Directive 91/414 — Application for suspension of operation and for interim measures — Prima facie case — Urgency — Balance of interests)

(2009/C 180/95)

Language of the case: English

Parties

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

Defendant: Commission of the European Communities (represented by: L. Parpala and N. Rasmussen, acting as Agents, assisted by J. Stuyck, lawyer)

Re:

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

Operative part of the order

1. *The operation of Commission Decision 2008/902/EC of 7 November 2008 concerning the non-inclusion of napropamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance is suspended up to 7 May 2010 — but at the latest up to the date on which the decision in the main action is delivered.*

2. *That suspension is subject to the condition that the parties lodge with the Registry of the Court, by no later than 15 March 2010, observations on the course of the accelerated procedure instituted, in regard to napropamide, pursuant to Article 13 of Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414 as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included in its Annex I.*

3. *The Commission is ordered to take, should the applicant so request, the measures necessary to ensure that the present order is fully effective in regard to those Member States which, prior to 7 May 2009, may already have cancelled, withdrawn or refused, pursuant to Article 2 of Decision 2008/902, authorisations for plant protection products containing napropamide.*

4. *Costs are reserved.*

Order of the President of the Court of First Instance of 8 June 2009 — Dover v Parliament

(Case T-149/09 R)

(Application for interim measures — Recovery of allowances paid by way of reimbursement of parliamentary assistance expenses — Application for suspension of operation of a measure — Inadmissibility — No urgency)

(2009/C 180/96)

Language of the case: English

Parties

Applicant: Densmore Ronald Dover, (Borehamwood, Hertfordshire, United Kingdom) (represented by: D. Vaughan QC, M. Lester, Barrister, and M. French, Solicitor)

Defendant: European Parliament (represented by: H. Krück, D. Moore and M. Windisch, Agents)

Re:

Application for suspension of the operation of Decision D (2009) 4639 of the Secretary General of the European Parliament of 29 January 2009 concerning the recovery of allowances unduly paid to the applicant by way of reimbursement of his parliamentary assistance expenses, of the debit note based on that decision and of any decision taken with a view to offsetting the amount claimed against payment of other parliamentary allowances due to the applicant.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 4 May 2009 — Budapesti Erőmű v Commission

(Case T-182/09)

(2009/C 180/97)

Language of the case: English

Parties

Applicant: Budapesti Erőmű Rt. (Budapest, Republic of Hungary) (represented by: M. Powell, Solicitor, C. Arhold, K. Struckmann and A. Hegyi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— to annul the decision of the European Commission of 4 June 2008 in State Aid Case C 41/05, as far as the PPAs concluded by the applicant are concerned;

— to award the applicant the costs of the present action;

— to take such other or further action as justice may require.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C (2008) 2223 final, of 4 June 2008, declaring incompatible with the common market the aid granted by the Hungarian authorities to certain electricity generating producers in the form of long-term power purchase agreements ("PPAs") of electricity concluded between the transmission operator Magyar Villamos Müvek Rt. ("MVM"), owned by the Hungarian State, and these producers at a date prior to accession of the Republic of Hungary to the European Union [State aid C 41/2005 (ex NN 49/2005) — Hungarian "Stranded Costs"]. The applicant is identified in the contested decision as a beneficiary of the alleged State aid and the decision orders Hungary to recover the aid, including interest, from the applicant.

On the basis of its first plea, the applicant submits that the Commission has erroneously taken the view that the relevant period of assessment was the time of Hungary's accession to the EU. Instead, the Commission should have assessed whether the applicant's PPAs contain any State aid in light of the factual and legal circumstances at the time when they were concluded. The applicant further claims that the Commission infringed Article 87(1) EC and made a manifest error of assessment by concluding that the PPAs grant an economic advantage. In addition, the applicant contends that the Commission misapplied the Treaty of accession of Hungary and Article 1(b)(v) of Council Regulation No 659/1999 [1] ("The Procedural Regulation").

Moreover, the applicant claims that, contrary to the Commission's view, there was no distortion of competition and that Annex IV to the accession Treaty does not list conclusively the aid measures that can be deemed existing aid, but stipulates only an exception to the principle that all pre-accession aid measures are *per se* existing aid. In addition, the applicant contends that Articles 87(3) EC with respect to possible exemption as State aid for cogeneration, 86(2) EC, 88(1) and (3), as well as Article 14 of the Procedural Regulation, with respect to the recovery of existing individual aid, have been infringed.

On the basis of its second plea, the applicant claims that the Commission lacked competence to assess the PPAs in question as they were concluded before Hungary's accession to the EU.

