ISSN 1725-2423

Official Journal of the European Union

C 113

English edition

Volume 53

1 May 2010

Information and Notices

Notice No | Contents | Page

EN

Price:
EUR 4

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

General Court

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE

(2010/C 113/01)

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

OJ C 100, 17.4.2010

Past publications

OJ C 80, 27.3.2010

OJ C 63, 13.3.2010

OJ C 51, 27.2.2010

OJ C 37, 13.2.2010

OJ C 24, 30.1.2010

OJ C 11, 16.1.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 4 March 2010 — Commission of the European Communities v Portuguese Republic

(Case C-38/06) [1]

(Failure of a Member State to fulfil obligations — Duty-free imports of goods for specifically military use)

(2010/C 113/02)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: G. Wilms and M. Afonso, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Â. Seiça Neves, J. Gomes and C. Guerra Santos, acting as Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented by J. Molde, acting as Agent), Hellenic Republic (represented by E.-M. Mamouna and K. Boskovits, acting as Agents), Italian Republic (represented by I. Bruni, acting as Agent, assisted by G. De Bellis, avvocato dello Stato), Republic of Finland (represented by A. Guimaraes-Purokoski, acting as Agent)

Re:

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

Operative part of the judgment

The Court:

1. *Declares that by refusing to calculate and pay to the Commission of the European Communities own resources which were not collected in the period from 1 January 1998 until 31 December 2002 inclusive, in relation to imports of equipment and goods for specifically military use, and by refusing to pay default interest arising from the failure to pay those own resources to the Commission of the European Communities, the Portuguese Republic has failed to fulfil its obligations, respectively, under Articles 2 and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, in so far as the period from 1 January 1998 to 30 May 2000 inclusive is concerned, and under the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, in so far as the period from 31 May 2000 to 31 December 2002 is concerned;*

2. *Orders the Portuguese Republic to pay the costs;*

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

---

[1] OJ C 74, 25.3.2006.

Judgment of the Court (Fourth Chamber) of 3 December 2009 — European Commission v Federal Republic of Germany

(Case C-424/07) [1]

(Failure of a Member State to fulfil obligations — Electronic communications — Directive 2002/19/EC — Directive 2002/21/EC — Directive 2002/22/EC — Networks and services — National rules — New markets)

(2010/C 113/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Braun and A. Nijenhuis, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma, Agent, C. Koenig, Professor and S. Loetz, Rechtsanwalt)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 8(4) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7), Articles 6, 7, 8(1), 15(3) and 16 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), as well as Article 17(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51) — Definition, analysis and regulation of new markets — National provisions defining 'new markets' in general and laying down restrictive conditions concerning regulation of those markets by the national regulatory authority as well as use of the consultation procedure provided for in Community law in connection with the definition and analysis of those markets

Operative part of the judgment

The Court:

1. *Declares that, by adopting Paragraph 9a of the Law on Telecommunications (Telekommunikationsgesetz), of 22 June 2004, the Federal Republic of Germany has failed to fulfil its obligations under Article 8(4) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), Articles 6 to 8(1) and (2), 15(3) and 16 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), and Article 17(2) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);*

2. *Orders the Federal Republic of Germany to pay the costs.*

[1] OJ C 283, 24.11.2007.

Judgment of the Court (Grand Chamber) of 9 March 2010 — European Commission v Federal Republic of Germany

(Case C-518/07) [1]

(Failure of a Member State to fulfil obligations — Directive 95/46/EC — Protection of individuals with regard to the processing of personal data and the free movement of such data — Article 28(1) — National supervisory authorities — Independence — Administrative scrutiny of those authorities)

(2010/C 113/04)

Language of the case: German

Parties

Applicant: European Commission (represented by: C. Docksey, C. Ladenburger and H. Krämer, Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and J. Möller, Agents)

Intervener in support of the applicant: European Data Protection Supervisor, (represented by: H. Hijmans and A. Scirocco, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of the second sentence of Article 28(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Obligation

of Member States to ensure that the national supervisory authorities responsible for monitoring the processing of personal data act with complete independence in exercising their functions — Submission to State monitoring of the supervisory authorities of the Länder responsible for monitoring the processing of personal data in the private sector

Operative part of the judgment

The Court:

1. *Declares that, by making the authorities responsible for monitoring the processing of personal data by non-public bodies and undertakings governed by public law which compete on the market (öffentlich-rechtliche Wettbewerbsunternehmen) in the different Länder subject to State scrutiny, and by thus incorrectly transposing the requirement that those authorities perform their functions 'with complete independence', the Federal Republic of Germany failed to fulfil its obligations under the second subparagraph of Article 28(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;*

2. *Orders the Federal Republic of Germany to pay the costs of the Commission;*

3. *Orders the European Data Protection Supervisor (EDPS) to bear his own costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the Court (Grand Chamber) of 2 March 2010 (reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany)) — Janko Rottmann v Freistaat Bayern

(Case C-135/08) ([1])

(Citizenship of the Union — Article 17 EC — Nationality of one Member State acquired by birth — Nationality of another Member State acquired by naturalisation — Loss of original nationality by reason of that naturalisation — Loss with retroactive effect of nationality acquired by naturalisation on account of deception practised in that acquisition — Statelessness leading to loss of the status of citizen of the Union)

(2010/C 113/05)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Janko Rottmann

Defendant: Freistaat Bayern

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht (Germany) — Interpretation of Article 17 EC — Acquisition of the nationality of a Member State entailing the definitive loss of the nationality of the Member State of origin — Loss of the new nationality with retroactive effect as a result of deception in connection with its acquisition — Statelessness of the person concerned with the consequence of loss of citizenship of the Union

Operative part of the judgment

It is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.

([1]) OJ C 171, 05.07.2008.

Judgment of the Court (Grand Chamber) of 2 March 2010 (references for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Aydin Salahadin Abdulla (C-175/08), Kamil Hasan (C-176/08), Ahmed Adem, Hamrin Mosa Rashi (C-178/08), Dler Jamal (C-179/08) v Bundesrepublik Deutschland

(Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) ([1])

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or for subsidiary protection status — Classification as a 'refugee' — Article 2(c) — Cessation of refugee status — Article 11 — Change of circumstances — Article 11(1)(e) — Refugee — Unfounded fear of persecution — Assessment — Article 11(2) — Revocation of refugee status — Proof — Article 14(2))

(2010/C 113/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Aydin Salahadin Abdulla (C-175/08), Kamil Hasan (C-176/08), Ahmed Adem, Hamrin Mosa Rashi (C-178/08), Dler Jamal (C-179/08),

Defendant: Bundesrepublik Deutschland

Re:

References for a preliminary ruling — Bundesvewaltungsgericht — Interpretation of Article 11(1) (e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) — Decisions of the national authority putting an end to the refugee status of the parties concerned solely on the basis of the finding that their fear of persecution no longer exists, without examining additional conditions concerning the political situation in their country of origin — Iraqi citizens whose refugee status was withdrawn following the fall of Saddam Hussein's regime

Operative part of the judgment

1. *Article 11(1)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:*

   — *refugee status ceases to exist when, having regard to a change of circumstances of a significant and non-temporary nature in the third country concerned, the circumstances which justified the person's fear of persecution for one of the reasons referred to in Article 2(c) of Directive 2004/83, on the basis of which refugee status was granted, no longer exist and that person has no other reason to fear being 'persecuted' within the meaning of Article 2(c) of Directive 2004/83;*

   — *for the purposes of assessing a change of circumstances, the competent authorities of the Member State must verify, having regard to the refugee's individual situation, that the actor or actors of protection referred to in Article 7(1) of Directive 2004/83 have taken reasonable steps to prevent the persecution, that they therefore operate, inter alia, an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the national concerned will have access to such protection if he ceases to have refugee status;*

   — *the actors of protection referred to in Article 7(1)(b) of Directive 2004/83 may comprise international organisations controlling the State or a substantial part of the territory of the State, including by means of the presence of a multinational force in that territory.*

2. *When the circumstances which resulted in the granting of refugee status have ceased to exist and the competent authorities of the Member State verify that there are no other circumstances which could justify a fear of persecution on the part of the person concerned either for the same reason as that initially at issue or for one of the other reasons set out in Article 2(c) of Directive 2004/83, the standard of probability used to assess the risk stemming from those other circumstances is the same as that applied when refugee status was granted.*

3. *In so far as it provides indications as to the scope of the evidential value to be attached to previous acts or threats of persecution, Article 4(4) of Directive 2004/83 may apply when the competent authorities plan to withdraw refugee status under Article 11(1)(e) of that directive and the person concerned, in order to demonstrate that there is still a well-founded fear of persecution, relies on circumstances other than those as a result of which he was recognised as being a refugee. However, that may normally be the case only when the reason for persecution is different from that accepted at the time when refugee status was granted and only when there are earlier acts or threats of persecution which are connected with the reason for persecution being examined at that stage.*

([1]) OJ C 197, 2.8.2008.
OJ C 180, 1.8.2009.

Judgment of the Court (Third Chamber) of 4 March 2010 — European Commission v French Republic

(Case C-197/08) [1]

(Failure of a Member State to fulfil obligations — Directive 95/59/EC — Taxes other than turnover taxes which affect the consumption of manufactured tobacco — Article 9(1) — Free determination, by manufacturers and importers, of the maximum retail selling prices of their products — National legislation imposing a minimum retail selling price for cigarettes — National legislation prohibiting the sale of tobacco products 'at a promotional price which is contrary to public health objectives' — Concept of 'national systems of legislation regarding the control of price levels or the observance of imposed prices' — Justification — Protection of public health — World Health Organisation Framework Convention on Tobacco Control)

(2010/C 113/07)

Language of the case: French

Parties

Applicant: European Commission (represented by: R. Lyal and W. Mölls, Agents)

Defendant: French Republic (represented by: G. de Bergues, J. S. Pilczer, J.-C. Gracia and B. Beaupère-Manokha, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) — Fixing of minimum prices — Hindrance to free movement of goods — Protection of public health — Relevance of the World Health Organisation Framework Convention on Tobacco Control (OJ 2004 L 213, p. 8)

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force a system of minimum prices for the retail sale of cigarettes released for consumption in France and a prohibition on selling tobacco products 'at a promotional price which is contrary to public health objectives', the French Republic has failed to fulfil its obligations under Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 2002/10/EC of 12 February 2002;*

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

[1] OJ C 183, 19.7.2008.

Judgment of the Court (Third Chamber) of 4 March 2010 — European Commission v Republic of Austria

(Case C-198/08) [1]

(Failure of a Member State to fulfil obligations — Directive 95/59/EC — Taxes other than turnover taxes which affect the consumption of manufactured tobacco — Article 9(1) — Free determination, by manufacturers and importers, of the maximum retail selling prices of their products — National legislation imposing a minimum retail selling price for cigarettes and a minimum retail selling price for fine-cut tobacco — Justification — Protection of public health — World Health Organisation Framework Convention on Tobacco Control)

(2010/C 113/08)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls and R. Lyal, Agents, Agents)

Defendant: Republic of Austria (represented by: E. Riedl, J. Bauer and C. Pesendorfer, Agents)

Re:

Failure by a Member State to fulfil obligations — Infringement of Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) — Fixing of the minimum retail selling prices for manufactured tobacco by the public authorities

Operative part of the judgment

The Court:

1. *Declares that, by adopting and maintaining in force legislation by which the public authorities fix minimum prices for the retail sale of cigarettes and fine-cut tobacco for the rolling of cigarettes, the Republic of Austria has failed to fulfil its obligations under Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 2002/10/EC of 12 February 2002;*

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

[1] OJ C 197, 2.8.2008.

Judgment of the Court (Third Chamber) of 4 March 2010 — European Commission v Ireland

(Case C-221/08) [1]

(Failure of a Member State to fulfil obligations — Directive 95/59/EC — Taxes other than turnover taxes which affect the consumption of manufactured tobacco — Article 9(1) — Free determination, by manufacturers and importers, of the maximum retail selling prices of their products — National legislation imposing a minimum retail selling price for cigarettes — Justification — Protection of public health — World Health Organisation Framework Convention on Tobacco Control)

(2010/C 113/09)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal and W. Mölls, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) — National law imposing minimum and maximum retail prices for manufactured tobacco

Operative part of the judgment

The Court:

1. *Declares that, by imposing minimum retail prices for cigarettes, Ireland has failed to fulfil its obligations under Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 2002/10/EC of 12 February 2002;*

2. *Declares that, by not providing the information required by the European Commission in order to enable it to fulfil its task of monitoring compliance with Directive 95/59, as amended by Directive 2002/10, Ireland has failed to fulfil its obligations under Article 10 EC;*

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

4. *Orders Ireland to pay the costs.*

---

[1] OJ C 209, 15.8.2008.

Judgment of the Court (Second Chamber) of 4 March 2010 — European Commission v French Republic

(Case C-241/08) [1]

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Article 6(2) and (3) — Incorrect transposition — Special areas of conservation — Significant effect of a project on the environment — 'Non-disturbing' nature of certain activities — Assessment of the effects on the environment)

(2010/C 113/10)

Language of the case: French

Parties

Applicant: European Commission (represented by D. Recchia and J.-B. Laignelot, Agents)

Defendant: French Republic (represented by G. de Bergues and A.-L. During, Agents)

Re:

Failure of a Member State to fulfil its obligations — Incorrect transposition of Articles 6(2) and 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7)

Operative part of the judgment

The Court:

1. *Declares that,*

   — *first, by providing generally that fishing, aquaculture, hunting and other hunting-related activities practised under the conditions and in the areas authorised by the laws and regulations in force do not constitute activities causing disturbance or having such an effect, and*

   — *second, by systematically exempting works and developments provided for in Natura 2000 contracts from the procedure of assessment of their implications for the site, and*

— *by systematically exempting works and development programmes and projects which are subject to a declaratory system from that procedure,*

the French Republic has failed to fulfil its obligations under Article 6(2) and Article 6(3) respectively of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

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

3. *Orders the French Republic to pay two thirds of the costs and the European Commission to pay the other third.*

(1) OJ C 197, 02.08.2008.

Judgment of the Court (Fourth Chamber) of 4 March 2010 — Commission of the European Communities v Italian Republic

(Case C-297/08) (1)

(Failure of a Member State to fulfil obligations — Environment — Directive 2006/12/EC — Articles 4 and 5 — Waste management — Management plan — Integrated and adequate network of disposal installations — Danger for human health or the environment — Force majeure — Civil disturbances — Organised crime)

(2010/C 113/11)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Zadra, D. Recchia and J.-B. Laignelot, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Aiello, avvocato dello Stato)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent and K. Bacon, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) — Region of Campania

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste;*

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

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

(1) OJ C 223, 30.8.2008.

Judgment of the Court (Grand Chamber) of 9 March 2010 (reference for a preliminary ruling from the Tribunale amministrativo regionale della Sicilia — Italy) — Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA, Syndial SpA v Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale No 8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA,

(Case C-378/08) (1)

('Polluter pays' principle — Directive 2004/35/EC — Environmental liability — Applicability ratione temporis — Pollution occurring before the date laid down for implementation of that directive and continuing after that date — National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution — Requirement for fault or negligence — Requirement for a causal link — Public works contracts)

(2010/C 113/12)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale della Sicilia

Parties to the main proceedings

Applicants: Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA, Syndial SpA

Defendants: Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale N°8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA

Intervenering parties: ENI Divisione Exploration and Production SpA, ENI SpA, Edison SpA

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale della Sicilia — Interpretation of 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 142, p. 56) and the 'polluter pays' principle — National legislation which allows the authorities to require private undertakings to implement rehabilitation measures, irrespective of whether or not any investigation has been carried out to identify the party responsible for the pollution in question.

Operative part of the judgment

Where, in a situation entailing environmental pollution, the conditions for the application ratione temporis and/or ratione materiæ of 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 are not met, such a situation is governed by national law, in compliance with the rules of the Treaty, and without prejudice to other secondary legislation.

Directive 2004/35 does not preclude national legislation which allows the competent authority acting within the framework of the directive to operate on the presumption, also in cases involving diffuse pollution, that there is a causal link between operators and the pollution found on account of the fact that the operators' installations are located close to the polluted area. However, in accordance with the 'polluter pays' principle, in order for such a causal link thus to be presumed, that authority must have plausible evidence capable of justifying its presumption, such as the fact that the operator's installation is located close to the pollution found and that there is a correlation between the pollutants identified and the substances used by the operator in connection with his activities.

Articles 3(1), 4(5) and 11(2) of Directive 2004/35 must be interpreted as meaning that, when deciding to impose measures for remedying environmental damage on operators whose activities fall within Annex III to the directive, the competent authority is not required to establish fault, negligence or intent on the part of operators whose activities are held to be responsible for the environmental damage. On the other hand, that authority must, first, carry out a prior investigation into the origin of the pollution found, and it has a discretion as to the procedures, means to be employed and length of such an investigation. Second, the competent authority is required to establish, in accordance with national rules on evidence, a causal link between the activities of the operators at whom the remedial measures are directed and the pollution.

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Grand Chamber) of 9 March 2010 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia (Italy)) — Raffineri Mediterranee SpA (ERG) (C-379/08), Polimeri Europa SpA, Syndial SpA v Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione Siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale No 8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA, ENI SpA (C-380/08) v Ministero Ambiente e Tutela del Territorio e del Mare, Ministero dello Sviluppo economico, Ministero della Salute, Regione siciliana, Istituto superiore di Sanità, Agenzia per la Protezione dell'Ambiente e per i Servizi tecnici, Commissario delegato per l'Emergenza rifiuti e la Tutela delle Acque

(Joined Cases C-379/08 and C-380/08) ([1])

('Polluter pays' principle — Directive 2004/35/EC — Environmental liability — Applicability ratione temporis — Pollution occurring before the date laid down for implementation of that directive and continuing after that date — Remedial measures — Duty to consult the undertakings concerned — Annexe II)

(2010/C 113/13)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicants: Raffineri Mediterranee SpA (ERG) (C-379/08), Polimeri Europa SpA, Syndial SpA (C-379/08), ENI SpA (C-380/08)

Defendants: Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione Siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale N° 8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA

Intervening parties: ENI Divisione Exploration and Production SpA, ENI SpA, Edison SPA (C-379/08), Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA (C-380/08)

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale della Sicilia (Italy) — Interpretation of Article 7 of and Annex II to 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 142, p. 56) — Remedial measures — Works on the environmental matrices — National legislation which allows the authorities to require, without assessing the site-specific conditions, that actions be taken which are different from and go further than those originally chosen at the conclusion of an appropriate investigation carried out an a consultative basis which have already been approved and put into effect and are being implemented — Priolo Site of National Interest

Operative part of the judgment

1. *Articles 7 and 11(4) of 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, in conjunction with Annex II to the directive, must be interpreted as permitting the competent authority to alter substantially measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already implemented or begun to be put into effect. However, in order to adopt such a decision, that authority:*

— *is required to give the operators on whom such measures are imposed the opportunity to be heard, except where the urgency of the environmental situation requires immediate action on the part of the competent authority;*

— *is also required to invite, inter alia, the persons on whose land those measures are to be carried out to submit their observations and to take them into account; and*

— *must take account of the criteria set out in Section 1.3.1. of Annex II to Directive 2004/35 and state in its decision the grounds on which its choice is based, and, where appropriate, the grounds which justify the fact that there was no need for a detailed examination in the light of those criteria or that it was not possible to carry out such an examination due, for example, to the urgency of the environmental situation.*

2. *In circumstances such as those in the main proceedings, Directive 2004/35 does not preclude national legislation which permits the competent authority to make the exercise by operators at whom environmental recovery measures are directed of the right to use their land subject to the condition that they carry out the works required by the authority, even though that land is not affected by those measures because it has already been decontaminated or has never been polluted. However, such a measure must be justified by the objective of preventing a deterioration of the environmental situation in the area in which those measures are implemented or, pursuant to the precautionary principle, by the objective of preventing the occurrence or resurgence of further environmental damage on the land belonging to the operators which is adjacent to the whole shoreline at which those remedial measures are directed.*

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Third Chamber) of 11 March 2010 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio — Italy) — Attanasio Group Srl v Comune di Carbognano

(Case C-384/08) ([1])

(Articles 43 EC and 48 EC — Regional legislation laying down mandatory minimum distances between roadside service stations — Jurisdiction of the Court and admissibility of the reference for a preliminary ruling — Freedom of establishment — Restriction)

(2010/C 113/14)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicant: Attanasio Group Srl

Defendant: Comune di Carbognano

Intervening party: Felgas Petroli Srl

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale per il Lazio (Italy) — Compatibility of national provisions laying down mandatory minimum distances between roadside petrol stations with Articles 43, 48, 49 and 56 EC and the principles of non-discrimination.

Operative part of the judgment

Article 43 EC, read in conjunction with Article 48 EC, is to be interpreted as meaning that domestic provisions such as those at issue in the main proceedings, which lay down mandatory minimum distances between roadside service stations, constitute a restriction on the freedom of establishment enshrined in the EC Treaty. In circumstances such as those in the main proceedings, that restriction does not appear to be justified by the objectives of road safety, protection of health and the environment, or the rationalisation of the service provided to users, these being matters for the national court to verify.

([1]) OJ C 301, 22.11.2008.

Judgment of the Court (Second Chamber) of 4 March 2010 — Pilar Angé Serrano, Jean-Marie Bras, Adolfo Orcajo Teresa, Dominiek Decoutere, Armin Hau, Francisco Javier Solana Ramos v European Parliament, Council of the European Union

(Case C-496/08 P) ([1])

(Appeals — Officials — Success in internal competitions for change of category under the old Staff Regulations — Entry into force of the new Staff Regulations — Transitional rules for classification in grade — Plea of illegality — Acquired rights — Legitimate expectations — Equal treatment — Principle of sound administration and the duty to have regard for the welfare of officials)

(2010/C 113/15)

Language of the case: French

Parties

Appellants: Pilar Angé Serrano, Jean-Marie Bras, Adolfo Orcajo Teresa, Dominiek Decoutere, Armin Hau, Francisco Javier Solana Ramos (represented by: E. Boigelot, avocat)

Other parties to the proceedings: European Parliament (represented by: L.G. Knudsen and K. Zejdová, Agents), Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 18 September 2008 in Case T-47/05 *Angé Serrano and Others* v *Parliament*, in which the Court of First Instance dismissed the applicants' application for annulment of the individual decisions classifying them in grade, taken pursuant to transitional measures laid down in Annex XIII and, in particular, Article 2 of the Staff Regulations of officials of the European Communities, as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1) — Ending, following entry into force of the new Staff Regulations, of classification in grade following success in an internal competition held under the old Staff Regulations — Whether interest in bringing an action retained despite the contested decisions becoming obsolete — Principles of the retaining of acquired rights and the protection of legitimate expectations — Principle of equal treatment

Operative part of the judgment

The Court:

1. *Dismisses the main appeal;*

2. *Dismisses the cross appeal;*

3. *Orders Ms Angé Serrano, Mr M. Bras, Orcajo Teresa, Decoutere, Hau, Solana Ramos, the European Parliament and the Council of the European Union to bear their own costs.*

([1]) OJ C 44, 21. 2. 2009.

