



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 27 April 2010 (05.05)
(OR. fr)**

8825/10

JUR 209

INFORMATION NOTE

Subject : Case-law of the Court of Justice of the EU in cases involving the Council
(1 July to 31 December 2009)

1. In the second half of 2009, 68 cases involving the Council were closed by the three courts comprising the Court of Justice of the European Union, i.e. the Court of Justice, the General Court and the Civil Service Tribunal (hereafter the CST) ^{1 2}.

42 of the cases were closed by 33 judgments, orders and opinions the main content of which is set out in this six-monthly note ³ The main purpose of this note is to highlight the aspects of those 33 rulings which are of particular relevance for the Council's future conduct. A list of these rulings is provided in the Annex.

¹ In the same period 34 new cases involving the Council were notified to it by the Court of Justice, the General Court and the CST.

² At the end of December 2009, there were 173 cases involving the Council pending before the Community courts. The breakdown was as follows:

- 102 direct cases with the Council as a main party;
- 57 direct cases between parties other than the Council, with the Council intervening to uphold the legality of one of its acts;
- 14 preliminary ruling cases concerning the validity of Council acts;
- 1 request for an opinion pursuant to Article 218(11) TFEU.

³ The remaining 26 cases closed have not been taken into consideration in this note either because of their specific nature (e.g. legal aid proceedings or taxation of costs) or because of the way in which they were closed (e.g. by removal).

2. Twenty-three of the judgments were handed down in direct cases with the Council as main party (see section I below), five were handed down in direct cases with the Council intervening (see section II below) and four were handed down in preliminary ruling cases on the validity of Council acts (see section III below). During the past six months the Court also delivered one opinion pursuant to Article 300(6) EC (see section IV below).
3. In 26 of those 33 rulings, the Court of Justice, the General Court and the CST upheld the Council's arguments. The Council failed in its submissions in seven cases (Nos 5, 7, 8, 9, 12, 21 and 23 on the list).

I. DIRECT CASES WITH THE COUNCIL AS A MAIN PARTY

A. ACTIONS FOR ANNULMENT

1. Three actions for annulment of Council acts were heard by the Court of Justice in the second half of 2009.
2. By the first of those actions (No 5 on the list), the Parliament requested the annulment of Council Regulation (EC) No 1968/2006 of 21 December 2006 concerning Community financial contributions to the International Fund for Ireland (2007-2010).

In support of its action, the Parliament had adduced a single plea of a breach of the EC Treaty through the erroneous choice of Article 308 as the legal basis. According to the Parliament, the Community legislature has the necessary powers under the third paragraph of Article 159 EC ⁴ to adopt the contested regulation.

The Court of Justice accepted only part of the Parliament's argument. While it accepted that the Community's financial contribution to the Fund could be considered to form part of "specific actions" within the meaning of the third paragraph of Article 159 EC, it nevertheless took the view that that Article does not by itself confer on the Community the necessary power to adopt the contested Regulation since the range of activities financed by it would extend beyond the scope of the Community's policy on economic and social cohesion.

In those circumstances, the Court of Justice concluded that in order to adopt the contested Regulation "*the Community legislature ought to have had recourse to both the third paragraph of Article 159 EC and Article 308 EC (...), while complying with the legislative procedures laid down therein, that is to say, both the 'codecision' procedure referred to in Article 251 EC and the requirement that the Council should act unanimously* (point 69 of the judgment).

The contested Regulation was therefore annulled ⁵.

⁴ The provision is part of Title XVII, Economic and Social Cohesion, of Part Three of the EC Treaty and reads as follows:
"If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions."

⁵ On grounds of important reasons of legal certainty, the Court of Justice nevertheless maintained the effects of Regulation No 1968/2006 until the entry into force of a new regulation adopted on an appropriate legal basis.