On the basis of its third plea, the applicant claims that the Commission infringed essential procedural requirements such as the right to be heard and the obligation to undertake a diligent and impartial investigation. Moreover, the applicant contends that the Commission has infringed essential procedural requirements by carrying out a common assessment of the PPAs without assessing the essential terms of each PPA individually. According to the applicant, in order to be able to assess whether the PPAs contain State Aid, the Commission must assess whether they confer an economic advantage on generators and in order to do so, an individual assessment of each PPA is absolutely essential. Further, it is submitted that the approach carried out by the Commission was inadequate for a proper assessment of whether a significant number of individual measures constitute State aid. If the PPAs could be considered as existing aid schemes, the Commission would have had to follow the appropriate measures procedure as laid down in Article 88(1) EC and Article 18 of the Procedural Regulation.

On the basis of its fourth plea, the applicant submits that the contested decision infringes the obligation to state reasons, enshrined in Article 253 EC.

Finally, on the basis of its fifth plea, the applicant claims that the Commission misused its powers under State aid rules by adopting a negative decision under the procedure laid down in Article 88(2) EC, calling for the termination of the PPAs without even establishing their economic advantage.

[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 1999 L 83, p. 1.

Action brought on 12 May 2009 — Galileo International Technology v OHIM — Residencias Universitarias (GALILEO)

(Case T-188/09)

(2009/C 180/98)

Language in which the application was lodged: English

Parties

Applicants: Galileo International Technology LLC (Bridgetown, Barbados) (represented by: M. Blair and K. Gilbert, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Residencias Universitarias, SA (Valencia, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 February 2009 in case R 471/2005-4; and

— Order OHIM and the other party to the proceedings before the Board of Appeal to pay their own costs and those incurred by the applicant

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "GALILEO", for goods and services in classes 9, 39, 41 and 42

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

Mark or sign cited: Spanish trade mark registrations of the figurative mark "GALILEO GALILEI" for services in classes 39, 41 and 42, respectively

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal committed a procedural error under Article 63(2) of Council Regulation 40/94 (which became Article 65(2) of Council Regulation 207/2009) by failing to remit the case back to the Opposition Division; Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal failed to carry out a proper assessment of the likelihood of confusion and incorrectly concluded that the applicant did not argue at all against the reasoning of the Opposition Division on this point; The Board of Appeal erred in its assessment of the similarity and the likelihood of confusion of the trade marks concerned and failed to provide proper reasons for its findings.

Action brought on 14 May 2009 — HIT Trading and Berkman Forwarding v Commission

(Case T-191/09)

(2009/C 180/99)

Language of the case: Dutch

Parties

Applicants: HIT Trading BV (Barneveld, Netherlands) and Berkman Forwarding BV (Barendrecht, Netherlands) (represented by: A.T.M. Jansen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— HIT Trading claims that the Court of First Instance should annul the Commission's decision of 12 February 2009 in Case REC 08/01 and declare that the post-clearance recovery of customs duties and anti-dumping duties is to be waived since the remission of those duties is justified.

Pleas in law and main arguments

The applicants submit that the Commission wrongly decided that the post-clearance recovery of customs duties and anti-dumping duties was justified, and that the Commission was wrong to find that there was no special situation for the purposes of Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

The applicants puts forward the following grounds in support of that submission:

— The Commission finds that the Pakistan customs authorities made an active error within the meaning of Article 220(2)(b) of Regulation No 2913/92 as regards preferential origin. The Commission wrongly takes the view that, as regards non-preferential origin, this error is not an error within the meaning of Article 220(2)(b) of Regulation No 2913/92.

— The Commission wrongly finds that the applicants were not careful in regard to the declarations lodged after 10 September 2004.

— In its examination of the question whether post-clearance recovery may be waived or whether a special situation exists, the Commission has failed, without justification, to fulfil its obligations.

— The Commission finds that the Pakistan customs authorities made an active error within the meaning of Article 220(2)(b) of Regulation No 2913/92 as regards preferential origin. The Commission wrongly takes the view that, as regards non-preferential origin, this error does not give rise to a special situation for the purposes of Article 239 of Regulation No 2913/92.

— It is not clear from the contested decision that the Commission genuinely weighed up the Community's interest in compliance with customs regulations against the interests of importers, acting in good faith, in not being subject to disadvantage beyond the normal commercial risks.

— It is not clear from the contested decision that the Commission took into account all the relevant facts in assessing whether the circumstances of the particular case give rise to a special situation.

Action brought on 19 May 2009 — Matkompaniet v OHIM — DF World of Spices (KATOZ)

(Case T-195/09)

(2009/C 180/100)

Language in which the application was lodged: English

Parties

Applicants: Matkompaniet AB (Borås, Sweden) (represented by: J. Gulliksson and J. Olsson, lawyers)

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

Other party to the proceedings before the Board of Appeal: DF World of Spices GmbH (Dissen, 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 11 March 2009 in case R 577/2008-2; and

— Order the defendant to pay the costs incurred both in the proceedings before the Court of First Instance and before OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "KATOZ", for goods in classes 29, 30 and 31

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

Mark or sign cited: German trade mark registration of the figurative mark "KATTUS" for goods in classes 29, 30, 31 and 33

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Upheld the appeal and partially rejected the application for the Community trade mark

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal wrongly concluded that there was a likelihood of confusion between the trade marks concerned.