Judgment of the Court (Third Chamber) of 11 March 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland)) — Telekomunikacja Polska SA w Warszawie v Prezes Urzędu Komunikacji Elektronicznej

(Case C-522/08) ([1])

(Electronic communications — Telecommunications services — Directive 2002/21/EC — Directive 2002/22/EC — Making the conclusion of a contract for the provision of services contingent on the conclusion of a contract for the supply of other services — Prohibition — Broadband internet)

(2010/C 113/16)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Telekomunikacja Polska SA w Warszawie

Defendant: Prezes Urzędu Komunikacji Elektronicznej

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 95 EC; of recital 13 in the preamble to, and Articles 5 and 8 of, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('Access Directive') (OJ 2002 L 108, p. 7); of the provisions of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('Authorisation Directive') (OJ 2002 L 108, p. 21); of recitals 1 and 28 in the preamble to, and Articles 1(3), 3, 7, 8, 14, 15, 16 and 19 of, Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ('Framework Directive') (OJ 2002 L 108, p. 33), and of recital 26 in the preamble to, and Articles 16 and 17 of, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive') (OJ 2002 L 108 p. 51) — National legislation prohibiting any provider of telecommunication services from making the conclusion of a contract for the provision of services contingent on the purchase of another service — Conclusion of a contract for the provision of broadband internet access made subject to the conclusion of a contract for the provision of telephone services

Operative part of the judgment

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) must be interpreted as not precluding national legislation, such as Article 57(1)(1) of the Polish Law on Telecommunications (ustawa — Prawo telekomunikacyjne) of 16 July 2004, in the version applicable to the facts in the main proceedings, which prohibits making the conclusion of a contract for the provision of services contingent on the conclusion, by the end user, of a contract for the provision of other services.

However, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business to consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and

Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding national legislation which, with certain exceptions, and without taking account of the specific circumstances, imposes a general prohibition of combined offers made by a vendor to a consumer.

(1) OJ C 69, 21.3.2009.

Judgment of the Court (Second Chamber) of 4 March 2010 (reference for a preliminary ruling from the Raad van State — Netherlands) — Rhimou Chakroun v Minister van Buitenlandse Zaken

(Case C-578/08) (1)

(Right to family reunification — Directive 2003/86/EC — Concept of 'recourse to the social assistance system' — Concept of 'family reunification' — Family formation)

(2010/C 113/17)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Rhimou Chakroun

Defendant: Minister van Buitenlandse Zaken

Re:

Reference for a preliminary ruling — Raad van State — Interpretation of Articles 2(d) and 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) — Concepts of 'recourse to the social assistance system' and of 'family reunification'.

Operative part of the judgment

1. *The phrase 'recourse to the social assistance system' in Article 7(1)(c) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification must be interpreted as precluding a Member State from adopting rules in respect of family reunification which result in such reunification being refused to a sponsor who has proved that he has stable and regular resources which are sufficient to maintain himself and the members of his family, but who, given the level of his resources, will nevertheless be entitled to claim special assistance in order to meet exceptional, individually determined, essential living costs, tax refunds granted by local authorities on the basis of his income, or income-support measures in the context of local-authority minimum-income policies ('minimabeleid')*

2. *Directive 2003/86, in particular Article 2(d) thereof, must be interpreted as precluding national legislation which, in applying the income requirement set out in Article 7(1)(c) of Directive 2003/86, draws a distinction according to whether the family relationship arose before or after the sponsor entered the territory of the host Member State.*

(1) OJ C 55, 7.3.2009.

Judgment of the Court (Fourth Chamber) of 11 March 2010 (reference for a preliminary ruling from the Conseil d'État — France) — Centre d'exportation du livre français (CELF), in liquidation, Ministre de la Culture et de la Communication v Société internationale de diffusion et d'édition

(Case C-1/09) (1)

(State aid — Article 88(3) EC — Unlawful aid declared compatible with the common market — Annulment of the Commission decision — National courts — Application for recovery of unlawfully implemented aid — Proceedings stayed pending the adoption of a new Commission decision — Exceptional circumstances liable to limit the obligation to repay)

(2010/C 113/18)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Centre d'exportation du livre français (CELF), in liquidation, Ministre de la Culture et de la Communication

Defendant: Société internationale de diffusion et d'édition

Re:

Reference for a preliminary ruling — Conseil d'État (France) — State aid — Export aid in the book trade — Obligation to repay aid unlawfully put into effect — Possibility of suspending repayment of the aid pending a final decision of the Commission on the compatibility of the aid with the Treaty — Admissibility of the obligation to repay the aid being limited on the ground of an exceptional circumstance

Operative part of the judgment

1. *A national court before which an application has been brought, on the basis of Article 88(3) EC, for repayment of unlawful State aid may not stay the adoption of its decision on that application until the Commission of the European Communities has ruled on the compatibility of the aid with the common market following the annulment of a previous positive decision;*

2. *The adoption by the Commission of the European Communities of three successive decisions declaring aid to be compatible with the common market, which were subsequently annulled by the Community judicature, is not, in itself, capable of constituting an exceptional circumstance such as to justify a limitation of the recipient's obligation to repay that aid, in the case where that aid was implemented contrary to Article 88(3) EC.*

([1]) OJ C 69, 21.3.2009.

Judgment of the Court (Third Chamber) of 11 March 2010 (reference for a preliminary ruling from the Oberlandesgericht Wien — Austria) — Wood Floor Solutions Andreas Domberger GmbH v Silva Trade, SA

(Case C-19/09) ([1])

(Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1)(a) and (b), second indent — Provision of services — Commercial agency contract — Performance in several Member States)

(2010/C 113/19)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Wood Floor Solutions Andreas Domberger GmbH

Defendant: Silva Trade SA

Re:

Reference for a preliminary ruling — Oberlandesgericht Wien (Austria) — Interpretation of Article 5(1)(a) and (b), second indent, of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Special jurisdiction — Scope — Action for payment of compensation for termination of a contract for the provision of services — Services provided under a contract in different Member States

Operative part of the judgment

1. *The second indent of Article 5(1)(b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that provision is applicable in the case where services are provided in several Member States;*

2. *The second indent of Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that where services are provided in several Member States, the court which has jurisdiction to hear and determine all the claims arising from the contract is the court in whose jurisdiction the place of the main provision of services is situated. For a commercial agency contract, that place is the place of the main provision of services by the agent, as it appears from the provisions of the contract or, in the absence of such provisions, the actual performance of that contract or, where it cannot be established on that basis, the place where the agent is domiciled.*

([1]) OJ C 82, 4.4.2009.

Judgment of the Court (Sixth Chamber) of 4 March 2010 — European Commission v Kingdom of Belgium

(Case C-258/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2008/1/EC — integrated pollution prevention and control — Failure to transpose within the prescribed period)

(2010/C 113/20)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Alcover San Pedro and A. Marghelis, Agents)

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

Re:

Failure to adopt or communicate, within the prescribed period, the measures necessary to comply, in the Walloon Region, with Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8) — Existing installations liable to have an effect on emissions into the air, water and soil and on pollution.

Operative part of the judgment

The Court:

1. *Declares that, by authorising, in the Walloon Region, the operation of existing installations which do not comply with the requirements laid down in Articles 3, 7, 9, 10, 13, 14(a) and (b) and 15(2) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, despite the time-limit of 30 October 2007 as laid down in Article 5(1) of that directive, the Kingdom of Belgium has failed to fulfil its obligations under the directive;*

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

([1]) OJ C 220, 12.9.2009.

Appeal brought on 10 September 2009 by Mr Hans Molter against the order of the Court of First Instance (Eighth Chamber) delivered on 12 August 2009 in Case T-141/09 Hans Molter v Bundesrepublik Deutschland

(Case C-361/09 P)

(2010/C 113/21)

Language of the case: German

Parties

Appellant: Hans Molter (represented by: T. Damerau, Rechtsanwalt)

Other party to the proceedings: Bundesrepublik Deutschland

The Court of Justice of the European Union (Fifth Chamber) dismissed the appeal by order of 5 February 2010 and ordered the appellant to bear his own costs.

Reference for a preliminary ruling from the Juzgado de lo Contencioso Administrativo Número 3 de Almería (Spain) lodged on 2 October 2009 — Águeda María Sáenz Morales v Consejería para la Igualdad y Bienestar Social

(Case C-389/09)

(2010/C 113/22)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso Administrativo Número 3 de Almería

Parties to the main proceedings

Applicant: Águeda María Sáenz Morales

Defendant: Consejería para la Igualdad y Bienestar Social

By Order of 20 January 2010 the Court of Justice (Sixth Chamber) declared the reference for a preliminary ruling manifestly inadmissible.

Reference for a preliminary ruling from the Fővárosi Bíróság lodged on 13 January 2010 — Károly Nagy v Mezőgazdasági és Vidékfejlesztési Hivatal

(Case C-21/10)

(2010/C 113/23)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Nagy Károly

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal

Questions referred

1. May Articles 22 of Council Regulation (EC) No 1257/1999 ([1]) and [68] of Commission Regulation No 817/2004 ([2]) be interpreted as meaning that, in the case of specific programmes for grassland by way of agri-environmental aid under the first article mentioned, the checks on the data contained in the ENAR (Egységes Nyilvántartási és Azonosítási Rendszer — Integrated Identification and Registration System), pursuant to Article 68 of Regulation No 817/2004, must also be extended to area aid specifying a certain density of livestock?

2. May the above provisions be interpreted as meaning that cross-checks under the integrated administration and control system must be carried out also in cases where the precondition for aid is the density of livestock, although the aid is not for animals?

3. May those provisions be interpreted as meaning that, in assessing area aid, the competent authority may or must check whether the conditions for aid are met, independently of the ENAR?

4. On the basis of the interpretation of the above provisions, what monitoring obligation arises for the competent authority from the requirement in the above Community provisions for checks and cross-checks? May the monitoring be limited exclusively to review of the data contained in the ENAR?

5. Do those provisions impose an obligation on the national authority to provide information concerning the preconditions for aid (for example, registration in the ENAR)? If so, in what way and to what extent?

([1]) 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).

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

Action brought on 20 January 2010 — European Commission v Kingdom of Denmark

(Case C-33/10)

(2010/C 113/24)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro, H. Støvlbæk, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— Declare that, by not adopting all the measures necessary to ensure that by, 30 October 2007, all permits were reconsidered and, where necessary, updated, the Kingdom of Denmark has failed to comply with its obligations under Article 5(1) of Directive 2008/1/EC ([1]) of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control;

— order Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

Article 5(1) of the Directive requires all Member States to enact measures with a view to implementing a permit and/or review procedure for existing installations by 30 October 2007. That time-limit applies without exception and the Directive does not allow the Member States to rely on exceptional circumstances as grounds for not complying with the obligation.

It is not sufficient that measures have been adopted in Denmark with a view to ensuring closure of all cases relating to compliance with Article 5(1) of the Directive by the end of 2009. Nor can delays resulting from the municipal reform of 1 January 2007 be accorded any weight in the assessment of whether Denmark has complied with its obligations under Article 5(1). The time-limit laid down for legalising installations expired on 30 October 2007 and was notified to Member States as early as 22 September 2005. Denmark has thus had a number of years in which to adopt the necessary measures to comply with the Directive.

Denmark has not contested its failure to implement requirements for the granting of permits for existing installations. It is thus uncontested that a significant number of the eight Danish installations are operated without permits under the Directive, contrary to Article 5(1) of the Directive.

(1) OJ 2008 L 24, p. 8.

Appeal brought on 1 February 2010 by Agencja Wydawnicza Technopol sp. z o.o. against the judgment of the General Court (Second Chamber) delivered on 19 November 2009 in Case T-298/06: gencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-51/10 P)

(2010/C 113/25)

Language of the case: English

Parties

Appellant: Agencja Wydawnicza Technopol sp. z o.o. (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— Annul the Judgment of the Court of First Instance of 19 November 2009 in Case T-298/2006

— Refer the case back to the General Court

— Order OHMI to bear the costs of the proceedings before the Court of Justice

Pleas in law and main arguments

The Appellant claims that the Court of First Instance violated Article 7 (1) (c) CTMR (1) in the it applied erroneous legal criteria in determining that the Appellant's mark was not registrable.

The Appellant further claims that the Court of First Instance violated Article 7 (1) (c) CTMR or Article 76 CTMR, or both of these provisions, in not taken proper account of the practice of OHMI as regards registration of marks consisting of numerals or indication the content of publications.

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

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 2 February 2010 — Land Hessen v Franz Mücksch OHG, Intervener: Merck KG aA

(Case C-53/10)

(2010/C 113/26)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Land Hessen

Defendant: Franz Mücksch OHG

Intervener: Merck KG aA

Questions referred

1. Is Article 12(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, (1) most recently amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 (2) — the Seveso II Directive — to be interpreted as meaning that the Member States' obligations contained therein, in particular the obligation to ensure that their land-use policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between the establishments covered by the directive and buildings of public use, are addressed to planners who have to take decisions on land-use by weighing up the public and private interests affected, or are they also addressed to the planning permission authorities who have to take a non-discretionary decision on the authorisation of a project in an already built-up area?

2. If Article 12(1) of the Seveso II Directive is also addressed to the planning permission authorities who have to take a non-discretionary decision on the authorisation of a project in an already built-up area:

   Do the abovementioned obligations include the prohibition on authorising the siting of a building of public use which fails to maintain — as required by the principles applicable to overall planning — an appropriate distance from an existing establishment, where there are already several comparable buildings of public use close to the establishment, where the operator does not — as a result of the new project — have to reckon with additional requirements concerning the limitation of the consequences of an accident, and where the requirements relating to healthy living and working conditions are satisfied?

3. If the answer to this question is in the negative:

   Does a legislative provision under which it is mandatory to authorise the siting of a building of public use in the circumstances set out in the previous question sufficiently take into account the need to maintain distances?

(1) OJ 1997 L 10, p. 13.
(2) OJ 2008 L 311, p. 1.

Appeal brought on 2 February 2010 by Agencja Wydawnicza Technopol sp. z o.o. against the judgment delivered on 19 November 2009 in Joined Cases T-64/07 to T-66/07 Agencja Wydawnicza Technopol v OHIM (350)

(Case C-54/10 P)

(2010/C 113/27)

Language of the case: Polish

Parties

Appellant: Agencja Wydawnicza Technopol sp. z o.o. (represented by: D. Rzążewska, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— set aside the judgment of the Court of First Instance of 19 November 2009 in Joined Cases T-64/07 to T-66/07;

— refer the case back to the General Court;

— order OHIM to pay the costs of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellant pleads that the Court of First Instance infringed Article 7(1)(c) of the Community trade mark regulation (1) by applying incorrect legal criteria when finding that the trade marks belonging to the appellant do not qualify for registration.

The appellant further pleads that the Court of First Instance infringed Article 7(1)(c) or 76 of the Community trade mark regulation, or both of those provisions, by not taking due account of OHIM's practice relating to the registration of signs consisting of figures or indicating the content of a publication.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Appeal brought on 2 February 2010 by Agencja Wydawnicza Technopol sp. z o.o. against the judgment delivered on 19 November 2009 in Joined Cases T-200/07 to T-202/07 Agencja Wydawnicza Technopol v OHIM (222)

(Case C-55/10 P)

(2010/C 113/28)

Language of the case: Polish

Parties

Appellant: Agencja Wydawnicza Technopol sp. z o.o. (represented by: D. Rzążewska, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— set aside the judgment of the Court of First Instance of 19 November 2009 in Joined Cases T-200/07 to T-202/07;

— refer the case back to the General Court;

— order OHIM to pay the costs of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellant pleads that the Court of First Instance infringed Article 7(1)(c) of the Community trade mark regulation [1] by applying incorrect legal criteria when finding that the trade marks belonging to the appellant do not qualify for registration.

The appellant further pleads that the Court of First Instance infringed Article 7(1)(c) or 76 of the Community trade mark regulation, or both of those provisions, by not taking due account of OHIM's practice relating to the registration of signs consisting of figures or indicating the content of a publication.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Appeal brought on 2 February 2010 by Agencja Wydawnicza Technopol sp. z o.o. against the judgment delivered on 19 November 2009 in Joined Cases T-425/07 and T-426/07 Agencja Wydawnicza Technopol v OHIM (100)

(Case C-56/10 P)

(2010/C 113/29)

Language of the case: Polish

Parties

Appellant: Agencja Wydawnicza Technopol sp. z o.o. (represented by: D. Rzążewska, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— set aside the judgment of the Court of First Instance of 19 November 2009 in Joined Cases T-425/07 and T-426/07;

— refer the case back to the General Court;

— order OHIM to pay the costs of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellant pleads that the Court of First Instance infringed Article 38(2) of the Community trade mark regulation [1] by applying incorrect legal criteria when finding that the Board of Appeal was justified in requesting that a statement be submitted disclaiming exclusive rights to the figures 100 and 300.

The appellant pleads that the Court of First Instance infringed Article 7(1)(c) of the Community trade mark regulation by applying incorrect legal criteria when finding that the elements in respect of which a statement disclaiming exclusive rights was requested to be submitted are descriptive.

The appellant further pleads that the Court of First Instance infringed Article 7(1)(c), Article 38(2) or Article 76 of the Community trade mark regulation, or all of those provisions, by not taking due account of OHIM's practice relating to the registration of signs consisting of figures or indicating the content of a publication.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

Reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 5 February 2010 — Scarlet Extended SA v Société Belge des auteurs, compositeurs et éditeurs (SABAM)

(Case C-70/10)

(2010/C 113/30)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Scarlet Extended SA

Defendant: Société Belge des auteurs, compositeurs et éditeurs (SABAM)

Questions referred

1. Do Directives 2001/29 ([1]) and 2004/48, ([2]) in conjunction with Directives 95/46, ([3]) 2000/31 ([4]) and 2002/58, ([5]) construed in particular in the light of Articles 8 and 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, permit Member States to authorise a national court, before which substantive proceedings have been brought and on the basis merely of a statutory provision stating that: 'They [the national courts] may also issue an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right', to order an Internet Service Provider (ISP) to introduce, for all its customers, in abstracto and as a preventive measure, exclusively at the cost of that ISP and for an unlimited period, a system for filtering all electronic communications, both incoming and outgoing, passing via its services, in particular those involving the use of peer-to-peer software, in order to identify on its network the sharing of electronic files containing a musical, cinematographic or audio-visual work in respect of which the applicant claims to hold rights, and subsequently to block the transfer of such files, either at the point at which they are requested or at which they are sent?

2. If the answer to the question in paragraph 1 is in the affirmative, do those directives require a national court, called upon to give a ruling on an application for an injunction against an intermediary whose services are used by a third party to infringe a copyright, to apply the principle of proportionality when deciding on the effectiveness and dissuasive effect of the measure sought?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
([2]) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004). Corrected version in (OJ 2004 L 195, p. 16).
([3]) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).
([4]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 78, p. 1).
([5]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002, L 201, p. 37).

Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 8 February 2010 — Office of Communications v The Information Commissioner

(Case C-71/10)

(2010/C 113/31)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Office of Communications

Defendant: The Information Commissioner

Question referred

Under Council Directive 2003/4/EC ([1]), where a public authority holds environmental information, disclosure of which would have some adverse effects on the separate interests served by more than one exception (in casu, the interests of public security served by article 4(2)(b) and those of intellectual property rights served by article 4(2)(e)), but it would not

do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, does the Directive require a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure?

(1) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC
OJ L 41, p. 26

Appeal brought on 9 February 2010 by European Renewable Energies Federation ASBL (EREF) against the order of the Court of First Instance (Sixth Chamber) delivered on 19 November 2009 in Case T-94/07: European Renewable Energies Federation ASBL (EREF) v Commission of the European Communities

(Case C-74/10 P)

(2010/C 113/32)

Language of the case: English

Parties

Appellant: European Renewable Energies Federation ASBL (EREF) (represented by: J. Kuhbier, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the order of the Court of First Instance of 19 November 2009 in Case T-94/07, EREF v Commission of the European Communities, null and void;

— refer the case back for judgment to the Sixth Chamber of the General Court;

— order the European Commission to pay the procedural costs of the appeal procedure.

Pleas in law and main arguments

The Appellant asks the Court to declare the Order of the CFI of 19 November 2009 in case T-94/07 null and void and to refer it back to the General Court for reconsideration.

The Appellant contests the CFI's conclusion that its lawyer, Dr Fouquet, could not represent it before the CFI and that its application was therefore inadmissible.

The CFI considers that because Dr Fouquet was nominated as a director of EREF on 29 June 2004 she could no longer be considered an independent third party. The Appellant submits that Dr Fouquet had not been formally nominated as a director of EREF — under Belgian law such a nomination would have required official registration with the competent Belgian authorities. The director status of Dr Fouquet at EREF was titular only and not, or only to a very limited extent, linked to the power of representation.

The Appellant also submits that even if it is assumed that the position of Dr Fouquet as director was of a formal nature the CFI incorrectly applied the criteria for assessing the status of a lawyer as an independent third party. It is submitted that the CFI misunderstood both the legal situation of EREF's representative before the Court and the real distribution of tasks and obligations between Dr Fouquet and EREF. Pursuant to German law the position of Dr Fouquet as director of EREF would allow her to represent the Appellant before the Court.

Appeal brought on 9 February 2010 by European Renewable Energies Federation ASBL (EREF) against the order of the Court of First Instance (Sixth Chamber) delivered on 19 November 2009 in Case T-40/08: European Renewable Energies Federation ASBL (EREF) v Commission of the European Communities

(Case C-75/10 P)

(2010/C 113/33)

Language of the case: English

Parties

Appellant: European Renewable Energies Federation ASBL (EREF) (represented by: J. Kuhbier, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the order of the Court of First Instance of 19 November 2009 in Case T-40/08, EREF v Commission of the European Communities, null and void;

— refer the case back for judgment to the Sixth Chamber of the General Court;

— order the European Commission to pay the procedural costs of the appeal procedure.

Pleas in law and main arguments

The Appellant asks the Court to declare the Order of the CFI of 19 November 2009 in case T-40/08 null and void and to refer it back to the General Court for reconsideration.