3. By the second of the abovementioned actions (No 6 on the list), the Commission requested the annulment of Regulation (EC) No 1013/2006 of the Council and the European Parliament of 14 June 2006 on shipments of waste in so far as it was based solely on Article 175(1) EC and not on Articles 175(1) and 133 EC.

In the Commission's view, a dual legal basis was called for because both the purpose and the content of the Regulation comprised two indissociable components, one relating to the common commercial policy and the other to protection of the environment, neither of which could be regarded as secondary or indirect as compared with the other.

On the other hand, according to the defending institutions, the contested regulation, both by its objective and content, was aimed primarily at protecting human health and the environment against the potentially adverse effects of cross-border shipments of waste and should therefore be based solely on Article 175(1) EC.

Endorsing the defending institutions' arguments, the Court of Justice dismissed the appeal brought by the Commission.

4. In the third of these actions (No 7 on the list), the Commission sought the annulment of the decision of the Council of the European Union of 24 May 2007 establishing the position to be adopted on behalf of the European Community with regard to certain proposals submitted at the 14th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), taking place in The Hague (Netherlands) from 3 to 15 June 2007.

In support of its action, the Commission put forward a single plea in support of its action, alleging breach of the duty to state reasons referred to in Article 253 EC, on the ground that the contested decision failed to state the legal basis on which it was founded.

Considering that the legal basis needed to be indicated on grounds of both the principle of legal certainty and the principle of the allocation of powers enshrined in the first paragraph of Article 5 EC, the Court of Justice upheld the Commission's action and annulled the contested decision ⁶.

5. Eleven actions for annulment of Council acts were heard by the General Court in the second half of 2009.
6. By the first three of those actions, an Iranian commercial bank controlled by the Iranian State, Bank Melli Iran ('BMI'), and its United Kingdom branch, the Melli Bank, sought the annulment of paragraph 4 of Table B of the Annex to Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran. Under the terms of the contested point, both BMI and its subsidiaries, including the applicant, were entered in the list in Annex V to the regulation, with the consequence that their funds were frozen.

⁶ On grounds of legal certainty, the Court of Justice nevertheless maintained in force the effects of the annulled decision.

In both of the cases brought by the branch before the General Court, which were joined because of the relationship between them (No 15 on the list), the applicant based its arguments particularly on Article 7(2)(d) of the Regulation which required the Council to freeze the funds of entities "owned or controlled" by entities identified as participating in nuclear proliferation as referred to in Article 7(2)(a) or (b) of Regulation. The applicant argued, on the one hand, that Article 7(2)(d) offended against the principle of proportionality, and was, therefore, inapplicable by virtue of Article 241 EC (now Article 277 TFEU). On the other hand, it alleged that in any event the Council had wrongly considered the applicant to be an entity "owned" by the BMI and had thus wrongly applied Article 7(2)(d) to it.

In support of its action against the same Decision 2008/475 (No 22 on the list), the BMI had adduced, *inter alia*, two pleas, one alleging infringement of the principle of proportionality and the right to property and the second alleging infringement of the rights of defence, the right to effective legal protection and the duty to state reasons as laid down in Article 15(3) of Regulation No 423/2007;

None of these grounds was considered by the General Court to be well-founded, and the actions by both the BMI and its branch were dismissed ⁷ ⁸.

⁷ In the action brought by the BMI, the plea of infringement of the duty to state reasons was considered well-founded by the General Court since the Council had not individually notified the BMI of the contested decision. However, in the light of the particular circumstances in which BMI became aware of the adoption of the decision, the General Court considered that the Council's omission did not justify annulling the contested decision.

⁸ The General Court's judgments in these two cases are currently the subject of two appeals before the CJ, one brought by the Melli Bank (Case C-380/09 P) and the other by the BMI (Case C-548/09 P).