Action brought on 20 May 2009 — Slovenia v Commission

(Case T-197/09)

(2009/C 180/101)

Language of the case: Slovene

Parties

Applicant: Republic of Slovenia (represented by Ž. Cilenšek Bončina, of the State Legal Service)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the Commission's decision of 19 March 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF), (notified under document number C(2009) 1945, [1]) in so far as it refers to the Republic of Slovenia;

— an order that the Commission should pay the costs;

— an order that the Commission should reimburse the costs incurred by the Republic of Slovenia in the proceedings.

Pleas in law and main arguments

By the contested decision the Commission excluded certain expenditure incurred by the Republic of Slovenia from Community financing for the financial years 2005 and 2006, on account of deficiencies in key controls and of incorrect control approach and tools, and also ordered a flat-rate financial correction of 5 % for immediate payment, for which it relied on the audit of national control carried out by its services in that Member State in March 2005.

In support of its claims the applicant argues, in particular, that the Commission:

— on account of a mistaken evaluation of the facts of the case, incorrectly applied Article 15 of Commission Regulation (EC) No 2419/2001 [2] or Article 23 of Commission Regulation (EC) No 796/2004, [3] for it carried out the audit too

late; it chose for it an atypical region for which conspicuously small fields were checked; in that audit it took no account of International Standard 530 on auditing and without cause it censured the applicant for using that standard as a yardstick;

— contravened the principle of the prohibition of unequal treatment of Member States, because it carried out its audit of national checks in the other Member States on a substantially greater, and therefore more representative, sample;

— applied a measure, namely the 5 % financial correction, which, on account of the limited risk to the Fund, considering the amount of the resources assigned, is plainly disproportionate to the gravity and extent of the infringements found to exist;

— acted contrary to the principle of good faith and fairness, for its services did not challenge the correctness of the instructions providing for the use of that yardstick, or, until autumn 2005, draw the problems to the applicant's attention.

([1]) OJ L 75, 21.3.2009, p. 15.

([2]) Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 11).

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

Action brought on 22 May 2009 — Rügen Fisch v OHIM — Schwaaner Fischwaren (SCOMBER MIX)

(Case T-201/09)

(2009/C 180/102)

Language in which the application was lodged: German

Parties

Applicant: Rügen Fisch AG (Sassnitz, Germany) (represented by: O. Spuhler and M. Geiz, 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: Schwaaner Fischwaren GmbH (Schwaandorf, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 in Case R 230/2007-4;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'SCOMBER MIX' for goods and services in classes 29 and 25 (Community trade mark No 3 227 031)

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Schwaaner Fischwaren GmbH

Decision of the Cancellation Division: dismissal of the application for a declaration of invalidity

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

Pleas in law: Infringement of Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009 ([1])) on the grounds that the Community trade mark 'SCOMBER MIX' is not purely descriptive.

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

Action brought on 25 May 2009 — Heinrich Deichmann-Schuhe GmbH& Co. v OHIM (Representation of a curved band with dotted lines)

(Case T-202/09)

(2009/C 180/103)

Language in which the application was lodged: Gemran

Parties

Applicant: Heinrich Deichmann-Schuhe GmbH& Co. (Essen, Germany) (represented by C. Rauscher, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 April 2009 in Case R 224/2007-4; and

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

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a curved band with dotted lines for goods in Classes 10 and 24 (International Registration designating the European Community, No W 0881226)

Decision of the Examiner: Refusal of protection

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 40/94 (now Article 7(1)(b) of Regulation No 207/2009 [1]) in finding the mark to be devoid of any distinctive character

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

Action brought on 27 May 2009 — Alder Capital v OHIM — Halder Holdings (ALDER CAPITAL)

(Case T-209/09)

(2009/C 180/104)

Language in which the application was lodged: English

Parties

Applicant: Alder Capital Ltd (Dublin, Ireland) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

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

Other party to the proceedings before the Board of Appeal: Halder Holdings BV (The Hague, The Netherlands)

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 20 February 2009 in case R 486/2008-2;

— Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should Halder Holdings become an intervening party in this case.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark "ALDER CAPITAL" for services in class 36

Proprietor of the Community trade mark: The applicant

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

Trade mark right of the party requesting the declaration of invalidity: Benelux trade mark registrations of the word mark "Halder" and "Halder Investments" for services in classes 35 and 36; International registration of the word mark "Halder" for services in classes 35 and 36; Unregistered trade and company names "Halder", "Halder Holdings", "Halder Investments" and "Halder Interest" used in the course of trade

Decision of the Cancellation Division: Declared the Community trade mark concerned invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

(1) Infringement of Articles 57 and 58 of Council Regulation 40/94 (which became Articles 58 and 59, respectively, of Council Regulation 207/2009), as well as Article 8(3) of Commission Regulation 216/96 [1] as the Board of Appeal wrongly accepted the request by the other party to the proceedings before it to re-examine the genuine use issue;