The Appellant contests the CFI's conclusion that it's lawyer, Dr Fouquet, could not represent it before the CFI and that its application was therefore inadmissible.

The CFI considers that because Dr Fouquet was nominated as a director of EREF on 29 June 2004 she could no longer be considered an independent third party. The Appellant submits that Dr Fouquet had not been formally nominated as a director of EREF — under Belgian law such a nomination would have required official registration with the competent Belgian authorities. The director status of Dr Fouquet at EREF was titular only and not, or only to a very limited extent, linked to the power of representation.

The Appellant also submits that even if it is assumed that the position of Dr Fouquet as director was of a formal nature the CFI incorrectly applied the criteria for assessing the status of a lawyer as an independent third party. It is submitted that the CFI misunderstood both the legal situation of EREF's representative before the Court and the real distribution of tasks and obligations between Dr Fouquet and EREF. Pursuant to German law the position of Dr Fouquet as director of EREF would allow her to represent the Appellant before the Court.

Reference for a preliminary ruling from the Cour d'Appel, Rouen (France) lodged on 8 February 2010 — Marc Berel, in his capacity as the authorised agent of the company Port Angot Développement, Mr Hess, in his capacity as receiver of the company Port Angot Développement, the company Rijn Schelde Mondia France, Receveur Principal des Douanes, Port of Rouen, Administration des Douanes, Port of Le Havre, the company Port Angot Développement, successor in title of the company Manutention de Produits Chimiques et Miniers (Maprochim), Asia Pulp & Paper France v Administration des Douanes, Rouen, Receveur Principal des Douanes, Le Havre, Administration des Douanes, Le Havre

(Case C-78/10)

(2010/C 113/34)

Language of the case: French

Referring court

Cour d'Appel, Rouen

Parties to the main proceedings

Applicants: Marc Berel, in his capacity as the authorised agent of the company Port Angot Développement, Mr Hess, in his capacity as receiver of the company Port Angot Développement, the company Rijn Schelde Mondia France, Receveur Principal des Douanes, Port of Rouen, Administration des douanes — Havre Port, Société Port Angot Développement, successor in title of the company Manutention de Produits Chimiques et Miniers (Maprochim), Asia Pulp & Paper France

Defendants: Administration des Douanes, Rouen, Receveur Principal des Douanes, Le Havre, Administration des Douanes, Le Havre

Question referred

Do Articles 213, 233 and 239 of the Community Customs Code [1] prevent a joint and several co-debtor of a customs debt who is not the beneficiary of a decision to remit that debt from enforcing, against the administration responsible for collection, the decision to remit based on Article 239 of the Community Customs Code which that administration notified to another joint and several co-debtor, in order to be excused payment of the customs debt?

[1] Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 11 February 2010 — Systeme Helmholz GmbH v Hauptzollamt Nüremberg

(Case C-79/10)

(2010/C 113/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Systeme Helmholz GmbH

Defendant: Hauptzollamt Nüremberg

Questions referred

1. Is the first sentence of Article 14(1)(b) of Council Directive 2003/96/EC [1] of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that the exclusion of private pleasure-flying from the tax advantage signifies that the exemption for energy products supplied for use as fuel for the purpose of air navigation is to be applied only to airlines, or is the exemption to be applied to all fuel used for air navigation, provided that the aircraft is used for the purpose of earning income?

2. Is Article 15(1)(j) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that it also pertains to fuel which an aircraft requires for the purposes of flights to and from an aircraft maintenance facility, or does the possibility of obtaining a tax advantage only apply to companies whose actual business purpose is the manufacture, development, testing and maintenance of aircraft?

3. Is Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity to be interpreted as meaning that, where an aircraft which is used for both private and commercial purposes is used for maintenance or training flights, pursuant to Article 14(1)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity an exemption proportionate to the commercial use should be applied in respect of the fuel used for these flights?

4. If the third question is answered in the negative: may it be concluded from the non-applicability of Article 11(3) of Directive 2003/96/EC for the purposes of Article 14(1)(b) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity that where there is mixed use of an aircraft for private and commercial purposes no exemptions are to be applied to maintenance or training flights?

5. If the third question is answered in the affirmative or if an analogous legal consequence arises from another provision of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity: which criteria and which reference period should be taken as a basis for determining the respective proportion of use, within the meaning of Article 11(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, for maintenance and training flights?

[1] OJ 2003 L 283, p. 51.

Action brought on 11 February 2010 — European Commission v Ireland

(Case C-82/10)

(2010/C 113/36)

Language of the case: English

Parties

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

Defendant: Ireland

The applicant claims that the Court should:

— Declare that in failing to apply the European Union insurance legislation in its entirety to all insurance undertakings on a non-discriminatory basis, the Republic of Ireland has failed to fulfil its obligations under, in particular, Articles 6, 8, 9, 13, 15, 16 and 17 of Council Directive 73/239/EEC of 24th July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as subsequently amended, and Articles 22 and 23 of Council Directive 92/49/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357; and

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that i) the Voluntary Health Insurance Board (hereinafter referred to as VHI) could not properly continue to benefit from an exemption under article 4 of directive 73/239/CEE with effect from the first change to its capacity by virtue of the entry into force of the Voluntary Health Insurance (Amendment) Act 1996, and ii) from this date it became fully subject to the requirements of the European Union insurance legislation, including in particular those relating to authorisation, financial supervision, establishment of technical provisions and a solvency margin including the guarantee fund.

VHI currently continues all its operations without having obtained authorisation from the Irish Financial Regulator, nor having complied inter alia with the necessary solvency requirements.

Reference for a preliminary ruling from the Juzgado de lo Mercantil de Pontevedra (Spain) lodged on 11 February 2010 — Aurora Sousa Rodriguez y otros v Air France S.A.

(Case C-83/10)

(2010/C 113/37)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de Pontevedra

Parties to the main proceedings

Applicants: Aurora Sousa Rodríguez, Yago López Sousa, Rodrigo Puga Lueiro, Luis Rodríguez González, María del Mar Pato Barreiro, Manuel López Alonso, Yaiza Pato Rodríguez

Defendant: Air France S.A.

Questions referred

1. Is the term 'cancellation', defined in Article 2(l) of [Regulation EC No 261/2004], ([1]) to be interpreted as meaning only the failure of the flight to depart as planned or is it also to be interpreted as meaning any circumstance as a result of which the flight on which places are reserved takes off but fails to reach its destination, including the case in which the flight is forced to return to the airport of departure for technical reasons?

2. Is the term 'further compensation' used in Article 12 of the regulation to be interpreted as meaning that, in the event of a cancellation, the national court may award compensation for damage, including non-material damage, for breach of a contract of carriage by air in accordance with rules established in national legislation and case-law on breach of contact or, on the contrary, must such compensation relate solely to appropriately substantiated expenses incurred by passengers and not adequately indemnified by the carrier in accordance with the requirements of Articles 8 and 9 of Regulation 261/2004/EC, even if such provisions have not been expressly relied upon or, lastly, are the two aforementioned definitions of the term further compensation compatible one with another?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement (OJ 2004 L 46, p. 1).

Reference for a preliminary ruling from the Arbeitsgericht Siegburg (Germany) lodged on 12 February 2010 — Hüseyin Balaban v Zelter GmbH

(Case C-86/10)

(2010/C 113/38)

Language of the case: German

Referring court

Arbeitsgericht Siegburg

Parties to the main proceedings

Applicant: Hüseyin Balaban

Defendant: Zelter GmbH

Question referred

Should Article 6 of Council Directive 2000/78/EC [1] of 27 November 2000 be interpreted as precluding national legislation which, in the selection of workers to be dismissed on operational grounds, allows age groups to be formed in order to ensure a balanced age structure and to ensure that the selection between comparable workers will be made in such a way that the ratio of the number of workers to be selected from the respective age groups to the total number of comparable workers to be dismissed corresponds to the ratio of the number of workers employed in the respective age groups to the number of all comparable workers of the undertaking?

[1] 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).

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium), lodged on 17 February 2010 — Q-Beef NV v Belgische Staat

(Case C-89/10)

(2010/C 113/39)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Claimant: Q-Beef NV

Defendant: Belgische Staat

Questions referred

1. Does Community law preclude national courts from applying the limitation period of five years, which is laid down in the internal legal system in respect of debts owed by the State, to claims for the reimbursement of charges paid to a Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, and which were paid before the entry into force of a new system of aid and compulsory contributions which replaces the first system, and which, by a final decision of the Commission, was declared compatible with Community law, but not in so far as those charges were imposed retroactively in respect of a period prior to the date of that decision?

2. Does Community law preclude a Member State from successfully invoking national limitation periods which, in comparison with those applicable under ordinary national law, are particularly favourable to that Member State, as a defence against proceedings instituted against it by a private individual with a view to vindicating that private individual's rights under the EC Treaty, in a case such as that before the national court, in which the effect of those particularly favourable national limitation periods is to render impossible the recovery of charges which were paid to the Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, where the conflict with Community law was established by the then Court of Justice of the European Communities only after the particularly favourable national limitation periods had expired, even if the illegality had existed earlier?

Action brought on 16 February 2010 — European Commission v Kingdom of Spain

(Case C-90/10)

(2010/C 113/40)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that:

— by failing to establish conservation priorities in relation to the special areas of conservation corresponding to the sites of Community importance for the Macaronesian biogeographical region identified by Decision 2002/11/EC, [1] in accordance with Article 4(4) of Directive 92/43/EEC, [2] and

— by failing to adopt and apply the appropriate conservation measures and a protection system to prevent the deterioration of habitats and significant disruption to species, ensuring the legal protection of the special areas of conservation corresponding to the sites referred to in Decision 2002/11/EC situated in Spanish territory, in accordance with Article 6(1) and (2) of Directive 92/43/EEC,

the Kingdom of Spain has failed to fulfil its obligations under Article 4(4) and Article 6(1) and (2) of Directive 92/43/EEC;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

In so far as concerns the special areas of conservation corresponding to the sites of Community importance for the Macaronesian biogeographical region in its territory identified by Decision 2002/11/EC, the Commission considers that the Kingdom of Spain has failed to:

— satisfy the requirement to establish conservation priorities in accordance with Article 4(4) of the directive, and

— satisfy the requirement to adopt and apply the appropriate conservation measures and a protection system to prevent the deterioration of habitats and significant disruption to species, ensuring the legal protection of those special areas of conservation, in accordance with Article 6(1) and (2) of the directive.

(1) Commission Decision of 28 December 2001 adopting the list of sites of Community importance for the Macaronesian biogeographical region, pursuant to Council Directive 92/43/EEC (OJ 2002 L 5, p. 16).

(2) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Reference for a preliminary ruling from the Rechtbank Breda (Netherlands) lodged on 17 February 2010 — VAV Autovermietung GmbH v Inspector of the Revenue Department, Customs-South, Rosendaal office

(Case C-91/10)

(2010/C 113/41)

Language of the case: Dutch

Referring court

Rechtbank Breda

Parties to the main proceedings

Applicant: VAV Autovermietung GmbH

Defendant: Inspector of the Revenue Department, Customs-South, Rosendaal office

Questions referred

1. Does Community law, in particular the principle of the freedom to provide services, as laid down in Articles 49 to 55 of the EC Treaty (now Articles 56 to 62 of the Treaty on the Functioning of the European Union), preclude a national legislative provision under which a person resident or established in the Netherlands who uses in the Netherlands a car registered and leased in another Member State is required, upon the commencement of use with that vehicle of the road network in the Netherlands, to pay a tax, whereby initially the full amount of tax is claimed and, subsequently, after the vehicle ceases to use the Netherlands road network, there is a refund of the excess amount of tax, without interest, as a result of which the amount owed and paid corresponds on balance to the period of use in the Netherlands?

2. If such legislation must be regarded as a restriction on the principle of freedom to provide services, as laid down in Articles 49 to 55 of the EC Treaty (now Articles 56 to 62 of the Treaty on the Functioning of the European Union), is a justificatory ground therefor to be found in the equal treatment of all cars present in the Netherlands, together with the attendant and consequent prevention of misuse and/or prevention of reverse discrimination of both national lessors and their customers, since the tax has to be paid in full even in the case of domestic leasing?

Appeal brought on 17 February 2010 by Media-Saturn-Holding GmbH against the judgment of the General Court (Fourth Chamber) delivered on 15 December 2009 in Case T-476/08 Media-Saturn-Holding GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-92/10 P)

(2010/C 113/42)

Language of the case: German

Parties

Appellant: Media-Saturn-Holding GmbH (represented by C.-R. Haarmann and E. Warnke, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of the European Union of 15 December 2009 in Case T-476/08;

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 28 August 2008 in Case R 591/2008-4;

— order the appellant to pay the costs of the proceedings before the Board of Appeal, the General Court of the European Union and the Court of Justice.

Pleas in law and main arguments

The present appeal is brought against the judgment of the General Court which dismissed the action brought by the appellant for annulment of the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 28 August 2008 rejecting its application for registration of the figurative mark 'BEST BUY'. The appellant claims that the General Court erred in law and was incorrect in its interpretation of the absolute ground for refusal of registration in respect of trade marks which are devoid of any distinctive character laid down in Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. The appeal consists of three parts.

First, the appellant claims that the General Court unlawfully inferred absence of distinctiveness from the assessment of a mark other than the one actually applied for. Its assessment of distinctiveness was carried out in relation to a sign which contains the correctly written word element 'BEST BUY' and which was the subject of another set of proceedings before that court. In contrast to that other sign, in the mark applied for by the appellant the arrangement of the prominent letter 'B', which forms the first letter of both the words 'BEST' and 'BUY', means that an alleged word element 'BEST BUY' is formed only after a pause for thought. Since the additional distinctiveness of that mark stemming from the unusual and incorrect manner in which it is written has a sufficient minimum of distinctiveness, the General Court ought not to have relied on an earlier decision relating to a sign in which that specific feature was lacking.

Second, the General Court failed to have regard to the principle that the question whether or not a complex mark has distinctive character must depend on an assessment of the mark as a whole. No such overall assessment was carried out in the judgment under appeal. The General Court assessed whether each individual element was capable on its own of conferring distinctiveness on that sign, a question which was then automatically answered in the negative if in that court's view the element was not distinctive in itself. An overall assessment of the mark, from which it could not be excluded that the sum of elements ineligible on their own for protection would result in a mark eligible for protection when viewed as a whole, was not carried out.

Third, the Court used an excessively strict criterion in its assessment of distinctiveness. It held that it was sufficient that the mark be perceived 'principally' as an advertising slogan in order for the refusal of registration laid down in Article 7(1)(b) of Regulation No 40/94 to apply. However, that approach constitutes a failure to have regard to the legal principles of Article 7(1)(b) of Regulation No 40/94, as applied in concrete terms by the Court of Justice. The laudatory connotation of a word mark does not mean that it cannot be appropriate for the purposes of guaranteeing to consumers the origin of the goods or services which it covers. It is entirely possible that such a mark can be perceived by the relevant public both as an advertising slogan and as an indication of commercial origin. In that regard, the General Court ought at least to have provided reasons why this was not however the case in respect of the mark applied for.

Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 22 February 2010 — Strong Segurança SA v Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

(Case C-95/10)

(2010/C 113/43)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Strong Segurança, SA

Respondent: Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

Questions referred

1. Is Article 47 of Directive 2004/18/EC [1] of the European Parliament and of the Council of 31 March 2004 directly applicable in the domestic legal order as from 31 January 2006, in the sense that it confers on individuals a right on which they can rely in proceedings against organs of the Portuguese authorities?

2. If so, is that principle applicable, despite the provision contained in Article 21 of that Directive, to contracts which have as their object services referred to in Annex II B?

[1] 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).

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium), lodged on 22 February 2010 — Frans Bosschaert v Belgische Staat, Slachthuizen Georges Goossens en Zonen NV and Slachthuizen Goossens NV

(Case C-96/10)

(2010/C 113/44)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: Frans Bosschaert

Defendants: Belgische Staat

Slachthuizen Georges Goossens en Zonen NV

Slachthuizen Goossens NV

Questions referred

1. Does Community law preclude national courts from applying the limitation period of five years which is laid down in the internal legal system for claims in respect of debts owed by the State to claims for the reimbursement of charges paid to a Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, and which were paid before the entry into force of a new system of aid and compulsory contributions which replaces the first system, and which, by a final decision of the Commission, was declared compatible with Community law, but not in so far as those charges are imposed retroactively in respect of a period prior to the date of that decision?

2. Does Community law preclude a situation in which, when a Member State levies charges on a private individual who is in turn obliged to pass the charges on to other private individuals with whom he carries on a commercial activity in a sector on which the Member State has imposed a hybrid system of aid and charges, but that system was subsequently

found to be not only partially illegal but also partially incompatible with Community law, those individuals are then, by reason of national provisions, subject to a shorter limitation period with regard to the Member State in respect of the recovery of contributions levied in breach of Community law, whereas they have a longer limitation period with regard to recovery of that same amounts from a private intermediary, with the result that such an intermediary might find itself in a situation where the claim against it is not time-barred but the claim against the Member State is, and the intermediary may thus have an action brought against it by other parties and consequently have to seek indemnification from the Member State concerned, but cannot recover from that Member State the contributions which it paid directly to that Member State?

3. Does Community law preclude a Member State from successfully invoking national limitation periods which, in comparison with those applicable under ordinary national law, are particularly favourable to that Member State, as a defence against proceedings instituted against it by a private individual with a view to vindicating that private individual's rights under the EEC Treaty, in a case such as that before the national court, in which the effect of those particularly favourable national limitation periods is to render impossible the recovery of charges which were paid to the Member State under a hybrid system of aid and charges which not only was partially illegal but was also found to be partially incompatible with Community law, where the conflict with Community law was established by the then Court of Justice of the European Communities only after those particularly favourable national limitation periods had expired, even if the illegality had existed earlier?

Reference for a preliminary ruling from the Tribunal d'Instance de Dax (France) lodged on 22 February 2010 — AG2R Prévoyance v SARL Bourdil — AG2R Prévoyance v SARL Boucalaise de Boulangerie — AG2R Prévoyance v SARL Baba-Pom'

(Case C-97/10)
(Case C-98/10)
(Case C-99/10)

(2010/C 113/45)

Language of the case: French

Referring court

Tribunal d'Instance de Dax (Landes)

Parties to the main proceedings

Applicant: AG2R Prévoyance

Defendants: SARL Bourdil, SARL Boucalaise de Boulangerie, SARL Baba-Pom'

Question referred

Does an extensive collective agreement granting an exclusive right to the management of a single scheme for the supplementary reimbursement of healthcare costs (in this case, to AG2R Prévoyance) infringe the provisions of Article 82 of the EC Treaty where that agreement does not provide for and even expressly excludes any waiver of affiliation to that scheme (in so far as the Community competition rules do not obstruct the performance of the tasks assigned to AG2R Prévoyance, entrusted with the scheme)?

Action brought on 23 February 2010 — European Commission v Grand Duchy of Luxembourg

(Case C-100/10)

(2010/C 113/46)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Braun and J. Sénéchal, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC [1] or, in any event, by failing to communicate those measures to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 53 of that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2006/43/EC lapsed on 28 June 2008. At the date the present action was commenced, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any event, had not informed the Commission of those measures.

([1]) OJ 2006 L 157, p. 87.

Reference for a preliminary ruling from the Judecătoria Focșani (Romania) lodged on 24 February 2010 — Frăsina Bejan v Tudorel Mușat

(Case C-102/10)

(2010/C 113/47)

Language of the case: Romanian

Referring court

Judecătoria Focșani

Parties to the main proceedings

Applicant: Bejan Frăsina

Defendant: Mușat Tudorel Adrian

Questions referred

1. Do the provisions of Article 40a of Law No 136/1995 ([1]) and of Articles 1 to 6, in particular Articles 3 and 6, of Decree 3111/2004 of the Comisia de Supraveghere a Asigurărilor (Insurance Supervisory Council), ([2]) in conjunction with the provisions of Article 10(3) of Law No 136/1995, breach the provisions of Article 169 TFEU (formerly Article 153 EC)?

2. If the national law of a Member State provides than an injured party has no right to compensation under a contract of civil-liability motor insurance where: the accident was caused deliberately, the accident occurred in the commission of facts punishable under the criminal law on road traffic as criminal offences, the accident occurred while the person who had committed the offence with intent was attempting to escape from the forces of law and order, the person responsible for the damage was driving the vehicle without the permission of the insured person — are those provisions excessively restrictive for the achievement of the objective pursued, namely, social protection, or, in other words, ensuring that injured persons are able to obtain compensation for the destruction of their property, and do they go beyond what is necessary to achieve that objective?

3. In the event that the second question is answered in the negative, does the restriction imposed place the injured person in a situation in which that person is treated less favourably than nationals of other Member States of the European Union who are denied compensation only in the cases set out under Article 2(1), first to third indents, of Second Council Directive 84/5/EEC ([3]) of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles?

4. Do the exclusions from the insured risk imposed by national law in the situations outlined amount to a restriction on the freedom of establishment or on the freedom to provide services, contrary to Articles 49 TFEU (formerly Article 43 EC) and 56 TFEU (formerly Article 49 EC), in conjunction with the provisions of Council Directive 92/49/EEC ([4]) of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (Third Non-life Insurance Directive)?

5. Where the national law of a Member State of the European Union provides that the victim of a road accident may seek from the person responsible compensation in respect of expenses arising from the repair or, where appropriate, the replacement of the motor vehicle, together with any other expenses, is the exemption of the insurer from any obligation to reimburse the injured party during an initial phase following a road traffic accident (the period immediately after the accident occurred), such that, subsequently, in accordance with the procedures for the resolution of the dispute and, in particular, the procedures for identifying the party responsible for the damage, the insurer is entitled to bring an action in recourse, so as to facilitate the rapid, effective resolution of demands for compensation and to avoid, as far as possible, costly legal proceedings which might make it impossible for the parties to enforce their rights, even in situations in which the provisions of Directive 2003/8/EC ([5]) and Recommendations R(81)7 and R(93)1 might apply, to be considered abusive and against the spirit of the recitals in the preambles to all of the directives on civil-liability motor vehicle insurance?

6. In the event that the fifth question is answered in the negative, is that situation contrary to what is provided for in recital 21 in the preamble to Directive 2005/14/EC ([6]) of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles?

7. Is the applicant's exclusion from cover in the present case, under her contract of civil-liability motor vehicle insurance, of such a kind as to place her in a situation which is less favourable than that of other persons who would receive compensation even if the party responsible for the damage were to remain unidentified or be uninsured, taking into account the fact that the applicant has signed both a compulsory civil-liability motor vehicle insurance policy and an optional policy, both of which were quite expensive, but has not received any kind of protection cover for her property?

