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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 285/01)

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

OJ C 272, 25.10.2008

Past publications

OJ C 260, 11.10.2008

OJ C 247, 27.9.2008

OJ C 236, 13.9.2008

OJ C 223, 30.8.2008

OJ C 209, 15.8.2008

OJ C 197, 2.8.2008

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 11 September 2008 — Federal Republic of Germany (C-75/05 P), Glunz AG, OSB Deutschland GmbH (C-80/05 P) v Kronofrance SA, Commission of the European Communities

(Joined Cases C-75/05 P and C-80/05 P) ([1])

(Appeals — State aid — Commission decision not to raise objections — Action for annulment — Admissibility — Interested parties — Regional aid for large investment projects — Multisectoral framework of 1998)

(2008/C 285/02)

Language of the case: German

Parties

Appellants: Federal Republic of Germany (represented by: W.-D. Plessing, C. Schulze-Bahr, acting as Agents, M. Núñez-Müller, Rechtsanwalt) (C-75/05 P), Glunz AG, OSB Deutschland GmbH (represented by: H.-J. Niemeyer, Rechtsanwalt)

Other parties to the proceedings: Kronofrance SA (represented by: R. Nierer and L. Gordalla, Rechtsanwälte), Commission of the European Communities (represented by: V. Kreuschitz, acting as Agent)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber, Extended Composition) of 1 December 2004 in Case T-27/02 (Kronofrance SA v Commission, supported by Glunz AG and OSB Deutschland GmbH), by which the Court annulled the Commission's Decision SG (2001) D of 25 July 2001 not to object to the aid granted by the German authorities to Glunz AG — Infringement of the fourth paragraph of Article 230 EC — Infringement of Article 87(3) EC — Infringement of Article 64 of the Rules of Procedure of the Court of First Instance

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders the Federal Republic of Germany to pay the costs relating to Case C-75/05 P;*

3. *Orders Glunz AG and OSB Deutschland GmbH to pay the costs relating to Case C 80/05 P;*

4. *Orders the Commission of the European Communities to bear its own costs.*

([1]) OJ C 106, 30.4.2005.

Judgment of the Court (Grand Chamber) of 3 September 2008 — Yassin Abdullah Kadi, Al Barakaat International Foundation v Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland

(Joined Cases C-402/05 P and C-415/05 P) ([1])

(Common foreign and security policy (CFSP) — Restrictive measures directed against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — United Nations — Security Council — Resolutions adopted under Chapter VII of the United Nations Charter — Implementation within the Community — Common Position 2001/154/CFSP — Regulation (EC) No 881/2002 — Measures directed at persons and entities included in a list drawn up by a body of the United Nations — Freezing of funds and economic resources — Committee of the Security Council established by paragraph 6 of Resolution 1267 (1999) of the Security Council (Sanctions Committee) — Inclusion of those persons and entities in Annex I to Regulation (EC) No 881/2002 — Actions for annulment — Competence of the Community — Joint legal basis of Articles 60 EC, 301 EC and 308 EC — Fundamental rights — Right to respect for property, right to be heard and right to effective judicial review)

(2008/C 285/03)

Languages of the case: English and Swedish

Parties

Appellants: Yassin Abdullah Kadi (represented by: I. Brownlie, D. Anderson QC, P. Saini, Barrister, and G. Martin, Solicitor), Al Barakaat International Foundation (represented by: L. Silbersky and T. Olsson, advokater)

Other parties to the proceedings: Council of the European Union (represented by: M. Bishop, E. Finnegan and E. Karlsson, acting as Agents), Commission of the European Communities (represented by: C. Brown, J. Enegren and P.J. Kuijper, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: R. Caudwell, E. Jenkinson and S. Behzadi-Spencer, acting as Agents, and C. Greenwood QC, and A. Dashwood, Barrister)

Interveners in support of the Council of the European Union: Kingdom of Spain, (represented by: J. Rodríguez Cárcamo, acting as Agent), French Republic (represented by: G. de Bergues, E. Belliard, and S. Gasri, acting as Agents), Kingdom of the Netherlands (represented by: H.G. Sevenster and M. de Mol, acting as Agents)

Intervener in support of the Commission of the European Communities: French Republic (represented by: G. de Bergues, E. Belliard and S. Gasri, acting as Agents)

Re:

Appeal lodged against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 21 September 2005 in Case T-315/01 *Yassin Abdullah Kadi* v *Council and Commission*, in which the Court of First Instance held (a) that there was no need to adjudicate on the application for annulment of Commission Regulation (EC) No 2062/2001 of 19 October 2001 amending, for the third time, Council Regulation (EC) No 467/2001 of 6 March 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No 337/2000 (OJ L 277, p. 25), in so far it added the applicant to the list of persons, entities and bodies affected by the freezing of funds imposed by that regulation, and (b) dismissed as unfounded the application for annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation (EC) No 467/2001 (OJ L 139, p. 9), in so far as those acts concerned him

Appeal lodged against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 21 September 2005 in Case T-306/01 *Yusuf and Al Barakaat International Foundation* v *Council and Commission*, in which the Court of First Instance dismissed an application for annulment of Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Regulation (EC) No 467/2001

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the Court of First Instance of the European Communities of 21 September 2005 in Case T-315/01 Kadi v Council and Commission and Case T-306/01 Yusuf and Al Barakaat International Foundation v Council and Commission;*

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

3. *Orders the effects of Regulation No 881/2002 to be maintained, so far as concerns Mr Kadi and the Al Barakaat International Foundation, for a period that may not exceed three months running from the date of delivery of this judgment;*

4. *Orders the Council of the European Union and the Commission of the European Communities each to pay, in addition to their own costs, half of those incurred by Mr Kadi and Al Barakaat International Foundation both at first instance and in these appeals;*

5. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs both at first instance and in these appeals;*

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

([1]) OJ C 36, 11.2.2006.
OJ C 48, 25.2.2006.

Judgment of the Court (Grand Chamber) of 9 September 2008 — Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM), Fabbrica italiana accumulatori motocarri Montecchio Technologies Inc (FIAMM Technologies), Giorgio Fedon & Figli SpA, Fedon America, Inc. v Council of the European Union, Commission of the European Communities, Kingdom of Spain

(Joined Cases C-120/06 P and C-121/06 P) ([1])

(Appeals — Recommendations and rulings of the World Trade Organisation (WTO) Dispute Settlement Body — Determination of the Dispute Settlement Body that the Community regime governing the import of bananas was incompatible with WTO rules — Imposition by the United States of America of retaliatory measures in the form of increased customs duty levied on imports of certain products from various Member States — Retaliatory measures authorised by the WTO — No non-contractual Community liability — Duration of the proceedings before the Court of First Instance — Reasonable period — Claim for fair compensation)

(2008/C 285/04)

Language of the case: Italian

Parties

Appellants: Fabbrica italiana accumulatori motocarri Montecchio SpA (FIAMM), Fabbrica italiana accumulatori motocarri

Montecchio Technologies Inc. (FIAMM Technologies), Giorgio Fedon & Figli SpA, Fedon America, Inc. (represented by: I. Van Bael, A. Cevese, F. Di Gianni and R. Antonini, avocats)

Other parties to the proceedings: Council of the European Union (represented by: A. Vitro, S. Marquardt and A. De Gregorio Merino, acting as Agents), Commission of the European Communities (represented by: P.J. Kuijper, V. Di Bucci, C. Brown and E. Righini, acting as Agents), Kingdom of Spain (Case C-120/06 P) (represented by: E. Braquehais Conesa and M. Muñoz Pérez, acting as Agents)

Intervener in support of the Council of the European Union and the Commission of the European Communities: Kingdom of Spain (Case C-121/06 P) (represented by: M. Muñoz Pérez, acting as Agent)

Re:

Appeal against the judgment of the Court of First Instance (Grand Chamber) of 14 December 2005 in Case T-69/00 *FIAMM and FIAMM Technologies* v *Council and Commission*, dismissing as unfounded an action for compensation for damage allegedly suffered by the appellants as a result of retaliatory measures taken by the United States authorities in relation to a series of Community goods, including batteries manufactured and exported by the appellants, in the context of the dispute concerning the European regime governing the import of bananas

Appeal against the judgment of the Court of First Instance (Grand Chamber) of 14 December 2005 in Case T-135/01 *Fedon & Figli and Fedon America* v *Council and Commission*, dismissing as unfounded an action for compensation for damage allegedly suffered by the appellants as a result of retaliatory measures taken by the United States authorities in relation to a series of Community goods, including spectacle cases manufactured and exported by the appellants, in the context of the dispute concerning the European regime governing the import of bananas

Operative part of the judgment

The Court:

1. *Dismisses the main appeals;*

2. *Dismisses the cross-appeals;*

3. *Orders Fabbrica italiana accumulatori motocarri Montecchio SpA, Fabbrica italiana accumulatori motocarri Montecchio Technologies LLC, Giorgio Fedon & Figli SpA and Fedon America, Inc. to bear the costs incurred by the Council of the European Union and the Commission of the European Communities;*

4. *Orders the Kingdom of Spain to bear its own costs.*

(1) OJ C 108, 6.5.2006.

Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Audiencia Provincial de Madrid, Spain) — CEPSA Estaciones de Servicio SA v LV Tobar e Hijos SL

(Case C-279/06) (1)

(Competition — Agreements, decisions and concerted practices — Agreements between undertakings — Article 81 EC — Regulation (EEC) No 1984/83 — Articles 10 to 13 — Regulation No 2790/1999 — Article 4(a) — Exclusive supply contract for petroleum products between a service-station operator and an oil company — Exemption)

(2008/C 285/05)

Language of the case: Spanish

Referring court

Audiencia Provincial de Madrid

Parties to the main proceedings

Applicant: CEPSA Estaciones de Servicio SA

Defendant: LV Tobar e Hijos SL

Re:

Reference for a preliminary ruling — Audiencia Provincial de Madrid — Interpretation of Article 81(1) EC and Articles 10 to 13 of Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article 85(3) of the Treaty to categories of exclusive purchasing agreements (OJ 1983 L 173, p. 5) — Exclusive distribution contracts for fuels classified as agency or commission contracts but having certain specific features

Operative part of the judgment

1) *An exclusive supply contract for motor-vehicle and other fuels, as well as lubricants and other related products, is capable of falling within the scope of Article 81(1) EC where the service station operator assumes, in a non-negligible proportion, one or more financial and commercial risks linked to the sale of those products to third parties and where that contract contains clauses capable of infringing competition, such as that relating to the fixing of the retail price. If the service-station operator does not assume such risks or assumes only a negligible share of them, only the obligations imposed on the operator in the context of services as an intermediary offered by the operator to the principal, such as the exclusivity and non-competition clauses, are capable of falling within the scope of that provision. It is for the referring court to ascertain, moreover, whether the contract concluded on 7 February 1996 between CEPSA Estaciones de Servicio SA and LV Tobar e Hijos SL has the effect of preventing, restricting or distorting competition within the meaning of Article 81 EC.*

2) *An exclusive supply contract, such as that referred to in the preceding paragraph of this operative part, is capable of benefiting from a block exemption provided for in Commission Regulation (EEC) No 1984/83 of 22 June 1983 on the application of Article [81](3) of the Treaty to categories of exclusive purchasing agreements, as amended by Commission Regulation (EC) No 1582/97 of 30 July 1997, if it complies with the maximum duration of 10 years referred to in Article 12(1)(c) of that regulation and if the supplier grants the service-station operator, in*

return for exclusivity, substantial commercial advantages which contribute to an improvement in distribution, facilitate the establishment or modernisation of the service station and lower the distribution costs. It is for the referring court to assess whether those conditions are satisfied in the case in the main proceedings.

3) *Articles 10 to 13 of Regulation No 1984/83, as amended by Regulation No 1582/97, must be interpreted as precluding the application of the block exemption to an exclusive supply contract which provides for the fixing of the retail price by the supplier. It is for the referring court to ascertain whether, under national law, the contractual clause relating to that sale price can be amended by unilateral authorisation of the supplier, such as that at issue in the main proceedings, and whether a contract which is automatically void may become valid following an amendment of that contractual clause which has the effect of bringing that clause into line with Article 81(1) EC.*

4) *The automatic nullity provided for in Article 81(2) EC affects a contract in its entirety only if the clauses which are incompatible with Article 81(1) EC are not severable from the contract itself. Otherwise, the consequences of the nullity, in respect of all the other parts of the contract, are not a matter for Community law.*

([1]) OJ C 212, 2.9.2006.

Judgment of the Court (Fifth Chamber) of 11 September 2008 — Commission of the European Communities v Hellenic Republic

(Case C-305/06) ([1])

(Failure of a Member State to fulfil obligations — Combined transport of goods between the Member States — Directive 92/106/EEC — Final road haulage leg forming an integral part of a combined transport operation — Nearest suitable railway station)

(2008/C 285/06)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: S. Chala, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2 and 4 of Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38) — Final road haulage leg forming an integral part of a combined transport operation — Requirement of a Greek road transport authorisation

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Fifth Chamber) of 11 September 2008 — Commission of the European Communities v Ireland

(Case C-316/06) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 91/271/EEC — Pollution and nuisance — Treatment of urban waste water)

(2008/C 285/07)

Language of the case: English

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40) — Failure to ensure that the waste water from a number of agglomerations is made subject to secondary treatment or an equivalent treatment before entering collecting systems (agglomerations of Bray, Howth, Letterkenny, Shanganagh, Sligo and Tramore, County Waterford)

Operative part of the judgment

The Court:

1. *Declares that, by failing, first, in respect of discharges from the agglomerations known as IE22, Bray, IE31, Howth, IE34, Letterkenny, IE40, Shanganagh, IE41, Sligo, and IE45, Tramore, County Waterford, to ensure that, before discharge, waste water entering collecting systems was made subject to secondary treatment or an equivalent treatment at the latest by 31 December 2000 and by failing, second, to ensure that the discharge of that waste water satisfied the relevant requirements of Annex I.B to Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment by the said deadline, Ireland has failed to fulfil its obligations under Article 4(1) and (3) of that directive;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 224, 16.9.2006.

Judgment of the Court (Third Chamber) of 11 September 2008 (references for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco (Spain)) — Unión General de Trabajadores de La Rioja (UGT-Rioja) (C-428/06), Comunidad Autónoma de La Rioja (C-429/06) v Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de La Rioja (C-430/06), Comunidad Autónoma de Castilla y León (C-433/06) v Diputación Foral de Álava, Juntas Generales de Álava, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de La Rioja (C-431/06), Comunidad Autónoma de Castilla y León (C-432/06) v Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Confederación Empresarial Vasca (Confebask) and Comunidad Autónoma de Castilla y León (C-434/06) v Diputación Foral de Vizcaya, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask)

(Case C-428/06 to C-434/06) ([1])

(State aid — Tax measures adopted by a regional or local authority — Selective nature)

(2008/C 285/08)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco, Spain

Parties to the main proceedings

Applicants: Unión General de Trabajadores de La Rioja (UGT-Rioja) (C-428/06), Comunidad Autónoma de La Rioja (C-429/06), Comunidad Autónoma de La Rioja (C-430/06), Comunidad Autónoma de Castilla y León (C-433/06), Comunidad Autónoma de La Rioja (C-431/06), Comunidad Autónoma de Castilla y León (C-432/06), Comunidad Autónoma de Castilla y León (C-432/06)

Defendants: Juntas Generales del Territorio Histórico de Vizcaya, Diputación Foral de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao, Confederación Empresarial Vasca (Confebask), Diputación Foral de Álava, Juntas Generales de Álava, Diputación Foral de Guipúzcoa, Juntas Generales de Guipúzcoa, Juntas Generales del Territorio Histórico de Vizcaya, Cámara de Comercio, Industria y Navegación de Bilbao

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco — State aid — Interpretation of Article 87(1) EC — Tax measures adopted by an infra-State body — Rate of tax lower than national rate and provision for specific tax deductions

Operative part of the judgment

Article 87(1) EC is to be interpreted as meaning that, for the purpose of assessing whether a measure is selective, account is to be taken of the institutional, procedural and economic autonomy enjoyed by the authority adopting that measure. It is for the national court, which alone has jurisdiction to identify the national law applicable and to interpret it, as well as to apply Community law to the cases before it, to determine whether the Historical Territories and the Autonomous Community of the Basque Country have such autonomy, which, if so, would have the result that the laws adopted within the limits of the areas of competence granted to those infra State bodies by the Spanish Constitution of 1978 and the other provisions of Spanish law are not of a selective nature within the meaning of the concept of State aid as referred to in Article 87(1) EC.

([1]) OJ C 326, 30.12.2006.

Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Hof van Beroep te Gent (Belgium)) — Hans Eckelkamp, Natalie Eckelkamp, Monica Eckelkamp, Saskia Eckelkamp, Thomas Eckelkamp, Jessica Eckelkamp, Joris Eckelkamp v Belgische Staat

(Case C-11/07) ([1])

(Free movement of capital — Articles 56 EC and 58 EC — Inheritance tax — National rules concerning the assessment of duties on the transfer of immovable property which do not allow for mortgage-related charges relating to the immovable property to be deducted from the value of that property on the ground that, at the time of death, the person whose estate is being administered was residing in another Member State — Restriction — Justification — None)

(2008/C 285/09)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Applicants: Hans Eckelkamp, Natalie Eckelkamp, Monica Eckelkamp, Saskia Eckelkamp, Thomas Eckelkamp, Jessica Eckelkamp, Joris Eckelkamp

Defendant: Belgische Staat

Re:

Preliminary ruling — Hof van beroep te Gent — Interpretation of Articles 12 EC, 17 EC, 18 EC, 56 EC and 58 EC — National legislation on the calculation of duty payable in respect of the acquisition, through inheritance, of immovable property which does not allow for deduction, from the value of the immovable property, of mortgage-related charges relating to that property on the ground that the testator, at the time of death, was resident in another Member State

Operative part of the judgment

The combined provisions of Articles 56 EC and 58 EC must be interpreted as precluding national legislation, such as that at issue in the main proceedings, concerning the assessment of inheritance and transfer duties payable in respect of an immovable property situated in a Member State, which makes no provision for the deductibility of debts secured on such property where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was, at that time, residing in the first-mentioned Member State, in which the immovable property included in the estate is situated.