(2) Infringement of Article 52(1)(a) of Council Regulation 40/94 (which became Article 53(1)(a) of Council Regulation 207/2009) and of Article 55(1)(b) of Council Regulation 40/94 (which became Article 56(1)(b) of Council Regulation 207/2009) in conjunction with Articles 42(1) of Council Regulation 40/94 (which became Article 41(1) of Council Regulation 207/2009) and 8(2) of Council Regulation 40/94 (which became Article 8(2) of Council Regulation 207/2009), as the Board of Appeal failed to dismiss outright the application for a declaration of invalidity lodged by the other party to the proceedings before it, as far as it was based on earlier rights which have been transferred to a third party;

(3) Infringement of Articles 56(2) and (3) of Council Regulation 40/94 (which became Articles 57(2) and (3) of Council Regulation 207/2009) in conjunction with Article 15 of Council Regulation 40/94 (which became Article 15 of Council Regulation 207/2009) and of Article 10 of Council Directive 89/104/EEC [2] and Rule 40(6) in conjunction with Rule 22(3) and (4) of Commission Regulation No 2868/95 [3] as the Board of Appeal wrongly considered that the other party to the proceedings before it has proved genuine use of any of its earlier trade marks anywhere;

(4) Alternatively, infringement of Article 8(1)(b) of Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal wrongly found that there was a likelihood of confusion between the trade marks concerned.

[1] Commission Regulation (EC) No 216/96 of 5 February 1996 laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade marks and Designs) (OJ 1996 L 28, p. 11)

[2] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1)

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

Action brought on 28 May 2009 — Yorma's AG v OHIM — Norma Lebensmittelfilialbetrieb (YORMAS'S)

(Case T-213/09)

(2009/C 180/105)

Language in which the application was lodged: German

Parties

Applicant: Yorma's AG (Deggendorf, Germany) (represented by A. Weiß, 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: Norma Lebensmittelfilialbetrieb GmbH & Co. KG

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 February 2009 in Case R 1879/2007-1; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark composed of a word element 'YORMA'S' in blue and yellow for services in Classes 35 and 42 (Registration No 2 048 205)

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

Mark or sign cited in opposition: Word mark 'Norma' (Community trade mark No 213 769) for goods in Classes 3, 5, 8, 16, 18, 21, 25, 28, 29, 30, 31, 32, 33, 34, 35 and 36 and the commercial symbol 'NORMA' used in the course of trade in Germany, as well as the figurative sign 'NORMA'

Decision of the Examiner: Rejection of the opposition.

Decision of the Board of Appeal: Annulment of the appealed decision and rejection of the Community trade mark application.

Pleas in law: Infringement of Article 8(1)(b) and (4) of Council Regulation No 40/94 (now Article 8(1)(b) and (4) of Regulation (EC) No 207/2009 [1])

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

Action brought on 26 May 2009 — COR Sitzmöbel Helmut Lübke v OHIM — El Corte Inglés (COR)

(Case T-214/09)

(2009/C 180/106)

Language in which the application was lodged: German

Parties

Applicant: COR Sitzmöbel Helmut Lübke (Rheda-Wiedenbrück, Germany) (represented by Y-G. von Amsberg, 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: El Corte Inglés (Madrid, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of 4 March 2009 (R 376/2008-2); and

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word Mark 'COR' for goods in Clases 20 and 27 (International Registration No 839 721)

Proprietor of the mark or sign cited in the opposition proceedings: El Corte Inglés, SA

Mark or sign cited in opposition: Word Mark 'CADENACOR' (Community Trade mark No 2 362 598) for goods in Class 20

Decision of the Examiner: Refusal of Protection

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 (now Article 8(1)(b) of Regulation (EC) No 207/2009 [1]), in as much as there is no likelihood of confusion between the opposing marks.

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

Action brought on 3 June 2009 — Freistaat Sachsen v Commission

(Case T-215/09)

(2009/C 180/107)

Language of the case: German

Parties

Applicant: Freistaat Sachsen (represented by: U. Soltész und P. Melcher, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C (2009) 2010 final of 24 March 2009 (NN 4/2009 (ex N 361/2008) — Germany, Dresden Airport) pursuant to the first paragraph of Article 231 EC in so far as the Commission finds that the capital contribution granted by Germany for the reconstruction and extension of the runway at Dresden airport constitutes State aid for the purposes of Article 87(1) EC; and

— order the Commission to pay the applicant's costs pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance of the European Communities.

Pleas in law and main arguments

The applicant objects to Commission Decision C (2009) 2010 final of 24 March 2009 (NN 4/2009, ex N 361/2008) — Germany, Dresden Airport, by which the Commission approved Germany's own proposed capital contribution for the reconstruction and extension of the runway at Dresden airport as being a measure compatible with the common market under Article 87(3)(c) EC. It seeks the annulment of the decision in so far as the Commission categorised the measure at issue as State aid.