8. Is the national court the only body which is competent to determine whether an undertaking, such as the insurance company here in question, meets the criteria for reliance to be placed, as against it, on the provisions of a directive that produces direct effects and, if so, what criteria are applicable?

9. Is the failure of a Member State of the European Union to transpose Directive 2005/14/CE into national law (despite the expiry on 11 June 2007 of the period allowed for transposition) and, in particular, the failure to transpose what is provided for in recitals 20 to 22 in the preamble to that directive, such as to harm the applicant by infringing one of her fundamental rights, namely the right to respect for her property, even though Directive 2009/103/EC ([7]) of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability has now repealed the First to Fifth Motor Insurance Directives (72/166/EEC, 84/5/EEC, 90/232/EEC, 2000/26/EC and 2005/14/EC), given that the legal rules to which the present court has referred are contained in full in the text of the new EC Directive, which, to a far greater extent than was the case under the repealed provisions, protects the rights of a person who has suffered damage as the result of a road accident?

10. Is the national court entitled to raise of its own motion the issue of breach of a provision of Community law and to rule that an insurance risk exclusion clause is null and void in a case where the injured party, that is to say, the consumer, has not been informed as to the exclusions (situations in which the insurance does not actually operate, by contrast with the scheme under Directive 2005/14/EC) and where the insurance company has imposed other exclusion clauses in addition to those provided for by the Romanian framework law on insurance, Law No 136/1995, even where the possible nullity of the clause has not been raised before the court by the person entitled to do so and even though national legislation has transposed the provisions of Directive 93/13/EC ([8]) by means of Law No 193/2000 ([9]) — Monitorul Oficial al României (Official Journal of Romania), Part I, of [10 November 2000, no 560] (supplemented by Law No 363/2006 on abusive clauses in contracts between businesses and consumers — Monitorul Oficial of 28 December 2007, no 899)?

([1]) Law No 136/1995 privind asigurările și reasigurările în România, M. Of., Partea I, nr. 303 din 30.12.1995.

([2]) Order No 3111/2004 al Comisiei de Supraveghere a Asigurărilor, M. Of., Partea I, nr. 1243/2004 din 23.12.2004.

([3]) Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17, Capital Special Edition 06/vol.1, p. 104).

([4]) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1, Capital Special Edition 06/vol. 2., p. 53).

([5]) Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, Capital Special Edition 19/vol. 6., p. 41).

([6]) Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (Text with EEA relevance) (OJ L 149, 11.6.2005, p. 14, Capital Special Edition 06/vol. 7., p. 212).

([7]) Commission Regulation (EC) No 103/2009 of 3 February 2009 amending Annexes VII and IX to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (Text with EEA relevance) (OJ 2009 L 34, p. 11).

([8]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29, Capital Special Edition 15/vol. 2, p. 273).

([9]) Law No 193/2000 privind clauzele abuzive din contractele încheiate între comercianți și consumatori, M. Of., nr. 560 din 10.11.2000, completată prin Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii și armonizarea reglementărilor cu legislația europeană privind protecția consumatorilor — M. Of., Partea I, nr. 899 din 28.12.2007).

Action brought on 24 February 2010 — European Commission v Portuguese Republic

(Case C-103/10)

(2010/C 113/48)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Oliver and P. Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/121/EC ([1]) of the European Parliament and of the Council of 18 December 2006 amending Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances in order to adapt it to Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency or, in any event, by failing to communicate those measures to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 2 of Directive 2006/121/EC.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 1 June 2008.

(1) OJ 2006 L 396, p. 850.

Reference for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 25 February 2010 — Lidl & Companhia v Fazenda Pública

(Case C-106/10)

(2010/C 113/49)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Lidl & Companhia

Defendant: Fazenda Pública

Intervening Party: Ministério Público

Questions referred

Is point (a) of the first paragraph of Article 78, read in conjunction with point (c) of the first paragraph of Article 79, of Directive 2006/112/EC (1) of 28 November 2006 to be interpreted as prohibiting, in the case of intra-Community purchases, the inclusion in the taxable amount for VAT of the vehicle tax introduced by Law No 22-A/2007 of 29 June 2007?

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

Action brought on 1 March 2010 — European Commission v Council of the European Union

(Case C-111/10)

(2010/C 113/50)

Language of the case: English

Parties

Applicant: European Commission (represented by: V. Di Bucci, L. Flynn, B. Stromsky, A. Stobiecka-Kuik, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision of 16 December 2009 on the granting of State aid by the authorities of the Republic of Lithuania for the purchase of State-owned agricultural land between 1 January 2010 and 31 December 2013 (1);

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

Pleas in law and main arguments

1. The Council, by adopting the contested decision, has overturned the Commission's decision resulting from the proposal for appropriate measures in Point 196 of the Community Guidelines for State aid in the agricultural and forestry sector 2007-2013 (2) (hereafter the '2007 Agricultural Guidelines') and from its unconditional acceptance by Lithuania, obliging the latter to bring to an end an existing aid scheme for the purchase of State-owned agricultural land by 31 December 2009 at the latest. Under the guise of exceptional circumstances, the Council has in fact allowed Lithuania to maintain that scheme until the expiry of the 2007 Agricultural Guidelines on 31 December 2013. The circumstances put forward by the Council as the grounds for its decision are self evidently not exceptional circumstances of such a nature as to justify the decision taken and make no allowance for the Commission's decision on that scheme.

2. In support of its action for annulment, the Commission raises four pleas in law:

In the first place, it considers that the Council was not competent to act under the third subparagraph of Article 108(2) TFEU because the aid which it approved was existing aid which Lithuania had committed to eliminating by the end of 2009 when it accepted the appropriate measures proposed to it by the Commission.

Secondly, it maintains that the Council has misused its powers, seeking to neutralise the determination that aid measures which Lithuania was free to retain until the end of 2009, but not after that date, could be kept in place until 2013.

Thirdly, the contested decision was adopted in breach of the principle of sincere cooperation which applies to Member States and also between institutions. By its decision, the Council has released Lithuania from its obligation of cooperation with the Commission in relation to the appropriate measures accepted by that Member State regarding existing aid for purchase of State-owned agricultural land in the context of the cooperation established by Article 108(1) TFEU.

Finally, the Commission maintains that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure. The Commission submits that, to the extent that any exceptional circumstances did exist, the contested decision approves aid which either is incapable of addressing those exceptional circumstances or goes beyond what would be needed to resolve them, in violation of the principle of proportionality.

([1]) 2009/983/EU, OJ L 338, p. 93
([2]) OJ 2006 C 319, p. 1

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium), lodged on 1 March 2010 — Procureur-Generaal bij het Hof van Beroep te Antwerpen v Zaza Retail BV [Philippe and Cécile Noelmans, administrators in the winding-up of Zaza Retail BV (Belgium)]; voluntary intervener: Zaza Retail BV [Manon Cordewener, administrator in the winding-up of Zaza Retail BV (Netherlands)]

(Case C-112/10)

(2010/C 113/51)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Procureur-Generaal bij het Hof van Beroep te Antwerpen

Respondent: Zaza Retail BV

[Philippe and Cécile Noelmans, administrators in the winding-up of Zaza Retail BV (Belgium)]

Voluntary intervener: Zaza Retail BV

[Manon Cordewener, administrator in the winding-up of Zaza Retail BV (Netherlands)]

Questions referred

1. Does the term 'the conditions laid down' in Article 3(4)(a) of Council Regulation (EC) No 1346/2000 ([1]) also cover conditions relating to the capacity or the interest of a person — such as the public prosecution service of another Member State — to request the opening of insolvency proceedings, or do those conditions relate only to the substantive conditions for being made subject to such proceedings?

2. Can the term 'creditor' in Article 3(4)(b) of Regulation No 1346/2000 be interpreted broadly to mean that a national authority which, under the law of the Member State to which it belongs, has power to request the opening of insolvency proceedings and acts in the public interest and as the representative of all the creditors, may also, in the present case, validly request the opening of territorial insolvency proceedings pursuant to Article 3(4)(b) of that regulation?

3. If the term 'creditor' can also refer to a national authority with the power to request the opening of insolvency proceedings, does the application of Article 3(4)(b) of Regulation No 1346/2000 require that national authority to demonstrate that it is acting in the interests of creditors who themselves have their domicile, habitual residence or registered office in the country of that national authority?

([1]) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

Reference for a preliminary ruling from the Cour de Cassation du Grand-Duché de Luxembourg (Luxembourg) lodged on 3 March 2010 — Etat du Grand-Duché de Luxembourg, Administration de l'Enregistrement et des Domaines v Mr Pierre Feltgen (Administrator in the bankruptcy of the limited liability company BACINO CHARTER COMPANY S.A.), Bacino Charter Company S.A.

(Case C-116/10)

(2010/C 113/52)

Language of the case: French

Referring court

Cour de Cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Applicants: Etat du Grand-Duché de Luxembourg, Administration de l'Enregistrement et des Domaines

Defendants: Me Pierre Feltgen (Administrator in the bankruptcy of the limited liability company Bacino Charter Company S.A.), Bacino Charter Company S.A.

Question referred

May services provided by the owner of a vessel who, for reward, with a crew, makes it available for natural persons for the purpose of leisure travel on the high seas by those clients, be exempted under Article 15(5) of Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, [1] where those services are considered to be both vessel hire services and transport services?

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

Action brought on 3 March 2010 — European Commission v Council of the European Union

(Case C-117/10)

(2010/C 113/53)

Language of the case: English

Parties

Applicant: European Commission (represented by: V. Di Bucci, L. Flynn, K. Walkerová, A. Stobiecka-Kuik, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Decision 2010/10/EC [1] of 20 November 2009 on the granting of State aid by the authorities of the Republic of Poland for the purchase of agricultural land between 1 January 2010 and 31 December 2013.

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

Pleas in law and main arguments

The Council, by adopting the contested decision, has overturned the Commission's decision resulting from the proposal for appropriate measures in Point 196 of the 2007 Agricultural Guidelines and from its unconditional acceptance by Poland, obliging the latter to bring to an end an existing aid scheme for the purchase of agricultural land by 31 December 2009 at the latest. Under the guise of exceptional circumstances, the Council has in fact allowed Poland to maintain that scheme until the expiry of the 2007 Agricultural Guidelines on 31 December 2013. The circumstances put forward by the Council as the grounds for its decision are self evidently not exceptional circumstances of such a nature as to justify the decision taken and make no allowance for the Commission's decision on that scheme. In support of its action for annulment, the Commission will put forward four pleas in law:

(a) In the first place, it considers that the Council was not competent to act under the third subparagraph of Article 88(2) EC because it did not decide on the Polish application within the three-month deadline fixed by the fourth subparagraph of that provision and because in any event the aid which it approved was existing aid which Poland had committed to eliminating by the end of 2009 when it accepted the appropriate measures proposed to it by the Commission.

(b) Secondly, the Council has misused its powers, seeking to neutralise the determination that aid measures which Poland was free to retain until the end of 2009 but not after that date could be kept in place until 2013.

(c) Next, in its third plea, the contested decision was adopted in breach of the principle of sincere cooperation which applies to Member States and also between institutions. By its decision, the Council has released Poland from its obligation of cooperation with the Commission in relation to the appropriate measures accepted by that Member State regarding existing aid for purchase of agricultural land in the context of the cooperation established by Article 88(1) EC.

(d) By its final plea, the Commission will argue that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure.

[1] OJ L 4, 8.1.2010, p. 89

Action brought on 3 March 2010 — European Commission v Council of the European Union

(Case C-118/10)

(2010/C 113/54)

Language of the case: English

Parties

Applicant: European Commission (represented by: V. Di Bucci, L. Flynn, K. Walkerová, A. Stobiecka-Kuik, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— Annul Council Decision 2009/991/EU ([1]) of 16 December 2009 on the granting of State aid by the authorities of the Republic of Latvia for the purchase of agricultural land between 1 January 2010 and 31 December 2013;

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

Pleas in law and main arguments

The Council, by adopting the contested decision, has overturned the Commission's decision resulting from the proposal for appropriate measures in Point 196 of the 2007 Agricultural Guidelines and from its unconditional acceptance by Latvia, obliging the latter to bring to an end an existing aid scheme for the purchase ofagricultural land by 31 December 2009 at the latest. Under the guise of exceptional circumstances, the Council has in fact allowed Latvia to maintain that scheme until the expiry of the 2007 Agricultural Guidelines on 31 December 2013. The circumstances put forward by the Council as the grounds for its decision are self evidently not exceptional circumstances of such a nature as to justify the decision taken and make no allowance for the Commission's decision on that scheme. In support of its action for annulment, the Commission will put forward four pleas in law:

a) In the first place, it considers that the Council was not competent to act under the third subparagraph of Article 108(2) TFEU because the aid which it approved was existing aid which Latvia had committed to eliminating by the end of 2009 when it accepted the appropriate measures proposed to it by the Commission.

b) Secondly, the Council has misused its powers, seeking to neutralise the determination that aid measures which Latvia was free to retain until the end of 2009 but not after that date could be kept in place until 2013.

c) Next, in its third plea, the contested decision was adopted in breach of the principle of sincere cooperation which applies to Member States and also between institutions. By its decision, the Council has released Latvia from its obligation of cooperation with the Commission in relation to the appropriate measures accepted by that Member State regarding existing aid for purchase of agricultural land in the context of the cooperation established by Article 108(1) TFEU.

d) By its final plea, the Commission will argue that the Council committed a manifest error of assessment insofar it found that exceptional circumstances existed which justify the adoption of the approved measure.

([1]) OJ L 339, 22.12.2009, p. 34

Reference for a preliminary ruling from the Marknadsdomstolen (Sweden) lodged on 8 March 2010 — Konsumentombudsmannen (KO) v Ving Sverige AB

(Case C-122/10)

(2010/C 113/55)

Language of the case: Swedish

Referring court

Marknadsdomstolen

Parties to the main proceedings

Applicant: Konsumentombudsmannen (KO)

Defendant: Ving Sverige AB

Questions referred

1. Is the requirement 'thereby enables the consumer to make a purchase' in Article 2(i) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [1] to be interpreted as meaning that an invitation to purchase exists as soon as information on the advertised product and its price is available so that the consumer may make a decision to purchase, or is it necessary that the commercial communication also offer an actual opportunity to purchase the product (e.g. an order form) or that there be access to such an opportunity (e.g. an advertisement outside a shop)?

2. If the answer to the above question is that it is necessary that there be an actual opportunity to purchase the product, is that to be regarded as existing if the commercial communication refers to a telephone number or website where the product can be ordered?

3. Is Article 2(i) of Directive 2005/29 to be interpreted as meaning that the requirement for a price is met if the commercial communication contains an entry-level price, that is to say, the lowest price for which the advertised product or category of products can be bought at the same time as the advertised product or category of products are available in other versions or with other content at prices which are not stated?

4. Is Article 2(i) of Directive 2005/29 to be interpreted as meaning that the requirement concerning a product's characteristics is met as soon as there is a verbal or visual reference to the product, [2] that is to say, so that the product is identified but not further described?

5. If the answer to the above question is affirmative, does that also apply where the advertised product is offered in many versions, but the commercial communication refers to them only by a common designation?

6. If there is an invitation to purchase, is Article 7(4)(a) to be interpreted as meaning that it is sufficient for only certain of a product's main characteristics to be given and for the trader to refer in addition to its website, on the condition that on that site there is essential information on the product's main characteristics, price and other terms in accordance with the requirement in Article 7(4)?

7. Is Article 7(4)(c) to be interpreted as meaning that it is sufficient to give an entry-level price for the price requirement to be met?

[1] OJ 2005 L 149, p. 22.

[2] Commission staff working document '*Guidance on the implementation/application of directive 2005/29/EC on unfair commercial practices*', p. 47f.

Action brought on 10 March 2010 — European Commission v Hellenic Republic

(Case C-127/10)

(2010/C 113/56)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Karanasou-Apostolopoulou and G. Zavvos, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

— declare that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/42/EC [1] of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC, or in any event by failing to inform the Commission of such provisions, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposing Directive 2006/42/EC into national law expired on 29 June 2008.

[1] OJ L 157 of 9.6.2006, p. 24.

GENERAL COURT

Judgment of the General Court of 4 March 2010 — Brosmann Footwear (HK) and Others v Council

(Case T-401/06) [1]

(Dumping — Imports of footwear with uppers of leather originating in China and Vietnam — Market economy treatment — Individual treatment — Sampling — Support of the complaint by the Community industry — Definition of the product concerned — Equal treatment — Injury — Legitimate expectations — Obligation to state the reasons on which the decision is based)

(2010/C 113/57)

Language of the case: English

Parties

Applicants: Brosmann Footwear (HK) Ltd (Kowloon, China); Seasonable Footwear (Zhongshan) Ltd (Zhongshan, China); Lung Pao Footwear (Guangzhou) Ltd (Guangzhou, China); and Risen Footwear (HK) Co., Ltd (Kowloon, China) (represented by: L. Ruessmann and A. Willems, lawyers)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and T. Scharf, acting as Agents) and Confédération européenne de l'industrie de la chaussure (CEC) (Brussels, Belgium) (represented: initially by P. Vlaemminck, G. Zonnekeyn and S. Verhulst and subsequently by P. Vlaemminck and A. Hubert, lawyers)

Re:

Application for partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1), in so far as it concerns the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Brosmann Footwear (HK) Ltd, Seasonable Footwear (Zhongshan) Ltd, Lung Pao Footwear (Guangzhou) Ltd and Risen Footwear (HK) Co., Ltd to bear their own costs as well as those incurred by the Council of the European Union;*

3. *Orders the European Commission and the Confédération européenne de l'industrie de la chaussure (CEC) to bear their own costs.*

---

[1] OJ C 42, 24.2.2007.

Judgment of the General Court of 4 March 2010 — Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council

(Joined Cases T-407/06 and T-408/06) [1]

(Dumping — Imports of footwear with uppers of leather originating in China and Vietnam — Market economy treatment — Individual treatment — Sampling — Rights of the defence — Equal treatment — Injury — Legitimate expectations — Obligation to state the reasons on which the decision is based)

(2010/C 113/58)

Language of the case: English

Parties

Applicants: Zhejiang Aokang Shoes Co., Ltd (Yongjia, China) (Case T-407/06) and Wenzhou Taima Shoes Co., Ltd (Wenzhou, China) (Case T-408/06) (represented by: I. MacVay, Solicitor, R. Thompson QC, and K. Beal, Barrister)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and T. Scharf, actig as Agents); Confédération européenne de l'industrie de la chaussure (CEC) (Brussels, Belgium) (represented: initially by P. Vlaemminck, G. Zonnekeyn and S. Verhulst and subsequently by P. Vlaemminck and A. Hubert, lawyers); BA.LA. di Lanciotti Vittorio & C. Sas (Monte Urano, Italy) and the 16 other interveners listed in the Annex (represented by: G. Celona, P. Tabellini and C. Cavaliere, lawyers)

Re:

Applications for partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1), in so far as it concerns the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Zhejiang Aokang Shoes Co., Ltd and Wenzhou Taima Shoes Co., Ltd to bear their own costs as well as those incurred by the Council of the European Union;*

3. *Orders the European Commission, the Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas and the 16 other interveners listed in the Annex to bear their own costs.*

([1]) OJ C 42, 24.2.2007.

Judgment of the General Court of 4 March 2010 — Sun Sang Kong Yuen Shoes Factory v Council

(Case T-409/06) ([1])

(Dumping — Imports of footwear with uppers of leather from China and Vietnam — Market economy treatment — Sampling — Lack of cooperation — Rights of the defence — Injury — Obligation to state reasons)

(2010/C 113/59)

Language of the case: English

Parties

Applicant: Sun Sang Kong Yuen Shoes Factory (Hui Yang) Corp. Ltd (Hui Yang City, China) (represented by I. MacVay, Solicitor, R. Thompson QC and K. Beal, Barrister)

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

Interveners in support of the defendant: European Commission (represented by H. van Vliet and T. Scharf, Agents); Confédération européenne de l'industrie de la chaussure (CEC) (Brussels, Belgium) (represented initially by P. Vlaemminck, G. Zonnekeyn and S. Verhulst and then by P. Vlaemminck and A. Hubert, lawyers); BA.LA. di Lanciotti Vittorio & C. Sas (Monte Urano, Italy) and the 16 other interveners listed in the annex to the judgment (represented by G. Celona, P. Tabellini and C. Cavaliere, lawyers)

Re:

Application for partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sun Sang Kong Yuen Shoes Factory (Hui Yang) Corp. Ltd to pay its own costs and those incurred by the Council of the European Union;*

3. *Orders the European Commission, the Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas and the 16 other interveners listed in the annex to bear their own costs.*

([1]) OJ C 42, 24.2.2007.

Judgment of the General Court of 4 March 2010 — Foshan City Nanhai Golden Step Industrial v Council

(Case T-410/06) [1]

(Dumping — Imports of footwear with uppers of leather originating in China and Vietnam — Calculation of the constructed normal value — Export price — Rights of the defence — Injury — Obligation to state the reasons on which the decision is based)

(2010/C 113/60)

Language of the case: English

Parties

Applicant: Foshan City Nanhai Golden Step Industrial Co., Ltd (Lishui, China) (represented by: I. MacVay, Solicitor, R. Thompson QC, and K. Beal, Barrister)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and T. Scharf, acting as Agents) and Confédération européenne de l'industrie de la chaussure (CEC) (Brussels, Belgium) (represented; initially by P. Vlaemminck, G. Zonnekeyn and S. Verhulst and subsequently by P. Vlaemminck and A. Hubert, lawyers)

Re:

Application for partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Foshan City Nanhai Golden Step Industrial Co., Ltd to bear its own costs and to pay those incurred by the Council of the European Union;*

3. *Orders the European Commission and Confédération européenne de l'industrie de la chaussure (CEC) to bear their own costs.*

---

[1] OJ C 42, 24.2.2007.

Judgment of the General Court of 18 March 2010 — Grupo Promer Mon Graphic v OHIM — PepsiCo (Representation of a circular promotional item)

(Case T-9/07) [1]

(Community design — Invalidity proceedings — Registered Community design representing a circular promotional item — Prior design — Ground for invalidity — Conflict — No different overall impression — Meaning of 'conflict' — Product at issue — Degree of freedom of the designer — Informed user — Article 10 and Article 25(1)(d) of Regulation (EC) No 6/2002)

(2010/C 113/61)

Language of the case: English

Parties

Applicant: Grupo Promer Mon Graphic SA (Sabadell, Spain) (represented by: R. Almaraz Palmero, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: PepsiCo Inc. (New York, United States) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 27 October 2006 (Case R 1001/2005-3) relating to invalidity proceedings between Grupo Promer Mon Graphic SA and PepsiCo Inc.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 27 October 2006 (Case R 1001/2005-3);*

2. *Orders OHIM and PepsiCo Inc. to bear their own costs and to pay those incurred by Grupo Promer Mon Graphic SA in the proceedings before the General Court;*

3. *Orders OHIM and PepsiCo to bear their own costs and to pay those incurred by Grupo Promer Mon Graphic in the proceedings before the Board of Appeal.*

([1]) OJ C 56, 10.3.2007.