([1]) OJ C 56, 10.3.2007.

Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — D.M.M.A. Arens-Sikken v Staatssecretaris van Financiën

(Case C-43/07) ([1])

(Free movement of capital — Articles 73b and 73d of the EC Treaty (now Articles 56 EC and 58 EC respectively) — National rules concerning inheritance duties and transfer duties which do not provide for the deduction, in the assessment of those duties, of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was not residing, at the time of death, in the Member State in which the immovable property included in the estate is situated — Restriction — Justification — None — No bilateral agreement for the prevention of double taxation — Consequences for the restriction of the free movement of capital of a lower level of compensation to prevent double taxation in that person's Member State of residence)

(2008/C 285/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: D.M.M.A. Arens-Sikken

Defendant: Staatssecretaris van Financiën

Re:

Preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 56 EC and 58 EC — National rules on the calculation of inheritance duty payable on immovable property which do not allow for deduction, from the value of immovable property, of debts associated with the testamentary partition in the case where the testator was resident in another Member State at the time of his death — Method of comparison applicable for the purpose of determining the amount of inheritance duty in the case where the testator was resident, at the time of his death, in the Member State in which the immovable property is situated — Bilateral convention designed to prevent double taxation

Operative part of the judgment

1. *Articles 73b and 73d of the Treaty (subsequently, Articles 56 EC and 58 EC respectively) must be interpreted as precluding national rules, such as those at issue in the main proceedings, concerning the assessment of inheritance duties and transfer duties payable in respect of an immovable property situated in a Member State, which, for the assessment of those duties, makes no provision for the deductibility of overendowment debts resulting from a testamentary parental partition inter vivos where the person whose estate is being administered was residing, at the time of death, not in that State but in another Member State, whereas provision is made for such deductibility where that person was residing, at the time of death, in the first-mentioned Member State, in which the immovable property included in the estate is situated, in so far as such rules apply a progressive rate of taxation and in so far as the combination of (i) the failure to take into account such debts and (ii) that progressive rate could result in a greater tax burden for heirs who are not in a position to rely on such deductibility.*

2. *The answer set out in point 1 of the operative part of this judgment is not affected by the fact that the rules of the Member State in which the person whose estate is being administered was residing at the time of death provide unilaterally for the possibility that a tax credit may be granted in respect of inheritance duties payable in another Member State on immovable property situated in that other State.*

([1]) OJ C 69, 24.3.2007.

Judgment of the Court (Fourth Chamber) of 11 September 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-141/07) ([1])

(Failure of a Member State to fulfil obligations — Measures having equivalent effect to a quantitative restriction — Protection of public health — Justification — Pharmacies — Supply of medicinal products directly to hospitals — Proximity to the hospital concerned)

(2008/C 285/11)

Language of the case: German

Parties

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

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 28 EC and 30 EC — National rules stipulating requirements to be met by pharmacies in order to be permitted to supply pharmaceutical products directly to hospitals and capable of being met in practice only by pharmacies located in the vicinity of the hospital concerned

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Third Chamber) of 11 September 2008 (reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria)) — Jörn Petersen v Landesgeschäftsstelle des Arbeitsmarktservice Niederösterreich

(Case C-228/07) ([1])

(Social security — Regulation (EEC) No 1408/71 — Article 4(1)(b) and (g), Article 10(1) and Article 69 — Freedom of movement for persons — Articles 39 EC and 42 EC — Statutory pension and accident insurance scheme — Benefit for reduced capacity to work or incapacity to work — Advance payment to unemployed persons who apply for the grant of a benefit — Whether the benefit is an 'unemployment benefit' or an 'invalidity benefit' — Residence qualification)

(2008/C 285/12)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Jörn Petersen

Defendant: Landesgeschäftsstelle des Arbeitsmarktservice Niederösterreich

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 39 EC and of Article 4(1)(b) and (g) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2) — Whether a monetary payment from unemployment insurance, not subject to the condition that the applicant be capable of working or ready for work, and payable as an advance, pending a final decision, only to unemployed persons having previously applied for a benefit under the statutory pension and accident insurance scheme on the ground of reduced capacity for work or incapacity for work, to be classified as an unemployment benefit or as an invalidity benefit — National legislation suspending that benefit if the unemployed person concerned lives in another Member State

Operative part of the judgment

1. *A benefit such as the one at issue in the main proceedings must be regarded as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996;*

2. *Inasmuch as no factor has been put forward which shows that such a condition is objectively justified and proportionate, Article 39 EC must be interpreted as preventing a Member State from making the grant of a benefit such as the one at issue in the main proceedings, which must be regarded as an 'unemployment benefit' within the meaning of Article 4(1)(g) of Regulation No 1408/71, subject to the condition that the recipients be resident in the national territory of that State.*

([1]) OJ C 170, 21.7.2007.

Judgment of the Court (Fourth Chamber) of 11 September 2008 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Gävle Kraftvärme AB v Länsstyrelsen i Gävleborgs län

(Case C-251/07) [1]

(Environment — Directive 2000/76/EC — Incineration of waste — Classification of an installation for the production of heat and electricity — Concepts of incineration plant and co-incineration plant)

(2008/C 285/13)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Gävle Kraftvärme AB

Defendant: Länsstyrelsen i Gävleborgs län

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Article 3(4) and (5) of Directive 2000/76/EC of 4 December 2000 of the European Parliament and of the Council on the incineration of waste (OJ 2000 L 332, p. 91) — Classification of a combined power and heating plant comprising a number of furnaces — Incineration plant or co-incineration plant

Operative part of the judgment

1. *For the purposes of applying Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, where a co-generation plant comprises a number of boilers, each boiler and its associated equipment is to be regarded as constituting a separate plant.*

2. *It is on the basis of its main purpose that a plant is to be classified as an 'incineration plant' or a 'co-incineration plant' within the meaning of Article 3(4) and (5) of Directive 2000/76. It is for the competent authorities to identify that purpose on the basis of an assessment of the facts existing at the time at which that assessment is carried out. In the context of such an assessment, account must be taken, in particular, of the volume of energy generated or material products produced by the plant in question in relation to the quantity of waste incinerated in that plant and the stability and continuity of that production.*

[1] OJ C 170, 21.7.2007.

Judgment of the Court (First Chamber) of 11 September 2008 (reference for a preliminary ruling from the Tribunale civile di Roma — Italy) — Caffaro Srl v Azienda Unità Sanitaria Locale RM/C

(Case C-265/07) [1]

(Commercial transactions — Directive 2000/35/EC — Combating of late payment — Procedures for recovery of unchallenged claims)

(2008/C 285/14)

Language of the case: Italian

Referring court

Tribunale civile di Roma

Parties to the main proceedings

Applicant: Caffaro Srl

Defendant: Azienda Unità Sanitaria Locale RM/C

In the presence of: Banca di Roma SpA

Re:

Reference for a preliminary ruling — Tribunale civile di Roma — Interpretation of Article 5 of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35) — Recovery procedures for uncontested debts — National legislation laying down that a period of 120 days from the date of notification of the recovery order must elapse before recovery of the debt may be enforced

Operative part of the judgment

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions is to be interpreted as not precluding a national provision such as Article 14 of Decree-Law No 669/1996 of 31 December 1996, converted into a law, after amendment, by Law No 30 of 28 February 1997, as amended by Article 147 of Law No 388 of 23 December 2000, pursuant to which a creditor in possession of an enforceable title in respect of an unchallenged claim against a public authority as remuneration for a commercial transaction cannot proceed to forced execution against the public authority before a period of 120 days has elapsed since service of the enforceable title on the authority.

[1] OJ C 199, 25.8.2007.

Judgment of the Court (Second Chamber) of 11 September 2008 — Commission of the European Communities v Republic of Lithuania

(Case C-274/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Universal service and users' rights relating to electronic communications networks and services — Article 26(3) — Single European emergency call number — Making available caller location information)

(2008/C 285/15)

Language of the case: Lithuanian

Parties

Applicant: Commission of the European Communities (represented by: G. Braun and A. Steiblytė, acting as Agents)

Defendant: Republic of Lithuania (represented by: D. Kriaučiūnas, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period the provisions necessary to comply with Article 26(3) 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)

Operative part of the judgment

The Court:

1. *Declares that, by not ensuring in practice that authorities handling emergencies are, to the extent technically feasible, given caller location information for all callers to the single European emergency call number '112' when public telephone networks are used, the Republic of Lithuania has failed to fulfil its obligations under Article 26(3) 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 Republic of Lithuania to pay the costs.*

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Sixth Chamber) of 11 September 2008 — Commission of the European Communities v Italian Republic

(Case C-447/07) ([1])

(Failure of a Member State to fulfil obligations — Article 39 EC — Employment in the public administration — Masters and officers (chief officers) of vessels — Allocation of State authority on board — Requirement to hold the nationality of the flag Member State)

(2008/C 285/16)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and L. Pignataro-Nolin, acting as Agents)

Defendant: Italian Republic (represented by: I. Braguglia, Agent, and S. Fiorentino, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 39 EC — National legislation reserving the posts of master and chief officer on all vessels flying the flag of that Member State to its nationals

Operative part of the judgment

The Court:

1. *Declares that, by maintaining in its legislation the requirement that masters and chief officers on all vessels flying the Italian flag hold Italian nationality, the Italian Republic has failed to fulfil its obligations under Article 39 EC;*

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

([1]) OJ C 297, 8.12.2007.

Order of the Court (Sixth Chamber) of 10 July 2008 (reference for a preliminary ruling from the Cosiglio di Stato (Italy)) — Salvatore Aiello and Others v Comune di Milano, Sindaco di Milano, Comitato tecnico-scientifico per l'emergenza del traffico e della mobilità nella città di Milano, Provincia di Milano, Regione Lombardia, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Interno, Presidenza del Consiglio dei Ministri, Euromilano SpA, Metropolitana milanese SpA

(Case C-156/07) ([1])

(Reference for a preliminary ruling — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Construction of a road in Milan)

(2008/C 285/17)

Language of the case: Italian

Referring court

Consiglio di Stato (Italy)

Parties

Applicant: Salvatore Aiello and Others

Defendants: Comune di Milano, Sindaco di Milano, Comitato tecnico-scientifico per l'emergenza del traffico e della mobilità nella città di Milano, Provincia di Milano, Regione Lombardia, Ministero delle Infrastrutture e dei Trasporti, Ministero dell'Interno, Presidenza del Consiglio dei Ministri

Interveners: Euromilano SpA, Metropolitana milanese SpA

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 2 and 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), and of Annex III thereto — Selection criteria to be taken into account in evaluating a project — Construction of a road ('the Interquartiere Nord') in Milan

Operative part of the order

1. *Article 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, must be interpreted as meaning that it does not require any project that may have a significant effect on the environment to be made subject to the impact assessment provided for in that directive, but only projects of a kind listed in Annexes I and II of the directive, as provided in Article 4 of the directive and subject to Article 1(4) and (5) and Article 2(3) of the directive;*

2. *Member States are under an obligation to take into account the relevant selection criteria set out in Annex III of Directive 85/337, as amended by Directive 97/11, when they determine, for projects listed in Annex II of the directive — on the basis of a case-by-case assessment or on the basis of thresholds or criteria that they lay down — whether the project at issue must be made subject to an environmental impact assessment;*

3. *Where a Member State chooses to determine on a case-by-case basis which of the projects listed in Annex II of Directive 85/337, as amended by Directive 97/11, must be made subject to an environmental impact assessment, it must ensure — either by having its national rules refer back to Annex III of the directive or by incorporating the criteria set out in Annex III in its national rules — that, as long as a particular one is relevant to the project at issue, all of those criteria can effectively be taken into account, and cannot explicitly or implicitly exclude one of them.*

([1]) OJ C 140, 23.6.2007.

Order of the Court (Third Chamber) of 3 July 2008 — (reference for a preliminary ruling from the Amtsgericht Landau/Isar (Germany)) — Criminal proceedings against Rainer Günther Möginger

(Case C-225/07) ([1])

(First paragraph of Article 104(3) of the Rules of Procedure — Directive 91/439/EEC — Mutual recognition of driving licences — Withdrawal of driving licence — Temporary ban on obtaining a new right to drive — Validity of a permit obtained in another Member State during the period of the ban)

(2008/C 285/18)

Language of the case: German

Referring court

Amtsgericht Landau/Isar (Germany)

Criminal proceedings against

Rainer Günther Möginger

Action

Reference for a preliminary ruling — Amtsgericht Landau/Isar — Interpretation of Article 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) — Non-recognition by the Member State of residence, on its territory, of a driving licence obtained in another Member State during the period of a temporary ban on applying for a new licence in the Member State of residence

Operative part of the judgment

Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as meaning that they do not preclude a Member State from refusing to recognise the validity of a driving licence issued by another Member State where the holder of that licence was, on the date the licence was issued, subject to a temporary ban on obtaining a new right to drive in the first Member State. In this respect, the fact that the question of validity arises after the date that marked the end of the period of the ban is irrelevant.

([1]) OJ C 183, 4.8.2007

Order of the Court of 20 June 2008 — Ayuntamiento de Madrid, Madrid Calle 30, SA v Commission of the European Communities

(Case C-448/07 P) ([1])

(Appeal — Provision of data relating to the excessive deficit procedure — Regulation (EC) No 3605/93 — European System of Accounts 1995 (ESA 1995) — Regulation (EC) No 2223/96 — Classification of the body 'Madrid Calle 30' in the 'general government sector' — Eurostat press release — Actionable act)

(2008/C 285/19)

Language of the case: Spanish

Parties

Appellant: Ayuntamiento de Madrid, Madrid Calle 30, SA (represented by: J. Buendía Sierra and R. González-Gallarza Granizo, abogados)

Other party to the proceedings: Commission of the European Communities (represented by: A. Aresu and L. Escobar Guerrero, acting as Agents)

Re:

Appeal brought against the order of the Court of First Instance (Fourth Chamber) of 12 July 2007, *Ayuntamiento de Madrid and Madrid Calle 30, SA* v *Commission* (T-177/06) dismissing as inadmissible an action for annulment of the Eurostat news release No 48/2006 of 24 April 2006 to the extent that it contains a decision of the Commission (Eurostat) on the classification of Madrid Calle 30 in the 'public administration' sector within the European System of Accounts (ESA 95)

Operative part of the order

1. *The appeal is dismissed.*

2. *Ayuntamiento de Madrid and Madrid Calle 30, SA are ordered to pay the costs.*

([1]) OJ C 283, 24.11.2007.

Order of the Court (Fifth Chamber) of 27 June 2008 — Philip Morris Products SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-497/07 P) ([1])

(Appeal — Community trade mark — Article 7(1)(b) of Regulation (EC) No 40/94 — Three-dimensional mark representing the shape of a packet of cigarettes — Refusal to register)

(2008/C 285/20)

Language of the case: French

Parties

Applicant: Philip Morris Products SA (represented by: T. Van Innis, avocat)

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

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-140/06 *Philip Morris Products* v *OHIM* by which the Court dismissed the action brought by the applicant against the decision of the Fourth Board of Appeal of OHIM of 24 February 2006 concerning its application for registration of the shape of a packet of cigarettes as a Community trade mark — Infringement of Articles 4 and 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Distinctive character of a three-dimensional shape — Ways of embodying that shape and time at which it is to be assessed

Operative part of the order

1. *The appeal is dismissed;*

2. *Philip Morris SA shall pay the costs.*

([1]) OJ C 22 of 26.1.2008.

Order of the Court of 19 June 2008 — US Steel Košice s.r.o. v Commission

(Case C-6/08 P) ([1])

(Appeal — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Integrated pollution prevention and control — Slovak Republic — Act of Accession — Allocation of allowances — Period 2008-2012 — Conditions — Whether directly affected — Inadmissibility)

(2008/C 285/21)

Language of the case: English

Parties

Appellant: US Steel Košice s.r.o. (represented by: C. Thomas, Solicitor, and E. Vermulst, advocaat)

Other party to the proceedings: Commission of the European Communities (represented by: U. Wölker and D. Lawunmi, Agents)

Re:

Appeal against the order of the Court of First Instance (Third Chamber) of 1 October 2007 in Case T-27/07 US Steel Košice s r.o. v Commission of the European Communities dismissing as inadmissible an application for annulment of the Commission's decision of 29 November 2006 concerning the national allocation plan for greenhouse gas emission allowances notified by Slovakia for the period from 2008 to 2012 in accordance with Directive 2003/87/EC of the European Parliament and of the Council (OJ 2003 L 275, p. 32) — Natural or legal persons — Acts of direct and individual concern to them — Direct concern — Criteria

Operative part of the order

1. *The appeal is dismissed.*

2. *US Steel Košice s.r.o. shall pay the costs.*

([1]) OJ C 64, 8.3.2008.

Order of the Court (Seventh Chamber) of 19 June 2008 (reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria)) — Marc André Kurt v Bürgermeister der Stadt Wels

(Case C-104/08) ([1])

(Articles 92(1) and 104(3) of the Rules of Procedure — Fundamental freedoms — Charter of Fundamental Rights of the European Union — Condition of diploma provided for by the national legislation for the issue of a permit to operate a driving school — Discrimination against own nationals as compared to nationals of other Member States)

(2008/C 285/22)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

Parties

Applicant: Marc André Kurt

Defendant: Bürgermeister der Stadt Wels

Re:

Reference for a preliminary ruling — Unabhängiger Verwaltungssenat des Landes Oberösterreich — Interpretation of the fundamental principles of the EC and EU Treaties and the fundamental freedoms thereunder, as well as Articles 16 and 20 of the Charter of Fundamental Rights of the European Union — National legislation establishing a permit system for establishing, operating and managing a driving school and providing for a diploma requirement — Discrimination against own nationals as compared to nationals of other Member States who avail themselves of their rights under Community law and who do not necessarily have to satisfy the diploma requirement

Operative part of the order

1. *Articles 23 EC, 43 EC and 49 EC do not preclude legislation of a Member State which, in a situation such as that at issue in the main proceedings, refuses to recognise professional qualifications acquired by a national of that Member State as equivalent to the possession of the diploma required by that legislation for the purposes of operating a driving school as an independent operator in that Member State.*

2. *The Court of Justice of the European Communities clearly has no jurisdiction to answer the second and third questions referred by the Unabhängiger Verwaltungssenat des Landes Oberösterreich.*

([1]) OJ C 142, 7.6.2008.