In support of its application the applicant submits, first, that, by applying the rules on State aid to the measure at issue in this case, the Commission acted contrary to the division of powers under the EC Treaty and to the principle that the Community can only act within the powers conferred on it enshrined in Article 5(1) EC. State financing of the construction of infrastructure accessible to all potential users under objective and non-discriminatory conditions is a general measure of economic policy which, as such, does not normally fall within the scope of the rules on State aid.

Second, the applicant objects to the fact that, in relation to the replacement of the old runway by a new one, Flughafen Dresden GmbH was deemed to be an undertaking within the meaning of Article 87(1) EC.

Furthermore, it is submitted that the Commission failed to take account of the fact that Flughafen Dresden GmbH is a State-owned single purpose vehicle with an organisational structure governed by private law which, accordingly, cannot be deemed to be a recipient of aid in so far as the State provides it with the resources required in order to perform its functions.

Fourth, the applicant complains that the 2005 guidelines [1] are contrary to primary Community law, being factually inapplicable and inherently contradictory where regional airport operators do not have the status of an undertaking. They were intended to supplement, not replace, the 1994 guidelines. [2] The 2005 guidelines also made the establishment of airports subject to the rules on aid. According to the applicant, in the previous guidelines of 1994 which continue to apply, this activity was expressly excluded from the application of the rules on State aid.

In the alternative, the applicant submits a fifth plea to the effect that the measure at issue satisfies all the conditions of the judgment in *Altmark Trans* [3] and ultimately, therefore, does not constitute aid.

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[1] Communication from the Commission — Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports, OJ 2005 C 312, p. 1.

[2] Communication from the Commission — Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ 1994 C 350, p. 5.

[3] Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 88 et seq.

Action brought on 3 June 2009 — Mitteldeutsche Flughafen and Flughafen Dresden v Commission

(Case T-217/09)

(2009/C 180/108)

Language of the case: German

Parties

Applicants: Mitteldeutsche Flughafen AG (Leipzig, Germany) and Flughafen Dresden GmbH (Dresden, Germany) (represented by: M. Núñez-Müller und M. le Bell, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1 of Commission Decision C (2009) 2010 final of 24 March 2009 pursuant to the first paragraph of Article 231 EC in so far as the Commission deemed the financing of the reconstruction and extension of the runway at Dresden airport to be State aid;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants object to Commission Decision C (2009) 2010 final of 24 March 2009 (NN 4/2009, ex N 361/2008) — Germany, Dresden Airport, by which the Commission approved Germany's own proposed capital contribution for the reconstruction and extension of the runway at Dresden airport as being a measure compatible with the common market under Article 87(3)(c) EC. They seek the annulment of the decision in so far as the Commission categorised the measure at issue as State aid.

In support of their application, the applicants submit, first, that the Commission acted contrary to the division of powers and the principle that the Community can only act within the powers conferred on it enshrined in Article 5 EC, as it is not responsible for reviewing the measure at issue, according to the division of powers of the EC. Planning powers and responsibility for infrastructure in respect of airport capacity fall within the original competences of the Member States of the European Union.

By their second plea, the applicants allege infringement of Article 87 EC. They submit that, in the 1994 guidelines, [1] the Commission explicitly ruled out the application of the Treaty rules on State aid to measures relating to airport infrastructure. Those guidelines, the applicants submit, continue to be applicable, because they are not contrary to primary Community law as interpreted by the Community judicature, nor have they been effectively repealed by the Commission. In particular, the 1994 guidelines have not been repealed by the 2005 guidelines. [2] In the alternative, the applicants submit that the 2005 guidelines are not applicable.

Furthermore, Flughafen Dresden GmbH should not be categorised as an undertaking within the meaning of Article 87(1) EC so far as the measure at issue is concerned, but should be regarded as a public authority. Moreover, there is no benefit, for the purposes of the rules on State aid, because the standard applied by the Commission — that of the private investor in a market economy — cannot be applied in relation to airport infrastructure.

By their third plea, the applicants submit that the decision should be annulled to the extent applied for also on the grounds that the Commission has infringed essential procedural requirements, the prohibition on retroactivity and the protection of legitimate expectations, and that the decision is inherently contradictory.

[1] Communication from the Commission — Application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector, OJ 1994 C 350, p. 5.

[2] Communication from the Commission — Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports, OJ 2005 C 312, p. 1.

Action brought on 28 May 2009 — Italy v Commission and EPSO

(Case T-218/09)

(2009/C 180/109)

Language of the case: Italian

Parties

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

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

Form of order sought

— Annul the notice of admission tests and notice of open competition EPSO/AST/91/09 to form a reserve list for the recruitment of assistants (AST 3) in the offset printing field;

— annul the notice of admission tests and notice of open competition EPSO/AST/92/09 to form a reserve list for the recruitment of assistants (AST 3) in the pre-press field.

Pleas in law and main arguments

The applicant challenges the notices of open competition referred to above in so far as some of the tests that are required to be taken must necessarily be taken in German, English of French.