7. The next three actions sought the annulment of decisions to freeze assets taken under Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism⁹

In support of the first two actions, joined because they were connected (No 16 on the list)¹⁰, the applicant argued that by including him on the list of persons whose assets were frozen without awaiting the outcome of appeal proceedings brought by him against a conviction at first instance, the Council had infringed his fundamental rights, and specifically the presumption of innocence. While acknowledging that the presumption of innocence is a fundamental right giving private individuals rights which the Community court must respect, the General Court ruled that "*that principle does not preclude the adoption of protective measures [such as decisions to freeze assets] which, in principle, do not constitute sanctions and in no way prejudge the innocence or guilt of the person to whom they are applied*" (point 40 of the judgment). Those actions were therefore dismissed as unfounded.

⁹ The EU restrictive measures adopted under Regulation No 2580/2001 are "autonomous" in the sense that they are not taken following a decision by the United Nations Security Council on the basis of Chapter VII of the United Nations Charter.

¹⁰ The actions in question sought more specifically the partial annulment of Council Decision 2007/445/EC of 28 June 2007 and of Council Decision 2006/1008/EC of 21 December 2006 insofar as the applicant's name appeared on the list of persons, groups and entities to which Regulation No 2580/2001 applied.

In support of his claim for annulment in the third of these actions (No 21 on the list)¹¹, the applicant had, in substance, adduced two pleas, the first alleging breach of the obligation to state reasons and a manifest error of assessment, and the second alleging that the requirements laid down by the relevant Community legislation to serve as a basis for a decision to freeze funds had not been satisfied, specifically the requirement for a decision to have been taken by a competent national judicial authority in respect of the person or entity concerned¹². While the General Court dismissed the first plea as unfounded, it accepted the second. It noted in particular that the decisions of the Netherlands national judicial authority used as the basis for the Community decisions to freeze funds had been delivered when it was ruling only incidentally and indirectly on the possible involvement of the person concerned in terrorist activity. The contested Community decisions to freeze funds were thus annulled insofar as they concerned the applicant¹³.

¹¹ More particularly, the action in question, on the hand, sought the partial annulment of Decisions 2007/445/EC, 2007/868/EC, 2008/343/EC and 2009/62/EC and of Regulation (EC) No 501/2009 and, on the other hand, made a claim for damages.

¹² See in this respect Article 1(4) of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and Article 2(3) of Regulation No 2580/2001, already cited.

¹³ The General Court will rule on the claim for compensation in a later judgment.

8. The next two actions were dismissed by the General Court as being manifestly inadmissible and were not even notified to the Council beforehand. The first (No 20 on the list) sought to annul Council Decision 2004/511/EC of 10 June 2004 concerning the representation of the people of Cyprus in the European Parliament in case of a settlement of the Cyprus problem¹⁴. The second action (No 26 on the list) was an application, first, for partial annulment of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States and those whose nationals are exempt from that requirement, insofar as it applies to Turkey, and, second, for compensation for the damage and loss allegedly suffered by Turkey.
9. In the context of the disputes relating to anti-dumping duties, the General Court dismissed two actions for the annulment of Regulations imposing such duties and upheld a third.

The actions dismissed concerned applications for annulment in part of:

- Council Regulation (EC) No 1136/2006 of 24 July 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of lever arch mechanisms originating in the People's Republic of China (No 19 on the list)¹⁵.
- Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (No 24 on the list).

¹⁴ The Order of the General Court in this case is currently the subject of an appeal to the Court of Justice (Case C-28/10 P).

¹⁵ This judgment is currently the subject of an appeal before the Court of Justice (Case C-511/09 P).

The action upheld sought annulment of Council Regulation (EC) No 366/2006 of 27 February 2006 amending Regulation (EC) No 1676/2001 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India, to the extent that it imposed an anti-dumping duty on the applicant (No 23 on the list). The General Court ruled that by departing from the methodology prescribed by Article 2(8) and (9) of the basic anti-dumping Regulation ¹⁶ and by determining the export price on the basis of criteria not laid down by those provisions, the Council had adopted the contested Regulation on an incorrect legal basis.