Order of the Court (Fifth Chamber) of 25 July 2008 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain)) — Real Sociedad de Fútbol SAD, Nihat Kahveci v Consejo Superior de Deportes, Real Federación Española de Fútbol

(Case C-152/08) ([1])

(Article 104(3) of the Rules of Procedure — EEC-Turkey Association Agreement — Article 37 of the Additional Protocol — Direct effect — Working conditions — Principle of non-discrimination — Football — Limit on the number of professional players from non-member States nationals who may be fielded per team in national competitions)

(2008/C 285/23)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties

Applicants: Real Sociedad de Fútbol SAD, Nihat Kahveci

Defendants: Consejo Superior de Deportes, Real Federación Española de Fútbol

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Madrid — Interpretation of Art. 37 of the Additional Protocol to the EEC-Turkey Association Agreement signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 133, p. 17) — Working conditions — Rules laid down by sporting associations limiting the participation in certain competitions of professional players who are nationals of non-Member countries who are not parties to the EEA Agreement — Turkish professional sportsman with a work permit for access to the profession and a residence permit as required by national law.

Operative part of the order

The prohibition on all discrimination against Turkish workers duly registered as belonging to the labour market of the Member States as regards remuneration and other conditions of work, as laid down by Article 37 of the Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, annexed to the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one part, and by the Member States of the EEC and the Community, on the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 and Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, must be interpreted as precluding the application to a professional sportsman of Turkish nationality legally employed by a club established in a Member State, of a rule laid down by a sports association in that State, according to which clubs are authorised to field in competitions organised at national level only a limited number of players from non-member States which are not parties to the Agreement on the European Economic Area.

([1]) OJ C 171, 5.7.2008.

Order of the Court (Sixth Chamber) of 11 July 2008 (reference for a preliminary ruling from the Panevėžio apygardos teismas — Republic of Lithuania) — Criminal proceedings against Edgar Babanov

(Case C-207/08) [1]

(First paragraph of Article 104(3) of the Rules of Procedure — Agriculture — Free movement of goods — National legislation prohibiting the cultivation of any type of hemp)

(2008/C 285/24)

Language of the case: Lithuanian

Referring court

Panevėžio apygardos teismas

Criminal proceedings against

Edgar Babanov

Action

Reference for a preliminary ruling — Panevėžio apygardos teismas — Compatibility with the law of the European Union of national legislation providing for criminal liability for cultivating any type of hemp — Power of a court to apply national legislation when the hemp content of active substances does not exceed a certain threshold

Operative part of the judgment

1. *Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 must be interpreted as meaning that it precludes national legislation which has the effect of prohibiting the cultivation and possession of hemp grown for fibre covered by that regulation.*

2. *Community law precludes the court of a Member State from applying national legislation which, contrary to Regulation No 1782/2003, has the effect of prohibiting the cultivation and possession of hemp grown for fibre covered by that regulation.*

[1] OJ C 209 of 15.8.2008.

Appeal brought on 21 February 2008 by Athanasios Pitsiorlas against the judgment of the Court of First Instance (Fifth Chamber) delivered on 27 November 2007 in Joined Cases T-3/00 and T-337/04 Athanasios Pitsiorlas v Council of the European Union and European Central Bank

(Case C-84/08 P)

(2008/C 285/25)

Language of the case: Greek

Parties

Appellant: Athanasios Pitsiorlas (represented by: D. Papafilippou, dikigoros)

Other parties to the proceedings: Council of the European Union, European Central Bank

By order of 3 July 2008, the Court of Justice (Second Chamber) dismissed the appeal and ruled that Athanasios Pitsiorlas had to bear the costs.

Action brought on 17 July 2008 — Commission of the European Communities v French Republic

(Case C-327/08)

(2008/C 285/26)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that:

by adopting and maintaining in force Article 44-1 of Decree No 2005-1308 of 20 October 2005, Article 46-1 of Decree No 2005-1742 of 30 December 2005 and Article 80-1-1 of Decree No 2006-975 of 1 August 2006, in so far as those provisions provide for the possibility for contracting authorities and/or contracting entities to reduce the reasonable time-limit to be complied with between the notice of tender and the signature of the contract without any limit in time and without any objective condition laid down previously in the national legislation,

and

by adopting and maintaining in force Article 144-1 of the new Code of Civil Procedure, as amended by Decree No 2005-1308 of 20 October 2005, in so far as that provision provides for a time-limit of 10 days for the response from the contracting authority and/or the contracting entity concerned prohibiting any precontractual interim measures before that response and without that time period having any suspensory effect on the time-limit to be complied with between the notice of tender and the signature of the contract,

the French Republic has failed to fulfil its obligations under Directive 89/665/EEC ([1]) and Directive 92/13/EEC ([2]), as interpreted by the Court of Justice in Case C-81/98 *Alcatel* and Case C-212/02 *Commission* v *Austria* and, more specifically, Article 2(1) of Directive 89/665/EEC and Article 2(1) of Directive 92/13/EEC.

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission puts forward two pleas in law in support of its action.

By its first plea, the Commission criticises the defendant for having allowed contracting authorities, in urgent cases, to reduce to under 10 days the minimum time-limit to be complied with between the notice of award of tender to all tenderers and the signature of the relevant contract. The urgency referred to in the French legislation is left to the discretion of the contracting authority, without any objective condition being required. However, that same legislation contains no guarantee that the number of days by which the time-limit is reduced will be brought to the attention of the tenderers, which could lead to those tenderers bringing precontractual proceedings against a decision to award a contract at a stage when the relevant contract has already been signed. Such a situation is clearly contrary to the objective pursued by Directives 89/665/EEC and 92/13/EEC, supported by the Court's case-law, consisting in putting in place effective and rapid remedies targeting unlawful decisions by contracting authorities at a stage when there is still time to correct violations.

By its second plea, the Commission also criticises the defendant for having disregarded the practical effectiveness of those directives by providing in the French legislation for a compulsory preliminary phase of formal notice to the contracting authority, which does not have a suspensory effect on the time-limit to be complied with between the notice of award of contract and the signature of the relevant contract. Since an unsuccessful tenderer may not bring an action during the time for responding to the formal notice, equivalent to 10 days, a response given by the contracting authority upon expiry of that time-limit deprives the unsuccessful tenderer of all effective legal remedies, because by that time the contract will have already been signed.

([1]) Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by 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).

([2]) Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14).

Action brought on 18 July 2008 — Commission of the European Communities v French Republic

(Case C-333/08)

(2008/C 285/27)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by providing, in respect of technological adjuvants and foodstuffs in the preparation of which were used technological adjuvants originating from other Member States where they were lawfully manufactured and/or placed on the market, for a scheme of prior authorisation which does not comply with the principle of proportionality, the French Republic has failed to fulfil its obligations under Article 28 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission complains of the restrictions on trade resulting from the French legislation relating to technological adjuvants. By introducing a system of prior authorisation for those products and for foodstuffs in the preparation of which were used technological adjuvants originating from other Member States where they were lawfully manufactured and/or placed on the market, that legislation makes the marketing of those foodstuffs and adjuvants more onerous and costly, thereby hindering intra-Community trade.

According to the Commission, a scheme of prior authorisation may, in certain circumstances, be justified on grounds of public health, but such a scheme would, in any event, have to satisfy the criterion of proportionality and comply with the conditions laid down in the case-law, including those set out in Case C-24/00 *Commission* v *France* [2004] ECR I-1277. In the present case, a number of those conditions are not satisfied, as the procedures provided for by that legislation are not easily accessible, expeditious and susceptible to challenge by way of legal proceedings in the event of authorisation being refused.

Appeal brought on 21 July 2008 by Transports Schiocchet — Excursions SARL against the order of the Court of First Instance (Fourth Chamber) delivered on 19 May 2008 in Case T-220/07 Transports Schiocchet — Excursions v Commission

(Case C-335/08 P)

(2008/C 285/28)

Language of the case: French

Parties

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

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Annul the order of the Court of First Instance of 19 May 2008;

— Decide the case definitively by granting the applications sought at first instance;

— In the alternative, remit the case to the Court of First Instance;

— Order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

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

In its first plea, the appellant claims that the Court of First Instance infringed the principle of legal certainty which applies to decisions of the Community judicature, Article 235 EC, the second paragraph of Article 288 EC and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms inasmuch as, in paragraph 39 of the contested order, the Court of First Instance that the commencement of the appellants actions before the national courts neither suspended nor interrupted the limitation period, whereas in its earlier decisions, which are now *res judicata*, the Court encouraged it to continue its action before the national courts.

In its second plea, the appellant complains of several errors committed by the Court of First Instance in assessing the conditions for non-contractual liability concerning distortion of the facts and the forms of order sought in the appellant's application, the second paragraph of Article 288 EC and Article 230 EC with regard, in particular to the alleged confirmation of the Commission's position by the national courts and the assessment made of the period in which the damage was suffered.

In its third and final plea, the appellant invokes an infringement of Article 4(2) and Article 2(1)(3) of Regulation No 684/92 ([1]) inasmuch as the Court of First Instance erroneously accepted the Commission's interpretation and wrongly characterised the activities of the appellant's competitors as 'special regular services' (Article 4(2)) and therefore exempt from authorisation, whereas they are in fact parallel or temporary services (Article 2(1)(3)), subject to the same rules as the regular services operated by the appellant.

([1]) OJ 1992 L 74, p. 1.

Action brought on 24 July 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-342/08)

(2008/C 285/29)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and A. Sipos, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to ensure the elaboration of an external emergency plan for all the establishments covered by Article 9 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ([1]), amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 ([2]), the Kingdom of Belgium has failed to fulfil its obligations under Article 11(1)(c) of that directive;

— order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission submits that the elaboration of external emergency plans for measures to be taken outside the establishments covered by Article 9 of Directive 96/82/EC is a fundamental requirement of that directive. The Kingdom of Belgium has failed to fulfil its obligations under the directive in so far as it has not drawn up such plans for 59 establishments situated on its territory while, according to the wording of the directive, those plans should have been drawn up at the latest 3 years after the time-limit for transposing the directive had elapsed, that is on 3 February 2002.

([1]) OJ 1997 L 10, p. 13.
([2]) Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003 amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (OJ 1997 L 345, p. 97).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 31 July 2008 — Modehuis A. Zwijnenburg BV, other party: Staatssecretaris van Financiën

(Case C-352/08)

(2008/C 285/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Modehuis A. Zwijnenburg BV

Other party: Staatssecretaris van Financiën

Question referred

Must Article 11(1)(a) of [Council] Directive 90/434/EEC ([1]) of 23 July 1990 be interpreted as meaning that the benefits of that Directive may be withheld from a tax-payer where a series of legal transactions is aimed at preventing the levying of a tax other than the taxes to which the benefits set out in that Directive relate?

([1]) [Council] Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1).

Action brought on 30 July 2008 — Commission of the European Communities v French Republic

(Case C-354/08)

(2008/C 285/31)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, by providing for priority to the outgoing licensee in the course of putting out to competitive tender licences in respect of works using hydraulic energy, in particular by adopting the provisions of Article 29(3) of decree No 99/225 of 22 March 1999 relating to the licence and the declaration of public use of works using hydraulic energy, the French Republic has failed to fulfil its obligations under Article 43 EC;

— order the French Republic to pay the costs.

Pleas in law and main arguments

The Commission claims that granting priority to the outgoing licensee, upon renewal and granting of licences in respect of works using hydraulic energy, infringes the principle of non-discrimination and hinders freedom of establishment. By favouring companies which have a licence and which are therefore established in France, French legislation makes the establishment of companies set up in other Member States more difficult.

Moreover, the French authorities did not rely on the derogations provided for in Articles 45 and 46 of the Treaty or overriding reasons in the public interest in order to justify the measure in question which was, in any event, disproportionate in the light of the objective pursued. Accordingly, financial charges borne by the outgoing licensee may, for example, be offset by other obligations imposed on all new competitors.

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 August 2008 — Stichting Greenpeace Nederland v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, other party: Pioneer Hi-Bred Northern Europe Sales Division

(Case C-359/08)

(2008/C 285/32)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Stichting Greenpeace Nederland

Defendant: Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

Other party: Pioneer Hi-Bred Northern Europe Sales Division

Questions referred

1. Must the location of release of genetically modified organisms which cannot be regarded as confidential by virtue of Article 25(4) of Directive 2001/18/EC ([1]), in view *inter alia* of the objective and general scheme of that Directive, be interpreted as referring to the parcel of land in the land register, or is it sufficient for a larger geographical area to be indicated?

2. (a) If the indication of a larger geographical area is sufficient, what circumstances may be included when it is decided how the area is to be indicated?

   (b) Is Directive 2003/4/EC ([2]) relevant in the determination of the size of the area to be indicated?

   (c) Does an area twenty times larger than the individual trial fields satisfy the principle of proportionality?

3. Is the principle of proportionality satisfied if, pursuant to the policy revised on 17 July 2008, a general indication of areas one hundred times the individual trial fields is chosen?

4. If only a reference to an entry in the land register is sufficient, can, despite the rule laid down in Article 25(4) of Directive 2001/18/EC, a justification for treating confidentially information on the precise location of release none the less lie in the circumstances defined in Article 4(2) of Directive 2003/4/EC?

5. (a) Does Article 4(2) of Directive 2003/4/EC contain an exhaustive list of justifications?

   (b) If so, can the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands be subsumed under one of the justifications set out in Article 4(2) of Directive 2003/4/EC?

6. If the answers to Questions 5(a) and (b) are in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field, in the light of Article 4(2)(h) of Directive 2003/4/EC, proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein), and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

7. (a) If the answer to Question 5(a) is in the negative, do the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands form a permissible justification?

(b) If the answer to Question 7(a) is in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein) and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

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

(2) 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 2003 L 41, p. 26).

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 August 2008 — Stichting Greenpeace Nederland and Stichting ter Voorkoming Misbruik Genetische Manipulatie 'VoMiGen' v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, other party: Pioneer Hi-Bred Northern Europe Sales Division

(Case C-360/08)

(2008/C 285/33)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants:

1. Stichting Greenpeace Nederland

2. Stichting ter Voorkoming Misbruik Genetische Manipulatie 'VoMiGen'

Defendant: Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

Other party: Pioneer Hi-Bred Northern Europe Sales Division

Questions referred

1. Must the location of release of genetically modified organisms which cannot be regarded as confidential by virtue of Article 25(4) of Directive 2001/18/EC (1), in view inter alia of the objective and general scheme of that Directive, be interpreted as referring to the parcel of land in the land register, or is it sufficient for a larger geographical area to be indicated?

2. (a) If the indication of a larger geographical area is sufficient, what circumstances may be included when it is decided how the area is to be indicated?

(b) Is Directive 2003/4/EC (2) relevant in the determination of the size of the area to be indicated?

(c) Does an area twenty times larger than the individual trial fields satisfy the principle of proportionality?

3. Is the principle of proportionality satisfied if, pursuant to the policy revised on 17 July 2008, a general indication of areas one hundred times the individual trial fields is chosen?

4. If only a reference to an entry in the land register is sufficient, can, despite the rule laid down in Article 25(4) of Directive 2001/18/EC, a justification for treating confidentially information on the precise location of release none the less lie in the circumstances defined in Article 4(2) of Directive 2003/4/EC?

5. (a) Does Article 4(2) of Directive 2003/4/EC contain an exhaustive list of justifications?

(b) If so, can the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands be subsumed under one of the justifications set out in Article 4(2) of Directive 2003/4/EC?

6. If the answers to Questions 5(a) and (b) are in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field, in the light of Article 4(2)(h) of Directive 2003/4/EC, proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein), and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

7. (a) If the answer to Question 5(a) is in the negative, do the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands form a permissible justification?

(b) If the answer to Question 7(a) is in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein) and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

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

(2) 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).

Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 4 August 2008 — Stichting Greenpeace Nederland v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, other party: Pioneer Hi-Bred Northern Europe Sales Division

(Case C-361/08)

(2008/C 285/34)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Stichting Greenpeace Nederland

Defendant: Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

Other party: Pioneer Hi-Bred Northern Europe Sales Division

Questions referred

1. Must the location of release of genetically modified organisms which cannot be regarded as confidential by virtue of Article 25(4) of Directive 2001/18/EC (1), in view inter alia of the objective and general scheme of that Directive, be interpreted as referring to the parcel of land in the land register, or is it sufficient for a larger geographical area to be indicated?

2. (a) If the indication of a larger geographical area is sufficient, what circumstances may be included when it is decided how the area is to be indicated?

(b) Is Directive 2003/4/EC (2) relevant in the determination of the size of the area to be indicated?

(c) Does an area twenty times larger than the individual trial fields satisfy the principle of proportionality?

3. Is the principle of proportionality satisfied if, pursuant to the policy revised on 17 July 2008, a general indication of areas one hundred times the individual trial fields is chosen?

4. If only a reference to an entry in the land register is sufficient, can, despite the rule laid down in Article 25(4) of Directive 2001/18/EC, a justification for treating confidentially information on the precise location of release none the less lie in the circumstances defined in Article 4(2) of Directive 2003/4/EC?

5. (a) Does Article 4(2) of Directive 2003/4/EC contain an exhaustive list of justifications?

(b) If so, can the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands be subsumed under one of the justifications set out in Article 4(2) of Directive 2003/4/EC?