In support of its challenge, the Italian Republic relies on forward the following grounds:

— infringement of Article 290 EC, which confers exclusive competence on the Council, acting unanimously, to determine the rules governing the languages of Community acts. The applicant submits in that connection that in the case at issue EPSO effectively assumed the role of the Council in determining the rules governing the languages of the two competitions by requiring that, as a second language and as the language in which the admission tests, two out of three of the written tests and the oral tests were to be taken, the candidates were obliged to choose between English, French and German, all the other languages of the Member States being excluded;

— infringement of Article 12 EC, Article 22 of the Charter of Fundamental Rights of the European Union, Articles 1 and 6 of Regulation No 1/58 [1] and Article 28 of the Staff Regulations. It is submitted in this regard that all the national languages of the Member States have the status of official languages and working languages of European

Union. A notice of open competition cannot therefore arbitrarily limit to just three the languages which candidates may choose from as a second language and as the language in which correspondence and the competition tests will be conducted. Moreover, Article 28 of the Staff Regulations requires candidates to have knowledge of a second Community language in addition to their own national language and does not confer any special status on English, French or German.

Finally, the applicant pleads infringement of Article 253 EC and of the principle of the protection of legitimate expectation.

([1]) Regulation No 1determining the languages to be used by the European Economic Community (OJ English Special Edition, 1952-1958, p. 59)

Action brought on 3 June 2009 — ERGO Versicherungsgruppe v OHIM — Société de Développement et de Recherche Industrielle (ERGO)

(Case T-220/09)

(2009/C 180/110)

Language in which the application was lodged: German

Parties

Applicant: ERGO Versicherungsgruppe (Düsseldorf, Germany) (represented by: V. von Bomhard, A Renck, T. Dolde and J. Pause, 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: Société de Développement et de Recherche Industrielle SAS (Chenôve, France)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 in Case No R 515/2008-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'ERGO' for goods and services in Classes 3 and 5 (registration application No 3 292 638)

Proprietor of the mark or sign cited in the opposition proceedings: Société de Développement et de Recherche Industrielle SAS

Mark or sign cited in opposition: the word mark 'URGO' for goods in Classes 3 and 5 (Community trade mark No 989 863)

Decision of the Opposition Division: opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) 207/2009 ([1])) on the grounds that there was no likelihood of confusion between the two opposing marks.

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

Action brought on 3 June 2009 — ERGO Versicherungsgruppe v OHIM — Société de Développement et de Recherche Industrielle (ERGO Group)

(Case T-221/09)

(2009/C 180/111)

Language in which the application was lodged: German

Parties

Applicant: ERGO Versicherungsgruppe AG (Düsseldorf, Germany) (represented by: V. von Bomhard, A. Renck, T.Dolde and J. Pause, 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: Société de Développement et de Recherche Industrielle SAS (Chenôve, France)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 March 2009 in Case R 520/2008-4; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ERGO' for goods and services in Classes 3 and 5 (Application No 3 296 449)

Proprietor of the mark or sign cited in the opposition proceedings: Société de Développement et de Recherche Industrielle SAS

Mark or sign cited in opposition: The word mark 'URGO' (Community trade mark No 989 863) for goods an services in Classes 3 and 5

Decision of the Opposition Division: Partial acceptance of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: The contested decision infringes Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009 ([1])) in as much as there is no likelihood of confusion between the opposing marks.

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

Action brought on 1 June 2009 — INEOS Healthcare v OHIM — Teva Pharmaceutical Industries (ALPHAREN)

(Case T-222/09)

(2009/C 180/112)

Language in which the application was lodged: English

Parties

Applicants: INEOS Healthcare Ltd (Warrington, United Kingdom) (represented by: S. Malynicz, Barrister and A. Smith, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Teva Pharmaceutical Industries Ltd (Jerusalem, Israel)

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 24 March 2009 in case R 1897/2007-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay their own costs, as well as those of the applicant.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "ALPHAREN", for goods in class 5

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

Mark or sign cited: Hungarian trade mark registration of the word mark "ALPHA D3" for goods in class 5; Lithuanian trade mark registration of the word mark "ALPHA D3" for goods in class 5; Latvian trade mark registration of the word mark "ALPHA D3" for goods in class 5

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The Board of Appeal failed to take account of the fact that the other party to the proceedings before it had failed to adduce evidence of similarity between the respective goods; Infringement of Article 75 of Council Regulation 207/2009 and the right to be heard as the Board of Appeal wrongly based material parts of its decision on evidence on which the applicant was not provided with an opportunity to present its comments; Infringement of Article 76 of Council Regulation 207/2009 as the Board of Appeal, in proceedings relating to relative grounds for refusal of registration, failed to restrict itself to an examination of the facts, evidence and arguments provided by the parties and the relief sought; Infringement of Article 8(1)(b) of Council Regulation 207/2009 as the Board of Appeal erred in relation to the identification of the relevant public and overall in its assessment of the likelihood of confusion.