Judgment of the General Court of 17 March 2010 — Mäurer + Wirtz v OHIM — (tosca de FEDEOLIVA)

(Case T-63/07) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark tosca de FEDEOLIVA — Earlier Community and national word marks TOSCA — Relative grounds for refusal — Failure to take an argument into consideration — Article 74(1) of Regulation (EC) No 40/94 (now Article 76(1) of Regulation (EC) No 207/2009))

(2010/C 113/62)

Language of the case: English

Parties

Applicant: Mäurer + Wirtz GmbH & Co. KG (Stolberg, Germany) (represented by: D. Eickemeier, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Exportaciones Aceiteras Fedeoliva, AIE (Jaén, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 December 2006 (Case R 761/2006-2), concerning opposition proceedings between Mülhens GmbH & Co. KG and Exportaciones Aceiteras Fedeoliva, AIE.

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) of 18 December 2006 (Case R 761/2006-2), to the extent that it rejects the opposition brought on the basis of Article 8(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (now Article 8(5) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark);*

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

3. *Orders Mäurer + Wirtz GmbH & Co. KG and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) each to bear its own costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the General Court of 18 March 2010 — KEK Diavlos v European Commission

(Case T-190/07) ([1])

(Financial assistance for the European citizen information programme (Prince) — Project concerning the preparation for the introduction of the euro in schools — Decision ordering reimbursement of the advance paid — Obligation to state reasons — Error of assessment)

(2010/C 113/63)

Language of the case: Greek

Parties

Applicant: KEK Diavlos (Athens, Greece) (represented by: D. Chatzimichalis)

Defendant: European Commission (represented by: M. Condou-Durande and S. Petrova, Agents, assisted by E. Politis, lawyer)

Re:

Application for annulment of Commission Decision C(2006) 465 Final of 23 February 2006 ordering the reimbursement of the advance, together with interest, paid under a contract for financial assistance, concluded under the Prince programme, for an operation entitled 'The EURO — its genuine and essential impact on school children' (Eurogenesis), concerning the preparation for the introduction of the euro in schools.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders KEK Diavlos to pay the costs.*

([1]) OJ C 211, 8.9.2007

Judgment of the General Court of 4 March 2010 — Weldebräu v OHIM — Kofola Holding (Shape of a bottle with a helically formed neck)

(Case T-24/08) ([1])

(Community trade mark — Opposition proceedings — Application for a three-dimensional Community trade mark — Shape of a bottle with a helically formed neck — Earlier three-dimensional Community trade mark consisting in the shape of a bottle with a helically formed neck — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 113/64)

Language of the case: English

Parties

Applicant: Weldebräu GmbH & Co. KG (Plankstadt, Germany) (represented by: W. Göpfert, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Kofola Holding a.s. (Ostrava, Czech Republic) (represented by: S. Hejdová and R. Charvát, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 November 2007 (Case R 1096/2006-4), relating to opposition proceedings between Weldebräu GmbH & Co. KG and Kofola Holding a.s.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Weldebräu GmbH & Co. KG to pay the costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the General Court of 18 March 2010 — Centre de coordination Carrefour v Commission

(Case T-94/08) ([1])

(Actions for annulment — State aid — Aid scheme for coordination centres established in Belgium — New decision of the Commission adopted following partial annulment by the Court — No interest in bringing proceedings — Inadmissibility)

(2010/C 113/65)

Language of the case: French

Parties

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

Defendant: European Commission (represented by: J.-P. Keppenne, Agent)

Re:

Action for the annulment of Commission Decision 2008/283/EC of 13 November 2007 amending Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2008 L 90, p. 7), in so far as it does not provide an adequate transitional period.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Centre de coordination Carrefour SNC to pay the costs.*

([1]) OJ C C 92, 12.4.2008.

Judgment of the General Court of 18 March 2010 — Forum 187 v Commission

(Case T-189/08) ([1])

(Actions for annulment — State aid — Aid scheme for coordination centres established in Belgium — New decision of the Commission adopted following partial annulment by the Court — Association — No interest in bringing proceedings — Inadmissibility)

(2010/C 113/66)

Language of the case: English

Parties

Applicant: Forum 187 (Brussels, Belgium) (represented by: A. Sutton and G. Forwood, Barristers)

Defendant: European Commission (represented by: N. Khan and C. Urraca Caviedes, Agents)

Re:

Action for the annulment of Commission Decision 2008/283/EC of 13 November 2007 amending Decision 2003/757/EC on the aid scheme implemented by Belgium for coordination centres established in Belgium (OJ 2008 L 90, p. 7), in so far as it does not provide reasonable prospective transitional periods for the coordination centres concerned by the judgment of the Court of Justice in Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Forum 187 ASBL to pay the costs.*

([1]) OJ C 183, 19.7.2008.

Judgment of the General Court of 4 March 2010 — Mundipharma v OHIM — ALK-Abelló (AVANZALENE)

(Case T-477/08) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark AVANZALENE — Earlier Community word mark AVANZ — 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))

(2010/C 113/67)

Language of the case: English

Parties

Applicant: Mundipharma AG (Basle, Switzerland) (represented by: F. Nielsen, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: ALK-Abelló A/S (Hørsholm, Denmark) (represented by: S. Palomäki Arnesen, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 28 August 2008 (Case R 1694/2007-4), relating to opposition proceedings between ALK-Abelló A/S and Mundipharma AG.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Mundipharma AG to pay the costs, except those incurred by ALK-Abelló A/S.*

3. *Orders ALK-Abelló to bear its own costs.*

([1]) OJ C 6, 10.1.2009.

Judgment of the General Court of 4 March 2010 — Monoscoop v OHIM (SUDOKU SAMURAI BINGO)

(Case T-564/08) ([1])

(Community trade mark — Application for Community word mark SUDOKU SAMURAI BINGO — Absolute ground 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))

(2010/C 113/68)

Language of the case: Spanish

Parties

Applicant: Monoscoop BV (Alkmaar, Netherlands) (represented by: A. Canela Giménez, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 September 2008 (Case R 816/2008-2) concerning an application for registration of the word mark SUDOKU SAMURAI BINGO as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Monoscoop BV to pay the costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the General Court of 9 March 2010 — Euro-Information v OHIM (EURO AUTOMATIC CASH)

(Case T-15/09) ([1])

(Community trade mark — Application for Community word mark EURO AUTOMATIC CASH — Absolute grounds 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) — Distinctive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2010/C 113/69)

Language of the case: French

Parties

Applicant: Européenne de traitement de l'information (Euro-Information) (Strasbourg, France) (represented by: A. Grolée, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 November 2008 (Case R 70/2006-4) concerning an application for registration of the word sign EURO AUTOMATIC CASH as a Community trade mark

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 November 2008 (Case R 70/2006 4);*

2. *Orders OHIM to pay four fifths of the costs incurred by the parties before the Court;*

3. *Orders Européenne de traitement de l'information (Euro-Information) to pay one fifth of the costs incurred by the parties before the Court;*

4. *Orders OHIM to pay the essential costs incurred by the applicant for the purposes of the proceedings before the Board of Appeal of OHIM.*

(1) OJ C 69, 21.3.2009.

Judgment of the General Court of 10 March 2010 — Baid v OHIM (LE GOMMAGE DES FACADES)

(Case T-31/09) (1)

(Community trade mark — Application for the Community word mark LE GOMMAGE DES FACADES — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation No 207/2009) — Duty to state reasons — First sentence of Article 73 of Regulation No 40/94 (now the first sentence of Article 75 of Regulation No 207/2009))

(2010/C 113/70)

Language of the case: French

Parties

Applicant: Baid SARL (Paris, France) (represented by: M. Grasset, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 October 2008 (Case R 963/2008-1), concerning an application to register the word sign LE GOMMAGE DES FACADES as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Baid SARL to pay the costs.*

(1) OJ C 69, 21.3.2009.

Judgment of the General Court of 9 March 2010 — hofherr communikation GmbH v OHIM (NATURE WATCH)

(Case T-77/09) (1)

(Community trade mark — International registration designating the European Community — Word mark NATURE WATCH — Absolute ground 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))

(2010/C 113/71)

Language of the case: English

Parties

Applicant: hofherr communikation GmbH (Innsbruck, Austria) (represented by: S. Warbek, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 December 2008 (Case R 1410/2008-1) concerning the international registration, designating the European Community, of the word sign NATURE WATCH.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders hofherr communikation GmbH to pay the costs.*

(1) OJ C 90, 18.4.2009.

Judgment of the General Court of 17 March 2010 — Parliament v Collée

(Case T-78/09) [1]

(Appeal — Staff cases — Officials — Promotion — 2004 Promotion round — Procedure for the allocation of merit points — Distortion of the evidence — Statement of reasons — Value of the opinion of the Reports Committee — Principle of non-discrimination)

(2010/C 113/72)

Language of the case: French

Parties

Appellant: European Parliament (represented by: initially C. Burgos and A. Lukošiūtė, and subsequently R. Ignătescu, Agents)

Other party to the proceedings: Laurent Collée (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Re:

Appeal against the judgment of 11 December 2008 of the European Union Civil Service Tribunal in Case F-148/06 *Collée* v *Parliament*, not yet published in the ECR, seeking the setting-aside of that judgment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Parliament to bear its own costs and to pay those incurred by Mr Laurent Collée in connection with the appeal.*

[1] OJ C 102, of 1.5.2009.

Order of the General Court of 3 March 2010 — REWE-Zentral v OHIM — KODI Diskontläden (inéa)

(Case T-538/08) [1]

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

(2010/C 113/73)

Language of the case: German

Parties

Applicant: REWE-Zentral AG (Cologne, Germany) (represented by: M. Kinkeldey and A. Bognár, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: KODI Diskontläden GmbH (Oberhausen, Germany) (represented by: J. Schmidt, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 October 2008 (Case R 744/2008-4) concerning opposition proceedings between KODI Diskontläden GmbH and REWE-Zentral AG.

Operative part of the order

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

2. *The applicant and the intervener shall bear their own costs and shall each pay half of the costs of the defendant.*

[1] OJ C 55, 7.3.2009.

Order of the General Court of 25 February 2010 — Google v OHIM (ANDROID)

(Case T-316/09) [1]

(Community trade mark — Refusal of registration — Restriction of the list of goods for which registration is sought — Withdrawal of the objection to registration — No need to adjudicate)

(2010/C 113/74)

Language of the case: English

Parties

Applicant: Google, Inc. (Mountain View, United States) (represented by: A. Bognár and M. Kinkeldey, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 26 May 2009 (Case R 1622/2008-2) concerning an application for registration of the word mark ANDROID as a Community trade mark.

Operative part of the judgment

The Court:

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

2. *The applicant and the defendant shall bear their own costs.*

[1] OJ C 244, 10.10.2009.

Order of the General Court of 4 March 2010 — Henkel v OHIM — JLO Holding (LIVE)

(Case T-414/09) [1]

(Community trade marks — Application for revocation — Withdrawal of the application for revocation — No need to adjudicate)

(2010/C 113/75)

Language of the case: German

Parties

Applicant: Henkel AG & Co. KGaA (Düsseldorf, Germany) (represented by: C. Milbradt, subsequently by C. Milbradt and H. Van Volxem, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: JLO Holding Company LLC (Santa Monica, United States) (represented by: A. Klett, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 July 2009 (Case R 609/2008-1) relating to an application for revocation involving Henkel AG & Co. KGaA and JLO Holding Company, LLC.

Operative part of the order

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

2. *The parties shall each bear their own costs.*

[1] OJ C 312, 19.12.2009.

Order of the President of the General Court of 15 March 2010 — GL2006 Europe v Commission and OLAF

(Case T-435/09 R)

(Application for interim measures — Community programmes for research and technological development — Arbitration clause — Order for recovery — Debit note — Application for suspension of operation of a measure — Financial loss — No exceptional circumstances — No urgency)

(2010/C 113/76)

Language of the case: English

Parties

Applicant: GL2006 Europe Ltd (Birmingham, United Kingdom) (represented by: M. Gardenal and E. Belinguier-Raiz, lawyers)

Defendant: European Commission (represented by: S. Delaude and N. Bambara, acting as Agents, and R. Van der Hout, lawyer)

Re:

Application for suspension of the operation of the decision contained in the Commission's letter of 10 July 2009 terminating the applicant's participation in two Community projects and the debit notes issued on 7 August 2009 by which the Commission claimed repayment of sums paid pursuant to Community projects in which the applicant participated

Operative part of the order

1. *The European Commission shall be regarded as the sole defendant.*

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

3. *The costs are reserved.*

Action brought on 14 August 2009 — Al-Faqih and MIRA v Council and Commission

(Case T-322/09)

(2010/C 113/77)

Language of the case: English

Parties

Applicants: Saad Al-Faqih and Movement for Islamic Reform in Arabia (London, United Kingdom), (represented by: J. Jones, Barrister and A. Raja, Solicitor)

Defendants: Council of the European Union and European Commission

Form of order sought

— annul in whole or in part Council Regulation (EC) No 881/2002 [1], as amended by the Commission Regulation (EC) No 14/2005 [2], No 492/2007 [3], and No 1190/2005 [4], and/or annul the Commission Regulation No 14/2005, No 492/2007, and No 1190/2005 insofar as they are of direct and individual concern to the applicants; and

— order the Council and/or the Commission to pay the applicants' costs.

Pleas in law and main arguments

By means of its application, the applicants seek, pursuant to Article 230 EC, the annulment of Council Regulation No 881/2002 imposing certain specific restrictive certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and Taliban, as amended by the Commission Regulations (EC) No 14/2005 of 5 January 2005, No 492/2007 of 3 May 2007, and 1190/2005 of 20 July 2005 and/or the annulment of Commission Regulations (BC) No 14/2005, No 492/2007, and 1190/2005, insofar as they relate to the applicants.

The applicants were included in the consolidated list of the United Nations Sanctions Committee of individuals and entities allegedly associated with Usama bin Laden, Al-Qaida and Taliban network, whose funds and other financial resources are to be frozen. Consequently, the European Commission adopted Regulations (EC) No 14/2005 and 1190/2005 which added the applicants names in Annex I to the Council Regulation (EC) No 881/2002 listing persons, groups and entities covered by the freezing of funds and economic resources within the EU. The entry of the first applicant, Mr. Al-Faqih, was later amended by the Commission Regulation (EC) 492/2007.

In support of their action, the applicants rely on the following pleas in law:

The applicants argue that the freezing of their funds provided by the contested regulations infringes their fundamental human rights, namely their right to be heard and the right to effective judicial review, as they have never been informed by the Council and/or the Commission of the reasons for their inclusion in Annex I to the Council Regulation (EC) No 881/2002 and have never received any evidence justifying the imposition of restrictive measures. The applicants therefore have not had any opportunity to defend themselves and challenge the listing decisions before the European judiciary.

The applicants further submit that their right to respect for property has been infringed since the indefinite restrictions of such right caused by freezing of their funds amount to a disproportionate and intolerable interference with this fundamental human right.

(1) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ L 139, p.9)

(2) Commission Regulation (EC) No 14/2005 of 5 January 2005 amending for the 42nd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ L 5, p.10)

(3) Commission Regulation (EC) No 492/2007 of 3 May 2007 amending for the 75th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ L 116, p. 5)

(4) Commission Regulation (EC) No 1190/2005 of 20 July 2005 amending for the 48th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 193, p. 27)

Appeal brought on 9 February 2010 by Giorgio Lebedef against the judgment of the Civil Service Tribunal delivered on 30 November 2009 in Case F-54/09, Lebedef v Commission

(Case T-52/10 P)

(2010/C 113/78)

Language of the case: French

Parties

Appellant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by F. Frabetti, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Annul the order of the CST of 30 November 2009 in Case F-54/09 between Giorgio Lebedef, resident at 4 Neie Wee, L-1670 Senningerberg, Luxembourg, official at the European Commission, assisted and represented by Frédéric Frabetti, 5 rue Jean Bertels, L-1230 Luxembourg, avocat à la Cour, at whose offices service is to be made, and the Commission of the European Communities, represented by J. Currall and G. Berscheid, acting as Agents, with an address for service in Luxembourg, defendant, seeking annulment of the decisions of 15.2.2008, 1.4.2008, 10.4.2008, 20.5.2008 and 14.7.2008 concerning the deduction of 39 days from the applicant's annual leave entitlement for 2008;

— Allow the applicant's claims at first instance;

— In the alternative, refer the matter back to the Civil Service Tribunal;

— Rule on costs and order the Commission to pay the costs.

Pleas in law and main arguments

By the present appeal, the applicant seeks the annulment of the order of the Civil Service Tribunal (CST) of 30 November 2009 in Case F-54/09 *Lebedef* v *Commission*, rejecting as manifestly devoid of any legal basis the action by which the applicant had sought annulment of a series of decisions concerning the deduction of 39 days from his annual leave for 2008.

In support of his appeal, the applicant raises nine pleas in law, alleging:

— failure to have regard to the sixth paragraph of Article 1 of Annex II to the Staff Regulations and to Article 1(2) of the Framework Agreement governing relations between the Commission and the trade unions and professional organisations;

— incorrect interpretation and application of the concept of freedom of association;

— facts which did not exist in 2008;

— failure to have regard to the decision of the Commission of 28 April 2004 laying down provisions applicable to absence due to illness or accident;

— incorrect interpretation and application of the concepts 'participation in staff representation', 'secondment for the purposes of trade union matters' and 'absence on trade union matters';

— distortion and misrepresentation of the facts and of the applicant's assertions and material inaccuracy of the findings of the CST with regard to the registration of 'irregular absences' in SysPer2;

— misinterpretation of the applicant's declarations and an error in law committed by the CST by interpreting the concept of 'absence' as it is defined in Articles 57, 59 and 60 of the Staff Regulations;

— an error in law committed by the CST in applying Article 60 of the Staff Regulations; and

— a failure to state reasons with regard to various decisive points in the contested matter.

Action brought on 11 February 2010 — Phoenix-Reisen and DRV v Commission

(Case T-58/10)

(2010/C 113/79)

Language of the case: German

Parties

Applicants: Phoenix-Reisen GmbH (Bonn, Germany) and Deutscher Reiseverband eV (DRV) (Berlin, Germany) (represented by: R. Gerharz, lawyer)

Defendant: European Commission

Form of order sought

— Annul the defendant's decision of 20 November 2009, notified by letter of 11 December 2009, by which it refused to take action against State aid granted by the Federal Republic of Germany in the form of insolvency payments;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants' action is directed against Commission Decision C(2009) 8707 final of 19 November 2009 concerning State aid NN 55/2009 — Germany; alleged State aid in the form of insolvency payments and the financing thereof. The Commission came to the conclusion in that decision that the measure in question does not constitute State aid for the purposes of Article 87(1) EC.

In support of their claim, the applicants maintain that the subsidisation of insolvent undertakings cannot be justified on the basis of Directive 80/987/EEC [1] as it serves solely to protect the employees of the insolvent undertaking, not the undertaking itself. The applicants take the view that the legal practice applied in the Federal Republic of Germany is such that insolvent undertakings profit directly from insolvency payments. Furthermore, the applicants submit that examples from other countries in the Community show that Directive 80/987/EEC can be transposed without competitors being unlawfully subsidised as a result.

[1] Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23).

Appeal brought on 10 February 2010 by Brigitte Zangerl-Posselt against the judgment of the Civil Service Tribunal of 30 November 2009 in Case F-83/07 Zangerl-Posselt v Commission

(Case T-62/10 P)

(2010/C 113/80)

Language of the case: German

Parties

Appellant: Brigitte Zangerl-Posselt (Merzig, Germany) (represented by: S. Paulmann, lawyer)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the contested judgment;

— give judgment itself and, as claimed by the appellant at first instance, annul the decision of the selection board of Competition EPSO/AST/27/06 of 25 July 2007 not to allow the appellant to be admitted to the practical and oral tests of that competition which was, in the meantime, confirmed by the decision of 13 December 2007 on her complaint;

— order the Commission to pay the costs incurred in connection with both proceedings.

Pleas in law and main arguments

The appeal is directed against the judgment of the Civil Service Tribunal of 30 November 2009 in Case F-83/07 *Zangerl-Posselt* v *Commission*, rejecting the appellant's application.

The appellant bases her appeal on the ground that the Civil Service Tribunal erred in law when considering the conditions for admission to Open Competition EPSO/AST/27/06. In that regard, it is alleged inter alia that the Civil Service Tribunal, when deciding whether the appellant possessed a diploma within the meaning of the notice of competition in respect of the competition in question, essentially applied the French version of Article 5(3)(a)(ii) of the Staff Regulations of Officials of the European Union.

Further, according to the appellant, the arguments with which the Civil Service Tribunal sought to invalidate the appellant's submissions are vitiated by a number of errors of law. In that regard, it is submitted inter alia that findings were made whose unlawfulness is apparent from the case-file, and also the clear sense of the evidence submitted was distorted.

The appellant further claims that the indirect discrimination on grounds of age, of which she complains and which was found to have existed, was held to be justified on grounds which were insufficient and false.

Action brought on 10 February 2010 — Jurašinović v Council

(Case T-63/10)

(2010/C 113/81)

Language of the case: French

Parties

Applicant: Ivan Jurašinović (Angers, France) (represented by: N. Amara-Lebret, lawyer)

Defendant: Council of the European Union

Form of order sought

— annulment of the decision of 7 December 2009 by which the Council refused the applicant access to the following documents:

— Council decisions relating to the transmission to the International Criminal Tribunal for the former Yugoslavia of documents which that Tribunal requested in connection with the Gotovina case;

— all the correspondence exchanged in that connection by the EU Institutions with the International Criminal Tribunal for the former Yugoslavia (+ any annexes) and particularly the initial requests from both the International Criminal Tribunal for the former Yugoslavia and Mr GOTOVINA's lawyers;

— an order that the General Secretariat of the Council of the EU allow access, electronically, to all the documents sought;

— an order that the Council of the EU pay the applicant a sum of EUR 2,000 exclusive of tax, being EUR 2,392 inclusive of all taxes for its legal costs, with interest at the ECB's rate to the date of registration of the application.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the Council's decision of 7 December 2009 refusing it access to the Council's decisions relating to the transmission to the International Criminal Tribunal for the former Yugoslavia (ICTY) of the documents which that Tribunal requested in connection with the Gotovina case and all the correspondence exchanged in that connection by the EU Institutions with the International Criminal Tribunal for the former Yugoslavia (+ any annexes) and particularly the initial requests from both the International Criminal Tribunal for the former Yugoslavia and Mr GOTOVINA's lawyers.