6. If the answers to Questions 5(a) and (b) are in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field, in the light of Article 4(2)(h) of Directive 2003/4/EC, proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein), and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

7. (a) If the answer to Question 5(a) is in the negative, do the protection of firms, including the persons and products therein, and the prevention of sabotage for the sake of the biotechnological development climate in the Netherlands form a permissible justification?

(b) If the answer to Question 7(a) is in the affirmative, is the designation of an area twenty or one hundred times the size of the trial field proportionate having regard to the protection of private interests (protection of firms, including the persons and products therein) and of public interests (prevention of sabotage for the sake of the biotechnological development climate in the Netherlands)?

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

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 7 August 2008 — Romana Slanina v Unabhängiger Finanzsenat Außenstelle Wien

(Case C-363/08)

(2008/C 285/35)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Romana Slanina

Defendant: Unabhängiger Finanzsenat Außenstelle Wien

Questions referred

1. Does it follow from Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (1) ('the regulation') that the divorced wife, who is not in employment, of a man who lives in Austria, and who is not self-employed, maintains her right to family allowance (in respect of a child) *vis-à-vis* Austria, if she establishes a permanent residence in another Member State and centres her life there, and if she continues not to be in employment there?

2. Is it relevant to the answer to question 1 that Austria, where the divorced man remains and where he is exclusively resident and employed, grants him under certain conditions the right to family allowances (in respect of the child), if the divorced wife's right no longer exists?

3. Does the regulation give the divorced wife a right to family allowances (in respect of the child) *vis-à-vis* Austria, where the divorced man and father of the child is resident and employed, if the circumstances as described in question 1 change so that the wife takes up employment in the new Member State?

(1) OJ 1971 L 149, p. 2.

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 11 August 2008 — Agrana Zucker GmbH v Bundesminister für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

(Case C-365/08)

(2008/C 285/36)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Agrana Zucker GmbH

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

Questions referred

1. Must Article 16 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (1) be interpreted as meaning that even a sugar quota which cannot be utilised as a consequence of a preventive withdrawal in accordance with Article 1 of Commission Regulation (EC) No 290/2007 of 16 March 2007 establishing, for the 2007/2008 marketing year, the percentage (2) provided for in Article 19 of Regulation (EC) No 318/2006, must be included in the assessment of the production charge?

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

   Is Article 16 of Council Regulation (EC) No 318/2006 of 20 February 2006 compatible with primary law, in particular with the principle of proportionality and the principle of non-discrimination derived from Article 34 EC?

(1) OJ L 58, p. 1.
(2) OJ L 78, p. 20.

Action brought on 12 August 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-369/08)

(2008/C 285/37)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany

Form of order sought

— declare that Point 2.1 of Annex VIIIb to the Straßenverkehrszulassungsordnung (German Regulation on the Entry into Service of Motor Vehicles) ('the StVZO') infringes Article 43 EC in conjunction with Article 48 EC;

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

Pleas in law and main arguments

Under the first paragraph of Article 43 EC, all rules which restrict the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited. It follows from Article 48 EC that the Treaty provisions on the freedom of establishment are the same for companies having their registered office, central administration or principal place of business within the Community as they are for natural persons who are nationals of Member States. The provisions on equal treatment prohibit not only overt discrimination by reason of nationality or, in the case of companies, their registered office, but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result.

According to Point 2.1 of Annex VIIIb to the StVZO, an inspection organisation for carrying out technical inspections or safety checks and the inspection and approval of motor vehicles can be recognised in Germany only if it is constituted exclusively by at least 60 independent motor vehicle experts engaged in that activity as their main profession; in the defined area within which the organisation has received recognition, as many inspection engineers must be established as are necessary to ensure a ratio of at least one, and at most 30, inspection engineers for every 100 000 motor vehicles and trailers registered in that area.

It is the view of the Commission that this requirement constitutes an inadmissible restriction on the right of establishment which infringes Article 43 EC or, alternatively, Article 43 EC in conjunction with Article 48 EC. The requirement that an organisation be made up exclusively of a minimum number of independent experts engaged in the activity in question as their main profession represents a qualitative restriction, inasmuch as undertakings wishing to carry out the activity in question would be obliged to adopt a particular structure. In particular, this requirement excludes dependent employees, who cannot become members of such an organisation. Moreover, the disputed provision also represents a quantitative restriction because it prescribes a minimum number of members for these inspection organisations. These preconditions governing recognition make it impossible for any economic operator which is lawfully established in another Member State and has a different legal form or internal structure to provide technical inspection services in Germany. Finally, the requirement that, within the area of recognition, as many inspection engineers must be established as are necessary to ensure a ratio of at least one inspection engineer for every 100 000 motor vehicles and trailers there registered amounts to a restriction that is contrary to Article 43 EC (in conjunction with Article 48 EC), because that criterion in particular places at a disadvantage legal persons already established in other Member States and whose inspection engineers are not necessarily established in the area of recognition.

In the present case, the Commission claims, neither Article 45 EC nor Article 46 EC is relevant.

According to Article 45 EC, the Treaty provisions on freedom of establishment do not apply to activities which in a Member State are connected, even occasionally, with the exercise of official authority. The criteria which emerge from settled case-law for establishing cases of direct and specific exercise of official authority are, however, not fulfilled with regard to the activities of the inspection organisations, in particular with regard to the carrying out of technical inspections. Neither the fact that the inspection organisations decide on the granting or removal of roadworthiness certificates nor the State supervision of those organisations proves that they exercise official authority. Firstly, the final decision on the refusal of a roadworthiness certificate can be made only by the competent body (that is, the licensing authority) in the corresponding federal *Land* and not by the inspection organisation. The inspection organisation, rather, assists and plays a preparatory role *vis-à-vis* the licensing authority. Secondly, the conclusion may not be drawn from the fact that the State supervises certain organisations that all tasks performed by such organisations are connected with the exercise of official authority. Even if isolated tasks of the inspection organisation were to be considered as amounting to an exercise of official authority, the exclusion of the technical inspections of motor vehicles from the application of the freedom of establishment would go too far and would extend significantly beyond the purpose of the derogation provided for by Article 45 EC.

Vehicle inspection is a purely technical task which, although it may have legal consequences, cannot be regarded as constituting a direct exercise of official authority.

So far as concerns Article 46 EC, which provides for the possibility of justification for unequal treatment on grounds of public policy, public security or public health, the case-law of the Court of Justice provides that, in order for reliance to be placed on this ground of justification, there must be a genuine and sufficiently serious threat affecting one of the aforementioned fundamental interests. As the German authorities have not provided evidence of any such threat, the conditions for invoking the derogating rule under Article 46 EC have not been met. The Commission is satisfied that the objective being pursued by the measures under challenge, namely the maintenance of road safety, could also be achieved by less restrictive measures, such as, for instance, an appropriate monitoring system for all inspection engineers and inspection organisations in Germany.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 13 August 2008 — Data I/O GmbH v Bundesfinanzdirektion Südost

(Case C-370/08)

(2008/C 285/38)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Data I/O GmbH

Respondent: Bundesfinanzdirektion Südost

Questions referred

1. Is Note 5(B) to Chapter 84 of the Combined Nomenclature of the Common Customs Tariff in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], as amended by the Annex to Commission Regulation (EC) No 1810/2004 of 7 September 2004 [2], to be so interpreted that it allows an electrical adapter, which is designed to provide the electrical connection between an automatic programming machine and electrical components to be programmed, to be classified under heading 8471 of the Combined Nomenclature?

2. If this question is answered in the negative: is the aforementioned adapter then to be classified under heading 8471 of the Combined Nomenclature if it contains a so-called memory-chip, on which the programming process is stored and from which it can be retrieved?

[1] OJ 1987 L 256, p. 1.
[2] OJ 2004 L 327, p. 1.

Reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 14 August 2008 — Nural Örnek v Land Baden-Württemberg

(Case C-371/08)

(2008/C 285/39)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Appellant: Nural Örnek

Respondent: Land Baden-Württemberg

Question referred

Is the protection against expulsion provided for in Article 14(1) of Decision No 1/80 of the EEC-Turkey Association Council and enjoyed by a Turkish national, whose legal status derives from the second indent of the first paragraph of Article 7 of Decision No 1/80 and who has resided for the previous ten years in the Member State in respect of which this legal status applies, to be determined in accordance with Article 28(3)(a) of Directive 2004/38/EC [1], as implemented by the relevant Member State, with the result that expulsion is permitted only on imperative grounds of public security, as defined by Member States?

[1] OJ 2004 L 158, p. 77.

Appeal brought on 14 August 2008 by Atlantic Dawn Ltd, Antarctic Fishing Co. Ltd, Atlantean Ltd, Killybegs Fishing Enterprises Ltd, Doyle Fishing Co. Ltd, Western Seaboard Fishing Co. Ltd, O'Shea Fishing Co. Ltd, Aine Fishing Co. Ltd, Brendelen Ltd, Cavankee Fishing Co. Ltd, Ocean Trawlers Ltd, Eileen Oglesby, Noel McGing, Mullglen Ltd, Bradan Fishing Co. Ltd, Larry Murphy, Pauric Conneely, Thomas Flaherty, Carmarose Trawling Co. Ltd, Colmcille Fishing Ltd against the order of the Court of First Instance (Seventh Chamber) delivered on 2 June 2008 in Case T-172/07 Atlantic Dawn Ltd, Antarctic Fishing Co. Ltd, Atlantean Ltd, Killybegs Fishing Enterprises Ltd, Doyle Fishing Co. Ltd, Western Seaboard Fishing Co. Ltd, O'Shea Fishing Co. Ltd, Aine Fishing Co. Ltd, Brendelen Ltd, Cavankee Fishing Co. Ltd, Ocean Trawlers Ltd, Eileen Oglesby, Noel McGing, Mullglen Ltd, Bradan Fishing Co. Ltd, Larry Murphy, Pauric Conneely, Thomas Flaherty, Carmarose Trawling Co. Ltd, Colmcille Fishing Ltd v Commission of the European Communities

(Case C-372/08 P)

(2008/C 285/40)

Language of the case: English

Parties

Appellants: Atlantic Dawn Ltd, Antarctic Fishing Co. Ltd, Atlantean Ltd, Killybegs Fishing Enterprises Ltd, Doyle Fishing Co. Ltd, Western Seaboard Fishing Co. Ltd, O'Shea Fishing Co. Ltd, Aine Fishing Co. Ltd, Brendelen Ltd, Cavankee Fishing Co. Ltd, Ocean Trawlers Ltd, Eileen Oglesby, Noel McGing, Mullglen Ltd, Bradan Fishing Co. Ltd, Larry Murphy, Pauric Conneely, Thomas Flaherty, Carmarose Trawling Co. Ltd, Colmcille Fishing Ltd (represented by: G. Hogan SC, N. Travers BL, T. O'Sullivan BL, D. Barry, Solicitor)

Other parties to the proceedings: Commission of the European Communities, Kingdom of Spain

Form of order sought

The applicants claim that the Court should:

— set aside the order of the Court of First Instance in its entirety;

— remit the case to the Court of First Instance for judgment on the substance of the application, the balance of the objection of inadmissibility of the Commission of 7 September 2007 to be reserved for the said decision on the merits;

— order the Commission to pay the costs incurred by the appellants in respect of this appeal.

Pleas in law and main arguments

The appellants base this appeal on three alleged infringements of Community law made in the order under appeal. The appellants submit that the Court of First Instance has, firstly, misconstrued Article 20 of Regulation No 2371/2002 [1] and, in particular, the scope of the residual powers of Member States under Article 20(3) thereof. Secondly, it has misconstrued Article 20(5) in relying upon the possibility of inter-Member State quota exchanges to exclude direct concern for the appellants. Lastly, it has erroneously ignored the fact that the appellants are directly concerned, as a closed group of individuals, by the contested regulation.

[1] Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, p. 59).

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 18 August 2008 — EGN B.V. — Filiale Italiana v Agenzia delle Entrate

(Case C-377/08)

(2008/C 285/41)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: EGN B.V. — Filiale Italiana

Defendant: Agenzia delle Entrate

Question referred

Is it permissible under Article 17(3)(a) of Council Directive 77/388/EEC [1] of 17 May 1977, in cases involving the supply of telecommunications services between taxable persons resident in different Member States of the Community and where the recipient is liable to value added tax, for the supplier to deduct the tax payable on the acquisition or importation of goods connected with such transactions which that supplier would be entitled to deduct if he provided the same services within his own country?

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

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) lodged on 25 August 2008 — Michael Neukirchinger v Bezirkshauptmannschaft Grieskirchen

(Case C-382/08)

(2008/C 285/42)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

Parties to the main proceedings

Applicant: Michael Neukirchinger

Defendant: Bezirkshauptmannschaft Grieskirchen

Questions referred

1. Is Article 49 et seq. of the Treaty establishing the European Community to be interpreted as precluding a national provision which requires a person who is established in another Member State, and who is licensed, pursuant to the legal order of that Member State, to operate commercial balloon flights, to have a registered office or place of residence in Austria in order to be able to operate balloon flights in that Member State (Paragraph 106 of the Luftfahrtgesetz (Austrian Law on Aviation) BGBl No 253/1957, last amended by BGBl I No 83/2008)?

2. Is Article 49 *et seq*. of the Treaty establishing the European Community to be interpreted as precluding a national provision under which the holder of a licence to operate commercial balloon flights who is established in another Member State and recognised under the legal order of that Member State is required to obtain a further licence for the operation of balloon flights in another Member State, where the test requirements in respect of that licence prove to be identical in substance to those of the licence already granted in the country of origin, albeit with the additional proviso that the applicant for the licence must have his registered office or place of residence within the territory of the country (in this case, in Austria)?

3. Are the provisions of Paragraph 102, in conjunction with Paragraphs 104 and 106, of the Austrian Luftfahrtgesetz incompatible with Article 49 EC if a licence-holder established in Germany is prosecuted in Austria under administrative criminal law for operating pursuant to his licence and, as a result, his access to the market is hindered, the background hereto being that under Paragraph 106(1) of the Luftfahrtgesetz it is impossible to obtain such a licence or an operating licence ('Betriebsaufnahmebewilligung') without establishing a separate place of business and/or residence, and without re-registering in Austria a hot-air balloon that is already registered in Germany?

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 1 September 2008 — Brita GmbH v Hauptzollamt Hamburg-Hafen

(Case C-386/08)

(2008/C 285/43)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Brita GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Questions referred

1. Should the importer of goods which originate in the West Bank be granted the preferential treatment requested in any event in light of the fact that preferential treatment is provided under two agreements which come under consideration in the present case — namely the 'Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part' (EMA) ([1]) and the 'Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organisation (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part' (EMI-PLO) ([2]) — for goods originating in the territory of the State of Israel or in the West Bank, even if only a formal certificate of origin from Israel is submitted?

   If Question 1 is to be answered in the negative:

2. Is the customs authority of a Member State bound under the EMA, *vis-à-vis* an importer who is requesting preferential treatment for goods which have been imported into Community territory, by a proof-of-origin certificate issued by the Israeli authority — and the verification procedure under Article 32 of Protocol 4 to the EMA has not been opened — as long as the customs authority has no doubt as to the originating status of the goods other than that as to whether the goods originate in an area which is merely under Israeli control — that is, pursuant to the terms of the Israeli-Palestinian Interim Agreement of 1995 — and as long as no dispute-settlement procedure was carried out pursuant to Article 33 of Protocol 4 to the EMA?

   If Question 2 is to be answered in the negative:

3. May the customs authority of the country of importation refuse automatically to grant preferential treatment for the following reason alone, namely that, pursuant to its request for verification under Article 32(2) of Protocol 4 to the EMA, it was confirmed by the Israeli authorities (only) that the goods were manufactured in an area which is subject to Israeli customs jurisdiction and that they were for that reason of Israeli origin, and where the subsequent request by the customs authority of the country of importation for further specification by the Israeli authorities remained unanswered, in particular without the actual origin of the goods having to be taken into account?

   If Question 3 is to be answered in the negative:

4. May the customs authority refuse automatically to grant preferential treatment under the EMA in the case where — as has become clear in the meantime — the goods originate in the West Bank, or should preferential treatment also be granted under the EMA for goods originating in that area, in any event as long as no dispute-settlement procedure has been carried out under Article 33 of Protocol 4 to the EMA concerning the interpretation of the expression 'territory of the State of Israel' used in the EMA?

(1) OJ 2000 L 147, p. 3.
(2) OJ 1997 L 187, p. 3.

Reference for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 8 September 2008 — Base NV, Euphony Benelux NV, Mobistar NV, Uninet International NV, T2 Belgium NV and KPN Belgium NV v Ministerraad, other party: Belgacom NV

(Case C-389/08)

(2008/C 285/44)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Base NV, Euphony Benelux NV, Mobistar NV, Uninet International NV, T2 Belgium NV and KPN Belgium NV

Defendant: Ministerraad

Other Party: Belgacom NV

Question referred

Can Article 12 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) (1) be interpreted as allowing the competent legislature of a Member State, acting in the capacity of the national regulatory authority, to determine generally and on the basis of the calculation of the net costs of the universal service provider — previously the sole provider — that the provision of universal service may represent an 'unfair burden' for those undertakings designated as universal service providers?

(1) OJ 2002 L 108, p. 51.

Action brought on 5 September 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-390/08)

(2008/C 285/45)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and J.-P. Keppenne, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by failing to communicate the information required by Article 3(2) of Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (1), read in conjunction with Articles 8, 9, 10 and 11 of Commission Decision No 166/2005/EC of 10 February 2005 laying down rules implementing Decision No 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (2), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 3(2) of Decision No 280/2004/EC, read in conjunction with Articles 8, 9, 10 and 11 of Decision No 166/2005/EC;

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

Pleas in law and main arguments

Pursuant to Article 3(2) of Decision No 280/2004/EC, read in combination with Decision No 166/2005/EC, the Member States were required to communicate to the Commission, by 15 March 2005 and every two years thereafter information on the national measures adopted to limit and/or reduce greenhouse gas emissions and implement the Kyoto Protocol.

At the date on which the present action was brought, the defendant had not communicated the measures in question to the Commission.