Action brought on 8 June 2009 — CLARO v OHIM — Telefónica (Claro)

(Case T-225/09)

(2009/C 180/113)

Language in which the application was lodged: Spanish

Parties

Applicant: CLARO, SA (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

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

Other party to the proceedings before the Board of Appeal: Telefónica, SA (Madrid, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 26 February 2009, in Case R 1079/2008-2, remit the case to that board for it to decide on it afresh, and order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: BCP S/A, now trading as CLARO, S.A., the applicant.

Community trade mark concerned: Three-dimensional trade mark containing the word element "CLARO" (application for registration No 5 229 241), for goods and services in Classes 9 and 38.

Proprietor of the mark or sign cited in the opposition proceedings: Telefónica S.A.

Mark or sign cited in opposition: earlier Community word mark "CLARO" (No 2 017 341), for, inter alia, goods and services in Classes 9 and 38.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed as inadmissible, since the applicant had not filed the relevant statement of grounds for the appeal.

Pleas in law: The applicant submits that the contested decision is contrary to the principle of functional continuity between the Opposition Division and the Board of Appeal. It argues that it was obvious that its appeal was against the Opposition Division's decision in its entirety, and that the appeal was based on the misinterpretation by the Opposition Division of Article 8(1)(b) of Regulation (EC) No 207/2009 on the Community trade mark.

Action brought on 11 June 2009 — United States Polo Association v OHIM — Textiles CMG (U.S. POLO ASSN.)

(Case T-228/09)

(2009/C 180/114)

Language in which the application was lodged: English

Parties

Applicants: United States Polo Association (Lexington, United States) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

Other party to the proceedings before the Board of Appeal: Textiles CMG, SA (Onteniente, Valencia, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 March 2009 in case R 886/2008-4; and

— Order the defendant to pay its own costs and those of the applicant, and, should the other party before the Board of Appeal intervene in the proceedings, order it to pay its own costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "U.S. POLO ASSN.", for goods in classes 9, 20, 21, 24 and 27

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

Mark or sign cited: Spanish trade mark registration of the word mark "POLO-POLO" for goods in class 24; Community trade mark registration of the word mark "POLO-POLO" for goods in classes 24, 25 and 39

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 (which became Article 8(1)(b) of Council Regulation 207/2009) as the Board of Appeal erred in its finding that there is a likelihood of confusion between the trade marks concerned.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 7 April 2009 — Roumimper v Europol

(Case F-41/09)

(2009/C 180/115)

Language of the case: Dutch

Parties

Applicant: Jaques Pierre Roumimper (Zoetermeer, Netherlands) (represented by: P. de Casparis and D. Dane, lawyers.)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 12 June 2008 informing the applicant that it was not possible to offer him a permanent post, and also the decision of 7 January 2009 rejecting the complaint brought against the former decision.

Form of order sought

— Annul the decision of 12 June 2008 whereby the defendant informed the applicant that it could not offer him permanent employment and also the decision made on his complaint on 7 January 2009 that the grounds of complaint brought by the applicant against the decision of 12 June 2008 were unfounded;

— Order Europol to pay the costs.

Action brought on 9 April 2009 — Esneau-Kappé v Europol

(Case F-42/09)

(2009/C 180/116)

Language of the case: Dutch

Parties

Applicant: Anne Esneau-Kappé (The Hague, Netherlands) (represented by: P. de Casparis and D. Dane, lawyers)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 12 June 2008 informing the applicant that it was not possible to offer her a permanent post, and also the decision of 7 January 2009 rejecting the complaint brought against the former decision.

Form of order sought

— Annul the decision of 12 June 2008 whereby the defendant informed the applicant that it could not offer her permanent employment and also the decision made on her complaint on 7 January 2009 that the grounds of complaint brought by the applicant against the decision of 12 June 2008 were unfounded;

— Order Europol to pay the costs.

Action brought on 15 April 2009 — van Heuckelom v Europol

(Case F-43/09)

(2009/C 180/117)

Language of the case: Dutch

Parties

Applicant: Carlo van Heuckelom (the Hague, the Netherlands) (represented by: J. Damminghs and D Dane, lawyers)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 14 July 2008 awarding the applicant a single step of classification in grade and the decision of 19 January 2009 rejecting the complaint brought against the first decision.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 19 January 2009 rejecting the applicant's complaint against the decision of 14 July 2008, and annul also that latter decision of 14 July 2008 awarding the applicant a singe step from 1 April 2008;

— order Europol to pay the costs.

Action brought on 17 April 2009 — Knöll v Europol

(Case F-44/09)

(2009/C 180/118)

Language of the case: Dutch

Parties

Applicant: Brigitte Knöll (Hochheim am Main, Germany) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 12 June 2008 informing the applicant that it was impossible to offer her a permanent post, and the decision of 7 January 2009 rejecting the complaint brought against the first decision.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 12 June 2008 by which the defendant informed the applicant that it could not offer her a permanent post and the decision of 7 January 2009 in response to a complaint, stating that the applicant's objections to the decision of 12 June 2008 were unfounded;

— order Europol to pay the costs.

Action brought on 20 May 2009 — J v Commission

(Case F-53/09)

(2009/C 180/119)

Language of the case: French

Parties

Applicant: J (London, United Kingdom) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's claim that the disease from which she is suffering should be recognised as an occupational disease, and of the decision to charge her for the fees and costs of the doctor which she designated and 50 % of the fees and incidental costs of the third doctor on the medical committee.

Form of order sought

The applicant claims that the Tribunal should:

— annul the Commission's decision rejecting the applicant's claim that the disease from which she is suffering and which prevents her from carrying out her duties should be recognised as an occupational disease within the meaning of Article 73 of the Staff Regulations;

— annul the Commission's decision to charge her for the fees and costs of the doctor which she designated and for 50 % of the fees and incidental costs of the third doctor on the medical committee;

— order the Commission to pay the applicant a symbolic sum of EUR one to compensate for the non-material harm suffered;

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

Action brought on 26 May 2009 — Maxwell v Commission

(Case F-55/09)

(2009/C 180/120)

Language of the case: French

Parties

Applicant: Allan Maxwell (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of the claim for compensation for the loss suffered by the applicant during his leave on personal grounds taken to perform the duties of 'EU Senior Adviser' at the Korean Peninsula Energy Development Organization (KEDO), loss resulting from the failure to reimburse accommodation and education expenses.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the appointing authority of 2 September 2008 rejecting the applicant's claim for compensation;

— order the Commission to pay the applicant EUR 132 900 by way of reimbursement for accommodation and education expenses which he incurred in the course of his duties as EU Senior Advisor at KEDO;

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

Action brought on 2 June 2009 — Dionisio Galao v Committee of the Regions

(Case F-57/09)

(2009/C 180/121)

Language of the case: French

Parties

Applicant: Ana Maria Dionisio Galao (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Committee of the Regions

Subject-matter and description of the proceedings

Application for annulment of the defendant's decision fixing the applicant's conditions of employment as a member of the contract staff under Article 3b of the CEOS, in so far as it limits the duration of the contract to 3 months, and annulment of two addendums to the applicant's contract of employment as a member of the temporary staff, amending the date of expiry of that contract.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of the Committee of the Regions of 19 December 2008 in so far as it fixes the applicant's conditions of employment as a member of the contract staff under Article 3b of the CEOS and, specifically, in so far as it limits the duration of that contract to 3 months;

— annul the decision of the Committee of the Regions of 23 October 2008 in so far as it amends, by addendum No 9 to the contract, the applicant's conditions of employment as a member of the temporary staff under the second paragraph of Article 8 of the CEOS and, specifically, in so far as it postpones the date of expiry to 31 December 2008;

— annul the decision of the Committee of the Regions of 22 September 2008 in so far as it amends, by addendum No 8 to the contract, the applicant's conditions of employment as a member of the temporary staff under the second paragraph of Article 8 of the CEOS and, specifically, in so far as it amends the date of expiry of the contract by postponing it from 30 September to 31 December 2008;

— order the Committee of the Regions to pay the costs.

Action brought on 10 June 2009 — Pascual García v Commission

(Case F-58/09)

(2009/C 180/122)

Language of the case: Italian

Parties

Applicant: Pascual García (Madrid, Spain) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Application for annulment of the Commission's decision to recruit the applicant as a technical assistant, with effect from 10 March 2009, with the classification AST3/Grade 2, in so far as it fails to confer on him the rights and remuneration necessary to ensure correct implementation of the judgment of the Civil Service Tribunal in Case F-145/06 *Pascual García* v *Commission* [2008] ECR-SC I-A-0000 and II-0000.

Form of order sought

— Annul the Commission's decision to recruit the applicant as a technical assistant, with effect from 10 March 2009, with the classification AST3/Grade 2, in so far as it fails to confer on him the rights and remuneration necessary to ensure correct implementation of the judgment of the Civil Service Tribunal in Case F-145/06 *Pascual García* v *Commission*, and in particular:

  (a) in so far as it fails to provide that the applicant's qualifying period of service is to be calculated from 1 April 2006 for the purposes of advancement within the classification and the calculation of pension rights and all other relevant purposes;

  (b) in so far as it denies the applicant's right to the expatriation allowance in Article 4(1) of Annex VII to the Staff Regulations;

— annul, in so far as necessary, the decision of 10 March 2009 to reject the applicant's complaint of the same date seeking to secure the rights and remuneration necessary to ensure correct implementation of the judgment of the Civil Service Tribunal in Case F-145/06 *Pascual García* v *Commission*, including the emoluments and various allowances that have not been paid, together with default interest;

— in the alternative, order the Commission to pay compensation for damages corresponding to the non-recognition of the expatriation allowance;

— order the defendant to pay the costs.

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