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

— error of law in that the Council refused access to the documents on the basis of Article 70B of the ICTY's Rules of Procedure and Evidence, although those rules are not applicable;

— that the protection of court proceedings and legal advice under the third indent of Article 4(2) of Regulation No 1049/2001 [1] would not be undermined because that exception concerns the protection of court proceedings of the European Union and its Member States and not proceedings before the International Criminal Tribunal for the former Yugoslavia which are outside the EU's jurisdiction;

— that the protection of the public interest as regards international relations under the third indent of Article 4(1)(a) of Regulation No 1049/2001 would not be undermined;

— that there is an overriding public interest under the third indent of Article 4(2) of Regulation No 1049/2001 because the applicant seeks the disclosure of the documents sought so as to establish its rights in Case T-465/09. That request appertains to access to justice and the right to due process before the European Courts. In addition, the conflict to which those documents relate was concluded in 1995.

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

Action brought on 15 February 2010 — Zuckerfabrik Jülich AG v European Commission

(Case T-66/10)

(2010/C 113/82)

Language of the case: German

Parties

Applicant: Zuckerfabrik Jülich AG (Jülich, Germany) (represented by: H.-J. Prieß and B. Sachs, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant puts forward six pleas in law in support of its action.

First, the applicant pleads an infringement of Article 233 EC (Article 266 TFEU) by analogy, because the Commission has not given effect to the requirements of the judgment of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich* and Others [2008] ECR I-3231. In that judgment the Court explained how the parameters of the "exportable surplus" and the "total tonnage of export obligations to be fulfilled" are to be determined in the calculation of the production levies for the marketing years 2002/2003 to 2005/2006. The applicant submits that in the contested regulation the Commission also altered the third parameter, "total amount of refunds", even though this was not the subject matter of Joined Cases C-5/06 etc.

Second, the Commission infringed Article 15(1)(d) of Regulation (EC) No 1260/2001 [1] and the spirit and purpose of that regulation. It submits, inter alia, that when calculating the total amount of refunds the Commission included refunds for exports which had not been claimed and paid. Moreover, the flat-rate approach of monthly exports leads to inaccuracies in the calculation. In Joined Cases C-5/06 etc the Court prohibited the total loss from being set at an amount higher than expenditure for the refunds.

Third, the Commission infringed the principle prohibiting retroactive effects, as the contested regulation altered the total amount of refunds retroactively.

Fourth, when the Commission adopted a production levy regulation for the 2002/2003 to 2005/2006 marketing years on 3 November 2009, it no longer had power to do so, because Regulation No 1260/2001, which the Commission indicated as the legal basis, was no longer in force when the Regulation was adopted, there was no other legal basis under secondary law and, according to the relevant rules of the EC Treaty, it was the Council and not the Commission which had such power.

Fifth, there was an infringement of Article 37(2) EC, because on the basis of that provision a different procedure should have been chosen for the adoption of the Regulation.

Finally, the Commission infringed its obligation to state reasons under Article 253 EC (Article 296, second paragraph, TFEU), as the reason given by the Commission for the contested regulation is that it implements the judgment in Joined Cases C-5/06 etc, but, in the applicant's view, that decision goes beyond the requirements of that judgment.

(1) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

Action brought on 15 February 2010 — Intermark Srl v OHIM

(Case T-72/10)

(2010/C 113/83)

Language in which the application was lodged: Hungarian

Parties

Applicant(s): Intermark Srl (Stei, Romania) (represented by: Á.M. László, ügyvéd)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: Natex International Trade SpA (Pioltello, Italy)

Form of order sought

— Amendment of the decision of the defendant and dismissal in its entirety of the application for registration with regard to all goods;

— An order that the defendant bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Natex International Trade SpA

Community trade mark concerned: the word mark 'NATY'S' for goods in classes 29, 30 and 32 (application for registration No 5 810 627)

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

Mark or sign cited in opposition: the figurative mark 'Naty' for goods and services in classes 30 and 35 (Community trade mark No 4 149 456)

Decision of the Opposition Division: opposition upheld in part

Decision of the Board of Appeal: dismissal of the application

Pleas in law: breach of Article 8(1)(b) of Regulation (EC) No 207/2009, (1) in that there is a likelihood of confusion between the marks at issue.

(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 17 February 2010 — Embraer and others v Commission

(Case T-75/10)

(2010/C 113/84)

Language of the case: English

Parties

Applicants: Empresa Brasileira de Aeronáutica, SA (Embraer) (São José dos Campos, Brazil), Embraer Aviation Europe SAS (EAE) (Villepinte, France), Indústria Aeronáutica de Portugal SA (OGMA) (Alverca do Ribatejo, Portugal) (represented by: U. O'Dwyer and A. Martin, Solicitors)

Defendant: European Commission

Form of order sought

— annul the contested decision,

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009) 4541 final of 17 June 2009 declaring compatible with the common market the aid for the research and development costs involved in the design and manufacture of an aircraft product granted by the United Kingdom authorities to Bombardier (Short Brothers) [N 654/2008] [1]. The Commission's decision was taken following a preliminary examination under Article 108(3) TFEU. The applicants are the competitors to the beneficiary of the aid and they lodged a complaint opposing the proposed aid and asking the Commission to open a formal investigation procedure.

In support of its application for annulment, the applicants submit the following pleas in law:

First, they claim that the Commission experienced serious difficulties during its preliminary examination of the compatibility of the State aid with the common market and, therefore, was obligated to initiate the formal investigation procedure provided for in Article 108(2) TFEU. They further state that the Commission's failure to initiate the formal procedure denied applicants and other parties concerned of their right to be consulted during the Commission's assessment. In the applicants' opinion this constitutes a procedural defect in violation of the Treaty.

Specifically, the serious difficulties encountered by the Commission are evidenced by:

— the length and circumstances of the preliminary examination;

— the failure of the Commission to identify the market for wings of aircraft with 100-149 seats as a relevant product market;

— the failure of the Commission to analyse the impact of the State aid on competition in the market for wings of aircraft with 100-149 seats;

— the Commission's analysis of the impact of the State aid on competition for finished aircraft with 100-149 seats, which was insufficient and incomplete.

Second, the applicants contend that the Commission's identification of a purported market for aerostructures and failure to identify the relevant market for wings of aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

Third, they argue that the Commission's failure to analyse the impact of the State aid on the relevant market for wings of aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

Fourth, they submit that the Commission's incomplete and flawed analysis of the impact of the State aid on the market for finished aircraft with 100-149 seats constitutes a manifest error of assessment of the aid's compatibility with the common market carried out under Article 107(3)(c).

[1] OJ 2009 C 298, p. 2

Action brought on 18 February 2010 — Certmedica International GmbH v OHIM — Lehning Enterprise (L112)

(Case T-77/10)

(2010/C 113/85)

Language in which the application was lodged: German

Parties

Applicant: Certmedica International GmbH (Aschaffenburg, Germany) (represented by: P. Pfortner, 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: Lehning Enterprise SARL (Sainte Barbe, France)

Form of order sought

— Annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark "L112" (EU 002349728) in relation to the goods "*Pharmaceutical and veterinary preparations; medicinal products for internal use; food supplements for medical purposes*" in Class 5;

— in the alternative, annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark "L112" (EU 002349728) in relation to the goods "*Medicinal products for internal use; food supplements for medical purposes*" in Class 5;

— in the further alternative, annul the decision of the Second Board of Appeal of OHIM of 9 December 2009 (Case R 934/2009-2), notified on 21 December 2009, inasmuch as it declares invalid the Community trade mark "L112" (EU 002349728) in relation to the goods "*Medicinal products for internal use*" in Class 5;

— reject in full the application, based on the French trade mark "L.114" (F 1 312 700), for a declaration of invalidity of Community trade mark "L112" (EU 002349728) and permit registration of Community trade mark "L112" for the following goods:

"Class 5: Pharmaceutical, veterinary and sanitary preparations; medicinal products for internal use; food supplements for medical purposes; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan)";

in the alternative reject the application, based on the French trade mark "L.114" (F 1 312 700), for a declaration of invalidity of Community trade mark "L112" (EU 002349728) inasmuch as it seeks a declaration of invalidity of the trade mark "L112" in Class 5 for the goods "*Medicinal products for internal use; food supplements for medical purposes*" and permit registration of Community trade mark "L112" for the following goods:

"Class 5: Sanitary preparations; medicinal products for internal use; food supplements for medical purposes; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan)";

in the further alternative, reject the application, based on the French trade mark "L.114" (F 1 312 700), for a declaration of invalidity of Community trade mark "L112" (EU 002349728) inasmuch as it seeks a declaration of invalidity of the trade mark "L112" in Class 5 for the goods "*Medicinal products for internal use*" and permit registration of Community trade mark "L112" for the following goods:

"Class 5: Sanitary preparations; medicinal products for internal use; dietetic foodstuffs concentrates with a shellfish base (including chitosan)

Class 29: Foodstuff concentrates with a shellfish base (including chitosan)";

— Order Lehning Enterprise SARL to pay all costs arising for the applicant out of the invalidity proceedings and the proceedings before the Board of Appeal;

in the alternative, order the applicant to pay the costs of the invalidity proceedings only to the extent that that the trade mark "L112" (EU 002349728) was declared invalid for the goods "*Pharmaceutical preparations*" (20 %);

in the further alternative, order the applicant to pay the costs of the invalidity proceedings only to the extent that that the trade mark "L112" (EU 002349728) was declared invalid for the goods "*Pharmaceutical preparations; food supplements for medicinal purposes*" (30 %);

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the Community word mark No 2 349 728 for goods in Classes 5 and 29

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity: Lehning Enterprise SARL

Trade mark right of applicant for the declaration: the French word mark "L.114" (trade mark No 1 312 700), although the application concerned only certain goods in Class 5

Decision of the Cancellation Division: application for a declaration of invalidity upheld and the Community trade mark concerned declared partially invalid

Decision of the Board of Appeal: applicant's appeal partially upheld

Pleas in law:

— No proof of use of the French trade mark "L.114" by the applicant for a declaration of invalidity;

— No similarity of goods in Class 5;

— Error of law by the Board of Appeal in assessing the similarity of the signs

Action brought on 19 February 2010 — Lehning Entreprise v OHIM — Certmedica International (L112)

(Case T-78/10)

(2010/C 113/86)

Language in which the application was lodged: French

Parties

Applicant: Lehning Entreprise (Sainte-Barbe, France) (represented by: P. Demoly, lawyer)

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

Other party to the proceedings before the Board of Appeal: Certmedica International GmbH (Aschaffenburg, Germany)

Form of order sought

— In view of the similarity between the signs and the goods at issue, there is a likelihood of confusion between the marks L.114 and L112 at issue in respect of all the goods in Class 5 covered by their registrations. Consequently, the applicant claims that the Court should annul the contested decision in so far as it dismissed the application of Lehning Entreprise for a declaration of invalidity in respect of the following goods: 'Sanitary preparations' and 'Dietetic foodstuffs concentrates with a shellfish base (including chitosan)', and should uphold the remainder of the decision.

— Lastly, and having regard to the circumstances of the case, it would be particularly inequitable for the applicant to bear the non-recoverable costs which it has had to incur in these proceedings that are manifestly unjustified. It therefore claims that the Court should order Certmedica International GmbH to pay it the costs incurred in the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: word mark 'L112' for goods in Classes 5 and 29 (Community trade mark No 2 349 728)

Proprietor of the Community trade mark: Certmedica International GmbH

Applicant for the declaration of invalidity: Lehning Entreprise

Trade mark right of applicant for the declaration: the national mark 'L.114' registered in France for goods in Class 5 (No 1 312 700)

Decision of the Cancellation Division: application granted for a declaration of invalidity of the trade mark concerned for the goods in Class 5 in part

Decision of the Board of Appeal: appeal of Certmedica International upheld in part

Pleas in law: Infringement of Articles 8, 52 and 53 of Council Regulation (EC) No 207/2009 on the Community trade mark, since there is a likelihood of confusion between the marks at issue in relation to the goods 'Sanitary preparations' and 'Dietetic foodstuffs concentrates with a shellfish base (including chitosan)'

Action brought on 22 February 2010 — COLT Télécommunications France SAS v European Commission

(Case T-79/10)

(2010/C 113/87)

Language of the case: French

Parties

Applicant: COLT Télécommunications France SAS (Paris, France) (represented by: M. Deboux, lawyer)

Defendant: European Commission

Form of order sought

— Pursuant to the measures of organisation of procedure and measures of inquiry under Article 49, 64 and 65 of the Rules of Procedure of the Court, order the Commission to make available certain documents, referred to in Commission Decision C(2009) 7426 Final (State aid N 331/2008 — France);

— Annul the decision in so far as it found that the 'measure notified does not constitute aid within the meaning of Article 87(1) EC';

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision C(2009) 7426 Final of 30 September 2009 declaring that the compensation for the costs of providing a public service in the amount of EUR 59 million, granted by the French authorities to a group of undertakings for the establishment and operation of a very-high-speed broadband electronic communications network (project THD 92) in the Hauts-de-Seine department does not constitute State aid.

In support of its action, the applicant puts forward a single plea based on the failure by the Commission to open the formal investigation procedure provided for in Article 108(2) of the Treating on the Functioning of the European Union (TFEU). That plea is broken down into seven parts.

— The first part of the plea is based on the finding that the particularly long period of time spent on investigating the case (15 months) is in itself an indicator of the complexity of the issues and the need to open a formal investigation procedure.

— In the second part of the plea, the applicant states that the two-phase schedule for rolling out the network should have led the Commission to find at least that the first phase of rolling-out of the network, concentrated in very dense and profitable areas, did not require any public subsidies.

— The third part of the plea aims to establish that the methodological approach taken in the decision to define alleged 'non-profitable areas' is very questionable and contradicts the findings of the ARCEP (the French sectoral regulator); those contradictions and methodological errors should have led to the opening of an in-depth investigative phase.

— The fourth part of the plea is based on the numerous, substantiated objections put forward by competing operators, which also should have led the Commission to open an in-depth investigative phase.

— In the fifth part, the applicant states that the Commission did not even make a minimum check to ensure that the French authorities had not made a manifest error of assessment in creating an alleged service of general economic interest, particularly since there was no market deficiency.

— The sixth part also relates to the lack of even minimal verification of whether there was a manifest error of assessment made by the French authorities in the creation of the service of general economic interest, particularly given the lack of specifics as to the planned public involvement.

— Lastly, in the seventh part of the plea, the applicant submits that the decision did not take account of the real risk of over-compensation for the alleged additional costs linked to the alleged public service obligations.

Action brought on 16 February 2010 — Bell & Ross v OHIM — Klockgrossisten i Norden (Representation of a watch)

(Case T-80/10)

(2010/C 113/88)

Language in which the application was lodged: French

Parties

Applicant: Bell & Ross BV (Zoetermeer, Netherlands) (represented by: S. Guerlain, lawyer)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: Klockgrossisten i Norden (Väsby, Sweden)

Form of order sought

— Annul the decision of the Third Board of Appeal of 9 September 2009 in Case R 1285/2008-3 notified on 16 December 2009 to the representatives of the company BELL & ROSS BV on grounds of:

— infringement of Article 91 of Council Regulation No 6/2002 on Community designs;

— infringement of Articles 57 and 63 of Council Regulation No 6/2002 on Community designs and Article 6 of the European Convention on Human Rights;

— infringement of Article 6 of Council Regulation No 6/2002 on Community designs.

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

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: No 342 951 (watches)

Proprietor of the Community design: the applicant

Applicant for the declaration of invalidity: Klockgrossisten i Norden

Decision of the Cancellation Division: Community design declared invalid

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: infringement of Articles 6, 57, 63 and 91 of Council Regulation No (EC) 6/2002 of 12 December 2001 on Community designs.

Action brought on 22 February 2010 — Regione Puglia v Commission

(Case T-84/10)

(2010/C 113/89)

Language of the case: Italian

Parties

Applicant: Regione Puglia (Bari, Italy) (represented by: F. Brunelli, lawyer, A. Aloia, lawyer)

Defendant: European Commission

Form of order sought

— Annul the contested decision.

— Order the defendant to pay the costs, including a fixed amount for general costs.

Pleas in law and main arguments

By the present action, the Regione Puglia claims that the Court should annul Decision No C(2009) 10350 of the European Commission of 22 December 2009, concerning the cancellation of part of the contribution from the European Regional Development Fund (ERDF) allocated to the operational programme POR Puglia Obiettivo 1 2000-2006, and uphold only the provision made in Article 4 of that decision.

In support of its claims, the Regione Puglia relies on precise objections raised by it in relation to the accuracy and validity of the complaints made against it by the Commission, and on the unlawfulness and erroneous nature of the methods used by the Commission for evaluating the results of the audits carried out in 2007 and 2009.

More specifically, the Regione Puglia submits that the decision was taken notwithstanding that:

— the checks performed by the Commission and serving as a basis for the decision were not carried out appropriately and on time;

— the results arrived at by the Commission in respect of each priority and each measure, and in respect of each of the checks carried out, are not confirmed or supported by the documents lodged and examined and, in some cases, those results were obtained without the necessary consideration of the legislation applicable to the sector;

— in any event, as regards methodology, the evaluations carried out are not suitable for confirming and corroborating the Commission's conclusions, which, moreover, appear presented as self-evident in so far as they are not sufficiently reasoned and/or proved.

Nonetheless, the Commission took no account whatsoever of:

— the various results of the audits performed by the European Court of Auditors and the Ministry for the Economy and Finance of the Italian Republic;

— the observations and objections submitted from time to time by the Regione Puglia in a detailed, substantiated and timely manner, in response to the complaints and requests made by the Commission; and, furthermore,

— the Commission failed in its duty of cooperation which must inform the relationships between itself and the recipient of the funding, reaching decisions and making findings before it had even received and examined the responses and clarifications which it itself had sought from the Regione Puglia.

Action brought on 17 February 2010 — British Sugar v Commission

(Case T-86/10)

(2010/C 113/90)

Language of the case: English

Parties

Applicant: British Sugar plc (London, United Kingdom) (represented by: K. Lasok, QC, G. Facenna, Barrister, W. Robinson, P. Doris and D. Das, Solicitors)

Defendant: European Commission

Form of order sought

— annul the contested measure;

— order the Commission to pay the applicant's legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 ([1]).

The applicant puts forward the following pleas in law in support of its claims.

First, it submits that the Commission failed to adopt the measures necessary to comply with the Court's judgments in Jülich ([2]) and SAFBA ([3]) Cases by which the Court declared invalid Commission Regulations (EC) Nos 1762/2003 ([4]), 1775/2004 ([5]) and 1686/2005 ([6]). The applicant claims that, as a result of the judgments in Jülich and SAFBA, the Commission was under an obligation and therefore had the competence to take the measures necessary to rectify the illegality identified in those judgments. That obligation and that competence were limited to adopting the measures necessary to secure the restoration to the persons concerned (including the applicant) of the amounts that they had been unlawfully required to pay in the marketing years in question. Those amounts were and are, in the applicant's submission, identifiable by applying the formula used in the regulations held by the Court to be invalid subject to the correction of the error identified by the Court. The applicant contends therefore that in breach of that obligation, and acting outside that competence, the Commission adopted the contested measure, which is vitiated by the same fundamental defect that led the Court of Justice to invalidate Regulations (EC) Nos 1762/2003, 1775/2004 and 1686/2005.

Second, the applicant claims, that the method of calculating the sugar levies that has been adopted in the contested measure is contrary to the Court's conclusion in Jülich case.

Third, the applicant argues that the Commission lacked competence to adopt the contested measure under Regulation (EC) No 1260/2001 because, in the applicant's opinion;

— that regulation had been repealed and was not in force at the time the contested measure was adopted; and

— the effect of the judgment in Jülich that the Commission had no competence to determine production levies in a manner inconsistent with Article 15 of that regulation. In the absence of competence by reason of the judgments Jülich and SAFBA or Regulation No 1260/2001 competence to set production levies is held by the Council under what is now Article 43 TFEU. Accordingly, the Commission had no competence at all to adopt the contested measure.

([1]) OJ 2009 L 321, p. 1
([2]) Joined Cases C-5/06 and C-23/06 to C-36/06, *Zuckerfabrik Jülich*, [2008] ECR I-3231
([3]) Joined Cases C-175/07 to C-184/07 *SAFBA*, [2008] ECR I-142
([4]) Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/03 marketing year, OJ 2003 L 254, p. 4
([5]) Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/04 marketing year, OJ 2004 L 316, p. 64
([6]) Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year OJ 2005 L 271, p. 12

Action brought on 15 February 2010 — Inter IKEA Systems v OHIM — Meteor Controls (GLÄNSA)

(Case T-88/10)

(2010/C 113/91)

Language in which the application was lodged: English

Parties

Applicant: Inter IKEA Systems B.V. (Delft, The Netherlands) (represented by: J. Gulliksson, lawyer)

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

Other party to the proceedings before the Board of Appeal: Meteor Controls International Limited (Cookstown, Ireland)

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 1 December 2009 in case R 529/2009-2; and

— Order the defendant to pay the costs incurred both in these proceedings and in the proceedings before it.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "GLÄNSA", for goods in class 11

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: Community trade mark registration of the word mark "GLANZ", for goods in classes 6, 9 and 11

Decision of the Opposition Division: Rejected the trade mark applied for in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal failed to make a correct global assessment and comparison of the trade marks concerned, thereby wrongly finding that these were similar and, as a result, that there was a likelihood of confusion between them.

Action brought on 19 February 2010 — Ferriere Nord SpA v European Commission

(Case T-90/10)

(2010/C 113/92)

Language of the case: Italian

Parties

Applicant(s): Ferriere Nord SpA (Osoppo, Italy) (represented by: W. Viscardini, avvocato, G. Donà, avvocato)

Defendant(s): European Commission

Form of order sought

— ***As a main claim***, annulment, pursuant to Article 263 of the Treaty on the functioning of the European Union, of the decision of the European Commission of 30 September 2009 C(2009) 7492 final — as amended and supplemented by the decision of the European Commission of 8 December 2009 C(2009) 9912 final, notified on 9 December 2009 — which imposed a fine of EUR 3 570 000 on the applicant following a procedure under Article 65 of the ECSC Treaty (COMP/37.956 — Concrete reinforcing bar, re-adoption).