([1]) OJ 2004 L 49, p. 1.
([2]) OJ 2005 L 55, p. 57.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio (Italy) lodged on 10 September 2008 — Emanuela Sbarigia v Azienda USL RM/A, Comune di Roma, Assiprofar — Associazione Sindacale Proprietari Farmacia and Ordine dei Farmacisti della Provincia di Roma

(Case C-393/08)

(2008/C 285/46)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale del Lazio

Parties to the main proceedings

Applicant: Emanuela Sbarigia

Defendants: Azienda USL RM/A, Comune di Roma, Assiprofar — Associazione Sindacale Proprietari Farmacia and Ordine dei Farmacisti della Provincia di Roma

Questions referred

1. Is it compatible with the Community principles upholding freedom of competition and freedom to provide services, laid down inter alia in Articles 49 EC, 81 EC, 82 EC, 83 EC, 84 EC, 85 EC and 86 EC, to impose on pharmacies the abovementioned prohibitions — whereby they are not allowed either to decline to take an annual holiday or to remain open whenever they so desire, beyond the maximum limits at present allowed under the abovementioned provisions of Lazio Regional Law No 26/2002 — and the concomitant additional requirement, under Article 10(2) of that Regional Law, of a prior discretionary assessment by the Administration (carried out in agreement with the bodies and organisations specified in that article) as to the special nature of the municipal area in which the applicant pharmacies are located, as a precondition for obtaining a derogation from those prohibitions within the Municipality of Rome?

2. Is it compatible with Articles 152 EC and 153 EC to impose on the public pharmacy service, albeit with the aim of protecting the health of consumers, conditions — such as those laid down in Regional Law No 26/2002 — limiting or precluding the possibility of extending the daily, weekly or annual opening times of individual pharmacies?

Appeal brought on 12 September 2008 by Zipcar, Inc. against the judgment of the Court of First Instance (Eighth Chamber) delivered on 25 June 2008 in Case T-36/07 Zipcar, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-394/08 P)

(2008/C 285/47)

Language of the case: English

Parties

Appellants: Zipcar, Inc. (represented by: M. Elmslie, Solicitor, N. Saunders, Barrister)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Canary Islands Car SL

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the Court of First Instance of 25 June 2008 in case T-36/07 in its entirety

— Remit the application to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to allow it to preceed

— Order that the Respondent shall pay the Appellant's costs of this Appeal and of the Appeal before the Court of First Instance

Pleas in law and main arguments

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

1) Improper extension of the factual and legal context of the review of the legality of the decision under appeal. It is submitted that the Court of First Instance in its judgment changed the subject matter of the proceedings before the Board of Appeal of the OHIM and took into account facts and matters which extended the factual and legal context of the dispute before the OHIM.

2) Breach of Art 8(1)(b) of Regulation 40/94 ([1]). The Court of First Instance stated in effect that the relevant public must be considered to be solely Spanish speaking *'even if it is accepted that in certain regions of Spain, such as the Canary Islands, English is commonly spoken or that some Spanish consumers have knowledge of English*'. This amounts to an error in law because it is in effect a ruling that in assessing the linguistic capacity and understanding of the average consumer in any particular case, the only question is one of determining the main or primary language of the Member State in which the earlier right subsists, without regard to other facts which are relevant to determining the nature of the relevant consumer.

3) Further breach of Art 8(1)(b) of Regulation 40/94. Having identified three categories of similarity between the goods and services of the application and those of the alleged prior right, namely 'in part identical', 'in part very similar', and 'in part not materially different' the Court erred in law by failing to consider the effect of these three different categories in assessing whether there was a likelihood of confusion.

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

Action brought on 16 September 2008 — Commission of the European Communities v Kingdom of Spain

(Case C-400/08)

(2008/C 285/48)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa, R. Vidal Puig acting as Agents, and C. Fernández Vicién and I. Moreno-Tapia Rivas, lawyers)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by imposing restrictions on the establishment of shopping centres, deriving from Law 7/1996 on retail commerce and the legislation of the Autonomous Community of Catalonia applicable in the matter (Law 18/2005 on trading establishments, Decree 378/2006 implementing Law 18/2005, and Decree 379/2006 approving the new sectional territorial plan for trading establishments), the Kingdom of Spain has failed to fulfil its obligations under Article 43 EC;

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Spanish and Catalan legislation at issue (Law 7/1996, Catalan Law 28/2005, Catalan Decrees 378/2006 and 379/2006) requires any operator wishing to start, extend, change its activity, transfer or assign a large shopping centre, to obtain a licence from the Generalidad, in addition to the compulsory municipal license required to start up an activity, the latter being intended to verify that the establishment conforms to the urban standards in force. The issue of commercial licences is subject to set of criteria, which include the compatibility of the project with the urban plan for commercial establishments (so that no establishment can be authorised if it does not comply with all the decisions in the plan), the location of the project in a consolidated urban area and the extent of market penetration by the applicant undertaking.

The Commission takes the view that the Spanish and Catalan legislation at issue constitute unjustified restrictions on the freedom of establishment within the meaning of Article 43 EC for the following reasons:

1. The requirement of a commercial license — in addition to the municipal license — issued according to certain criteria which relate not only to planning and the environment, but also to the potential economic repercussions of the creation certain kinds of large scale shopping centres on the competitive structure of the distribution market, and to the existence of a 'market requirement', makes the establishment of certain kinds of large scale shopping centres very difficult.

2. The national legislation concerned has a discriminatory effect in that it facilitates the establishment of smaller shopping centres (which correspond to the traditional commercial distribution structure in Catalonia and, therefore, local commerce) as compared to the establishment of large shopping centres (which correspond to the distribution model used by companies from other Community States).

The Commission takes the 46 of the EC Treaty (public policy, public security or public health) which, moreover, have not been relied on by the national authorities.

In the Commission's opinion, the justifications relied on by the Spanish and Catalan authorities — protection of consumers (protection of small businesses in order to guarantee competitive supply in each market, protection of the environment and urban areas) cannot be accepted for the following reasons:

1. The criteria laid down by the legislation at issue is not in fact intended to protect consumers as the national authorities state, but to favour the small business sector to the detriment of the big names of commercial distribution. Therefore, the measures are an inappropriate means of attaining the alleged objective as in reality they have an economic purpose.

2. The measures at issue go beyond what is necessary to attain the objectives pursued. In any event, it is for the national authorities to prove that the objectives relied on could not have been achieved by less restrictive measures.

Action brought on 18 September 2008 — Commission of the European Communities v Republic of Slovenia

(Case C-402/08)

(2008/C 285/49)

Language of the case: Slovene

Parties

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

Defendant: Republic of Slovenia

Form of order sought

— A declaration that the Republic of Slovenia, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC [1] 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, has failed to fulfil its obligations under that directive;

— an order that the Republic of Slovenia should pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of Directive 2004/35/CE expired on 30 April 2007.

[1] OJ 2004 L 143, p. 56.

Appeal brought on 23 September2008 by Trubowest Handel GmbH, Viktor Makarov against the judgment of the Court of First Instance (Third Chamber) delivered on 9 July 2008 in Case T-429/04 Trubowest Handel GmbH, Viktor Makarov v Council, Commission

(Case C-419/08 P)

(2008/C 285/50)

Language of the case: English

Parties

Appellants: Trubowest Handel GmbH, Viktor Makarov (represented by: K. Adamantopoulos, E. Petritsi, dikigoroi)

Other parties to the proceedings: Council of the European Union, Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

— Set aside in its entirety the Judgment of the Court of First Instance

— Accept, by giving a final judgment itself, the application for compensation under Article 288 EC lodged before the Court of First Instance (CFI), or in the alternative refer the case back to the CFI

— Order the Council and the Commission, in addition to paying their own costs, to pay all the costs occasioned by the appellants, in the course of the present proceedings and the proceedings before the CFI

Pleas in law and main arguments

The appellants submit that the contested judgment should be set aside for the following reasons:

1) The CFI erred in law in interpreting and applying Community law with regard to the conditions under which the Community may incur non-contractual liability pursuant to Article 288(2) EC. First it is submitted that the contested judgement is vitiated by an error of law in so far as the CFI has totally failed to consider the illegal conduct complained of in the context of assessing the causal link and failed to investigate it in its legal context although it ought to have done so in order to determine the Community's legal responsibility. The CFI erred in law by failing to correctly assess, in accordance with Community law, the existence of a direct causal nexus between the conduct of the Community Institutions and the resulting damage suffered by the appellants and in finding that there was no sufficiently direct causal link between the conduct of the Community Institutions and the resulting damage on the grounds that either the appellants failed to demonstrate reasonable diligence and/or that the fault is attributed exclusively to the German Authorities.

2) The CFI erred in law in refusing jurisdiction as regards the claims in relation to the amounts of EUR 118 058,46, EUR 277 939,37 and the legal fees, for which the national remedies have been exhausted following the legal right to settlement. As a result the appellants are left with no effective remedy and are penalised for exercising their legal right to settlement on the basis of the German Civil Code, despite the fact that the Community liability is involved in this case. In this context it is submitted that the CFI distorted the facts and evidence in holding that the appellants did not produce any evidence in support of, on one hand, the role of the Community and the Russian authorities and, on the other hand, the role of the criminal proceedings, in concluding a settlement.

Action brought on 25 September 2008 — Commission of the European Communities v Republic of Cyprus

(Case C-426/08)

(2008/C 285/51)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbaek and I. Khatzigiannis)

Defendant: Republic of Cyprus

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]), or in any event by not notifying those provisions to the Commission, the Republic of Cyprus has failed to fulfil its obligations under that directive;

— order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into domestic law expired on 1 January 2007.

([1]) OJ L 363, 20.12.2006, p. 141.

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

(Case C-427/08)

(2008/C 285/52)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbaek and I. Khatzigiannis)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC of 20 November 2006 adapting certain directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]), or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive into domestic law expired on 1 January 2007.

([1]) OJ L 363, 20.12.2006, p. 141.

Order of the President of the Fourth Chamber of the Court of 25 June 2008 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Verlag Schawe GmbH v Sächsisches Druck- und Verlagshaus AG

(Case C-215/07) ([1])

(2008/C 285/53)

Language of the case: German

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

([1]) OJ C 155, 7.7.2007.

Order of the President of the Court of 5 June 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-401/07) ([1])

(2008/C 285/54)

Language of the case: Dutch

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

([1]) OJ C 269, 10.11.2007.

Order of the President of the Eighth Chamber of the Court of 8 July 2008 — Commission of the European Communities v Kingdom of Sweden

(Case C-419/07) ([1])

(2008/C 285/55)

Language of the case: Swedish

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

([1]) OJ C 283, 24.11.2007.

Order of the President of the Court of 9 June 2008 — Commission of the European Communities v Italian Republic

(Case C-30/08) ([1])

(2008/C 285/56)

Language of the case: Italian

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

([1]) OJ C 79, 29.3.2008.

Order of the President of the Court of 8 July 2008 — Commission of the European Communities v Hellenic Republic

(Case C-121/08) ([1])

(2008/C 285/57)

Language of the case: Greek

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

([1]) OJ C 116, 9.5.2008.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 24 September 2008 — Kahla/Thüringen Porzellan v Commission

(Case T-20/03) ([1])

(State aid — Existing aid or new aid — Firm in difficulty — Principle of legal certainty — Principle of the protection of legitimate expectations — Private investor test — Compatibility with the common market — Conditions)

(2008/C 285/58)

Language of the case: German

Parties

Applicant: Kahla/Thüringen Porzellan GmbH (Kahla, Germany) (represented by: M. Schütte and S. Zühlke, lawyers)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz and V. Di Bucci, Agents, assisted by C. Koenig, professor)

Interveners in support of the applicant: Freistaat Thüringen (Germany) (represented by: initially by A. Weitbrecht and A. van Ysendyck, and subsequently by A. Weitbrecht and M. Núñez-Müller, lawyers); and Federal Republic of Germany (represented by: W.D. Plessing and M. Lumma, Agents)

Re:

APPLICATION for annulment of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ 2003 L 227, p. 12), in so far as that decision concerns the financial assistance granted to Kahla/Thüringen Porzellan GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kahla/Thüringen Porzellan GmbH to bear its own costs and to pay a third of the costs incurred by the Commission, and the Commission to bear two thirds of its own costs;*

3. *Orders the Land of Thuringia and the Federal Republic of Germany to bear theirown costs.*

([1]) OJ C 70, 22.3.2003.

Judgment of the Court of First Instance of 16 September 2008 — Nortrail Transport v Commission

(Case T-496/04) ([1])

(Customs Union — External Community transit operation — Fishery products originating in Norway — Application for remission and repayment of import duties — Fairness clause — Regulations (EEC) No 2913/92 and No 2454/93 — Special situation — Retroactive opening of tariff quotas)

(2008/C 285/59)

Language of the case: German

Parties

Applicant: Nortrail Transport GmbH (Kiel, Germany) (represented by: J. Krause, lawyer)

Defendant: Commission of the European Communities (represented initially by B. Schima and J. Hottiaux, then by B. Schima and M. Patakia, Agents)

Re:

Application for annulment of Commission Decision REM 15/02 of 1 October 2004, finding that the repayment of import duties to the applicant, which are the subject of the application made by the Federal Republic of Germany, is not justified.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nortrail Transport GmbH to bear its own expenses and to pay the expenses incurred by the Commission.*

([1]) OJ C 93, 16.4.2005.

Judgment of the Court of First Instance of 18 September 2008 — Angé Serrano and Others v Parliament

(Case T-47/05) ([1])

(Staff case — Officials — Success in internal competitions for change of category under the Staff Regulations — Entry into force of the new Staff Regulations — Transitory rules for classification in grade — Changes to levels of hierarchy under the old Staff Regulations — Admissibility — Plea of illegality — Acquired rights — Legitimate expectations — Proportionality — Equal treatment — Principle of sound administration and duty of care)

(2008/C 285/60)

Language of the case: French

Parties

Applicants: Pilar Angé Serrano (Luxembourg, Luxembourg), Jean-Marie Bras (Luxembourg), Dominiek Decoutere (Wolwelange, Luxembourg), Armin Hau (Luxembourg), Adolfo Orcajo Teresa (Brussels, Belgium) and Francisco Javier Solana Ramos (Brussels), represented by É. Boigelot, lawyer.

Defendant: European Parliament (represented by: initially, L. Knudsen, A. Bencomo Weber and K. Zejdova, and subsequently by L. Knudsen and K. Zejdova)

Intervener in support of the form of order sought by the defendant: Council of the European Union (represented by: M. Sims and I. Sulce, and subsequently I. Sulce and M. Sims, acting as Agents)

Re:

Application for annulment of the individual decisions containing the applicants' classification in the intermediate grade from 1 May 2004 and communicated to them, by letter from the Director General for Personnel of the European Parliament, during the first week of May 2004, and of any act consecutive to and/or relating to those decisions, even ones adopted subsequent to the present action, and an application to order the European Parliament to pay damages and interest.

Operative part of the judgment

The Court:

1. *Finds that there is no need to adjudicate in respect of Angé Serrano and Bras and Orcajo Teresa as regards the first head of claim;*

2. *Dismisses the remainder of the application;*

3. *Orders the European Parliament to bear its own costs and to pay those incurred by Angé Serrano and Bras and Orcajo;*

4. *Orders Dominiek Decoutere, Armin Hau and Francisco Javier Solana to bear their own costs;*

5. *Orders the Council to bear its own costs.*

([1]) OJ C 93, 16.4.2005.

Judgment of the Court of First Instance of 24 September 2008 — HUP Uslugi Polska v OHIM — (I.T.@MANPOWER)

(Case T-248/05) ([1])

(Community trade mark — Invalidity proceedings — Communityword mark 'I.T.@MANPOWER' — Absolute grounds for refusal — Distinctive character — Lack of descriptive character — No signs or indications which have become customary — Not a trade mark of such a nature as to deceive the public — Article 7(1)(b), (c), (d) and (g) and Article 51(1)(a) of Regulation (EC) No 40/94)

(2008/C 285/61)

Language of the case: English

Parties

Applicant: HUP Uslugi Polska sp. z o.o., formerly HP Temporärpersonalgesellschaft mbH (Czeladz, Poland) (represented by: M. Ciresa, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Manpower Inc. (Milwaukee, Wisconsin, United States) (represented by: R. Moscona and V. Marsland, Solicitors, and A. Bryson, Barrister)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 April 2005 (Case R 124/2004-4) concerning invalidity proceedings between MP Temporärpersonal GmbH and Manpower Inc.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders HUP Uslugi Polska sp. z o.o. to pay the costs.*

([1]) OJ C 217, 3.9.2005.

Judgment of the Court of First Instance of 24 September 2008 — M v Ombudsman

(Case T-412/05) ([1])

(Non-contractual liability — Decision by the Commission to take no action on a complaint calling into question the conduct of a Member State — Decision by the European Ombudsman concerning the handling of the complaint — Errors made by the Commission in its finding of instances of maladministration — Naming of the applicant — Infringement of the right to respect for private life, and of the principles of proportionality and the right to be heard — Non-material damage — Causal link)

(2008/C 285/62)

Language of the case: French

Parties

Applicant: M (Brussels, Belgium) (represented initially by G. Vandersanden and A. Kalogeropoulos, then by A. Kalogeropoulos and L. Levi, lawyers)

Defendant: European Ombudsman (represented by: J. Sant'Anna and G. Grill, Agents)

Re:

Action under the second paragraph of Article 288 EC for compensation for damage suffered by the applicant as a result of being named in the decision of the European Ombudsman of 18 July 2002 concerning the complaint registered with the reference 1288/99/OV and as a result of the negligent conduct of the Ombudsman concerning the investigation of that complaint and the conclusions he reached in that decision.

Operative part of the judgment

The Court:

1. *Orders the European Ombudsman to pay Mr M compensation of EUR 10 000;*

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

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

([1]) OJ C 48, 25.2.2006.