10. In the context of civil service disputes, the CST dismissed the action brought by a Council official seeking the annulment of vacancy notice 197/06 to fill a post of administrator (AD 11-8) in the External Protection sector in the Security Office of the General Secretariat of the Council (No 29 on the list).

B. APPLICATIONS FOR DAMAGES

1. The General Court ruled on seven applications for damages which sought to establish the non-contractual liability of the Community on account of a Council act.

¹⁶ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the EC, as last amended by Regulation (EC) No 461/2004.

2. The first of these actions (No 7 on the list) sought damages to compensate for the damage alleged to have been suffered by a Greek sea fisheries undertaking as a result of the fact that the Council and the Commission had not adopted provisions enabling the customs authorities of a Member State to accept as proof of the Community nature of products of sea-fishing documents other than the T2M form provided for in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. The applicant claimed that the Community institutions had infringed several higher-ranking principles of the Community legal order by imposing production of the duly completed and authenticated T2M form as the only proof of the Community nature of the products but neglecting to include provisions relating to that form or to enlarged customs cooperation in the Association Agreement subsequently concluded with Tunisia ¹⁷ and not adequately supervising the Greek customs authorities.

Ruling that the condition for non-contractual liability of the Community on grounds of an illegal act or illegal behaviour by the institutions through failure to act or omission had not been met, the General Court dismissed the action ¹⁸.

¹⁷ See Decision 98/238/EC, ECSC of the Council and the Commission of 26 January 1998 on the conclusion of a Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (OJ L 97, 30.10.1998, p. 1).

¹⁸ This judgment is currently the subject of an appeal before the Court of Justice (Case C-451/09 P).

3. By the other six actions, joined because they were connected (No 27 on the list), 61 French ship brokers sought compensation from the Community for the damage caused by the abolition of the monopoly of the French profession of ship brokers. In court, the applicants explained that the damage they claimed to have suffered resulted from the abolition by the French legislator of the privilege previously conferred by the French Commercial Code following the proceedings wrongly initiated by the Commission against France for infringement of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.

Having re-stated the cumulative conditions governing the Community's non-contractual liability for a legal act adopted by one of its organs, the General Court decided to examine two of those conditions, i.e. a sufficiently serious violation of the rule of law designed to confer rights on private individuals and the existence of a causal connection between the infringement proceedings wrongfully initiated by the Commission and the damage alleged by the applicants.

With regard to the first of these conditions, the General Court ruled that " ... *even an erroneous position by the Commission, in a reasoned opinion, on the scope of Community law could not constitute a sufficiently serious infringement to engage the Community's responsibility*" (point 77 of the judgment, not available in English). With regard to the second condition, it ruled that since the reasoned opinion of the Commission did not have binding effect, it could not be considered as the immediate cause of the damage alleged by the applicants. Those actions were therefore dismissed as unfounded.

C. APPEALS

1. Two appeals seeking annulment of judgments of the General Court and the CST, by which they had found in favour of the Council at first instance, were heard by the CJ and the General Court respectively.
2. Dismissing three of them, the CJ and General Court fully confirmed:
 - the judgment of the General Court ¹⁹ dismissing an action for annulment of Council Regulation (EC) No 960/2003 of 2 June 2003 imposing a definitive countervailing duty on imports of recordable compact disks originating in India (No 4 on the list);
 - the judgment of the General Court ²⁰ in which it declared inadmissible an action for the annulment of certain provisions of Council Regulation (EC) No 1954/2003 of 4 November 2003 on the management of the fishing effort relating to certain Community fishing areas and resources, modifying Regulation (EEC) No 2847/93 and repealing Regulations (EC) No 685/95 and (EC) No 2027/95 (see No 10 on the list);
 - the judgment of the CST ²¹ in which it dismissed the action by a Council official seeking, first, to annul the classification decision relating to the applicant as a successful candidate in an open competition for the constitution of a reserve for the future recruitment of administrators A7/A6, and, secondly, seeking damages.

¹⁹ Judgment of 4 October 2006, *Moser Baer India / Council*, Case T-300/03, ECR II-3911.

²⁰ Judgment of 1 July 2008, *Região autónoma dos Açores / Council*, Case T-37/04, ECR II-103*.

²¹ Judgment of 20 September 2007, *Giannopoulos v. Council*, Case F-111/06, not yet published in the ECR.

3. By the fourth of the appeals referred to (No 9 on the list), a company established in China sought annulment of the judgment of the General Court ²² dismissing its action for annulment of Council Regulation (EC) No 452/2007 of 23 April 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ironing boards originating in the People's Republic of China and Ukraine, inasmuch as it imposed an anti-dumping duty on imports of ironing boards produced by the applicant. In support of its appeal, the applicant argued that the General Court has wrongly ruled that the Commission's infringement of Article 20(5) of the basic Regulation ²³ was not such as to affect the content of the contested Regulation and hence the applicant's rights of defence.

Finding that this plea was admissible, the CJ set aside the contested judgment. Considering, moreover, that the action brought before the General Court could be ruled on, the Court of Justice itself gave a definitive ruling on the request for the annulment of Regulation (EC) No 425/2007. Noting, in the latter connection, that had the Commission not infringed Article 20(5) of the basic Regulation, it could have proposed definitive measures to the Council which were more favourable to the applicant, the Court of Justice concluded that the applicant's rights of defence were in fact adversely affected by that infringement and that the contested Regulation must be annulled so far as it imposed an antidumping duty on imports of ironing boards manufactured by the appellant.

²² Judgment of 29 January 2008, *Foshan Shunde Yongjian Housewares / Council*, Case T-206/03, ECR II-1.

²³ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the EC, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 1995.

4. The last two of the abovementioned appeals, joined because they were connected (No 12 on the list), sought annulment of the judgments of the General Court ²⁴ by which it dismissed two actions 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, insofar as that act concerned the applicants ²⁵.

In line with its earlier case law (but later than the contested judgments) ²⁶, the Court of Justice set aside the contested judgments and annulled Regulation No 881/2002, as amended for each of the applicants respectively, by Commission Regulations (EC) No 46/2008 and (EC) No 1210/2006 insofar as they applied to them ²⁷.

²⁴ Judgments of 12 July 2006, *Hassan v Council and Commission*, case T-49/04, ECR II-52*, and *Ayadi v Council*, Case T-253/02, ECR II-2139.

²⁵ Unlike the EU restrictive measures adopted under Regulation No 2580/2001 (see footnote 9 above), the measures introduced by Regulation No 881/2002 are taken following a decision by the United Nations Security Council on the basis of Chapter VII of the United Nations Charter.

²⁶ Judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation v. Council and Commission*, joined cases C-402/05 P and C-415/05 P, ECR I-6351.

²⁷ It should be noted that, by means of Commission Regulation (EC) No 954/2009 of 13 October 2009, adopted in compliance with the requirements emerging from the Court of Justice case law in the *Kadi* case already referred to (see footnote 26 above), the applicants continue to be included in the list of persons and entities subject to restrictive measures under Regulation No 881/2002.

D. SPECIAL PROCEEDINGS

1. In view of the general interest of the questions of law raised in a review procedure, conducted in accordance with the second subparagraph of Article 225(2) and Articles 62 to 62b of the Statute of the Court of Justice and relating to a judgment by the General Court ²⁸, the Council decided to lodge written observations on the questions raised (see No 10 on the list) ²⁹.

Endorsing the arguments put by the Council, among others, the Court of Justice ruled that:

- where a court seised at first instance, such as the General Court or the CST, upholds a defendant's plea of inadmissibility not going to the substance of the case, and an appeal court, such as the Court of Justice or the General Court, sets aside that decision, the case may not be considered such that, within the meaning of the first paragraph of Article 61 of the Statute of the Court of Justice and Article 13(1) of the Annex to the Statute, "*the state of the proceedings (...) permits a decision*" by the appeal court on the substance; in such an instance, the case must be referred back to the court seised at first instance for a ruling (see points 29 and 30 of the judgment);
- the fact that, having set aside the ruling of inadmissibility and held the action admissible, the appeal court (in this case the General Court) ruled on the substance of a claim, when no written or oral exchange of arguments had taken place either before the appeal court or at first instance (in this case before the CST), constitutes a breach of the requirements of the right to a fair hearing, in particular the requirement of respect for the rights of the defence (see points 38 to 59 of the judgment).

²⁸ Judgment of 6 May 2009, *M / EMEA*, Case T-12/08 P, not yet published in the ECR.

²⁹ See 12126/09 LIMITE JUR 326 INST 105.

In view of the nature and scope of the errors committed in the General Court judgment under review, the Court of Justice ruled that that judgment affected the unity and the consistency of Community law. It therefore partly set aside the judgment and referred the case back to the General Court.

2. Seised of an application for interpretation of the first point of the operative part of its judgment of 10 September 2008, *JSC Kirovo-Chepetsky Khimichesky Kombinat / Council* (Case T-348/05, ERC II-159*)³⁰ by which it annulled Council Regulation (EC) No 945/2005 of 21 June 2005³¹, the General Court stated that the contested Regulation had been annulled only in so far as it concerned the applicant (No 14 on the list).
3. The General Court dismissed as manifestly inadmissible the application by third parties contesting its judgment of 4 December 2008, *People's Mojahedin Organization of Iran v Council* (Case T-284/08, ECR II-3487) (No 18 on the list), ruling that the third party opponents had not put forward substantiated reasons for which they would have been genuinely unable to intervene in the original proceedings and had not established that the contested judgment was prejudicial to their rights.

II. DIRECT CASES WITH THE COUNCIL INTERVENING

1. Six direct cases (giving rise to five judgments) between parties other than the Council, in which the latter intervened, were heard by the CST in the second half of 2009.

³⁰ On this judgment, see 8965/09 JUR 194, p. 6.

³¹ Council Regulation (EC) No 945/2005 of 21 June 2005 amending Regulation (EC) No 658/2002 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia and Regulation (EC) No 132/2001 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in, inter alia, Ukraine, following a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96.

2. The Council intervened in these cases in order to uphold the legality of one of its acts, which had been challenged as an incidental question through six objections of illegality within the meaning of Article 241 EC (now Article 277 TFEU).

The objections of illegality in question had been raised against:

- Article 13 of Annex VIII to the Staff Regulations (invalidity allowance) (No 28 on the list); having dismissed the main action as being manifestly inadmissible before even ruling on the Council's application for leave to intervene, the CST was not obliged to rule on this objection of illegality ³²;
- Article 32, second paragraph of the Staff Regulations, limiting to a maximum of 24 months the additional seniority in step which may be accorded when grading a new official (No 30 on the list); having been judged as irrelevant, this objection was dismissed by the CST ³³;
- Article 88 of the conditions of employment of other servants of the European Communities (CEOS) in that it restricted the duration of the contracts of contract staff (No 31 on the list); this was dismissed as none of the arguments put forward in support of this objection of illegality (in particular, infringement of a right to employment stability as a general principle of law arising from the framework agreement on fixed-term work ³⁴, infringement of clause 5(1) of that framework agreement and failure to state reasons) were accepted by the CST;

³² This order is currently the subject of an appeal before the Court (Case T-368/09 P).

³³ This judgment is currently the subject of an appeal before the Court (Case T-452/09 P).

³⁴ The framework agreement on fixed-term work concluded on 18 March 1999 between the general cross-sector organisations was implemented by Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

- Article 100 of the CEOS establishing, under certain conditions, a medical proviso when engaging contract staff (No 31 on the list); having upheld the main application on grounds other than the objection of illegality in question, the CST did not have to decide on that objection;

- Articles 3 and 4 of Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities insofar as they authorised the combination of a survivor's pension and remuneration for the purposes of calculating the tax for the benefit of the European Communities (No 32 on the list); this was dismissed since the argument put forward in support of this objection of illegality (violation of the principle of equal treatment and non-discrimination) was not upheld;

- Article 4 of Annex VIII to the Staff Regulations (No 33 on the list); this was also dismissed by the CST since the argument put forward in support of this objection of illegality (violation of the principle of equal treatment and non-discrimination) was not upheld.

III. PRELIMINARY RULINGS ON THE VALIDITY OF COUNCIL ACTS

1. Four preliminary rulings on, in particular, the validity of Council acts were given in the second half of 2009.

2. Examination of the questions put by the national courts in the context of two of those cases revealed no issues likely to affect the validity of:
- Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92³⁵, and Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (No 1 on the list);
 - Article 6(3) of the REACH Regulation³⁶, as regards the principles of proportionality and equal treatment (No 2 on the list).

³⁵ It should be noted that, under that Regulation, the name "Bayerisches Bier" was registered as a protected geographical indication (PGI).

³⁶ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, p. 1).

3. In one of the questions raised in connection with the third of those cases (No 3 on the list), *Tallinna Halduskohus* (Estonia) asked the Court whether Article 1(5) of Council Regulation (EC) No 85/2006 of 17 January 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of farmed salmon originating in Norway was invalid insofar as it violated the principle of proportionality by laying down a higher minimum import price for frozen backbones of salmon than that laid down for gutted, head-on fish. Bearing in mind the clarification of the scope of Regulation (EC) No 85/2006, as provided after its adoption by Regulation (EC) No 319/2009, and the retroactive nature of that clarification, the Court considered that it was not necessary to answer this question.

4. In the last of those cases (No 8 on the list), the Court, in a case brought before it by the *Tribunal de Travail de Nivelles* (Belgium), ruled that Article 39 of the EC Treaty must be interpreted as precluding application by the competent authorities of a Member State of national legislation which, in accordance with Article 40(3)(b) of Regulation (EEC) No 1408/71³⁷, makes acquisition of the right to invalidity benefits subject to the condition that a period of primary incapacity of one year has elapsed, where such application has the result that a migrant worker has paid into the social security scheme of that Member State contributions on which there is no return and is therefore at a disadvantage by comparison with a non-migrant worker.

³⁷ 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, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005.

V. OPINION

Having received a request from the Commission under Article 300(6) of the TEC for an opinion on the shared or exclusive nature of the competence of the European Community and the appropriate legal basis which ought to be used to conclude agreements with certain members of the World Trade Organisation (WTO) amending the schedules of specific commitments of the Community and its Member States under the General Agreement on Trade in Services (GATS), the Court, on 30 November 2009, delivered its Opinion 1/08 pursuant to which:

- "1) *The conclusion of the agreements with the affected members of the World Trade Organisation, pursuant to Article XXI of the General Agreement on Trade in Services (GATS), as described in the request for an Opinion, falls within the sphere of shared competence of the European Community and the Member States.*
- 2) *The Community act concluding the abovementioned agreements must be based both on Article 133(1), (5) and (6), second subparagraph, EC and on Articles 71 EC and 80(2) EC, in conjunction with Article 300(2) and (3), first subparagraph, EC." (No 11 on the list).*

I. COURT OF JUSTICE *

1. Judgment of 2 July 2009, *Bavaria and Bavaria Italia*, Case C-343/07, not yet published in the ECR
2. Judgment of 7 July 2009, *S.P.C.M. e.a.*, Case C-558/07, not yet published in the ECR
3. Judgment of 16 July 2009, *Pärlitigu*, Case C-56/08, not yet published in the ECR
4. Judgment of 3 September 2009, *Moser Baer India v Council*, Case C-535/06 P, not yet published in the ECR
5. Judgment of 3 September 2009, *Parliament v Council*, Case C-166/07, not yet published in the ECR
6. Judgment of 8 September 2009, *Commission v Parliament and Council*, Case C-411/06, not yet published in the ECR
7. Judgment of 1 October 2009, *Commission v Council*, Case C-370/07, not yet published in the ECR
8. Judgment of 1 October 2009, *Leyman*, Case C-3/08, not yet published in the ECR
9. Judgment of 1 October 2009, *Foshan Shunde Yongjian Housewares & Hardware v Council*, Case C-141/08 P, not yet published in the ECR
10. Order of 26 November 2009, *Região autónoma dos Açores v Council*, Case C-444/08 P, not yet published in the ECR
11. Opinion 1/08 of 30 November 2009, not yet published in the ECR
12. Judgment of 3 December 2009, *Hassan v Council and Commission*, Joined Cases C-399/06 P and C-403/06 P, not yet published in the ECR
13. Judgment of 17 December 2009, *M v EMEA*, Case C-197/09 RX, not yet published in the ECR

II. GENERAL COURT *

14. Judgment of 9 July 2009, *JSC Kirovo-Chepetsky Khimichesky Kombinat v Council*, Case T-348/05 INTP, not yet published in the ECR
15. Judgment of 9 July 2009, *Melli Banki v Conseil*, Joined Cases T-246/08 and T-332/08, not yet published in the ECR
16. Judgment of 2 September 2009, *El Morabit v Conseil*, Joined Cases T-37/07 and T-323/07, not yet published in the ECR
17. Judgment of 16 September 2009, *Pigasos Alieftiki Naftiki Etaireia v Council*, Case T-162/07, not yet published in the ECR
18. Order of 17 September 2009, *Avaessian Avaki e.a. v People's Mojahedin Organization of Iran*, Case T-284/08 TO, not yet published in the ECR
19. Judgment of 23 September 2009, *Dongguan Nanzha Leco Stationery v Council*, Case T-296/06, not yet published in the ECR
20. Order of 24 September 2009, *Bayramoglu v Parliament and Council*, Case T-110/09, not yet published in the ECR
21. Judgment of 30 September 2009, *Sison v Council*, Case T-341/07, not yet published in the ECR
22. Judgment of 14 October 2009, *Bank Melli Iran v Council*, Case T-390/08, not yet published in the ECR
23. Judgment of 17 November 2009, *MTZ Polyfilms v Council*, Case T-143/06, not yet published in the ECR
24. Judgment of 9 December 2009, *Apache Footwear and Apache II Footwear v Council*, Case T-1/07, not yet published in the ECR
25. Judgment of 11 December 2009, *Giannopoulos v Council*, Case T-436/07 P, not yet published in the ECR
26. Order of 17 December 2009, *Işçi Partisi v Council and Commission*, Case T-430/09, not yet published in the ECR
27. Judgment of 18 December 2009, *Arizmendi e.a. v Council and Commission*, Joined Cases T-440/03, T-121/04, T-171/04, T-208/04, T-365/04 and T-484/04, not yet published in the ECR

III. CIVIL SERVICE TRIBUNAL *

28. Order of 8 July 2009, *Sevenier v Commission*, Case F-62/08, not yet published in the ECR
 29. Judgment of 9 July 2009, *Montero v Council*, Case F-91/07, not yet published in the ECR
 30. Judgment of 10 September 2009, *Rosenbaum v Commission*, Case F-9/08, not yet published in the ECR
 31. Judgment of 29 September 2009, *O v Commission*, Joined Cases F-69/07 and F-60/08, not yet published in the ECR
 32. Judgment of 21 October 2009, *Ramaekers-Jorgensen v Commission*, Case F-74/08, not yet published in the ECR
 33. Judgment of 17 November 2009, *Palazzo v Commission*, Case F-57/08, not yet published in the ECR
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* The texts of the judicial decisions included in this list and not published or not yet published in the European Court Reports are available on the Internet site of the Court of Justice at www.curia.europa.eu.