— ***In the alternative***, partial annulment of decision C(2009) 7492 final — as amended and supplemented by decision C(2009) 9912 final — and concomitant reduction of the fine.

Pleas in law and main arguments

The application is directed against the decision of 30 September 2009, as amended and supplemented by the decision of 8 December 2009, by which the Commission imposed a penalty for a breach of Article 65 CS on the basis of Regulation (EC) No 1/2003. [1]

The pleas in law and main arguments are similar to those relied on in other actions brought against the above decision.

In particular, the applicant raises the following pleas inter alia:

— the Commission had no authority to impose a penalty for a breach of the ECSC Treaty after that treaty ceased to be in force;

— there was no prior notification of a fresh 'statement of objections';

— there was no fresh hearing before the Hearing Officer;

— the final report of the Hearing Officer postdated the decision of 30 September 2009;

— the decision of 30 September 2009 was adopted without the annexes mentioned in it.

In the alternative, the applicant seeks the annulment in part of the above decisions, on various grounds, which include the following:

— erroneous legal assessment of the facts (as regards the duration of participation in the cartel, the objections put forward, the basic price, the supplement for larger sizes, the limitation of output and/or sales);

— the disproportionate amount of the fine in relation to the seriousness and duration of the infringement;

— failure to take account of mitigating circumstances;

— misapplication of the criteria laid down by the Commission Notice of 18 July 1996 on the non-imposition or reduction of fines in cartel cases.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, 4.1.2003, p. 1).

Action brought on 19 February 2010 — Lucchini v Commission

(Case T-91/10)

(2010/C 113/93)

Language of the case: Italian

Parties

Applicant: Lucchini SpA (Milan, Italy) (represented by: M. Delfino, J.-P. Gunther and E. Bigi, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2009) 7492 final in Case COMP/37.956 — Reinforcing bars, re-adoption, as amended by Decision C(2009) 9912 final.

— In the alternative, annul Article 2 of the decision of 30 September 2009, in so far as the applicant is ordered to pay the sum of EUR 14.35 million jointly and severally with the company S.P. SpA.

— In the further alternative, reduce the amount of the fine imposed.

— In any event, order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the decision of 30 September 2009, as amended by the decision of 8 December 2009, by which the Commission imposed fines for infringement of Article 65 ECSC, on the basis of Regulation (EC) No 1/2003. (1)

The pleas in law and main arguments are similar to those relied on other actions brought against the decision in question.

In particular, the applicant puts forward the following pleas in support of its action:

— The incomplete nature of the decision and breach of essential procedural requirements, in so far as the decision was notified without its annexes and was adopted by the Commission in an incomplete form and was then re-notified still in an incomplete form, without the main text.

— The Commission lacks competence to allege infringement under Article 65 of the ECSC Treaty once the treaty has expired and, accordingly, incorrectly chose the substantive legal basis.

— Breach of the rights of the defence and infringement and incorrect application of the law, in so far as the Commission failed to re-open the administrative procedure and purported to exercise the power to examine the more favourable legislation applicable in the present case without giving the applicant the opportunity effectively to make known its views on the truth and relevance of the facts and circumstances alleged.

In the alternative, the applicant seeks annulment of the decision on the grounds that there is insufficient evidence and that the substantive law was incorrectly applied, in so far as the Commission imputes the infringement, for the entire period from 6 December 1989 and 27 June 2000, to Lucchini through the single undertaking Lucchini/Siderpotenza. The applicant emphasises Siderpotenza's decision-making and management autonomy and the fact that the Commission was not in a position to provide convincing evidence to show that Lucchini was responsible, in terms of human and physical resources, for the management of Siderpotenza.

In the further alternative, the applicant observes that the Commission incorrectly applied the rules governing the calculation of fines, in particular the 1998 Guidelines.

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

Action brought on 17 February 2010 — Ferriera Valsabbia and Valsabbia Investimenti v Commission

(Case T-92/10)

(2010/C 113/94)

Language of the case: Italian

Parties

Applicants: Ferriera Valsabbia SpA (Odolo, Italy) and Valsabbia Investimenti SpA (Odolo, Italy) (represented by: D. Fosselard, lawyer, S. Amoruso, lawyer, L. Vitolo, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission Decision C(2009) 7492 final, adopted on 30 September 2009 in Case COMP/37.956 — *Reinforcing bars, readoption*, as corrected and completed by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it finds that Ferriera Valsabbia SpA and Valsabbia Investimenti SpA had infringed Article 65 of the ECSC Treaty and imposes upon them, jointly and severally, a fine of EUR 10.25 million;

in the alternative, annul Article 2 of Commission Decision C(2009) 7492 final, by which the penalty is imposed on the applicants;

in the further alternative, reduce the fine imposed;

— order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in other actions challenging Commission Decision C(2009) 7492 final. In particular, the applicants allege:

— following the expiry of the ECSC Treaty, lack of competence on the part of the Commission to penalise the infringement of Article 65 of that Treaty and, in any event, to use Article 7(1) and Article 23(2) of Regulation (EC) No 1/2003 ([1]) as a legal basis;

— breach of the applicants' rights of defence during the procedure before the Commission;

— infringement of Article 65(1) of the ECSC Treaty, in so far as the facts described in Commission Decision C(2009) 7492 final do not indicate a single and continuous offence;

— breach of the Guidelines on the method of calculating fines and breach of the principles of equal treatment and proportionality;

On that last point, it is argued in particular that it was unlawful to place the applicants in the first category of undertakings, which were given the higher basic fine, since, in calculating the amount of the fine, the Commission misapplied the criterion of the undertaking's specific weight on the market and did not uniformly apply the criterion of the undertaking's overall size. Furthermore, the manner of conducting the procedure for calculating the fine was also incorrect with regard to the evaluation of the 'attenuating circumstances'. Lastly, the excessive lengthiness of the procedure seriously compromised the right to an impartial ruling within a reasonable time.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1 of 4.1.2003, p. 1).

Action brought on 17 February 2010 — Bilbaína de Alquitranes e.a. v ECHA

(Case T-93/10)

(2010/C 113/95)

Language of the case: English

Parties

Applicants: Bilbaína de Alquitranes, SA (Luchana-Baracaldo, Spain), Cindu Chemicals BV (Uithoorn, The Netherlands), Deza a.s. (Valašske Meziříčí, Czech Republic), Industrial Química del Nalón, SA (Oviedo, Spain), Koppers Denmark A/S (Nyborg, Denmark), Koppers UK Ltd (Scunthorpe, United Kingdom), Rütgers Germany GmbH (Castrop-Rauxel, Germany), Rütgers Belgium NV (Zelzate, Belgium) and Rütgers Poland Sp. Z o.o. (Kedzierzyn-Kozle, Poland), (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested act, as far as it relates to pitch, coal tar, high temp., CAS Number 65996-93-2; and

— order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ('ECHA') (ED/68/2009) to identify pitch, coal tar, high temp., CAS Number 65996-93-2 ('CTPHT') as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 ([1]) (hereinafter 'REACH'), in accordance with Article 59 of REACH.

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA press release, the substance pitch, coal tar, high temp. was included in the list of *15 new chemical substances of the Candidate list of substance of very high concern.*

In summary, the applicants do not challenge the identification of CTPHT as carcinogenic but they do challenge the identification of that substance as persistent, bioaccumulative and toxic and as very persistent and very bioaccumulative in accordance with the criteria set out in Annex XIII to REACH.

In addition, the applicants claim that the inclusion of pitch, coal tar, high temp. on the candidate list of substances of very high concern will lead to the eventual inclusion of such substance in Annex XIV to REACH, which in turn will have several negative legal consequences for the applicants which flow directly from such identification.

The applicants submit that the contested act is unlawful because it infringes the applicable rules established for the identification of substances of very high concern under REACH, and of substances which are persistent, bioacculumative and toxic and very persistent and very bioaccumulative, in particular. Accordingly, the contested decision is based on an error of assessment and an error of law because the identification of pitch, coal tar, high temp. as a substance of very high concern due to the fact that it is persistent, bioacculumative and toxic and very persistent and very bioaccumulative is solely based on properties of constituent substances, which finds no legal basis in REACH.

In addition, the contested act is unlawful because it infringes the principles of equal treatment since it discriminates between the substance in question and other comparable substances without any objective justification.

Finally, the applicants claim that the contested act infringes the principles of proportionality since it is disproportionate in view of the choice of measures available to the defendant and the disadvantages caused in the relation to the aims pursued.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 17 February 2010 — Rütgers Germany and Others v ECHA

(Case T-94/10)

(2010/C 113/96)

Language of the case: English

Parties

Applicants: Rütgers Germany GmbH (Castrop-Rauxel, Germany), Rütgers Belgium NV (Zelzate, Belgium), Deza, a.s. (Valašské Meziříčí, Czech Republic), Industrial Química del Nalón, SA (Oviedo, Spain), Bilbaína de Alquitranes, SA (Luchana-Baracaldo- Vizcaya, Spain) (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested act, as far as it relates to anthracene oil;

— order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ('ECHA') (ED/68/2009) to identify anthracene oil (CAS Number 90640-80-5) ('anthracene oil') as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 (1) ('REACH'), in accordance with Article 59 REACH.

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA's press release, the anthracene oil was included in the list of 14 chemical substances of the Candidate List of Substance of Very High Concern ('SVHC') for eventual inclusion in Annex XIV to the REACH. The reasons stated in the contested act for the identification of anthracene oil as a SVHC are that the substance is carcinogenic and also persistent, bioaccumulative and toxic ('PBT') and very persistent and very bioaccumulative ('vPvB') in accordance with criteria set out in Annex XIII to the REACH.

The applicants consider that the contested act infringes the applicable rules established for the identification of SVHCs under the REACH and put forward four pleas in law in support of their application.

First, they argue that the decision is unlawful as it was adopted in breach of essential procedural requirements. In this regard, the applicants submit that the dossier on which the contested act was based did not contain any information on alternative substances in breach of Article 59(3) and Annex XV of the REACH. Further they contend that the defendant materially amended the proposal to identify anthracene oil as a SVHC by adding Article 57(a) and (b) as grounds for that identification without having any competency to do so, in breach of Article 59(5) and (7) REACH.

Second, the applicants submit that the contested act infringes the principle of non-discrimination and equal treatment since it discriminates against anthracene oil with regard to other comparable substances without any objective justification.

Third, they claim that the ECHA committed a manifest error of assessment by identifying the anthracene oil as a PBT and vPvB substance on the basis of the properties of its constituents which finds no basis in the REACH.

Fourth, the applicants argue that the contested act infringes the principle of proportionality since the contested act is disproportionate in view if the choice of measures available to the defendant and the disadvantages caused in relation to the aims pursued.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 17 February 2010 — Cindu Chemicals and others v ECHA

(Case T-95/10)

(2010/C 113/97)

Language of the case: English

Parties

Applicants: Cindu Chemicals BV (Uithoorn, Netherlands), Deza, a.s. (Valašské Meziříčí, Czech Republic), Koppers Denmark A/S (Nyborg, Denmark), Koppers UK Ltd (Scunthorpe, United Kingdom) (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested act, as far as it relates to anthracene oil, anthracene low;

— order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ('ECHA') (ED/68/2009) to identify anthracene oil, anthracene low (CAS Number 90640-82-7) ('anthracene oil (low)') as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 (1) ("REACH"), in accordance with Article 59 REACH.

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA's press release, the anthracene oil (low) was included in the list of 14 chemical substances of the Candidate List of Substance of Very High Concern ('SVHC') for eventual inclusion in Annex XIV to the REACH. The reasons stated in the contested act for the identification of anthracene oil, anthracene low as a SVHC are that the substance is carcinogenic, mutagenic and very bioaccumulative ('vPvB') in accordance with criteria set out in Annex XIII to the REACH.

The applicants consider that the contested act infringes the applicable rules established for the identification of SVHCs under the REACH and put forward four pleas in law in support of their application which are identical to those raised in Case T-94/10, *Rütgers Germany and Others* v *ECHA*.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 17 February 2010 — Rütgers Germany and others v ECHA

(Case T-96/10)

(2010/C 113/98)

Language of the case: English

Parties

Applicants: Rütgers Germany GmbH (Castrop-Rauxel, Germany), Rütgers Belgium NV (Zelzate, Belgium), Deza, a.s. (Valašské Meziříčí, Czech Republic), Koppers Denmark A/S (Nyborg, Denmark), Koppers UK Ltd (Scunthorpe, United Kingdom) (represented by: K. Van Maldegem, R. Cana, lawyers and P. Sellar, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— declare the application admissible and well-founded;

— partially annul the contested act, as far as it relates to anthracene oil, anthracene paste;

— order ECHA to pay the costs of these proceedings.

Pleas in law and main arguments

The applicants seek the partial annulment of the decision of the European Chemicals Agency ("ECHA") (ED/68/2009) to identify anthracene oil, anthracene paste (CAS Number 90640-81-6) ("anthracene oil (paste)") as a substance meeting the criteria set out in Article 57(d) and (e) of Regulation (EC) No 1907/2006 (1) ("REACH"), in accordance with Article 59 REACH.

On the basis of the contested decision, brought to the applicants' attention by means of an ECHA's press release, the anthracene oil (paste) was included in the list of 14 chemical substances of the Candidate List of Substance of Very High Concern ('SVHC') for eventual inclusion in Annex XIV to the REACH. The reasons stated in the contested act for the identification of anthracene oil (paste) as a SVHC are that the substance is carcinogenic mutagenic and also persistent, and very bioaccumulative ('vPvB') in accordance with criteria set out in Annex XIII to the REACH.

The applicants consider that the contested act infringes the applicable rules established for the identification of SVHCs under the REACH and put forward four pleas in law in support of their application which are identical to those raised in Case T-94/10, *Rütgers Germany and Others* v *ECHA*.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 2 March 2010 — Meica v OHIM — Tofutown.com (TOFUKING)

(Case T-99/10)

(2010/C 113/99)

Language in which the application was lodged: German

Parties

Applicant: Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG (Edewecht, Germany) (represented by: S. Russlies, 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: Tofutown.com GmbH (Wiesbaum/Vulkaneifel, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 January 2010 (Case R 63/2009-4);

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Tofutown.com GmbH

Community trade mark concerned: the word mark 'TOFUKING' for goods in Classes 29, 30 and 32 (Application No 5 027 016)

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

Mark or sign cited in opposition: the German word mark 'King' (trade mark No 30 404 434), the Community word mark 'Curry King' (trade mark No 2 885 077) and the German word mark 'Curry King' (trade mark No 39 902 969), all three of which were registered for goods in Classes 29 and 30

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Breach of Article 8(1)(b) of Regulation (EC) No 40/94 [1] as there is a likelihood of confusion between the marks at issue

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

Action brought on 3 March 2010 — Nordzucker v Commission

(Case T-100/10)

(2010/C 113/100)

Language of the case: German

Parties

Applicant: Nordzucker AG (Brunswick, Germany) (represented by: M. Niestedt, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EC) No 1193/2009; [1]

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant puts forward the following pleas in law in support of its action:

— Lack of competence of the Commission to adopt a regulation relating to production levies for sugar marketing years 2002/2003 to 2005/2006 since the legal basis for the regulation was one that is no longer in force;

— Infringement of essential procedural requirements in so far as a different procedure for the adoption of the contested regulation should have been selected, and the participation rights of the Council and of the European Parliament have thus been disregarded;

— Failure to have regard to the judgment of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich and Others* [2008] ECR I-3231 in so far as, in the contested regulation, the Commission arbitrarily also changed the 'total amount of refunds' parameter in the calculation of production levies, even though this parameter was not the object of the Court's examination;

— Infringement of the prohibition of retroactivity by the subsequent amendment — only introduced by Regulation No 1193/2009 — of the total amount of refunds for sugar marketing years that had already been completed.

(1) Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1).

Action brought on 3 March 2010 — Poland v Commission

(Case T-101/10)

(2010/C 113/101)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

— declare invalid Article 3 of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006, (1) to the extent to which that article recasts Article 2 of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year; (2)

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

Pleas in law and main arguments

The applicant submits that the contested provision introduced a difference in coefficients for the additional production levy in the sugar sector for the marketing year 2004/2005 in that that coefficient was established in the amount of 0.25466 for the new Member States, whereas it was established in the amount of 0.14911 for the States of the Community of Fifteen.

The applicant raises the following heads of complaint in respect of the contested provision:

First, the applicant alleges that there was a lack of competence on the part of the Commission and a breach of Article 16 of Council Regulation (EC) No 1260/2001, (3) which authorised the Commission solely to establish one single coefficient in a uniform amount for the whole of the Union. The applicant submits that the various language versions of the provisions of Regulation (EC) No 1260/2001 are to that extent perfectly in line with one another and unambiguous. The applicant further submits that the principles of the common organisation of the markets in the sugar sector cannot constitute justification for departing from the literal construction of the provisions of Regulation (EC) No 1260/2001 and, indeed, rather exclude any such departure. In the applicant's view, a uniform coefficient constituted an essential instrument for the purpose of giving effect to the principles of the common organisation of the markets in the sugar sector.

Second, the applicant alleges that there has been a breach of the principle that new Member States must give immediate and full effect to the *acquis communautaire*. In the applicant's view, the contested provision is *de facto* a transitional measure which lacks any basis in the 2003 Act of Accession or in the measures adopted pursuant thereto. The applicant cites in this regard Article 2 of the Act of Accession, which forms the basis for the full adoption by the Republic of Poland of all rights and obligations resulting from membership, and thus also, according to the applicant, of the right to benefit from excess payments and duties covering losses on the sugar market which have arisen in previous marketing years.

Third, the applicant alleges that there has been an infringement of the principle of non-discrimination. According to the applicant, the sole criterion for the difference in coefficients is the date on which Member States acceded to the European Union. It contends that the accession of new Member States cannot, by itself, constitute an objective criterion capable of justifying the distinction introduced inasmuch as the consequences of accession were exhaustively regulated in the Act of Accession and in the measures adopted pursuant thereto.

Fourth, the applicant alleges infringement of the principle of solidarity. It submits that the principle of solidarity among producers is a fundamental principle of the common organisation of the markets in the sugar sector and implies that the costs of financing that market are to be borne jointly by all producers, and financial neutrality is achieved, not on the basis of individual Member States, but rather on the basis of the entire Union, in accordance with objective criteria. A distinction in coefficients with regard to individual Member States is, according to the applicant, indicative of an arbitrary and disproportionate distribution of the costs of financing the sugar market which demonstrates a lack of solidarity.

Fifth, the applicant submits that there has been a breach of Article 253 EC (now the second paragraph of Article 296 TFEU) by reason of the inadequate reasoning of the contested provision. In the opinion of the applicant, the Commission failed to define either the circumstances which would justify a difference in coefficients or the objectives to be served by such a difference.

(1) OJ 2009 L 321 of 8.12.2009, p. 1.
(2) Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271 of 15.10.2005, p. 12).
(3) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178 of 30.06.2001, p. 1).

Action brought on 3 March 2010 — Südzucker and Others v Commission

(Case T-102/10)

(2010/C 113/102)

Language of the case: German

Parties

Applicants: Südzucker AG Mannheim/Ochsenfurt (Mannheim, Germany), AGRANA Zucker GmbH (Vienna, Austria), Südzucker Polska S.A. (Breslau, Poland), Raffinerie Tirlemontoise SA (Brussels, Belgium), Saint Louis Sucre SA (Paris, France) (represented by: H.-J. Prieß and B. Sachs)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicants put forward several pleas in law in support of their action.

First, the applicants plead an infringement of Article 233 EC (Article 266 TFEU) by analogy, because the Commission has not given effect to the requirements of the judgment of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich* and Others [2008] ECR I-3231. In that judgment the Court explained how the parameters of the 'exportable surplus' and the 'total tonnage of export obligations to be fulfilled' are to be determined in the calculation of the production levies for the marketing years 2002/2003 to 2005/2006. The applicants submit that in the contested regulation the Commission also altered the third parameter, 'total amount of refunds', even though this was not the subject matter of Joined Cases C-5/06 etc.

Second, the Commission infringed Article 15(1)(d) of Regulation (EC) No 1260/2001 (1) and the spirit and purpose of that regulation. They submit, inter alia, that when calculating the total amount of refunds the Commission included refunds for exports which had not been claimed and paid. Moreover, the flat-rate approach of monthly exports leads to inaccuracies in the calculation. In Joined Cases C-5/06 etc the Court prohibited the total loss from being set at an amount higher than expenditure for the refunds.

Third, the Commission infringed the principle prohibiting retroactive effects, as the contested regulation altered the total amount of refunds retroactively.

Fourth, the Commission infringed its obligation to state reasons under Article 253 EC (Article 296, second paragraph, TFEU), because the reason given by the Commission for the contested regulation is that it implements the judgment in Joined Cases C-5/06 etc, but, in the applicants' view, that decision goes beyond the requirements of that judgment.

Lastly, under the heading 'other errors of law', the applicants submit that when the Commission adopted a production levy regulation for the 2002/2003 to 2005/2006 marketing years on 3 November 2009, it no longer had power to do so, because Regulation No 1260/2001, which the Commission indicated as the legal basis, was no longer in force when the Regulation was adopted. In addition, there was an infringement of Article 37(2) EC, because on the basis of that provision a different procedure should have been chosen for the adoption of the Regulation.

(1) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

Appeal brought on 5 March 2010 by the European Parliament against the order of 18 December 2009 of the President of the Civil Service Tribunal in Case F-92/09 R U v Parliament

(Case T-103/10 P(R))

(2010/C 113/103)

Language of the case: French

Parties

Appellant: European Parliament (represented by S. Seyr and K. Zejdovà, Agents)

Other party to the proceedings: U

Form of order sought by the appellant

— the setting aside of the order under appeal of the President of the Civil Service Tribunal;

— final adjudication on the application for interim relief and its dismissal as unfounded;

— the reservation of the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the setting aside of the order of 18 December 2009 of the President of the Civil Service Tribunal (CST) in Case F-92/09 R *U* v *Parliament* suspending the operation of the dismissal decision of 6 July 2009 pending the Tribunal's decision disposing of the proceedings.