Judgment of the Court of First Instance of 24 September 2008 — Reliance Industries v Council and Commission

(Case T-45/06) ([1])

(Common commercial policy — Anti-dumping duties — Countervailing duties — Expiry of duties — Notice of initiation of a review — Time-limits — WTO Rules)

(2008/C 285/63)

Language of the case: English

Parties

Applicant: Reliance Industries Ltd (Mumbai, India) (represented by: I. MacVay and S. Ahmed, Solicitors, R. Thompson, QC, and K. Beal, Barrister)

Defendants: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrisch, lawyer) and Commission of the European Communities (represented by: N. Khan and P. Stancanelli, acting as Agents)

Re:

Application for annulment of:

— Commission Notice of 1 December 2005 of initiation of an expiry review of the countervailing measures applicable to imports of certain polyethylene terephthalate originating in inter alia India (OJ 2005 C 304, p. 4),

— Commission Notice of 1 December 2005 of initiation of an expiry review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in India, Indonesia, the Republic of Korea, Malaysia, Taiwan and Thailand and a partial interim review of the anti-dumping measures applicable to imports of certain polyethylene terephthalate originating in the Republic of Korea and Taiwan (OJ 2005 C 304, p. 9),

— Council Regulation (EC) No 2603/2000 of 27 November 2000 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Malaysia and Thailand and terminating the anti-subsidy proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia, the Republic of Korea and Taiwan (OJ 2000 L 301, p. 1), Council Regulation (EC) No 2604/2000 of 27 November 2000 imposing a definitive anti-dumping duty and collecting definitively

the provisional duty imposed on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 21), and Commission Decision 2000/745/EC of 29 November 2000 accepting undertakings offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ 2000 L 301, p. 88), in so far as those measures may purport to apply to the applicant in the period after 1 December 2005,

— in the alternative, Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) and Article 18(1) of Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (OJ 1997 L 288, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Reliance Industries Ltd to pay the costs.*

([1]) OJ C 86, 8.4.2006.

Judgment of the Court of First Instance of 24 September 2008 — Oakley v OHIM — Venticinque (O STORE)

(Case T-116/06) ([1])

(Community trade mark — Invalidity proceedings — Community word mark O STORE — Earlier national word mark THE O STORE — Comparison of services provided in connection with retail trade with corresponding goods — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94 — Application for alteration made by the intervener — Article 134(3) of the Rules of Procedure of the Court of First Instance)

(2008/C 285/64)

Language of the case: English

Parties

Applicant: Oakley, Inc. (One Icon, Foothill Ranch, United States) (represented by: M. Huth-Dierig and M. Nentwig, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Venticinque Ltd (Hailsham, East Sussex, United Kingdom) (represented by: D. Caneva, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 January 2006 (Joined Cases R 682/2004-1 and R 685/2004-1) concerning invalidity proceedings between Venticinque Ltd and Oakley, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Oakley, Inc., to pay the costs, except those incurred by the intervener;*

3. *Orders Venticinque Ltd to pay its own costs.*

([1]) OJ C 154, 1.7.2006.

Order of the Court of First Instance of 17 September 2008 — Neurim Pharmaceuticals (1991) Ltd v OHIM — Eurim-Pharm Arzneimittel (Neurim PHARMACEUTICALS)

(Case T-218/06) ([1])

(Community trade mark — Opposition proceedings — Application for a Community figurative mark Neurim PHARMACEUTICALS — Earlier Community and national word marks EURIM-PHARM — Language of appeal proceedings — Time-limits — Admissibility of an appeal to the Board of Appeal — Principle of proportionality — Continuation of proceedings — Restitutio in integrum — Articles 59, 78 and 78a of Regulation (EC) No 40/94 — Rule 48(1)(c) and (2), Rule 49(1) and Rule 96(1) of Regulation (EC) No 2868/95)

(2008/C 285/65)

Language of the case: German

Parties

Applicant: Neurim Pharmaceuticals (1991) Ltd (Tel Aviv, Israel) (represented by: M. Kinkeldey, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Eurim-Pharm Arzneimittel GmbH (Piding, Germany) (represented by: T. Raab, lawyer)

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 2 June 2006 (Case R 74/2006-1), concerning opposition proceedings between Eurim-Pharm Arzneimittel GmbH and Neurim Pharmaceuticals (1991) Ltd.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders Neurim Pharmaceuticals (1991) Ltd to pay the costs.*

([1]) OJ C 237, 30.9.2006.

Judgment of the Court of First Instance of 19 September 2008 — Chassagne v Commission

(Case T-253/06 P) ([1])

(Appeal — Staff case — Officials — Payment of Annual travel expenses — Official originating from a French Overseas Department (DOM) — Article 8 of Annex VII to the Staff Regulations — Confirmatory Act — Pay slip — Distortion of the facts — Error of law)

(2008/C 285/66)

Language of the case: French

Parties

Applicant: Olivier Chassagne (Brussels, Belgium) (represented by: initially, S. Rodrigues and C. Bernard-Glanx, subsequently, T. Bontinck, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid, V. Joris, Agents, and F. Longfils, lawyer)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (Third Chamber) of 29 June 2006 in Case F-11/05 *Chassagne* v *Commission* [2006] ECR-SC I-A-65 and II-241) and seeking annulment of that order.

Operative part of the judgment

The Court:

1. *Annuls the order of the European Union Civil Service Tribunal (Third Chamber) of 29 June 2006 in Case F-11/05 Chassagne v Commission [2006] ECR-SC I-A-65 and II-241;*

2. *Refers the case back to the European Union Civil Service Tribunal;*

3. *Orders that the costs shall be reserved.*

([1]) OJ C 281, 18.11.2006.

Judgment of the Court of First Instance of 24 September 2008 — DC-Hadler Networks v Commission

(Case T-264/06) ([1])

(Public supply contracts — TACIS programme — Decision to annul the call for tenders — Application for annulment — Duty to state reasons)

(2008/C 285/67)

Language of the case: French

Parties

Applicant: DC-Hadler Networks SA (Brussels, Belgium) (represented by: L. Muller, lawyer)

Defendant: Commission of the European Communities (represented by: initially by E. Cujo and P. Kuijper, and subsequently by M. Wilderspin and E. Cujo, acting as Agents)

Re:

Application to annul the Commission decision of 14 July 2006 to annul the tender procedure in respect of Europe Aid/122742/C/SUP/RU relating to the supply of IT and office equipment for the information network and of social integration and rehabilitation-related equipment for the disabled in the federal district of the Volga (Russian Federation).

Operative part of the judgment

The Court:

1. *Annuls the Commission decision of 14 July 2006 annulling the tender procedure in respect of Europe Aid/122742/C/SUP/RU;*

2. *Orders the Commission and DC-Hadler Networks to pay their own costs.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court of First Instance of 17 September 2008 — FVB v OHIM

(Case T-10/07) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark FVB — Earlier national word mark FVD — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2008/C 285/68)

Language of the case: German

Parties

Applicant: FVB Gesellschaft für Finanz- und Versorgungsberatung mbH (Osnabrück, Germany) (represented by: P. Koehler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: FVD Gesellschaft für Finanzplanung und Vermögensberatung Deutschland mbH, formerly FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH (Hamburg, Germany) (represented: first by J. Mattes and P. Heigl, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 November 2006 (Case R 1343/2005-4), relating to opposition proceedings between FVD Gesellschaft für Finanzplanung und Vorsorgemanagement Deutschland mbH and FVB Gesellschaft für Finanz- und Versorgungsberatung mbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders FVB Gesellschaft für Finanz- und Versorgungsberatung mbH to pay the costs.*

([1]) OJ C 56, 10.3.2007.

Judgment of the Court of First Instance of 16 September 2008 — ratiopharm v OHIM (BioGeneriX)

(Case T-47/07) ([1])

(Community trade mark — Application for Community word mark BioGeneriX — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2008/C 285/69)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented first by Rechtsanwalt S. Völker, and then by S. Völker and A. Schabenberger, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 December 2006 (Case R 1047/2004-4) concerning an application for registration of the word mark BioGenerix as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders ratiopharm GmbH to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court of First Instance of 16 September 2008 — ratiopharm v OHIM (BioGeneriX)

(Case T-48/07) ([1])

(Community trade mark — Application for Community word mark BioGeneriX — Absolute ground for refusal — Partially descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 40/94)

(2008/C 285/70)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented initially by S. Völker, then by S. Völker and A. Schabenberger, lawyers)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 December 2006 (Case R 1048/2004-4) concerning an application for registration of the word mark BioGeneriX as a Community trade mark.

Operative part of the judgment

The Court hereby:

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 20 December 2006 (Case R 1048/2004-4), in so far as chemical substances for preserving foodstuffs, falling within Class 1, are concerned;*

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

3. *Orders ratiopharm GmbH to bear its own costs and to pay half of OHIM's costs. OHIM will bear the other half of its costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the Court of First Instance of 24 September 2008 — Anvil Knitwear v OHIM — Aprile e Aprile (Aprile)

(Case T-179/07) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark Aprile — Earlier national word mark ANVIL — Relative ground for refusal — Lack of likelihood of confusion — Obligation to state reasons — Rights of the defence — Articles 8(1)(b), 73 and 74 of Regulation (EC) No 40/94)

(2008/C 285/71)

Language of the case: English

Parties

Applicant: Anvil Knitwear, Inc. (New York, New York, United States) (represented by: G. Würtenberger, R. Kunze and T. Wittmann, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and O. Mondéjar Ortuño, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Aprile e Aprile Srl (Argelato, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 March 2007 (Case R-1076/2006-2), relating to opposition proceedings between Anvil Knitwear, Inc. and Aprile e Aprile Srl.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Anvil Knitwear, Inc. to pay the costs.*

([1]) OJ C 170, 21.7.2007.

Judgment of the Court of First Instance of 17 September 2008 — Prana Haus v OHIM

(Case T-226/07) ([1])

(Community trade mark — Application for registration of the word mark PRANAHAUS — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94)

(2008/C 285/72)

Language of the case: German

Parties

Applicant: Prana Haus GmbH (Fribourg-en-Brisgau, Germany) (represented by: N. Hebies, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 18 April 2007 (Case R 1611/2006-1) concerning an application for registration of the verbal mark PRANAHAUS as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders Prana Haus GmbH to pay the costs.*

(1) OJ C 211, 8.9.2007.

Order of the Court of First Instance of 10 September 2008 — Município de Gondomar v Commission

(Case T-324/06) (1)

(Action for annulment — Cohesion Fund — Regulation (EC) No 1164/94 — Cancellation of financial assistance — Lack of direct effect — Admissibility)

(2008/C 285/73)

Language of the case: Portuguese

Parties

Applicant: Município de Gondomar (Portugal) (represented by: J. da Cruz Vilaça, D. Choussy and L. Pinto Monteiro, lawyers)

Defendant: Commission of the European Communities (represented by: P. Guerra and Andrade and A. Weimar, Agents)

Re:

Application for annulment of Commission Decision C(2006) 3782 of 16 August 2006 on the cancellation of the financial assistance granted by the Cohesion Fund for Project No 95/10/61/017 — Redevelopment of Grande Porto Sul — Subsistema de Gondomar.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Município de Gondomar shall bear its own costs and those of the Commission, including the costs incurred in the application for interim measures.*

(1) OJ C 326, 30.12.2006.

Order of the Court of First Instance of 8 September 2008 — Matthias Rath v Office for Harmonisation in the Internal Market (Trade Marks and Designs) — Grandel (Epican Forte)

(Case T-373/06) (1)

(Community trade mark — Opposition proceedings — Application for Community trade mark Epican Forte — Earlier Community word mark EPIGRAN — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Application manifestly lacking any foundation in law)

(2008/C 285/74)

Language of the case: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Dr. Grandel GmbH (Augsburg, Germany) (represented by: G. Hodapp, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 5 October 2006 (Case R 1069/2005-1), relating to opposition proceedings between Dr. Grandel GmbH and Matthias Rath

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law;*

2. *Matthias Rath shall bear his own costs and pay those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM) and Dr. Grandel GmbH.*

(1) OJ C 42, 24.2.2007.

Order of the Court of First Instance of 8 September 2008 — Rath v OHIM — Grandel (Epican)

(Case T-374/06) ([1])

(Community trade mark — Opposition proceedings — Application for registration of the Community word mark Epican — Earlier Community word mark EPIGRAN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 — Action manifestly lacking any foundation in law)

(2008/C 285/75)

Language of the case: German

Parties

Applicant: Matthias Rath (Cape Town, South Africa) (represented by: S. Ziegler, C. Kleiner and F. Dehn, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Dr. Grandel GmbH (Augsburg, Germany) (represented by: G. Hodapp, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 5 October 2006 (Case R 1324/2005-1), relating to opposition proceedings between Dr. Grandel GmbH and Matthias Rath.

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law.*

2. *Matthias Rath shall bear his own costs and those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Dr. Grandel GmbH.*

([1]) OJ C 42, 24.2.2007.

Order of the Court of First Instance of 10 September 2008 — Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Lipor) v Commission

(Case T-26/07) ([1])

(Action for annulment — Cohesion Fund — Regulation (EC) No 1164/94 — Reduction of financial assistance — No direct concern — Inadmissibility)

(2008/C 285/76)

Language of the case: Portuguese

Parties

Applicant: Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Lipor) (Baguim do Monte, Portugal) (represented by: P. Moura Pinheiro, M. Gorjão Henriques and F. Quintela, lawyers)

Defendant: Commission of the European Communities (represented by: P. Guerra e Andrade and A. Weimar, Agents)

Re:

Action for annulment of decision C(2006) 5008 of the Commission of 17 October 2006 concerning the reduction of the Cohesion Fund as regards certain projects relating to the factory for the incineration of solid urban waste of household origin in the Region of Porto.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *Serviço Intermunicipalizado de Gestão de Resíduos do Grande Porto (Lipor) shall pay its own costs and those incurred by the Commission.*

([1]) OJ C 82 of 17.4.2007.

Order of the Court of First Instance of 9 September 2008 — Marcuccio v Commission

(Case T-143/08) ([1])

(Civil service — Social security — Refusal of the application for reimbursement of 100 % of certain medical expenses incurred by the applicant)

(2008/C 285/77)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall, C. Berardis-Kayser, Agents and A. Dal Ferro, lawyer)

Re:

Inter alia, an application for annulment of the decisions of the office responsible for settling claims of the Joint Sickness Insurance Scheme of the European Communities refusing to pay 100 % of certain medical expenses incurred by the applicant or to reimburse the expenses for a medical visit in accordance with the rules applicable to consultations of medical experts, and an application that the Commission be ordered to pay certain medical expenses for the applicant.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The parties are ordered to bear their own costs.*

([1]) OJ C 223 of 22.9.2007 (formerly Case F-20/07).

Order of the Court of First Instance of 9 September 2008 — Marcuccio v Commission

(Case T-144/08) ([1])

(Staff case — Social security — Rejection of a claim for reimbursement of 100 % of certain of the applicant's medical expenses)

(2008/C 285/78)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities (represented by: J Currall and C. Barnardis-Kayser, Agents, and A. Dal Ferro, lawyer)

Re:

Inter alia, an application, first, for annulment of the Commission decision refusing the applicant's claim for reimbursement of 100 % of certain medical expenses incurred and, secondly, for an order that the Commission pay him EUR 89,56 by way of additional reimbursement of medical expenses or as compensation for loss.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Each party shall bear its own costs.*

([1]) OJ C 235, 6.10.2007 (formerly Case F-84/06).

Action brought on 11 August 2008 — Bull and Others v Commission

(Case T-333/08)

(2008/C 285/79)

Language of the case: French

Parties

Applicants: Bull SAS (Les Clayes-sous-Bois, France), Unisys Belgium SA (Brussels, Belgium) and Tata Consultancy Services (TCS) SA (Capellen, Luxembourg) (represented by: B. Lombaert and M. van der Woude, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the contested decision, namely:

  — the rejection of the tender of Consortium B-Trust

  — the decision not to award the contract

  — the decision to open a negotiated procedure;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants challenge the Commission's decision to reject their tender submitted in connection with the call for tenders procedure concerning contract 'DIGIT/R2/PO/2007/024 — Managed services provision' (OJ 2007 S 159 — 197776) and the decision not to award the contract in the absence of satisfactory tenders and to open the negotiated procedure.

In support of their application, the applicants claim, first of all, that the contested decision was not taken in compliance with the rules for the conferral of powers within the Commission, since the decision was taken by an 'Acting Head of Unit'. The applicants take the view that it was not established that the author of the measure was in fact entitled to adopt such a decision in the Commission's name.

Secondly, the applicants submit that the Commission infringed its obligation to state reasons by not setting out, in its decision, the grounds on which it considered that certain prices in the applicant's tender were unusually low and that the tender did not comply with the relevant legal provisions in the event of performance of the contract in Brussels or Luxembourg.

Finally, the applicants consider that the Commission infringed the procedure for checking that the prices were lawful, in so far as (i) the Commission excluded the applicant's tender on the basis of the procedure in respect of unusually low prices, whereas the tender was financially sound, (ii) the Commission did not take into account the reasons provided by the applicants and (iii) the contested decision was not based on an accurate account of the facts.

Appeal brought on 14 August 2008 by Marianne Timmer against the order of the Civil Service Tribunal delivered on 5 June 2008 in Case F-123/06 Timmer v Court of Auditors

(Case T-340/08 P)

(2008/C 285/80)

Language of the case: French

Parties

Appellant: Marianne Timmer (Saint-Sauves-d'Auvergne, France) (represented by F. Rollinger, lawyer)

Other party to the proceedings: Court of Auditors of the European Communities

Form of order sought by the appellant

— Annul the order of 5 June 2008 in Case F-123/06 *Marianne Timmer* v *Court of Auditors*;

— Uphold the claim for compensation for loss suffered;

— Uphold the claim for costs against the Court of Auditors.

Pleas in law and main arguments

By this appeal, the applicant seeks annulment of the order of the Civil Service Tribunal of 5 June 2008 in Case F-123/06 *Timmer* v *Court of Auditors* whereby the Tribunal dismissed as inadmissible her action claiming, first that the Tribunal should annul her staff reports for the period 1984 to 1997 along with the connected and/or subsequent decisions, including that appointing the reporting officer concerned to the position of Head of the Dutch Unit in the Translation Department of the Court of Auditors and, second, a claim for damages to compensate for the loss allegedly suffered.

In support of her appeal, the applicant relies on six pleas in law alleging:

— distortion the facts capable of being inferred from the evidence submitted to the Tribunal and error in assigning the burden of proof;

— distortion of the applicant's request to the appointing authority of 29 July 2005 concerning compliance with Article 14 of the Staff Regulations of Officials of the European Communities in the version in force prior to the modification thereof by the entry into force Regulation No 723/2004 [1] inasmuch as that request did not seek the re-examination of the applicant's staff reports as indicated at paragraph 37 of the order under appeal;

— error in the legal classification of the pre-litigation complaint of 26 February 2006, the aim of which was the annulment of the staff reports and the decision on the applicant's career and not 'taking into account of numerous other new facts' (paragraph 41 of the order under appeal);

— failure to state reasons for the decision to reject the complaint;

— in the alternative, failure to state sufficient reasons for that decision to reject, inasmuch as the Tribunal should have examined the insufficiency of the reasons stated;

— error in the application of the case-law regarding the unlawful exercise of activities by the applicant's hierarchical superior, since the applicant did not claim that those staff reports were vitiated by the unlawfulness of the appointment of her hierarchical superior, but by the unlawful occupation of a position which the applicant could have held and by the personal interest of her hierarchical superiors (paragraph 42 of the order under appeal).

(1) Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

Action brought on 19 August 2008 — Arkema France v Commission

(Case T-343/08)

(2008/C 285/81)

Language of the case: French

Parties

Applicant: Arkema France (Colombes, France) (represented by: A. Winckler, S. Sorinas Jimeno and H. Kanellopolous, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul, on the basis of Article 230 EC, the decision adopted by the Commission of the European Communities of 11 June 2008 in Case COMP/38.695 in so far as it concerns Arkema;

— In the alternative, annul or reduce, on the basis of Article 229 EC, the amount of the fine imposed on the applicant by that decision;

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

Pleas in law and main arguments

By the present action, the applicant seeks the annulment in part of Commission Decision C(2008) 2626 final of 11 June 2008 in Case COMP/38.695 — Sodium Chlorate, by which the Commission found that certain undertakings, including the applicant, infringed Article 81(1) EC and Article 53(1) of the Agreement on the European Economic Area by sharing sales volumes, by fixing prices, by exchanging commercially sensitive information on prices and sales volumes and by monitoring the execution of those anticompetitive arrangements on the market for sodium chlorate in the European Economic Area.

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

— an infringement of the rules concerning the responsibility of a parent company for offences committed by a subsidiary, inasmuch as the Commission committed errors of fact by asserting that Elf Aquitaine had a decisive influence on the applicant's commercial policy;

— an infringement of the applicant's rights of defence and of the principles of proportionality, *non bis in idem*, equality of treatment and of sound administration, since the basic amount of the fine payable by the applicant was increased by 90 % on the ground of recidivism;

— an underestimate of the value of the information provided by the applicant pursuant to the Leniency Notice of 2002 (1), inasmuch as the applicant should have received a reduction of the fine of between 30 and 50 %; and

— errors of law and of fact and an infringement of the principles of sound administration, proportionality and equality of treatment, since the Commission did not grant the applicant a reduction of the fine on the basis of its cooperation in the administrative procedure.

(1) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 26 August 2008 — Aragonesas Industrias y Energía v Commission

(Case T-348/08)

(2008/C 285/82)

Language of the case: English

Parties

Applicant: Aragonesas Industrias y Energía, SA (Barcelona, Spain) (represented by: I. Forrester, K. Struckmann, P. Lindfelt, J. Garcia-Nieto Esteva, lawyers)

Defendant: Commission

Form of order sought

— Annul Commission decision of 11 June 2008 — Case COMP/F/38.695 — Sodium Chlorate as far as it relates to Aragonesas; or

— Amend Articles 1 and 2 of the decision to annul or substantially to reduce the fine imposed on Aragonesas; and

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 2626 final of 11 June 2008 (Case COMP/38.695 — Sodium Chlorate) relating to a proceeding under Article 81(1) EC and Article 53(1) EEA in so far as it relates to the applicant. Alternatively, it seeks the amendment of the Articles 1 and 2 of the decision in so far as it imposes a fine on the applicant.

The applicant puts forward two pleas in law in support of its claims:

First, the applicant submits that the Commission committed a manifest error of appraisal in finding that the applicant had participated in a cartel between late 1994 and 2000, allocating sales volumes and fixing prices for sodium chlorate. It claims that the level of evidence put forward by the Commission in the decision is insufficient to establish to the requisite legal standard the applicant's participation in a single continuous infringement.

Second, the applicant argues that there has been an infringement of the principles of proportionality and equal treatment by reason of the fact that the Commission, in its calculation of the basic amount of the fine:

— wrongly assessed the gravity of the infringement with regard to the applicant;

— wrongly applied the entry fee to the applicant;

— failed to properly assess the duration of the infringement; and

— failed to take account of the mitigating circumstances specific to the applicant.

Action brought on 26 August 2008 — Uralita v Commission

(Case T-349/08)

(2008/C 285/83)

Language of the case: English

Parties

Applicant: Uralita, SA (Madrid, Spain) (represented by: I. Forrester, QC, K. Struckmann, P. Lindfelt, J. Garcia-Nieto Esteva, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission decision of 11 June 2008 — Case COMP/F/38.695 — Sodium Chlorate as far as it relates to Uralita; and

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

By means of this application the applicant seeks partial annulment pursuant to Article 230 EC of Commission Decision C(2008) 2626 final of 11 June 2008 (Case COMP/38.695 — Sodium Chlorate) relating to a proceeding under Article 81(1) EC and Article 53(1) EEA in so far as it finds that the applicant must be held jointly and severally liable for infringement allegedly committed by Aragonesas, in which the applicant held shares, during the period 16 December 1996 through 9 February 2000.

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

First, it submits that the Commission erred in law by imputing the conduct of Aragonesas to Uralita by way of parent-subsidiary liability.

Second, the applicant submits that the Commission erred in imputing the conduct of Aragonesas to Uralita by way of succession.

Action brought on 25 August 2008 — Matratzen Concord v OHIM — Barranco Schnitzler and Barranco Rodriguez (MATRATZEN CONCORD)

(Case T-351/08)

(2008/C 285/84)

Language in which the application was lodged: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: J. Albrecht, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Pablo Barranco Schnitzler (Sant Just Desvern, Spain) and Mariano Barranco Rodriguez (Sant Just Desvern)

Form of order sought

— annul the decision of the Second Board of Appeal of OHIM of 30 May 2008 (Case R 1034/2007-2);

— order OHIM to pay the costs, including those of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative mark 'MATRATZEN CONCORD' for goods in Classes 10, 20 and 24 (Application No 3 355 369)

Proprietors of the mark or sign cited in the opposition proceedings: Pablo Barranco Schnitzler and Mariano Barranco Rodriguez

Mark or sign cited in opposition: national word mark 'MATRATZEN' for goods in Class 20

Decision of the Opposition Division: Refusal of the application for a Community trade mark

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, in that there is no likelihood of confusion between the conflicting marks, and infringement of Article 43(2) of that regulation, in that no proof has been provided of genuine use of the mark cited in opposition.

Action brought on 25 August 2008 — Pannon Hőerőmű v Commission of the European Communities

(Case T-352/08)

(2008/C 285/85)

Language of the case: Hungarian

Parties

Applicant(s): Pannon Hőerőmű Energiatermelő (Pécs, Hungary) (represented by: M. Kohlrusz, P. Simon and G. Ormai)

Defendant(s): Commission of the European Communities

Form of order sought

— As a main claim, annulment of the decision of the Commission of 4 June 2008 on aid granted by Hungary under long term power purchase agreements (C 41/2005 (ex NN 49/2005), 'the contested decision').

— In the alternative, that the applicant be exempted from the obligation to repay the aid imposed by the contested decision.

— That the Commission be ordered to pay the costs.

Pleas in law and main arguments

The applicant is a private limited company principally involved in the production of electricity. Before the accession of Hungary to the European Union, certain electricity producers, as sellers, concluded long term power purchase agreements ('PPAs') with MVM Trade Villamosenergia-kereskedelmi Zrt. ('MVM'), as purchaser. Under those agreements, MVM is obliged to purchase a specific quantity of electricity from the producers operating under the PPAs. According to the contested decision, that obligation to purchase constitutes state aid incompatible with the common market, which must be repaid by its recipients.

In support of its main claim, seeking the annulment of the contested decision, the applicant essentially alleges that there has been a breach of essential procedural requirements, that the legal rules have been misapplied and that it has an obligation to supply in the general economic interest.

As regards the breaches of essential procedural requirements, the applicant complains, first, that the Commission did not examine each of the PPAs but reached a general conclusion concerning all the PPAs. Second, the applicant alleges that the Commission did not take into account the applicability of the PPAs in the long term but only from 1 May 2004, that is to say, it considered the period between the accession of Hungary to the European Union and the adoption of the contested decision. Third, the applicant states that the Commission only examined how an economic operator in the position of MVM proceeded and did not analyse the conduct of economic operators in the position of the electricity producers. Fourth, it alleges that the Commission erroneously classed the price fixing mechanism adopted under the PPAs as a 'guarantee'. Fifth, and finally, it submits that, as regards distortion of competition, the Commission merely made general statements and did not examine the actual circumstances.

In the event that the plea in law alleging breach of essential procedural requirements is held to be unfounded, the applicant puts forward a plea based on the misapplication of the law. According to the applicant, the conditions are not met for the classification of the PPAs it concluded as State aid. First, the Commission is wrong to apply the criterion of private investor, since the situation of MVM cannot be compared to that of a typical private investor. Second, the measure cannot be said to be of a selective nature either, since the conclusion of the PPAs was an express legal obligation. Third, the advantage was not granted by the State as MVM is a commercial company operating under market conditions. Fourth, there was no distortion of competition since there is no evidence that the PPAs have had any effect on competition.

However, in the event that the Court of First Instance should consider that the conditions for State aid are met, the applicant states that the service it supplied is in the nature of a service of general economic interest so that the PPAs which it concluded do not constitute State aid incompatible with the common market.

In support of its claim that it should be exempted from the obligation to repay, submitted in the alternative in its application, the applicant relies on the principles of proportionality, of the protection of legitimate expectations and legal certainty and the right to legal redress.

Action brought on 21 August 2008 — Spira v Commission

(Case T-354/08)

(2008/C 285/86)

Language of the case: English

Parties

Applicant: Diamanthandel A. Spira BVBA (Antwerp, Belgium) (represented by: J. Bourgeois, Y. Van Gerven, F. Louis, A. Vallery, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission decision of 5 June 2008, pursuant to Article 7(2) of Council Regulation No 773/2004, in case COMP/38.826/B-2-Spira/De Beers/DTC Supplier of Choice;

— Order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In the present case, the applicant contests Commission Decision (2008) D/203546 of 5 June 2008 by which the Commission declared that the change in facts due to the annulment by the Court of First Instance of the commitment decision ([1]) was not a decisive element which would require the Commission to revisit its Decision (2007) D/200338 of 26 January 2007, by which it rejected, for lack of Community interest, the applicant's complaint regarding violation of Articles 81 and 82 EC in connection with the Supplier of Choice (SoC) system applied by De Beers Group for the distribution of rough diamonds ('rejection decision' ([2])) (Case COMP/38.826/B-2-Spira/De Beers/DTC Supplier of Choice).

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

Firstly, the applicant alleges that the Commission failed to examine with care and impartiality the anticompetitive practices denounced by the applicant in its complaint.

Secondly, the applicant claims that when re-examining the issue of input foreclosure the Commission could not claim that there was a lack of Community interest to act on the complaint in light of the significant damage resulting from the input foreclosure caused by the SoC system. The applicant submits that the input foreclosure should have been considered of Community interest as it affects the availability of rough diamonds EU-wide and even worldwide. It considers that the SoC distribution system is an anti-competitive selective distribution system that restricts intra-brand competition.

Thirdly, in the alternative, the applicant submits that the Commission erred in law and provided inadequate statement of reasons in the application of the foreclosure effects test by:

— not having first defined the analyzed market structure, market power of the company concerned and the market position of its competitors;

— failing to engage the examination of all potential restrictions or monopolization activities of the supplier whose selective distribution system was under scrutiny.

Furthermore, the applicant claims that the Commission made a manifest error of assessment and based its decision on materially incorrect facts when concluding that the SoC arrangement does not appreciably foreclose secondary market operators from access to rough diamonds (the input foreclosure).

(1) Case T-170/06 *Alrosa* v *Commission* [2007] ECR II-2601, appeal lodged by the Commission with the Court of Justice, Case C-441/07, *Commission* v *Alrosa*, OJ 2007 C 283, p. 22.

(2) The rejection decision is appealed by the applicant before the Court of First Instance in Case T-108/07 *Spira* v *Commission*, OJ 2007 C 129, p. 20.

Appeal brought on 26 August 2008 by Chantal De Fays against the judgment of the Civil Service Tribunal delivered on 17 June 2008 in Case F-97/07 De Fays v Commission

(Case T-355/08 P)

(2008/C 285/87)

Language of the case: French

Parties

Appellant: Chantal De Fays (Bereldange, Luxembourg) (represented by F. Moyse, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Declare the present appeal admissible;

— set aside the judgment under appeal;

— grant the application for annulment made by the appellant before the Civil Service Tribunal;

— order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

By the present appeal, the appellant seeks to have set aside the judgment of the Civil Service Tribunal ('the CST') of 17 June 2008 in Case F-97/07 dismissing her action against the decision of the appointing authority of 21 November 2006 applying Article 60 of the Staff Regulations.

The appellant puts forward two pleas in law in support of her appeal:

In first place, the appellant is of the view that the CST erred in law in its definition of the temporal scope of the decision of 21 November 2006 by which the administration, first, found that the appellant had been regularly absent from 19 October 2006 and, secondly, withheld her remuneration for the whole of the period not covered by annual leave. The appellant submits that the CST considered that the effects of the contested decision extended only from 19 October 2006 until 13 December 2006, that is, up to the point at which the administration received a medical certificate justifying the appellant's absence, whereas, in fact, the effects of that decision continue up to the present. That error of law is the outcome of an erroneous judicial assessment of the facts, the inaccuracy of which, in the appellant's view, is attributable to the documents on the case file.

In second place, the appellant states that the fact that the CST based its decision that the administration was entitled to continue the suspension of the remuneration which was due to the appellant on the existence of an implied decision is an error of law, entailing breach of the second paragraph of Article 25, Article 59(1) and Article 60 of the Staff Regulations, the internal provisions of the Commission on the exercise of the powers conferred on the appointing authority and the rights of defence.

Action brought on 1 September 2008 — Hellenic Republic v Commission of the European Communities

(Case T-356/08)

(2008/C 285/88)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: K. Khalkias and E. Leftheriotou)

Defendant: Commission of the European Communities

Form of order sought

— uphold the Hellenic Republic's action and annul the contested Commission decision in its entirety or otherwise alter it in accordance with the matters that have been more specifically set out, ordering that no correction be made with regard to arable crops for the crop years 2004 and 2005 or, in any event, that the correction be restricted to 5 % and only to expenditure in respect of durum wheat;

— deduct the sum of EUR 609 833,96 from the correction imposed of EUR 127 714 520,73 and from any correction that may be imposed after the bringing of the present action;

— order the Commission to pay the costs.

Pleas in law and main arguments

In this action for annulment of Commission Decision C(2008) 3411 of 8 July 2008, published under No 2008/582/EC, which excludes expenditure amounting to EUR 127 714 520,73 incurred by the Hellenic Republic from Community financing, in the context of the clearing of the accounts of the European Agricultural Guidance and Guarantee Fund (EAGGF), the applicant puts forward the following pleas in support of the claim for annulment.

By the first plea for annulment, which concerns the correction applicable to durum wheat crops and to matters other than durum wheat, it is submitted that the Commission misinterpreted and misapplied Article 4 of Regulation (EEC) No 3508/92 ([1]), Article 1(3) of Regulation (EC) No 1593/2000 ([2]), Article 58 of Regulation (EC) No 445/2002 ([3]) and Article 20 of Regulation (EC) No 1782/2003 ([4]) since it is permissible, on the basis of the provisions in question, to identify land using alternative cartographic material that is equivalent to orthophoto maps, or otherwise that the Commission erred in its assessment of the facts and stated inadequate reasons for the corrections. The applicant also pleads a lack of legal basis for imposing the correction since the Commission misinterpreted the facts and exceeded the limits of its discretion, so far as concerns its determination that the on-site checks were not carried out in time.

In the second plea for annulment, the applicant alleges a lack of lawful basis and of a sufficient statement of reasons, with regard to the alleged repetition of breaches and infringement of the principles of proportionality and of the protection of legitimate expectations, because, according to the applicant, the Commission had been informed of the court proceedings that were delaying the completion of the system of control and, on its recommendation and in cooperation with it, the applicant engaged in an action plan for that purpose.

([1]) Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes (OJ 1992 L 355, p. 1).

([2]) Council Regulation (EC) No 1593/2000 of 17 July 2000 amending Regulation (EEC) No 3508/92 establishing an integrated administration and control system for certain Community aid schemes (OJ 2000 L 182, p. 4).

([3]) Commission Regulation (EC) No 445/2002 of 26 February 2002 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 2002 L 74, p. 1).

([4]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

Action brought on 5 September 2008 — Abouchar v Commission

(Case T-367/08)

(2008/C 285/89)

Language of the case: French

Parties

Applicant: Michel Abouchar (Dakar, Senegal) (represented by: B. Dubreuil Basire and J-J. Lorang, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Declare that officials of the Commission/EDF committed intentional torts in the performance of their tasks;

— declare that the Commission/EDF infringed Article 155 EC and Article 311 of the Fourth Lomé Convention and the general principles of sound administration, duty of care and the protection of legitimate interests;

— declare that those torts directly gave rise to harm to the applicant and order the Commission/EDF to pay him jointly and severally, for all the damage he suffered, the sum of EUR 4 500 000 by way of damages and interest;

— order the Commission/EDF to pay the applicant the sum of EUR 100 000 as irrecoverable expenditure which the applicant had to incur;

— order the Commission to pay the entire costs of the proceedings.

Pleas in law and main arguments

By means of his action for non-contractual liability, the applicant is seeking to obtain a declaration that the Commission infringed the financial implementing rules of the Sixth and Seventh European Development Fund ('the EDF') and of the so-called 'Lomé III' and 'Lomé IV' ([1]) Conventions linking the Community with the African, Caribbean and Pacific States ('ACP'), in the context of managing resources of the EDF concerning a project to finance Small and Medium Enterprises in the region of Saint-Louis of Senegal.

In this case, the applicant, the beneficiary of a loan for a vegetable farm project in the eligible region, takes the view that management errors and misappropriation of funds allegedly imputed to Commission officials had the effect of immediately paralysing his farming project set up under the European Development Fund.

The applicant essentially relies on two Commission failures, capable of giving rise to non-contractual liability on the part of the Commission. More precisely, the applicant alleges, first, errors committed by officials when carrying out their duties, and, secondly, a failure to monitor funding awarded by the Commission, breach of Articles 155 EC and Article 311 of the Fourth Lomé Convention, and of the general principles of sound administration, duty of care and protection of legitimate expectations.

(1) Since 23 June 2000, the Lomé Convention has been replaced by the Cotonou Agreement (OJ 2000 L 317, p. 3). The applicant still refers in his application, however, to the Lomé III and IV Conventions.

Action brought on 3 September 2008 — Nuova Agricast Srl v Commission

(Case T-373/08)

(2008/C 285/90)

Language of the case: Italian

Parties

Applicant: Nuova Agricast Srl (Cerignola, Italy) (represented by: M.A. Calabrese, lawyer)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court of First Instance should order the defendant to pay it:

— EUR 1 447 249,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2003 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2003 until the date of judgment; and

— EUR 1 432 497,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2004 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2004 until the date of judgment; and

— EUR 2 009 197,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2005 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2005 until the date of judgment; and

— EUR 1 830 564,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2006 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2006 until the date of judgment; and

— EUR 1 947 081,00, or such other sum as may be determined in the course of the proceedings, by way of compensation for the loss of income in the normal management of the undertaking in the financial year ending 30 June 2007 compared with the income it would have had if the investment programme had been completed, revalued from 1 July 2007 until the date of judgment;

— interest on the sums as revalued, calculated from the date of judgment until satisfied in full, at the rate set by the European Central Bank for main refinancing operations, plus the number of percentage points considered by the Court to be just, which, in the applicant's view, should be not fewer than two; and

— the costs of the proceedings, including those of the party's technical consultancy for 2008.

Pleas in law and main arguments

This present action is the natural continuation of the action in Case T-362/05, in which the applicant sought, inter alia, an order that the Commission pay it compensation for loss of profit, consisting of the difference between the income from normal management recorded in balance sheets drawn up on 30 June 2003 and, subsequently, on 30 June 2004, 2005, 2006 and 2007, and the income that would have been obtained from normal management if the projected investment funds had been paid in full.

By the present action, the applicant charges the Commission with the same (or virtually the same) unlawful acts previously alleged in Case T-362/05. The same complaints concerning the acts and conduct of the defendant are also set out in this application, but take account of the ruling of the Court of Justice of the European Communities in its judgment delivered on 15 April 2008 in Case C-390/06 P *Nuova Agricast* v *Commission*.

Action brought on 10 September 2008 — Portugal v Commission

(Case T-378/08)

(2008/C 285/91)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by L.Inez Fernandes and J. de Oliveira, Agents)

Defendant: Commission of the European Communities

Form of order sought

— Principally, a declaration that the notice of payment MARKT/C2/PMS/bmgD(2008) 13692 issued by the Director-General of Directorate-General Internal Market and Services of 15 July 2008 under the heading 'demand for payment of the periodic penalty payable by the Portuguese Republic in compliance with the judgment given in Case C-70/06 *Commission* v *Portuguese Republic*' is invalid;

— alternatively, a declaration that that notice is invalid, in so far as its effects extend beyond 29 January 2008;

— an order that the Commission of the European Communities should pay the costs or, if the Court of First Instance should reduce the amount of the periodic penalty, an order that each party should bear its own costs.

Pleas in law and main arguments

The Portuguese Republic claims that it has fully complied with the judgments of the Court of Justice by adopting Law No 67/2007 expressly repealing Decree-Law No 48051.

The Portuguese Republic further claims that the Director-General of DG Internal Market and Services had no power to adopt the contested measure, which failed to have regard to the Portuguese Republic's rights of the defence, fails to state the reasons on which it is based and was adopted in breach of essential procedural requirements.

Action brought on 9 September 2008 — Kingdom of the Netherlands v Commission of the European Communities

(Case T-380/08)

(2008/C 285/92)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels and M. de Mol, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's Decision of 30 June 2008 under reference SG.E3/MV/psi D(2008)5364;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the decision of 13 December 2006 in Case COMP/38.456 — Bitumen (Netherlands) ([1]) the Commission imposed fines on a large number of undertakings, suppliers and purchasers of road pavement bitumen for infringements of Article 81 EC. The Commission did not publish all particulars in that decision. Various legal persons, public and private, including the applicant, have suffered serious losses as a result of the undertakings' actions. As knowledge of that information would be extremely useful in order to recover those losses, the applicant applied under Article 6(1) of Regulation No 1049/2001 ([2]) for access to the complete, uncensored version of the decision of 13 September 2006. By decision of 30 June 2008, the Commission rejected that application.

In support of its application the applicant submits that the contested decision is contrary to the right of access referred to in Article 255 EC, read in conjunction with Articles 1 and 4 of Regulation No 1049/2001.

Secondly, the applicant submits that the Commission should have provided partial access, as referred to in Article 4(6) of Regulation No 1049/2001.

Thirdly, the contested decision is contrary to the principle of proportionality.

Fourthly, the contested decision infringes Article 253 EC, as its statement of reasons is defective.

Fifthly, the contested decision is contrary to Article 10 EC, read in conjunction with the principle of proportionality.

(1) Commission Decision 2007/534/EC of 13 September 2006 relating to a proceeding under Article 81 of the Treaty establishing the European Community (Case No COMP/F/38.456 — Bitumen (NL)) (notified under document number C(2006) 4090) (OJ 2007 L 196, p. 40).

(2) 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 L 145, p. 43).

Action brought on 16 September 2008 — Regione autonoma della Sardegna v Commission

(Case T-394/08)

(2008/C 285/93)

Language of the case: Italian

Parties

Applicant: Regione autonoma della Sardegna (represented by: A. Fantozzi, P. Carrozza and G. Mameli, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the Commission of the European Communities of 3 July 2008 (State aid C1/2004 Italy — SG-Greffe (208) D/204339) concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98'.

Pleas in law and main arguments

Law No 9 of 11 March 1998 of the Region of Sardinia provided for credit incentives for the reclassification and adaptation of the hotel industry. The aid scheme thus set up was approved by the Commission. In spite of that, on 3 July 2008 the defendant communicated the contested decision in the present case to the Italian Government. According to that decision, in the aid scheme in question investment inducements were granted in respect of which no application for aid had been submitted before work was started on the project, in breach of the Guidelines on national regional aid (1).

In support of its claims the applicant pleads infringement of essential procedural requirements on account of inconsistent reasons, the alleged irrelevance of the award in the assessment of the 'incentive effect' on the beneficiaries and therefore in the assessment of the requirement of the 'necessity of the aid'.

In particular it is considered in that regard that a correct assessment of the beneficiaries' award ought, in fact, to have led the Commission to give due weight to the fact that:

— the aid scheme in question was the ideal continuation of a current lawful scheme in which the grant of aid took place regardless of the assessment as to whether or not the investments had been started;

— the aid scheme in question was adopted by a regional law approved without any actual likelihood that the Guidelines on national regional aid could influence the legislative procedure, inasmuch as the same was approved only one day after the publication of those Guidelines in the *Official Journal*;

— the beneficiary undertakings set up operations precisely in reliance on the aid measures, which therefore absolutely had an incentive effect.

The Commission errs, therefore, in seeking to assess the incentive effect of the aid by taking as a basis the unproven assumption that the beneficiary, given that it had not submitted the application prior to starting, had made the investment regardless of the aid.

The incorrectness of the Commission's assessment is made clear by the fact that it is impossible to argue that Regional Law 9/1998 is compatible from the outset with the Guidelines of 1998 cited above.

The defendant also errs in basing its assessment on a requirement which is not procedural but 'substantive', that of compatibility of the aid on a presumption of absence of the incentive effect where there was no application prior to the investment, laid down for the first time with reference to the national regional aid of the 'Guidelines', and therefore not known and not capable of being known in advance.

In addition, the defendant's assessment appears to infringe Article 88 of the Treaty and Regulation No 659/99/EC, in so far as the reasons for which the aid in question is described as unlawful rather than misuse of aid is completely omitted from the contested decision, when the description of the measure as misuse of aid excludes, in principle, the possibility of recovery.

(1) OJ C 74 of 10.3.1998, p. 9.

Action brought on 22 September 2008 — Stowarzyszenie Autorów 'ZAiKS' v Commission

(Case T-398/08)

(2008/C 285/94)

Language of the case: Polish

Parties

Applicant: Stowarzyszenie Autorów 'ZAiKS' (Warsaw, Poland) (represented by: B. Borkowska and M. Błeszyński, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul Article 3 and Article 4(2) and (3) (to the extent to which those provisions refer to Article 3) of the Commission decision of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC);

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

In this case the applicant is seeking the partial annulment of the Commission decision of [16] July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC) to the extent to which it concerns concerted practices with regard to the conditions governing the administration of rights to the public performance of musical works and the granting of corresponding licences by collecting societies and which take the form of restrictions on membership applied in the reciprocal representation agreements as envisaged in the CISAC model contract (model contract of the Conféderation Internationale des Sociétés d'Auteurs et Compositeurs — International Confederation of Societies of Authors and Composers — CISAC) or as applied in practice.

The applicant bases its action on the following pleas:

— absence of a balanced appraisal of all the conditions essential for the correct interpretation of the concept of 'concerted practices' as a result of an incomplete regard for the facts of the case and a lack of regard for all of the inseparably linked elements constituting the collective administration of copyright;

— defective appraisal of the grounds on which the principle of territoriality chosen in the reciprocal representation agreements is based;

— defective indication and assessment of the consequences of a potential alteration of the system obtaining hitherto for the collective administration of copyright;

— lack of appraisal of the totality of evidence in the case as a result of the failure to take account of the facts put forward by the applicant with regard to the particular features of the activity of the authors' association ZAiKS and the provisions of Polish law in the area of the collective administration of copyright.

Order of the Court of First Instance of 2 September 2008 — CLL Centres de Langues v Commission

(Case T-202/08) ([1])

(2008/C 285/95)

Language of the case: French

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

([1]) OJ C 183, 19.7.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 25 September 2008 — Guido Strack v Commission

(Case F-44/05) [1]

(Staff case — Officials — Recruitment — Vacancy notice — Rejection of candidature — Action for annulment and for damages — Admissibility — Interest in bringing proceedings — Retirement — Preselection comittee — Composition — Temporal application of new provisions — Independence — Impartiality — Notification of a decision)

(2008/C 285/96)

Language of the case: French

Parties

Applicant: Guido Strack (Cologne, Germany) (represented by: J. Mosar initially, then by M. Wehrheim, then by F. Gengler, lastly by P. Goergen, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and H. Kraemer, acting as Agents)

Re:

Application for annulment of the Commission's decision to reject the applicant's candidature for the post of head of the 'Calls for tender and contracts' unit and to appoint another candidate to that post and, secondly, an application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the application for annulment of the decision to appoint Mr A to the post of head of the 'Calls for tender and contracts' unit of the Publications Office of the European Communities as inadmissible;*

2. *Annuls the decision to reject the candidature of Mr Strack for the post of head of the 'Calls for tender and contracts' unit of the Publications Office of the European Communities;*

3. *Orders the Commission of the European Communities to pay the applicant EUR 2 000 by way of damages;*

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

5. *Orders Mr Strack to bear half of his own costs;*

6. *Orders the Commission of the European Communities to pay its own costs and half of the costs incurred by Mr Strack.*

[1] OJ C 205, 20.8.2005. p. 28 (Case initially registered before the Court of First Instance of the European Communities under number T-225/05 and transferred to the Civil Service Tribunal of the European Union by order of 15.12.2005).

Judgment of the Civil Service Tribunal (Third Chamber) of 11 September 2008 — Coto Moreno v Commission

(Case F-127/07) [1]

(Staff case — Officials — Open competition — Non-inclusion on the reserve list of successful candidates — Assessment of written and oral tests)

(2008/C 285/97)

Language of the case: French

Parties

Applicant: Juana Maria Coto Moreno (Gaborone, Botswana) (represented by: K. Lemmens and C. Doutrelepont, lawyers)

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

Re:

Annulment of the decision of the selection board of competition EPSO AD/25/05 of 12 February 2007 not to include the applicant's name on the reserve list of successful candidates for that competition — Claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses Ms Coto Moreno's action;*

2. *Orders that each party shall bear its own costs.*

[1] OJ C 22, 26.1.2008, p. 57.

Action brought on 30 July 2008 — Kipp v Europol

(Case F-65/08)

(2008/C 285/98)

Language of the case: Dutch

Parties

Applicant: Michael Kipp (The Hague, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 4 October 2007 by which Europol informed the applicant that there was no possibility of offering him a permanent post

Form of order sought

— Annul the decision of 4 October 2007 by which the defendant informed the applicant that there was no possibility of offering him a permanent post, the decision of 29 April 2008 rejecting the complaint against the earlier decision and the decision of 12 June 2008, which follows on from that of 4 October 2007;

— Order Europol to pay the costs.

Action brought on 6 August 2008 — Visser-Fornt Raya v Europol

(Case F-67/08)

(2008/C 285/99)

Language of the case: Dutch

Parties

Applicant: Maria Teresa Visser-Fornt Raya (The Hague, Netherlands) (represented by: P. Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 4 October 2007 by which Europol informed the applicant that there was no possibility of offering her a permanent post

Form of order sought

— Annul the decision of 4 October 2007 by which the defendant informed the applicant that there was no possibility of offering her a permanent post, the decision of 29 April 2008 rejecting the complaint against the earlier decision and the decision of 12 June 2008, which follows on from that of 4 October 2007;

— Order Europol to pay the costs.

Action brought on 6 August 2008 — Sluiter v Europol

(Case F-68/08)

(2008/C 285/100)

Language of the case: Dutch

Parties

Applicant: Rudolf Sluiter (Hillegom, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of the decision of 4 October 2007 whereby Europol informed the applicant that there was no possibility of his being offered a permanent position

Form of order sought

— Annul the decision of 4 October 2007 whereby the defendant informed the applicant that there was no possibility of his being offered a permanent position, along with the decision of 29 April 2008 rejecting his complaint brought against the first decision and the decision of 12 June 2008 in furtherance of that of the 4 October 2007;

— Order Europol to pay the costs.

Action brought on 6 August 2008 — Knöll v Europol

(Case F-69/08)

(2008/C 285/101)

Language of the case: Dutch

Parties

Applicant: Brigitte Knöll (Hochheim, Germany) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Application for annulment of the decision of 4 October 2007, by which Europol informed the applicant that there was no possibility of offering her a permanent post.

Form of order sought

The applicant claims the Tribunal should:

— Annul the decision of 4 October 2007, by which the defendant informed the applicant that there was no possibility of offering her a permanent post, the decision of 29 April 2008 rejecting the complaint brought against the first decision and the decision of 12 June 2008 which is part of the extension of that of 4 October 2007;

— Order Europol to pay the costs.

Action brought on 1 September 2008 — Aparicio and Others v Commission

(Case F-75/08)

(2008/C 285/102)

Language of the case: French

Parties

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

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

First, illegality of Article 5(1)(d) of the General Implementing Provisions relating to the selection procedure for members of contract staff under Article 3a and, secondly, annulment of EPSO's decisions not to include the applicants' names on the list of successful candidates and in the database for the recruitment procedure CAST 27/Relex.

Form of order sought

The applicant claims that the Tribunal should:

— Declare Article 5(1)(d) of the General Implementing Provisions relating to the selection procedure for members of contract staff under Article 3a illegal;

— Annul EPSO's decision not to include the applicants' names on the list of successful candidates and in the database for the recruitment procedure CAST 27/Relex

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

Action brought on 18 September 2008 — Behmer v Parliament

(Case F-76/08)

(2008/C 285/103)

Language of the case: French

Parties

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

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision not to promote the applicant to grade AD 13 in the 2007 promotion procedure

Form of order sought

— annul the decision not to promote the applicant to grade AD 13 in the 2007 promotion procedure;

— order the European Parliament to pay the costs.

Action brought on 15 September 2008 — Vicente Carbajosa and Others v Commission

(Case F-77/08)

(2008/C 285/104)

Language of the case: French

Parties

Applicants: Isabel Vicente Carbajosa (Brussels, Belgium) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

An application for a declaration that the Commission's decision to restrict publication of the competition notices EPSO/AD/116/08 and EPSO/AD/117/08 to three languages is unlawful, and that those competition notices are unlawful and, consequently, for annulment of EPSO's individual decisions not to admit the applicants to the tests in those competitions.

Form of order sought

The applicant claims the Tribunal should:

— Declare that the Commission's decision to restrict publication of the competition notices EPSO/AD/116/08 and EPSO/AD/117/08 to three languages is unlawful and that those competition notices are unlawful;

— Annul EPSO's individual decisions not to admit the applicants to the tests in competitions EPSO/AD/116/08 and EPSO/AD/117/08 respectively;

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