In support of its appeal, the appellant relies on three grounds of appealing alleging:

— failure properly to state the reasons for the decision, because the reasoning set out in the order under appeal does not, on several points, enable the grounds justifying the decision reached by the President of the Civil Service Tribunal to be ascertained;

— infringement of the European Parliament's rights of the defence, because the order for interim relief goes beyond the compass of a simple evaluation under Article 102(2) of the Rules of Procedure of the Civil Service Tribunal that applications for interim measures must state, in particular, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie the case for the interim measures applied for. By going into the details of the merits of the case, particularly by adjudicating on the details of the conduct of the improvement procedure, the order infringes the European Parliament's rights of the defence, depriving it of the possibility of taking a position and defending itself on those aspects;

— failure to observe the rules in respect of the burden of proof and the taking of evidence, because as regards the requirement for urgency, all the relevant evidence which could have affected the applicant's financial situation was not taken into account, disregarding the principle of equality of the parties before the court.

Action brought on 1 March 2010 — BASF v Commission

(Case T-105/10)

(2010/C 113/104)

Language of the case: English

Parties

Applicant: BASF SE (Ludwigshafen am Rhein, Germany) (represented by: F. Montag, J. Blockx and T. Wilson, lawyers)

Defendant: European Commission

Form of order sought

— annul the contested decision;

— order the Commission in the costs of the proceedings.

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2009)10568 of 18 December 2009 in Case No. COMP/M.5355 — BASF/Ciba rejecting the proposal of 6 November 2009 to approve Roquette Frères as purchaser of Divestment Business SDA and rejecting the request to modify the commitments subject to which the Commission declared, by

its decision C(2009) 1961 of 12 March 2009, the operation by which the applicant acquires control of the whole CIBA Holding AG ('Ciba') compatible with the common market.

The applicant puts forward the following pleas in law in support of its application for annulment.

It claims, in the first place, that by rejecting the proposed purchaser the defendant violated Article 6(2) of the Regulation No 139/2004 [1], paragraphs 418 and 419 of the decision approving BASF's acquisition of Ciba, clause 4(a)(b), 13, 14 and 34 and Schedule B of the commitments attached thereto and paragraphs 31, 48, 73 and 102 of the remedies notice [2].

In particular, the applicant argues that the defendant has based its rejection of the proposed purchaser on inaccurate facts and has committed a manifest error of assessment with regard to the incentive for Roquette Frères to maintain and develop the Divestment Business. Furthermore, the applicant argues that the defendant has relied on inaccurate facts and committed a manifest error of assessment with regard to the applicant's request to modify the commitments according to the review clause of the commitments.

Secondly, the applicant claims that the contested decision breaches the principle of proportionality since, in the applicant's opinion, the rejection of its proposal was not necessary to achieve the purpose of the commitments to avoid the creation or strengthening of a dominant position.

Thirdly, the applicant claims that the defendant violated the principle of sound administration and Article 296 TFEU by failing to hear the applicant before taking the contested decision and by failing to state adequate reasons for the contested decision.

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

[2] Commission Regulation (EC) No 802/2004 of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ 2004 L 133, p. 1

Action brought on 4 March 2010 — Spain v Commission

(Case T-106/10)

(2010/C 113/105)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

— annul Decision C(2009) 10136 final of 18 December 2009 applying financial corrections to the support from the Guidance Section of the EAGGF allocated to the Community initiative CCI 2000 ES.060.0.PC.003 (Spain — Leader + Aragon), and

— order the defendant to pay the costs.

Pleas in law and main arguments

Pursuant to the contested decision, the Commission applied a net financial correction of a flat rate of 2 % to the expenditure declared by the Spanish authorities until 4 June 2008, which involves a reduction of the support from the Guidance Section of the EAGGF of EUR 652 674,70 with respect to expenditure for the programme mentioned below which was initially granted in accordance with Commission Decision C(2001) 2067 of 31 July 2001.

The Kingdom of Spain submits that the decision should be annulled on the basis of two grounds:

The first ground is based on an infringement owing to the incorrect application of Article 39 of Regulation (EC) No 1260/1999 [1], in so far as the alleged irregularities justifying the financial correction imposed by the Commission do not in fact constitute an infringement of Article 4 of Regulation (EC) No 438/2001 [2], because the obligation imposed by that provision, according to which the records relating to on-the-spot verifications must state the work done, does not necessarily require those records to contain a list of the checks made, where they may be easily ascertained.

The second ground concerns the infringement of the principle of proportionality laid down in Article 39(3) of Regulation (EC) No 1260/1999, applied in relation to the guidelines defining the principles, criteria and indicative scales to be applied by the Commission staff in order to determine the financial corrections referred to in Article 39(3) of Regulation (EC) No 1260/1999 ([3]). First, by applying that correction of 2 % of the expenditure, even though the information provided by the Spanish authorities to the Commission showed that the risk to the Fund was substantially less than that percentage. Second, by extending the period concerned by the correction, so that not only the expenditure declared until the period covered by the Commission audit (17 December 2004) was included, but also the expenditure up until the date of the bilateral meeting (4 June 2008).

([1]) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

([2]) Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21).

([3]) Document C (2001) 476 of 2 March 2001.

Action brought on 3 March 2010 — Portugal v Commission

(Case T-111/10)

(2010/C 113/106)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: N. Mimoso Ruiz and P. Moura Pinheiro, lawyers, and L. Inez Fernandes, Agent)

Defendant: European Commission

Form of order sought

On 3 March 2010 the Portuguese Republic brought an action pursuant to Article 263 of the Treaty on the functioning of the European Union against the European Commission for annulment of European Commission Decision C(2009) 10624 of 21 December 2009 reducing the assistance granted through the European Regional Development Fund to the Operational Programme 'Modernisation of the economic fabric' CCI: 1994 PT 16 1 PO 004 (ex ERDF ref. 94.12.09.004), in so far as it concerns the financing of the Closed Tourist Real Property Investment Fund (FIIT).

Pleas in law and main arguments

A real property investment fund, set up by the authorities following approval by the European Commission of the Community support framework (CSF II) for action by the structural funds in regions concerned by Objective 1, for the period from 1 January 1994 to 31 December 1999, has been adapted in order to carry out the tasks of the European Regional Development Fund (FEDER).

Regulation (EEC) No 4254/88, amended by Regulation (EEC) No 2083/93, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the scope of the ERDF, ([1]) provides that that fund is to participate in the development of indigenous potential in the regions by measures improving access of small and medium-sized enterprises [sic] to the capital market. In the same way as the provision of guarantees and equity participation, activities mentioned merely by way of example in Regulation (EEC) No 2083/93, a real property investment fund is a funding mechanism appropriate for the purpose of encouraging and developing the activities of small and medium-sized undertakings.

The FIIT is intended, in particular, to fund small and medium-sized undertakings active in the tourism sector in Portugal, which generally own significant real property assets and encounter difficulties in access to the sources of finance available on the market.

The FIIT's activities during the period concerned played a part in supporting the development and modernisation of supply in the tourism sector in Portugal, by means of purchasing tourist establishments and then renting them to small and medium-sized undertakings.

The FIIT's activities are in strict keeping with the European Commission's Decision C(94) 464 approving, within the framework of CSF II, the operational programme 'Modernisation of the economic fabric' and Subprogramme 4 'Tourism and cultural heritage'. That decision provided for the creation of a tourism investment fund whose sphere of priority action included, in particular, the financial restructuring, modernisation and resizing of hotels.

The European Commission has failed to observe the principle *audi alteram partem* inasmuch as it was only in the contested decision that it raised the issue of the alleged failure to show deficiencies in the market for the financing of the small and medium-sized undertakings supported by the FIIT, and that it criticised the national authorities for supposedly failing to analyse sufficiently the economic viability of those undertakings, doing no more than refinance their debts.

The contested decision fails to observe the principle of the protection of legitimate expectations, by concluding that the FIIT project was ineligible for ERDF cofinancing, for the European Commission, while monitoring the programme, acted in such a way as to engender in the Portuguese authorities the firm and legitimate conviction that the financing of the FIIT would not be called in question, especially because the Community legal framework then in force being in no way unequivocal as to its being permissible or not did not make it possible to determine whether there existed a manifest error of assessment with regard to the lawfulness of that financial instrument.

(1) Council Regulation (EEC) No 2083/93 of 20 July 1993 amending Regulation (EEC) No 4254/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund (OJ 1993 L 193, p. 34).

Action brought on 1 March 2010 — Prionics v Commission and EFSA

(Case T-112/10)

(2010/C 113/107)

Language of the case: German

Parties

Applicant: Prionics AG (represented by: H. Janssen and M. Franz, lawyers)

Defendant: European Commission and European Food Safety Authority (EFSA)

Form of order sought

— annul the 'Scientific Opinion on Analytical sensitivity of approved TSE rapid tests' of EFSA and the Commission, in so far as that opinion does not currently recommend the use of two tests manufactured by the applicant, the Prionicsâ-Check LIA and the Prionicsâ-Check PrioSTRIP, for monitoring BSE;

— order EFSA and the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant is challenging EFSA's Scientific Opinion of 10 December 2009 on Analytical sensitivity of approved TSE rapid tests ('the EFSA Opinion'). That opinion recommends inter alia that the analytical sensitivity of two test systems manufactured by the applicant for BSE (Prionics®-Check LIA and Prionics®-Check PrioSTRIP) be re-assessed by appropriate experiments.

The applicant puts forward four pleas in law in support of its action.

In its first plea, the applicant alleges infringement of the principle of sound administration on the ground that the defendants base their recommendation in the EFSA Opinion on an incorrect assessment of the facts and on contradictory data.

In its second plea, the applicant alleges an infringement of the principle that the right to be heard must be granted in procedures which may result in measures having an adverse effect on a party. In that connection, the applicant furthermore alleges an infringement of the general legal principles of equal treatment and protection of legitimate expectations on the ground that, contrary to its own published administrative provisions, EFSA did not grant the applicant the right to be heard prior to publication of the EFSA Opinion.

In its third plea, the applicant alleges infringement of the general legal principles of equal treatment and protection of legitimate expectations on the ground that, contrary to its own published administrative provisions, EFSA provided no information in its opinion on the possibility of lodging an appeal against that opinion.

In its final plea, the applicant alleges infringement of the fundamental right of freedom to pursue a professional activity and the fundamental right of freedom to conduct a business on the ground that the EFSA Opinion was published without any consideration of the harmful consequences for the applicant.

Action brought on 8 March 2010 — Spain v Commission

(Case T-113/10)

(2010/C 113/108)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo)

Defendant: European Commission

Form of order sought

— Annulment of Commission Decision No 10678 of 23 December 2009 reducing the assistance from the European Regional Development Fund (ERDF) for the País Vasco operational programme Objective 2 (1997-1999) in Spain pursuant to Decision C(98) 121 of 5 February 1998, ERDF No 97.11.09.007, and

— an order that the Commission should pay the costs.

Pleas in law and main arguments

The origin of this case is Decision C(98) 121 of 5 February 1998 by which the Commission granted assistance from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) for an operational programme in the País Vasco region, forming part of the Community support framework for action by the structural funds in the Spanish regions concerned by Objective No 2 in the period 1997-1999, for a maximum amount of EUR 291 862 367.

The decision contested in these proceedings maintains that in the carrying out of that operational programme irregularities occurred in 24 of the 37 projects audited, which affects a total of ESP 4 844 712 820 and entails a financial correction of EUR 27 794 540,77.

In support of its claims the applicant puts forward the following pleas in law:

— infringement of Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988, ([1]) in that the extrapolation method was used in the contested decision, given that that article does not provide for it to be possible to extrapolate irregularities found in specific actions to the whole body of actions included in the operational programmes financed by ERDF funds. The correction applied by the Commission in the contested decision has no basis in law, because the Commission's internal guidelines of 15 October 1997 concerning net financial corrections in the context of the application of Article 24 of Regulation (EEC) No 4253/88 cannot, in accordance with the judgment of the Court of Justice in Case C-443/97 *Spain* v *Commission*, ([2]) be considered to produce legal effects vis-à-vis the Member States, and because that provision envisages the reduction of assistance only when examination of that assistance reveals an irregularity, a principle breached by the application of corrections by extrapolation;

— as a subsidiary plea, infringement of Article 24 of Regulation (EEC) No 4253/88 read in conjunction with the present Article 4(3) TEU (principle of sincere cooperation), for the correction was applied by extrapolation although no deficiency had been revealed in the management, supervision or audit systems regarding the amended contracts, given that the management bodies applied the Spanish legislation which has not been declared by the Court to be contrary to the law of the European Union. The Kingdom of Spain takes the view that the management bodies' observance of national law, even though it may lead to a finding by the Commission of irregularities or of actual infringements of European Union law, cannot serve as a basis for extrapolation on the ground of failings in the system of management, when the law applied by those bodies has not been declared contrary to European Union law by the Court of Justice and when the Commission has not brought an action against the Member State under Article 258 TFEU;

— as a subsidiary plea, infringement of Article 24 of Regulation (EEC) No 4253/88, in that the sample used for the application of the financial correction by extrapolation was unrepresentative. In this respect it is claimed that the Commission formed the sample for the application of extrapolation with a very limited number of projects (37 out of 3 348), without taking into consideration all the essential parts of the operational programme, including expenditure withdrawn beforehand by the Spanish authorities, taking as the starting point the expenditure declared and not the assistance granted and by using an IT programme which offered a level of reliability of less than 85 %. The Kingdom of Spain considers, therefore, that the sample does not satisfy the conditions of representativity required in order for it to serve as a basis for extrapolation;

— finally, the Kingdom of Spain considers that the communication of irregularities to the Spanish authorities (which took place in August 2005, in most cases concerning irregularities committed during the years 1998 and 1999) must

determine the moment from which the period of four years laid down in Article 3 of Regulation No 2988/95 ([3]) started to run with regard to those irregularities.

([1]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).
([2]) Case C-443/97 *Spain* v *Commission* (2000) ECR I-2415.
([3]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Action brought on 4 March 2010 — United Kingdom v Commission

(Case T-115/10)

(2010/C 113/109)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, acting as agent, assisted by D.Wyatt, QC and M. Wood, Barrister)

Defendant: European Commission

Form of order sought

— annul Commission Decision 2010/45/EU, of 22 December 2009 adopting, pursuant to Council Directive 92/43/EEC (the Habitats Directive) ([1]), a third updated list of sites of Community importance for the Mediterranean bio-geographical region ([2]), to the extent that it lists the Estrecho Oriental site of Community importance, identified by code ES6120032,

— award costs against the Commission.

Pleas in law and main arguments

By means of the present application, the applicant challenges the validity of Commission Decision 2010/45/EU (notified under document number C(2009) 10406) to the extent of its listing of the Estrecho Oriental site of Community importance, and seeks annulment of the listing of the Estrecho Oriental site of Community importance.

The applicant puts forward the following pleas in law in support of its claims.

First, the applicant submits that the contested decision was adopted in breach of Directive 92/43/EEC, in that the listing of the Spanish Estrecho Oriental site of Community importance was incompatible with it, because:

— a very substantial area of that site is located within British Gibraltar Territorial Waters (BGTW), which fall within the effective control of the United Kingdom rather than Spain, and

— because it completely overlaps the existing UK Southern Water of Gibraltar site of Community importance.

Secondly, the applicant claims that the contested decision was adopted in breach of the principle of legal certainty, in that the listing of the Estrecho Oriental site of Community importance purports to impose obligations on Spain under Directive 92/43/EEC in respect of an area within an existing site of Community importance, in respect of which the Government of Gibraltar is already subject to identical obligations under that Directive. The effect is to purport to qualify or call into question the authority of the Government of Gibraltar to implement the Directive in the Southern Waters of Gibraltar site of Community importance, and to enforce the law of Gibraltar in BGTW, creating legal uncertainty for the Government of Gibraltar, and for EU citizens.

Thirdly, the applicant contends that the contested decision was adopted in breach of the principle of proportionality, in that the listing of the Spanish Estrecho Oriental site of Community importance so as to include the whole of the UK Southern Waters of Gibraltar site of Community importance and other areas of BGTW is neither appropriate, nor necessary, to attain the environmental objectives pursued by Directive 92/43/EEC.

Finally, the applicant contends that the contested listing of the Estrecho Oriental site of Community importance must be annulled in its entirety, since partial annulment of the listing would have the affect of changing its substance, and would entail amendment by the Court of the listing, and recalculation of the centre point of the site of Community importance, and of its area, and an environmental assessment of the eligibility of the remaining part of the site to qualify as an site of Community importance.

(1) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ 1992 L 206, p. 7
(2) OJ 2010 L 30, p. 322

Action brought on 5 Mars 2010 — Acron v Council

(Case T-118/10)

(2010/C 113/110)

Language of the case: English

Parties

Applicant: Acron OAO (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 125112009 of 18 December 2009 amending Regulation (EC) No 1911/2006 (1), in so far as it affects the applicant;

— order the Council to pay the costs of and occasioned by these proceedings.

Pleas in law and main arguments

In support of its application, the applicant puts forward a single ground for annulment, divided in three pleas.

The applicant submits that the Union's institutions breached Articles 1 and 2 of the Basic Regulation, Article 11(9) of the Basic Regulation (2) when read together with Article 2 of the Basic Regulation and committed series of manifest errors of assessments, as a result of which they established an artificially increased constructed normal value for the applicant, and hence made an unwarranted finding of dumping.

In the first plea, the applicant challenges the rationale for the gas adjustment. More specifically, the applicant submits that the institutions erred in law and violated Article 2 (3) and (5) of the Basic Regulation, by disregarding a major part of the cost of production in the country of origin and/or by de facto applying a non-market economy methodology for establishing the major part of the applicant's normal value.

In the second plea, the applicant challenges the method used for the gas adjustment. The applicant submits that once having decided to proceed with the gas adjustment, the Commission violated Article 2(5), second sentence, of the Basic Regulation and/or made a manifest error of appreciation and showed a lack of reasoning, by making the gas adjustment on the basis of the price of Russian gas at Waidhaus, Germany, by failing to consider a penalised market sharing cartel in respect of Russian gas coming via Waidhaus, and by failing to deduct 30 % Russian export duty on Russian gas and by adjusting to reflect local distribution cost.

In the third plea, the applicant challenges the determination of profit margin used in constructed normal value. The applicant submits that the profit margin determined by institutions and added to the cost of manufacturing to form constructed normal value of the applicant in the findings of the contested regulation, is in breach of Article 2(3) and 2(6)(c) of the Basic Regulation and manifestly unreasonable, and is vitiated by a manifest error of assessment. Also the profit margin thus determined departs significantly, in breach of Article 11(9) of the Basic Regulation, from the profit and methodology for constructed normal value used in the original investigation which led to the duty under review.

(1) Council Implementing Regulation (EU) No 1251/2009 of 18 December 2009 amending Regulation (EC) No 1911/2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating, inter alia, in Russia, OJ 2009 L 338, p. 5
(2) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 5 March 2010 — Netherlands v Commission

(Case T-119/10)

(2010/C 113/111)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries and J. Langer, Agents)

Defendant: European Commission

Form of order sought

— annul European Commission Decision No C(2009) 10712 of 23 December 2009 reducing assistance under the European Regional Development Fund (ERDF) for the Community Initiative (CI) Interreg II/C Inundation Rijn-Maas Programme in the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands pursuant to Commission Decision C(97) 3742 of 18 December 1997 (ERDF No 970010008);

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its application, the applicant puts forward seven pleas in law:

— breach of Article 24(2) of Regulation No 4253/88 [1] by reason of the determination of financial reductions on the basis of extrapolation, even though that provision does not provide any basis for so doing;

— breach of Article 24(2) and (3) of Regulation No 4253/88 by reason of the imposition of flat-rate financial reductions, even though that provision does not provide any basis for so doing;

— infringement of the principle of legal certainty by reason of the imposition of obligations on a Member State by reference to case-law of the Court of Justice dating from after the imposition of those obligations, which obligations, at the moment of their imposition, were not clear, precise and foreseeable for the Member States;

— infringement of the principle of proportionality by reason of the imposition of a financial reduction of 25 % of the costs declared in connection with contracts, in which context there was a failure to comply with general principles such as those of transparency, non-discrimination and equal treatment;

— infringement of the principle of proportionality by reason of the imposition of a financial reduction of 100 % of the costs declared in connection with contracts which exceed the threshold values of Directive 93/37/EEC, [2] Directive 93/36/EEC [3] or Directive 92/50/EEC [4] and which were awarded without any competition;

— breach of the duty to state reasons through the failure to explain how the scope of the flat-rate reductions imposed was established;

— breach of the duty to state reasons through the imposition of project-specific reductions for which insufficient reasons were given.

(1) Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

(2) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54; corrigendum OJ 1994 L 111, p. 115).

(3) Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1).

(4) 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).

Order of the General Court of 2 March 2010 — gardeur v OHIM — Blue Rose (g)

(Case T-310/07) [1]

(2010/C 113/112)

Language of the case: English

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

[1] OJ C 247, 20.10.2007.

Order of the General Court of 2 March 2010 — Aldi v OHIM — Catalana de Telecomunicacions Societat Operadora de Xarxes (ALDI)

(Case T-298/08) [1]

(2010/C 113/113)

Language of the case: German

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

[1] C 247, 27.9.2008.

Order of the General Court of 4 March 2010 — Commission v Domótica

(Case T-552/08) [1]

(2010/C 113/114)

Language of the case: Portuguese

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

[1] OJ C 55, 7.3.2009.

Order of the General Court of 1 March 2010 — TerreStar Europe v Commission

(Case T-196/09) [1]

(2010/C 113/115)

Language of the case: English

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

[1] OJ C 167, 18.7.2009.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 29 January 2010 — AC v Council

(Case F-9/10)

(2010/C 113/116)

Language of the case: French

Parties

Applicant: AC (Brussels, Belgium) (represented by: S. Rodruigez and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision not to include the applicant in the list of persons promoted to grade AD 13 in the 2009 promotion procedure and an order that the defendant make good the non-material damage suffered by the applicant.

Form of order sought

— Annul the decision of the Appointing Authority not to include the applicant in the list of persons promoted to grade AD 13 in the 2009 promotion procedure, as that decision can be determined from Staff Notice No 94/09 of 27 April 2009;

— Annul, to the extent necessary, the decision of the Appointing Authority rejecting the applicant's complaint;

— Order the defendant to pay the applicant EUR 5 000 in compensation for the non-material loss suffered;

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

Action brought on 9 February 2010 — Kerstens v European Commission

(Case F-12/10)

(2010/C 113/117)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision imposing on the applicant a disciplinary penalty in the form of a written warning.

Form of order sought

— Annul the decision of the Appointing Authority of 23 April 2009 imposing on the applicant a disciplinary penalty in the form of a written warning;

— Order the European Commission to pay the costs.

2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 100 per year
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 770 per year
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 400 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 300 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

CD-Rom formats will be replaced by DVD formats during 2010.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN