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Notice No | Contents | Page

EN

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EN

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(Continued overleaf)

EN

EN

(Continued overleaf)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 355/01)

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

OJ C 347, 26.11.2011

Past publications

OJ C 340, 19.11.2011

OJ C 331, 12.11.2011

OJ C 319, 29.10.2011

OJ C 311, 22.10.2011

OJ C 305, 15.10.2011

OJ C 298, 8.10.2011

These texts are available on:

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Appointment of the Registrar of the Civil Service Tribunal

(2011/C 355/02)

On 10 October 2011, in accordance with Article 15(5) of the Rules of Procedure, the Judges of the Civil Service Tribunal decided to reappoint Ms. W. HAKENBERG as Registrar, for the period from 30 November 2011 to 29 November 2017.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 13 October 2011 (references for a preliminary ruling from the Hof van beroep te Brussel (Belgium)) — Airfield NV, Canal Digitaal BV v Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam) (C-431/09), Airfield NV v Agicoa Belgium BVBA (C-432/09)

(Joined Cases C-431/09 and C-432/09) ([1])

(Copyright — Satellite broadcasting — Directive 93/83/EEC — Articles 1(2)(a) and 2 — Communication to the public by satellite — Satellite package provider — Single communication to the public by satellite — Persons to whom that communication may be attributed — Authorisation from copyright holders for the communication)

(2011/C 355/03)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellants: Airfield NV, Canal Digitaal BV (C-431/09), Airield NV (C-432/09)

Respondents: Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam) (C-431/09), Agicoa Belgium BVBA (C-432/09)

Re:

References for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Article 1(2)(a) and (b) and Article 2 of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15) — Exclusive right of the author to authorise communication of his works — Transmission by a broadcasting organisation of programme-carrying signals to a digital television supplier via an independent satellite — Subsequent retransmission of those signals — Authorisation of the copyright holders

Operative part of the judgment

Article 2 of Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission must be interpreted as requiring a satellite package provider to obtain authorisation from the right holders concerned for its intervention in the direct or indirect transmission of television programmes, such as the transmission at issue in the main proceedings, unless the right holders have agreed with the broadcasting organisation concerned that the protected works will also be communicated to the public through that provider, on condition, in the latter situation, that the provider's intervention does not make those works accessible to a new public.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Third Chamber) of 13 October 2011 (reference for a preliminary ruling from the Cour d'appel de Paris (France)) — Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la Concurrence, Ministre de l'Économie, de l'Industrie et de l'Emploi

(Case C-439/09) ([1])

(Article 101(1) and (3) TFEU — Regulation (EC) No 2790/1999 — Articles 2 to 4 — Competition — Restrictive practice — Selective distribution network — Cosmetics and personal care products — General and absolute ban on internet sales — Ban imposed by the supplier on authorised distributors)

(2011/C 355/04)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Pierre Fabre Dermo-Cosmétique SAS

Defendants: Président de l'Autorité de la Concurrence, Ministre de l'Économie, de l'Industrie et de l'Emploi

Intervening parties: Ministère public, European Commission

Re:

Reference for a preliminary ruling — Cour d'appel de Paris — Competition — General and absolute ban on internet sales of cosmetics and personal care products imposed by the supplier on authorised distributors in the context of a selective distribution network — Obligation to sell such products in a physical space in which a qualified pharmacist must be present — 'Hardcore' restriction of competition by object under Article 81(1) EC which cannot benefit from a block exemption under Commission Regulation No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21) — Possibility of benefiting from an individual exemption under Article 81(3) EC

Operative part of the judgment

Article 101(1) TFEU must be interpreted as meaning that, in the context of a selective distribution system, a contractual clause requiring sales of cosmetics and personal care products to be made in a physical space where a qualified pharmacist must be present, resulting in a ban on the use of the internet for those sales, amounts to a restriction by object within the meaning of that provision where, following an individual and specific examination of the content and objective of that contractual clause and the legal and economic context of which it forms a part, it is apparent that, having regard to the properties of the products at issue, that clause is not objectively justified.

Article 4(c) of Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices must be interpreted as meaning that the block exemption provided for in Article 2 of that regulation does not apply to a selective distribution contract which contains a clause prohibiting de facto the internet as a method of marketing the contractual products. However, such a contract may benefit, on an individual basis, from the exception provided for in Article 101(3) TFEU where the conditions of that provision are met.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Fifth Chamber) of 13 October 2011 — European Commission v Italian Republic

(Case C-454/09) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid for New Interline SpA — Recovery)

(2011/C 355/05)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: E. Righini, B. Stromsky and D. Grespan, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieir, acting as Agent, P. Gentili and B. Tidore, avvocati dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the measures necessary to comply with Articles 2, 3 and 4 of Commission Decision 2008/697/EC of 16 April 2008 on State Aid C 13/07 (ex NN 15/06) implemented by Italy for New Interline (notified under document number C(2008) 1321)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the measures necessary to ensure implementation of Commission Decision 2008/697/EC of 16 April 2008 on State Aid C 13/07 (ex NN 15/06 and N 734/06) implemented by Italy for New Interline, the Italian Republic has failed to fulfil its obligations under the fourth paragraph of Article 249 EC and Articles 2 and 3 of that decision;*

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

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Third Chamber) of 13 October 2011 (reference for a preliminary ruling from the Juzgado de lo Mercantil nº 1 de Pontevedra (Spain)) — Aurora Sousa Rodríguez, Yago López Sousa, Rodrigo Manuel Puga Lueiro, Luis Ángel Rodríguez González, María del Mar Pato Barreiro, Manuel López Alonso, Yaiza Pato Rodríguez v Air France SA

(Case C-83/10) ([1])

(Reference for a preliminary ruling — Air transport — Regulation (EC) No 261/2004 — Article 2(1) — Compensation for passengers in the event of cancellation of a flight — Meaning of 'cancellation' — Article 12 — Meaning of 'further compensation' — Compensation under national law)

(2011/C 355/06)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil nº 1 de Pontevedra

Parties to the main proceedings

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

Defendant: Air France SA

Re:

Reference for a preliminary ruling — Juzgado de lo Mercantil nº 1 de Pontevedra — Interpretation of Articles 2(1), 8, 9 and 12 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1) — Meaning of 'cancellation of a flight' — Technical faults — Meaning of 'further compensation' — Right to compensation under national law

Operative part of the judgment

1. *'Cancellation', as defined in Article 2(1) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, it does not refer only to the situation in which the aeroplane in question fails to take off at all, but also covers the case in which that aeroplane took off but, for whatever reason, was subsequently forced to return to the airport of departure where the passengers of the said aeroplane were transferred to other flights.*

2. *The meaning of 'further compensation', used in Article 12 of Regulation No 261/2004, must be interpreted to the effect that it allows the national court to award compensation, under the conditions provided for by the Convention for the unification of certain rules for international carriage by air or national law, for damage, including non-material damage, arising from breach of a contract of carriage by air. On the other hand, that meaning of 'further compensation' may not be the legal basis for the national court to order an air carrier to reimburse to passengers whose flight has been delayed or cancelled the expenses the latter have had to incur because of the failure of that carrier to fulfil its obligations to assist and provide care under Article 8 and Article 9 of Regulation No 261/2004.*

(1) OJ C 113, 1.5.2010.

Judgment of the Court (Fourth Chamber) of 13 October 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Prism Investments BV v J.A. van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV

(Case C-139/10) (1)

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Enforcement — Grounds for refusing enforcement — Compliance, in the State in which it was delivered, with the judgment in respect of which the declaration of enforceability is sought)

(2011/C 355/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Prism Investments BV

Respondent: J.A. van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 34, 35, 43, 44 and 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Grounds for refusal — Exhaustive list — Performance of the obligation under the national judgment which is the subject of the application for a declaration of enforceability

Operative part of the judgment

Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as precluding the court with which an appeal is lodged under Article 43 or Article 44 of that regulation from refusing or revoking a declaration of enforceability of a judgment on a ground other than those set out in Articles 34 and 35 thereof, such as compliance with that judgment in the Member State of origin.

(1) OJ C 134, 22.05.2010.

Judgment of the Court (Third Chamber) of 13 October 2011 (reference for a preliminary ruling from the Hof van beroep te Brussel (Belgium)) — DHL International NV, formerly Express Line NV v Belgisch Instituut voor Postdiensten en Telecommunicatie

(Case C-148/10) [1]

(Postal services — External procedures for dealing with users' complaints — Directive 97/67/EC — Article 19 — Scope — Additional to means of redress available under national law and under European Union law — Freedom of action of Member States — Restrictions — Article 49 TFEU — Freedom of establishment)

(2011/C 355/08)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Applicant: DHL International NV, formerly Express Line NV

Defendant: Belgisch Instituut voor Postdiensten en Telecommunicatie

Re:

Reference for a preliminary ruling — Hof van Beroep te Brussel — Interpretation of Article 17 of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directives 2002/39/EC (OJ 2002 L 176, p. 21) and 2008/6/EC (OJ 2008 L 52, p. 3) — Procedures for dealing with complaints from users of postal services — External scheme for dealing with complaints

Operative part of the judgment

1. *Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, in its original version and in the versions as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 and by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services;*

2. *Article 49 TFEU must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.*

[1] OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 13 October 2011 (reference for a preliminary ruling from the Landgericht Baden-Baden (Germany)) — Criminal proceedings against Leo Apelt

(Case C-224/10) [1]

(Directive 91/439/EEC — Mutual recognition of driving licences — Withdrawal of the national driving licence issued by the Member State of residence and issue of a driving licence for vehicles in categories B and D by another Member State — Refusal of recognition by the Member State of residence — Obligation to hold a valid licence for vehicles in category B at the time of issue of the licence for vehicles in category D)

(2011/C 355/09)

Language of the case: German

Referring court

Landgericht Baden-Baden

Party to the national criminal proceedings

Leo Apelt

Re:

Reference for a preliminary ruling — Landgericht Baden-Baden — Interpretation of Articles 1, 5(1)(a) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) and of Article 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18) — Driving licence for category B issued by a Member State to a national of another Member State before a decision to withdraw the national licence but after the facts which justified that withdrawal — Extension of that licence, by the Member State of issue, to category D after expiry of the period during which no new national licence could be applied for — Possibility for the Member State of residence to refuse to recognise the validity of that licence, basing that refusal on the lack of a valid licence for category B at the time when the licence for category D was issued

Operative part of the judgment

Articles 1(2), 5(1)(a), 7(1)(b) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Commission Directive 2000/56/EC of 14 September 2000, do not preclude a host Member State from refusing to recognise a driving licence for vehicles in categories B and D issued by another Member State, first, if the holder of that driving licence was granted the right to drive vehicles in category B in disregard of the normal residence condition and after his driving licence issued by the first Member State had been confiscated by the police authorities in that first Member State but before the right to drive was withdrawn by court order in that first Member State, and, second, if the holder of that

driving licence was granted the right to drive vehicles in category D after that withdrawal by court order and after the expiry of the ban on the issue of a new driving licence.

(1) OJ C 221, 14.8.2010.

Judgment of the Court (Third Chamber) of 13 October 2011 — Deutsche Post AG, Federal Republic of Germany v European Commission

(Joined Cases C-463/10 P and C-475/10 P) (1)

(Appeals — State aid — Regulation (EC) No 659/1999 — Article 10(3) — Decision requiring the production of information — Act open to challenge for the purposes of Article 263 TFEU)

(2011/C 355/10)

Language of the case: German

Parties

Appellant: Deutsche Post AG (represented by: J. Sedemund and T. Lübbig, Rechtsanwälte), Federal Republic of Germany (represented by T. Henze, J. Möller and N. Graf Vitzthum, Agents)

Other party to the proceedings: European Commission (represented by: B. Martenczuk and T. Maxian Rusche, Agents)

Re:

Appeal against the order of the General Court (First Chamber) of 14 July 2010 in Case T-570/08 *Deutsche Post* v *Commission* by which the General Court upheld a plea of inadmissibility put forward by the Commission and accordingly dismissed as inadmissible the action for annulment of the decision contained in the Commission's letter of 30 October 2008 requiring information to be provided in the proceedings relating to State aid to Deutsche Post AG — Misinterpretation of 'challengeable act' for the purposes of Article 230 EC — Failure to have regard to the nature and legal consequences of the contested act — Infringement of the principle of effective judicial protection

Operative part of the judgment

The Court:

1. *Annuls the orders of the General Court of the European Union of 14 July 2010, Deutsche Post v Commission (T-570/08), and Germany v Commission (T-571/08).*

2. *Dismisses the objections of inadmissibility raised by the European Commission before the General Court of the European Union.*

3. *Refers the cases back to the General Court of the European Union for a decision on the pleas of Deutsche Post AG (T-570/08) and the Federal Republic of Germany (T-571/08) for the annulment of the Commission's decision of 30 October 2008 ordering the Federal Republic of Germany to provide information in the proceedings concerning State aid in favour of Deutsche Post AG.*

4. *Reserves the costs.*

(1) OJ C 328, 4.12.2010.

Judgment of the Court (Eighth Chamber) of 13 October 2011 (reference for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Waypoint Aviation SA v État belge — SPF Finances

(Case C-9/11) (1)

(Freedom to provide services — Tax legislation — Tax credit on income from loans granted for the acquisition of assets used on national territory — Exclusion of assets for which the right to use is transferred to a third party established in another Member State)

(2011/C 355/11)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Waypoint Aviation SA

Defendant: État belge — SPF Finances

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Article 10 EC (Article 4(3) EU) and Article 49 EC (Article 56 TFEU) — National legislation which grants a tax credit to the recipients of income from debt-claims or loans granted to a national coordination centre — Right to use assets acquired using borrowed funds by a resident company in the same group as that to which the coordination centre belongs — Exclusion of non-resident companies in the same group — Restrictions on the freedom to provide services

Operative part of the judgment

Article 49 EC must be interpreted as precluding a legislative provision of a Member State, such as that in issue in the main proceedings, which provides for the grant of a tax credit on income from loans provided to certain companies for the acquisition of new assets used on the national territory subject to the condition that the right to use the asset is not transferred, by the company which acquired it through the loan conferring entitlement to the tax credit or by any other company in the same group, to third parties other than members of that group established in that Member State.

(1) OJ C 95, 26.3.2011.

Reference for a preliminary ruling from the Rechtbank Amsterdam (Netherlands), lodged on 29 August 2011 — F.P. Jeltes, M.A. Peeters, J.G.J. Arnold v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)

(Case C-443/11)

(2011/C 355/12)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicants: F.P. Jeltes, M.A. Peeters, J.G.J. Arnold

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv)

Questions referred

1. Is the supplementary scope of the judgment in Case 1/85 *Miethe*, [1] which was delivered while Regulation No 1408/71 [2] was in force, still valid under Regulation No 883/2004, [3] that is to say, a right of choice for an atypical frontier worker in respect of the Member State in which he makes himself available to the employment recruitment services, and from which he receives unemployment benefit, on the ground that in the Member State of his choice his prospects of reintegration into working life are greatest? Or does Article 65 of Regulation No 883/2004, considered as a whole, provide sufficient guarantees that a wholly unemployed worker will receive a benefit under conditions which are most favourable for him in his search for work, and has the *Miethe* judgment lost its added value?

2. Does European Union law, in this case Article 45 TFEU or Article 7(2) of Regulation No 1612/68, [4] preclude the refusal by a Member State to award an unemployment benefit under its national legislation in the case of a migrant worker (frontier worker) who has become wholly unemployed, who was last employed in that Member State and who, given the existence of social and family ties, may be assumed to have the best prospects of reintegration into working life in that Member State, solely on the ground that he resides in another Member State?

3. Having regard to Article 87(8) of Regulation No 883/2004, Article 17 of the Charter of Fundamental Rights of the European Union and the principle of legal certainty, what would be the answer to the foregoing question if, before the date of the entry into force of Regulation No 883/2004, such a worker had been awarded an unemployment benefit under the legislation of the previous State of employment, where the maximum duration of the benefit and of the revival had not yet lapsed at the time of that entry into force (and where that benefit was terminated on the ground that the unemployed person had again found work)?

4. Would the answer to Question 2 be different if undertakings had been given to the unemployed frontier workers concerned that they would be able to apply for the revival of their entitlement to benefits if, after having found new work, they were once again to become unemployed, and the information supplied in that regard does not appear to have been correct or unambiguous as a result of lack of clarity in implementing practice?

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[1] Case 1/85 *Miethe* [1986] ECR 1837.

[2] 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 (OJ English Special Edition, 1971(II), p. 416).

[3] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

[4] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475).

Reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 6 September 2011 — L v M

(Case C-463/11)

(2011/C 355/13)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: L

Defendant: M

Question referred

Does a Member State exceed the limits of its discretion under Article 3(4) and (5) of Directive 2001/42 [1] if, in respect of a municipality's development plans which determine the use of small areas at local level and set the framework for future development consent of projects but do not fall within the scope of Article 3(2) of Directive 2001/42, it determines — having regard to the relevant criteria of Annex II to the directive — by specifying a particular type of development plan which is characterised by a threshold based on surface area and by a qualitative condition, that when drawing up such a development plan the procedural provisions on environmental assessment otherwise applicable to development plans are to be waived and also provides that an infringement of those procedural provisions which stems from the fact that the municipality has incorrectly assessed the qualitative condition is irrelevant for the legal validity of a development plan of that particular type?

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[1] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

Reference for a preliminary ruling from the Berufsgericht für Heilberufe bei dem Verwaltungsgericht Gießen (Germany) lodged on 19 September 2011 — Disciplinary proceedings against Kostas Konstantinides

(Case C-475/11)

(2011/C 355/14)

Language of the case: German

Referring court

Berufsgericht für Heilberufe bei dem Verwaltungsgericht Gießen

Parties to the main proceedings

Defendant: Kostas Konstantinides

Other party: Landesärztekammer Hessen

Questions referred

A. With regard to Article 5(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Directive 2005/36/EC): [1]

1. Is Paragraph 12(1) of the Berufsordnung für die Ärztinnen und Ärzte in Hessen (Professional Code of Conduct for the Medical Profession in Hesse) of 2 September 1998 (Hessisches Ärzteblatt (HÄBl.) 1998, p. I–VIII), last amended on 1 December 2008 (HÄBI. 2009, p. 749) — 'the Code of Conduct' — a professional rule the breach of which by the service provider in the host State may give rise to professional disciplinary proceedings concerning serious professional malpractice which is directly and specifically linked to consumer protection and safety?

2. If so, does this also hold in the event that no relevant fee code exists for the operation performed by the service provider (here: the doctor) in the applicable Gebührenordnung für Ärzte (Regulation on Medical Fees) of the host State?

3. Are the provisions on unprofessional advertising (Paragraph 27(1)-(3) in conjunction with Section D, point 13 of the Code of Conduct) professional rules the breach of which by the service provider in the host State may give rise to professional disciplinary proceedings concerning serious professional malpractice which is directly and specifically linked to consumer protection and safety?

B. With regard to letter (a) of the first sentence of Article 6 of Directive 2005/36/EC:

Do the rules adopted in implementation of Directive 2005/36/EC amending Paragraph 3(1) and (3) of the Hessisches Gesetz über die Berufsvertretungen, die Berufsausübung, die Weiterbildung und die Berufsgerichtsbarkeit der Ärzte, Zahnärzte, Tierärzte, Apotheker, Psychologischen Psychotherapeuten und Kinder- und Jugendlichenpsychotherapeuten (Hesse Law on professional associations, professional practice, further training and jurisdiction of professional disciplinary tribunals for doctors, dentists, veterinarians, pharmacists, psychological psychotherapists and child and youth psychotherapists ('Law on the medical profession')), in the version published on 7 February 2003 (Gesetz- und Verordnungsblatt (GVBl.) I, p. 123), last amended by the Law of 24 March 2010 (GVBl. I, p. 123), by the Drittes Gesetz zur Änderung des Heilberufsgesetzes (Third Law amending the Law on the medical profession) of 16 October 2006 (GVBl. I, p. 519), represent the correct implementation of the abovementioned provisions of Directive 2005/36/EC, in that both the relevant codes of conduct and the provisions governing jurisdiction of professional disciplinary tribunals in the Sixth Section of the Law on the medical profession are declared to be fully applicable to service providers (here: doctors) who are working temporarily in the host State exercising freedom to provide services under Article 57 TFEU (formerly Article 50 EC)?

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[1] OJ 2005 L 255, p. 22.

Action brought on 22 September 2011 — European Commission v French Republic

(Case C-485/11)

(2011/C 355/15)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that by introducing an additional charge on operators of electronic communications by Article 33 of Law No 2009-258 of 5 March 2009 on audiovisual communication, [1] the French Republic failed to fulfil its obligations under Article 12 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services. [2]

— order the French Republic to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission questions the compatibility of Article 302 bis KH of the General Tax Code, introduced par Article 33 of Law No 2009-258 of 5 March 2009 on audiovisual communication and the new public television service, with the Authorisations Directive. By imposing a charge on undertakings operating an electronic communications network or providing an electronic communications service under the general authorisation, the defendant infringes in particular Article 12 of the directive. The Commission does not accept the argument of the national authorities that Article 12 relates solely to charges which the States may impose 'in respect of' the issue of a licence or a process linked to the procedure of authorising operators of electronic

communications. According to the applicant, the objective of Article 12 is in fact to encompass any form of 'administrative' charge, in other words linked to all costs engendered by the management, monitoring and enforcement of the authorisation scheme, and not only those linked to the issue of authorisation.

(1) JORF No 0056, p. 4321.
(2) OJ 2002 L 108, p. 21.

Reference for a preliminary ruling from the Tribunal da Relação de Guimarães (Portugal) lodged on 22 September 2011 — Jonathan Rodrigues Esteves v Seguros Allianz Portugal SA

(Case C-486/11)

(2011/C 355/16)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Guimarães

Parties to the main proceedings

Applicant: Jonathan Rodrigues Esteves

Defendant: Seguros Allianz Portugal SA

Questions referred

(a) Must Article 1a of the Third Motor Insurance Directive (90/232/EEC) (1) — inserted by Article 4 of the Fifth Motor Insurance Directive (2005/14/EC) (2) — on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles be interpreted as precluding national law (such as that stemming from Articles 505 and 570 of the Portuguese Civil Code) which provides that that compulsory insurance against such liability does not cover liability for the personal and material damage caused to a cyclist in a road-traffic accident between a motor vehicle and a bicycle, even though the accident is due solely to the cyclist's conduct?

(b) If the answer is in the affirmative — that is, such an exclusion of compensation is contrary to Community law — is national legislation that limits or reduces such compensation, having regard to the fault of the cyclist, on the one hand, and the risk posed by the motor vehicle, on the other, in causing the accident, compatible with the aforementioned Community directives?

(1) OJ 1990 L 129, p. 33.
(2) OJ 2005 L 149, p. 14.

Appeal brought on 27 September 2011 by Total SA and Elf Aquitaine SA against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 14 July 2011 in Case T-190/06 Total and Elf Aquitaine v Commission

(Case C-495/11 P)

(2011/C 355/17)

Language of the case: French

Parties

Appellants: Total SA and Elf Aquitaine SA (represented by: E. Morgan de Rivery and A. Noël-Baron, avocats)

Other party to the proceedings: European Commission

Form of order sought

Primarily:

— on the basis of Article 263 TFEU, set aside the judgment of the General Court of 14 July 2011 in Case T-190/06 *Total and Elf Aquitaine* v *Commission*;

— grant the forms of order sought at first instance before the General Court;

— consequently, annul Articles 1(o) and (p), 2(i), 3 and 4 of Commission Decision C(2006) 1766 final of 3 May 2006;

in the alternative:

— cancel, on the basis of Article 261 TFEU, the fines imposed on Elf Aquitaine and Total jointly and severally under Article 2(i) of that decision;

in the further alternative:

— amend, on the basis of Article 261 TFEU, the fines imposed on Elf Aquitaine and Total jointly and severally under Article 2(i) of that decision;

— in any event, order the European Commission to pay all the costs, including those incurred by Elf Aquitaine and Total before the General Court.

Pleas in law and main arguments

In support of their appeal, the appellants raise five main grounds of appeal, one in the alternative and one in the further alternative.

By the first ground of appeal, Total SA and Elf Aquitaine SA claim that the General Court infringed Article 5 TEU in so far as it validated the principle that a parent company is automatically liable for the infringements committed by its subsidiary, which the Commission applied in the present case and justified by the concept of undertaking within the meaning of Article 101 TFEU. Such an approach is incompatible with the principles of conferral of powers and subsidiarity (first part) and with the principle of proportionality (second part).

By the second ground of appeal, the appellants submit that the General Court's interpretation of national law and of the concept of undertaking was manifestly erroneous in that, inter alia, it conferred the wrong legal status on the principle of autonomy of legal persons.

By the third ground of appeal, the appellants claim, in essence, that the General Court deliberately refused to draw the appropriate conclusions from the criminal nature of competition law sanctions and from the new obligations resulting from the Charter of Fundamental Rights of the European Union. In the appellants' view, the General Court applied the concept of undertaking under European Union law unlawfully and erroneously, without regard to the presumption of autonomy on which national company law is based and to the criminal nature of competition law sanctions. Moreover, the appellants submit that the General Court should have raised, of its own motion, the illegality of the current administrative procedure before the Commission.

By the fourth ground of appeal, the appellants allege infringement of the rights of the defence as a result of an erroneous interpretation of the principles of fairness and equality of arms. The General Court approved the Commission's use of *probatio diabolica* and erred in finding that a subsidiary's autonomy must be assessed in general terms by reference to its capital links with its parent company, whereas it ought to be assessed by reference to conduct on a given market.

By the fifth ground of appeal, the appellants submit that the General Court made errors of law in relation to the Commission's obligation to state the reasons for its decision (first part). Furthermore, the parties claim that the General Court substituted its own reasoning for that of the Commission (second part).

By the sixth ground of appeal, the appellants seek, in the alternative, cancellation of the fines imposed on them.

Lastly, by the seventh ground of appeal, put forward in the further alternative, the appellants seek a reduction in the fines imposed on them.

Appeal brought on 27 September 2011 by The Dow Chemical Company, Dow Deutschland Inc., Dow Deutschland Anlagengesellschaft mbH, Dow Europe GmbH against the judgment of the General Court (First Chamber) delivered on 13 July 2011 in Case T-42/07: The Dow Chemical Company and others v European Commission

(Case C-499/11 P)

(2011/C 355/18)

Language of the case: English

Parties

Appellants: The Dow Chemical Company, Dow Deutschland Inc., Dow Deutschland Anlagengesellschaft mbH, Dow Europe GmbH (represented by: D. Schroeder, Rechtsanwalt, T. Kuhn, Rechtsanwalt, T. Graf, Advocat)

Other party to the proceedings: European Commission

Form of order sought

— The Dow Chemical Company respectfully requests the Court of Justice to set aside the General Court's judgment in Case T-42/07 in so far as it dismisses its request to annul the Commission's decision of 29 November 2006 in Case COMP/F/38.638 insofar as it relates to it;

— The Dow Chemical Company respectfully requests the Court of Justice to annul the Commission's decision of 29 November 2006 in Case COMP/F/38.638 insofar as it relates to it;

— All Appellants respectfully request the Court of Justice to set aside the General Court's judgment in Case T-42/07 in so far as it dismisses their request to substantially reduce their fines;

— All Appellants respectfully request the Court of Justice to substantially reduce their fines;

— All Appellants respectfully request the Court of Justice

— to order the Commission to pay the Appellants' legal and other costs and expenses in relation to this matter; and

— take any other measures that this Court considers appropriate.

Pleas in law and main arguments

The appeal contains four pleas. According to the first plea, the General Court erred in law by assuming that the Commission does not have to exercise its discretion properly and by not exercising the full scope of judicial review with regard to the exercise of the Commission's discretion in holding The Dow Chemical Company liable. According to the second plea, the General Court erred in law with respect to the differential treatment applied to the starting amounts of the fine. According to the third plea, the General Court erred in law by confirming that the Commission was entitled to take The Dow Chemical Company's turnover into account. According to the fourth plea, the General Court erred in law by confirming that the Commission's application of the deterrence multiplier is not discriminatory.

Appeal brought on 7 October 2011 by ThyssenKrupp Liften Ascenseurs NV against the judgment delivered by the General Court (Eighth Chamber) on 13 July 2011 in Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 ThyssenKrupp Liften Ascenseurs and Others v European Commission

(Case C-516/11 P)

(2011/C 355/19)

Language of the case: Dutch

Parties

Appellant: ThyssenKrupp Liften Ascenseurs NV (represented by: O.W. Brouwer and J. Blockx, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment under appeal of the General Court of 13 July 2011 in so far as the General Court rejected the pleas put forward by the appellant at first instance;

— give judgment in this case and annul Commission Decision C(2007) 512 final ([1]) of 21 February 2007 in Case COMP/E-1/38.823 — Elevators and Escalators on the basis of the relevant pleas put forward at first instance and/or reduce the fine imposed on ThyssenKrupp Liften Ascenseurs NV;

— in the alternative, reduce the fine imposed on the appellant;

— in the further alternative, refer the case back to the General Court;

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

Pleas in law and main arguments

The appellant puts forward four grounds in support of its appeal.

1. Infringement of Article 81(1) (now Article 101(1)) EC since the infringements are not capable of appreciably affecting trade between Member States and the Commission unlawfully initiated the investigation procedure.

2. Breach of the *ne bis in idem* principle.

3. Infringement of Article 23 of Regulation 1/2003, ([2]) Articles 48(1) and 49(1) and (3) of the Charter of Fundamental Rights of the European Union and of the principle that penalties must fit the offence on account of the confirmation of the appellant's joint and several liable for the entire amount of the fine calculated on the basis of the group turnover.

4. Error of assessment and unlawful omission by the General Court, in so far as it failed to make any use of its unlimited jurisdiction in the area of fines, inter alia as regards the extent of the market concerned, the multiplier for deterrence and the cooperation in and outside the context of the 2002 Leniency Notice.

([1]) Summary in OJ 2008 C 75, p. 19.
([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Appeal brought on 11 October 2011 by ThyssenKrupp Liften BV against the judgment delivered by the General Court (Eighth Chamber) on 13 July 2011 in Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 ThyssenKrupp Liften Ascenseurs and Others v European Commission

(Case C-519/11 P)

(2011/C 355/20)

Language of the case: Dutch

Parties

Appellant: ThyssenKrupp Liften BV (represented by: O.W. Brouwer, N. Lorjé, N. Al-Ani, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment under appeal of the General Court of 13 July 2011 in so far as the General Court rejected the pleas put forward by the appellant at first instance;

— give judgment in this case and annul Commission Decision C(2007) 512 final ([1]) of 21 February 2007 in Case COMP/E-1/38.823 — Elevators and Escalators on the basis of the relevant pleas put forward at first instance and/or reduce the fine imposed on the appellant;

— in the alternative, reduce the fine imposed on the appellant;

— in the further alternative, refer the case back to the General Court;

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

Pleas in law and main arguments

The appellant puts forward five grounds in support of its appeal.

1. Infringement of Article 81(1) EC (now Article 101(1) TFEU) since the infringements are not capable of appreciably affecting trade between Member States and the Commission unlawfully initiated the procedure.

2. Breach of the *ne bis in idem* principle.

3. Breach of the principle of proportionality as a result of the setting of a disproportionate starting amount of the fine.

4. Infringement of the maximum amount of the fine provided for in Article 23 of Regulation 1/2003, [2] the presumption of innocence set out in Article 48(1) of the Charter of Fundamental Rights of the European Union and Article 6(2) of the ECHR, the *nulla poena sine lege* principle set out in Article 49(1) of the Charter of Fundamental Rights of the European Union, the principle of proportionality in Article 49(3) of the Charter of Fundamental Rights of the European Union, the principle that penalties must fit the offence and the principle of personal liability for penalties on account of the confirmation of the appellant's joint and several liable for the entire amount of the fine calculated on the basis of the group turnover.

5. Error of assessment and unlawful omission by the General Court, in so far as it failed to make any use of its unlimited jurisdiction in the area of fines, inter alia as regards the starting amount of the fine, the multiplier for deterrence and the cooperation outside the context of the 2002 Leniency Notice.

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[1] Summary in OJ 2008 C 75, p. 19.

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

GENERAL COURT

Judgment of the General Court (Second Chamber) of 25 October 2011 — CHEMK and KF v Council

(Case T-190/08) [1]

(Dumping — Imports of ferro-silicon originating in the former Yugoslav Republic of Macedonia, China, Egypt, Kazakhstan and Russia — Calculation of the export price — Profit margin — Price undertaking — Injury — Causal link — Complaint — Rights of the defence — Obligation to state reasons)

(2011/C 355/21)

Language of the case: English

Parties

Applicants: Chelyabinsk Electrometallurgical Integrated Plant OAO (CHEMK) (Chelyabinsk, Russia); and Kuzneckie Ferrosplavy OAO (KF) (Novokuznetsk, Russia) (represented by P. Vander Schueren, lawyer)

Defendant: Council of the European Union (represented initially by J. P. Hix, and subsequently by J.-P. Hix and B. Driessen, Agents, assisted initially by G. Berrisch and G. Wolf, and subsequently by G. Berrisch, lawyers)

Intervener in support of the defendant: European Commission (represented initially by H. van Vliet and K. Talabér-Ritz, and subsequently by H. van Vliet and M. França, Agents)

Re:

Application for partial annulment of Council Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2008 L 55, p. 6), in so far as it affects the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Chelyabinsk Electrometallurgical Integrated Plant OAO (CHEMK) and Kuzneckie Ferrosplavy OAO (KF) to bear their own costs as well as those incurred by the Council of the European Union.*

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

[1] OJ C 197, 2.8.2008.

Judgment of the General Court of 25 October 2011 — Transnational Company 'Kazchrome' and ENRC Marketing v Council

(Case T-192/08) [1]

(Dumping — Imports of ferro-silicon originating in the former Yugoslav Republic of Macedonia, China, Egypt, Kazakhstan and Russia — Causal link — Community interest — Lack of cooperation — Facts available — Market economy treatment — Rights of the defence — Obligation to state reasons)

(2011/C 355/22)

Language of the case: English

Parties

Applicants: Transnational Company 'Kazchrome' AO (Aktobe, Kazakhstan) and ENRC Marketing AG (Kloten, Switzerland) (represented by: initially L. Ruessmann and A. Willems, and subsequently by A. Willems and S. de Knop, lawyers)

Defendant: Council of the European Union (represented by: initially J.-P. Hix and subsequently by J.-P. Hix and B. Driessen, Agents, assisted initially by G. Berrisch and G. Wolf, and subsequently by G. Berrisch, lawyers)

Interveners in support of the defendant: European Commission (represented by H. van Vliet and K. Talabér-Ritz, Agents), and Euroalliages (Brussels, Belgium) (represented by J. Bourgeois, Y. van Gerven and N. McNelis, lawyers)

Re:

APPLICATION for partial annulment of Council Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2008 L 55, p. 6), in so far as it applies to the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Transnational Company 'Kazchrome' AO and ENRC Marketing AG to bear their own costs as well as those incurred by the Council of the European Union and by Euroalliages;*

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

[1] OJ C 197, 2.8.2008.

Judgment of the General Court of 25 October 2011 — Aragonesas Industrias y Energía v Commission

(Case T-348/08) ([1])

(Competition — Agreements, decisions and concerted practices — Sodium chlorate market — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Action for annulment — Market-sharing — Price-fixing — Body of evidence — Date of the evidence — Statements of competitors — Acknowledgment — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances)

(2011/C 355/23)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: A. Biolan, J. Bourke and R. Sauer, Agents)

Re:

Application, primarily, for the annulment of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) to the extent to which it concerns Aragonesas Industrias y Energía and, in the alternative, for the annulment or a substantial reduction of the fine imposed on it in that decision

Operative part of the judgment

The Court:

1. *Annuls Article 1(g) of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) in so far as the Commission of the European Communities found therein an infringement by Aragonesas Industrias y Energía, SAU, from 16 December 1996 to 27 January 1998 and from 1 January 1999 to 9 February 2000;*

2. *Annuls Article 2(f) of Decision C(2008) 2626 final in so far as its sets the amount of the fine at EUR 9 900 000;*

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

4. *Orders Aragonesas Industrias y Energía to bear a third of its own costs and half of those incurred by the Commission;*

5. *Orders the Commission to bear half of its own costs and two thirds of those incurred by Aragonesas Industrias y Energía.*

([1]) OJ C 285, 8.11.2008.

Judgment of the General Court of 25 October 2011 — Uralita v Commission

(Case T-349/08) ([1])

(Competition — Agreements, decisions and concerted practices — Sodium chlorate market — Decision finding an infringement of Article 81 EC — Action for annulment — Imputability of unlawful conduct)

(2011/C 355/24)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: F. Castilla Contreras, R. Sauer, A. Biolan and J. Bourke, Agents)

Re:

Application for the partial annulment of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) in so far as it concerns Uralita, SA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Uralita, SA to pay the costs.*

([1]) OJ C 285, 8.11.2008.

Judgment of the General Court of 20 October 2011 — Eridania Sadam v Commission

(Case T-579/08) ([1])

(State aid — Measures by the Italian authorities aimed at compensating for the losses suffered by the sugar refinery Villasor (Italy) following a drought — Decision declaring the aid incompatible with the common market — Obligation to state reasons — Guidelines for State aid in the agricultural sector)

(2011/C 355/25)

Language of the case: Italian

Parties

Applicant: Eridania Sadam SpA (Bologna, Italy) (represented by: G.M. Roberti, I. Perego, B. Amabile and M. Serpone, lawyers)

Defendant: European Commission (represented by: R. Rossi and B. Stromsky, Agents)

Re:

Application for annulment of Commission Decision 2009/704/EC of 16 July 2008 relating to State aid C 29/2004 (ex N 328/2003) that Italy is considering granting to the Villasor sugar refinery owned by Sadam ISZ (OJ 2009 L 244, p. 10).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Eridania SpA to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 44, 21.2.2009.

Judgment of the General Court of 20 October 2011 — Alfastar Benelux v Council

(Case T-57/09) ([1])

(Public service contracts — Tendering procedure — Provision of technical maintenance and help desk and on-site intervention services for the PCs, printers and peripherals of the General Secretariat of the Council — Rejection of a tender — Obligation to state the reasons on which a decision is based)

(2011/C 355/26)

Language of the case: English

Parties

Applicant: Alfastar Benelux (Ixelles, Belgium) (represented by: N. Keramidas, lawyer)

Defendant: Council of the European Union (represented by: M. Balta, M. Vitsentzatos and M. Robert, Agents)

Re:

Application, first, for annulment of the Council's decision of 1 December 2008 to reject the tender submitted by the Alfastar-Siemens consortium, composed of Alfastar Benelux SA and Siemens IT Solutions and Services SA, in response to Call for Tenders UCA/218/07 for the provision of technical maintenance — help desk and on-site intervention services for the PCs, printers and peripherals of the General Secretariat of the Council (OJ 2008/S 91-122796) and to award the contract to another tenderer and, secondly, for damages.

Operative part of the judgment

The Court:

1. *Annuls the Council's decision of 1 December 2008 to reject the tender submitted by the consortium composed of Alfastar Benelux SA and Siemens IT Solutions and Services SA, in response to Call for Tenders UCA/218/07 for the provision of technical maintenance — help desk and on-site intervention services for the PCs, printers and peripherals of the General Secretariat of the Council and to award the contract to another tenderer;*

2. *Dismisses the claim for damages;*

3. *Orders the Council of the European Union to pay the costs.*

([1]) OJ C 102, 1.5.2009.

Judgment of the General Court of 20 October 2011 — Poloplast v OHIM — Polypipe (P)

(Case T-189/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community trade mark P — Earlier figurative Community marks P and P POLYPIPE — Relative grounds for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2011/C 355/27)

Language of the case: German

Parties

Applicant: Poloplast GmbH & Co. KG (Leonding, Austria) (represented by: G. Bruckmüller, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Polypipe Ltd (Edlington, United Kingdom) (represented by: initially K.E. Gilbert and M.H. Blair, Solicitors, subsequently K.E. Gilbert, M.H. Blair and S.S. Malynicz, Barrister)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 February 2009 (Case R 80/2008-2) relating to opposition proceedings between Polypipe Ltd and Poloplast GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Poloplast GmbH & Co. KG to pay the costs, including the costs necessarily incurred by Polypipe Ltd for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 167, 18.7.2009.

Judgment of the General Court of 20 October 2011 — COR Sitzmöbel Helmut Lübke v OHIM — El Corte Inglés (COR)

(Case T-214/09) [1]

(Community trade mark — Opposition proceedings — Application for territorial extension of the protection of an international registration — Word mark COR — Earlier Community word mark CADENACOR — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Similarity of the signs — Similarity of the goods)

(2011/C 355/28)

Language of the case: English

Parties

Applicant: COR Sitzmöbel Helmut Lübke GmbH & Co. KG (Rheda-Wiedenbrück, Germany) (represented by: Y.-G. von Amsberg and A.-S. Loesenbeck, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, M.E. López Camba and Seijo Veiguela, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 March 2009 (Case R 376/2008-2) concerning opposition proceedings between El Corte Inglés, SA, and COR Sitzmöbel Helmut Lübke GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders COR Sitzmöbel Helmut Lübke GmbH & Co. KG to pay the costs.*

[1] OJ C 180, 1.8.2009.

Judgment of the General Court of 26 October 2011 — Bayerische Asphaltmischwerke v OHIM — Koninklijke BAM Groep (bam)

(Case T-426/09) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark BAM — Earlier national figurative mark BAM — Relative ground for refusal — Likelihood of confusion — No similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 355/29)

Language of the case: English

Parties

Applicant: Bayerische Asphaltmischwerke GmbH & Co. KG für Straßenbaustoffe (Hofolding, Germany) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Koninklijke BAM Groep NV (Bunnik, Netherlands) (represented by: initially, J. van Manen, subsequently, J. van Manen and M. van de Braak, and lastly, J. van Manen and R. Sjoerdsma, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 August 2009 (Case R 1005/2008-2), relating to opposition proceedings between Bayerische Asphaltmischwerke GmbH & Co. KG für Straßenbaustoffe and Koninklijke BAM Groep NV

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Bayerische Asphaltmischwerke GmbH & Co. KG für Straßenbaustoffe to pay, in addition to its own costs, the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by Koninklijke BAM Groep NV, including, as regards the latter, the costs necessarily incurred for the purposes of the proceedings before the Board of Appeal.*

[1] OJ C 11, 16.1.2010.

Judgment of the General Court of 26 October 2011 — Dufour v ECB

(Case T-436/09) [1]

(Access to documents — Decision 2004/258/EC — ECB's databases used for the preparation of reports on staff recruitment and mobility — Refusal of access — Action for annulment — Interest in bringing proceedings — Admissibility — Meaning of 'document' — Action for damages — Premature)

(2011/C 355/30)

Language of the case: French

Parties

Applicant: Julien Dufour (Jolivet, France) (represented by: I. Schoenacker Rossi and H. Djeyaramane, lawyers)

Defendant: European Central Bank (ECB) (represented by: initially K. Laurinavicius and S. Lambrinoc, then S. Lambrinoc and P. Embley, Agents)

Interveners in support of the applicant: Kingdom of Denmark (represented by: B. Weis Fogh and S. Juul Jørgensen, Agents); Republic of Finland (represented by: initially J. Heliskoski, H. Leppo and M. Pere, then J. Heliskoski and H. Leppo, Agents); and Kingdom of Sweden (represented by: A. Falk, K. Petkovska and S. Johannesson, Agents)

Intervener in support of the defendant: European Commission (represented by: J.-P. Keppenne and C. ten Dam, Agents)

Re:

Application for, first, annulment of the decision of the Board of Directors of the European Central Bank, notified to the applicant by letter of the President of the ECB of 2 September 2009, refusing to grant the applicant access to the databases used for the compilation of reports on its staff recruitment and mobility and, second, delivery up to the applicant of the databases in question, and, finally, a claim for damages for the loss allegedly suffered by the applicant as a result of the refusal of his application for access

Operative part of the judgment

The Court:

1. *Annuls the decision of the Board of Directors of the European Central Bank (ECB) notified to Mr Julien Dufour by letter of the President of the ECB of 2 September 2009;*

2. *Dismisses the remainder of the action;*

3. *Orders the ECB to bear its own costs and to pay those incurred by Mr Dufour;*

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

([1]) OJ C 11, 16.1.2010.

Judgment of the General Court of 26 October 2011 — Intermark v OHIM — Natex International (NATY'S)

(Case T-72/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark NATY'S — Earlier Community figurative mark Naty — Relative ground for refusal — Likelihood of confusion — Similarity of goods — Article 8(1)(b) of Regulation (EC) No 207/2009 — Partial rejection of opposition)

(2011/C 355/31)

Language of the case: Italian

Parties

Applicant: Intermark Srl (Stei, Romania) (represented by: Á. László, lawyer)

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 December 2009 (Case R 953/2009-2) relating to opposition proceedings between Intermark Srl and Natex International Trade SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Intermark Srl to pay the costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 20 October 2011 — Scatizza v OHIM — Jacinto (Horse Couture)

(Case T-238/10) ([1])

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

(2011/C 355/32)

Language of the case: English

Parties

Applicant: Stephanie Scatizza (Breganzona, Switzerland) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Manuel Jacinto, L[da] (São Paio de Oleiros, Portugal)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 March 2010 (Case R 723/2009-2) relating to opposition proceedings between Manuel Jacinto, L[da] and Stephanie Scatizza.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Stephanie Scatizza to pay the costs.*

([1]) OJ C 209, 31.7.2010.

Judgment of the General Court of 25 October 2011 — Microban International and Microban (Europe) v Commission

(Case T-262/10) [1]

(Public health — List of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs — Withdrawal by the original applicant of the application for inclusion of an additive on the list — Commission decision not to include 2,4,4'-trichloro-2'-hydroxydiphenyl ether in the list — Actions for annulment — Admissibility — Regulatory act — Whether directly concerned — No implementing measures — Legal basis)

(2011/C 355/33)

Language of the case: English

Parties

Applicants: Microban International (Huntersville, North Carolina, United States) and Microban (Europe) Ltd (Cannock, United Kingdom) (represented by: M. Sánchez Rydelski, lawyer)

Defendant: European Commission (represented by: L. Pignataro and T. Scharf, Agents)

Re:

ACTION for annulment of Commission Decision 2010/169/EU of 19 March 2010 concerning the non-inclusion of 2,4,4'-trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC (OJ 2010 L 75, p. 25).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2010/169/EU of 19 March 2010 concerning the non-inclusion of 2,4,4'-trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC.*

2. *Orders the European Commission to pay its own costs and those incurred by Microban International Ltd and Microban (Europe) Ltd.*

[1] OJ C 221, 14.8.2010.

Order of the General Court of 12 October 2011 — Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro v Commission

(Case T-353/10) [1]

(Action for annulment — Debit note — Objection of inadmissibility — Contractual nature of the dispute — Nature of the action — Act open to challenge)

(2011/C 355/34)

Language of the case: Greek

Parties

Applicant: Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro (Athens, Greece) (represented by: E. Tzannini, lawyer)

Defendant: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Re:

Application for partial annulment of a debit note issued by the Commission on 22 July 2010 for recovery of the sum of EUR 109 415,20 paid to the applicant in the context of financial assistance in support of a medical research project

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The European Commission is ordered to bear its own costs and to pay those incurred by Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro AE.*

[1] OJ C 288, 23.10.2010.

Order of the President of the General Court of 14 October 2011 — Rousse Industry v European Commission

(Case T-489/11 R)

(Application for interim measures — State aid — Decision declaring aid to be incompatible with the common market and ordering its recovery — Application for suspension of operation — Failure to have regard to formal requirements — Inadmissibility)

(2011/C 355/35)

Language of the case: Bulgarian

Parties

Applicant: Rousse Industry (Rousse, Bulgaria) (represented by: A. Angelov and S. Panov, lawyers)

Defendant: European Commission (represented by: C. Urraca Caviedes and D. Stefanov, Agents)

Re:

Application for suspension of operation of Commission Decision C(2011) 4903 final of 13 July 2011 declaring incompatible with the internal market the aid granted by Bulgaria in favour of Rousse Industry in the form of rescheduling of debts owed to the State (State aid C 12/2010 and N 389/2009) in so far as that decision orders the recovery of that aid from the applicant.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 21 September 2011 — 'Rauscher' Consumer Products v OHIM (Representation of a tampon)

(Case T-492/11)

(2011/C 355/36)

Language of the case: German

Parties

Applicant: 'Rauscher' Consumer Products GmbH (Vienna, Austria) (represented by M. Stütz, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 July 2011 in Case R 2168/2010-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: figurative mark, representing a tampon, for goods in Classes 3 and 5

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009 as the Community trade mark concerned has distinctive character

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Action brought on 23 September 2011 — Germany v Commission

(Case T-500/11)

(2011/C 355/37)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze and K. Petersen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision C(2011) 4922 final of 13 July 2011 in State aid procedure N 438/2010 in so far as it declares that the entire subordinated loans scheme is covered by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid;

— in the alternative, annul the whole decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

The action is directed against the Commission's decision on the subordinated loans scheme WACHSTUM for undertakings with a rating in Sachsen-Anhalt in so far as it declares that the entire subordinated loans scheme is covered by Regulation (EC) No 1998/2006 ([1]) on *de minimis* aid.

The action challenges the Commission's view that it is to be assumed, on the basis of the mere fact that the loans are granted by a special credit institution, that they are not granted under market conditions and that therefore the requirements of the *de minimis* Regulation must be complied with.

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of Article 107 TFEU in conjunction with Articles 1 and 2 of Regulation No 1998/2006 on account of the incorrect finding or mere claim that there is an advantage

   The Commission's finding that the measure is covered by the *de minimis* Regulation is substantively incorrect. The addressees of the loans scheme received no advantage for the purposes of Article 107(1) TFEU with the result that the loans scheme should not therefore be regarded as aid in the main cases to which it applies.

   — The Commission should not have concluded that an advantage exists from the mere fact that loans are granted by a special credit institution. What matters especially as regards loans are the loan conditions. In order to determine whether an advantage is being granted the interest rate required, the collateral for the loan and the overall position of the undertaking receiving the loan are decisive. It must be ascertained whether a private investor would have granted a comparable loan at the agreed interest rate and on the basis of the securities indicated.

   — In accordance with the previous decision-making practice of the Commission, those indicators were, in the case of subordinated loans, concretised by means of the so-called Brandenburg method on the basis of the Commission reference rate communication in such a way that there was no aid within the meaning of Article 107(1) TFEU. The Commission is suddenly departing from that decision-making practice and solely taking into account the characteristics of the credit institution which is granting the loan. Those characteristics are, however, completely unsuitable as indicators since special credit institutions are also capable of acting under market conditions.

2. Second plea in law, alleging infringement of the obligation to state reasons in accordance with Article 296 TFEU

Furthermore the applicant submits that there is infringement of the obligation to state reasons pursuant to Article 296 TFEU because the Commission was satisfied with sweeping assumptions and deductions, but did not explain why the loan conditions were not market conditions and why it was suddenly departing from its previous decision-making practice.

3. Third plea in law, alleging infringement of the principle of the rights of the defence in its various forms

The applicant further submits that there is infringement of the principle of the rights of the defence in its various forms as the Commission did not discuss the change in its view with the Federal Government before the adoption of the contested decision.

([1]) Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ 2006 L 379, p. 5).

Action brought on 26 September 2011 — Aldi v OHIM — Dialcos (dialdi)

(Case T-505/11)

(2011/C 355/38)

Language in which the application was lodged: German

Parties

Applicant: Aldi GmbH & Co. KG (Mülheim an der Ruhr, Germany) (represented by: N. Lützenrath, U. Rademacher, L, Kolks and C. Fürsen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Dialcos SpA (Due Carrare, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 July 2011 in Case R 1097/2010-2;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Dialcos SpA

Community trade mark concerned: Figurative mark containing the word element 'dialdi' for goods in Classes 29 and 30.

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

Mark or sign cited in opposition: Word mark 'ALDI' for goods and services in Classes 3, 4, 7, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34 and 36.

Decision of the Opposition Division: Rejection of the opposition.

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

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

Action brought on 28 September 2011 — i-content v OHIM — Decathlon (BETWIN)

(Case T-514/11)

(2011/C 355/39)

Language in which the application was lodged: English

Parties

Applicant: i-content Ltd Zweigniederlassung Deutschland (Berlin, Germany) (represented by: A. Nordemann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Decathlon SA (Villeneuve d'Ascq, France)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 June 2011 in case R 1816/2010-1, and reject the opposition No B 001494205;

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'BETWIN', among others for goods in classes 25, 26 and 28 — Community trade mark application No 7281652

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

Mark or sign cited in opposition: Community trade mark registration No 6780951, of the figurative mark 'bTwin', among others for goods in classes 25 and 28; French trade mark registration No 23191414, of the figurative mark 'bTwin', inter alia for goods in class 25; French trade mark registration No 99822017, of the figurative mark 'bTwin', inter alia for goods in class 28

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that the marks in dispute are confusingly similar.

Action brought on 27 September 2011 — Delphi Technologies v OHIM (INNOVATION FOR THE REAL WORLD)

(Case T-515/11)

(2011/C 355/40)

Language of the case: English

Parties

Applicant: Delphi Technologies, Inc. (Wilmington, United States of America) (represented by: C. Albrecht and J. Heumann, lawyers)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 June 2011 in case R 1967/2010-2;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INNOVATION FOR THE REAL WORLD', for goods in classes 7, 9, 10 and 12 — Community trade mark application No 7072705

Decision of the Examiner: Refused the application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal: (i) misunderstood the burden of arguments and proof laid down in Article 7(1)(b); (ii) erred in applying the relevant case law of the ECJ for the assessment of distinctiveness of slogans and the possible meaning of the mark applied for; and, (iii) neglected the substantial use and notoriety of the mark which is important for the perception of the slogan by the relevant consumers. Infringement of Article 7(1)(b) of Council Regulation No 207/2009 and the general principles of the administrative proceedings, as the Board of Appeal did not take into account that identical and similar slogans with the word 'INNOVATION' have already been registered in the EU and in particular by the OHIM.

Action brought on 29 September 2011 — United States Polo Association v OHIM — Polo/Lauren (Representation of a device of two polo players)

(Case T-517/11)

(2011/C 355/41)

Language in which the application was lodged: English

Parties

Applicant: United States Polo Association (Kentucky, USA) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

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

Other party to the proceedings before the Board of Appeal: The Polo/Lauren Company, LP (New York, USA)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 June 2011 in case R 1107/2010-2;

— Order the defendant to pay its own costs and those of the applicant; and

— Order the other party before the Board of Appeal to pay its own costs, in case it intervenes in the proceedings

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Community trade mark application of the figurative mark representing a device of two polo players, for goods in class 3 — Community trade mark registration No 5997473

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

Mark or sign cited in opposition: French trade mark registration No 1441630 of the figurative mark representing a device of a polo player, for goods and services in classes 3, 9, 14, 16, 18, 24, 25 and 35; Spanish trade mark registration No 878316 of the figurative mark representing a device of a polo player, for goods in class 3; United Kingdom trade mark registration No 2172123 of the figurative mark representing a device of a polo player, for goods in class 3; German trade mark registration No 1070650 of the figurative mark representing a device of a polo player, for goods in class 3; Community trade mark registration No 4236527 of the three-dimensional trade mark representing a bottle device with a polo player, for goods in class 3

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Rules 20(7) and 53(a) of Commission Regulation No 2868/95, and Infringement of Article 80(1) of Council Regulation No 207/2009, as the Board of Appeal notified its decision to the parties of the opposition on 19 July 2011 without taking into account their joint request for a suspension of the proceedings filed on 18 July 2011 and then dismissed the applicant's request to revoke its decision and to grant the suspension request. Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that the registration of the CTM application was precluded by Article 8(1)(b). There is no likelihood of confusion between the opposing marks.

Action brought on 27 September 2011 — BTL Diffusion v OHIM — dm-drogerie markt (babyTOlove)

(Case T-518/11)

(2011/C 355/42)

Language in which the application was lodged: English

Parties

Applicant: BTL Diffusion (Saint Cloud, France) (represented by: A. Berendes, lawyer)

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

Other party to the proceedings before the Board of Appeal: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 July 2011 in case R 883/2010-2 to the extend that it: (i) upheld the opposition and rejected the contested Community trade mark application for 'surgical medical, dental and veterinary apparatus and instruments, orthopaedic articles; suture materials' in class 10 and 'clothing, footwear headgear' in class 25, and (ii) dismissed the applicant's request to annul the contested decision on a point not raised in the appeal to the extent that it upheld the opposition for 'games and playthings; gymnastic and porting articles not included in other classes' in class 28; and

— Confirm the said decision for 'artificial limbs, eyes and teeth' in class 10 and 'decorations for Christmas trees' in class 28.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'baby-TOlove', for goods in classes 10, 25 and 28 — Community trade mark application No 7104219

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

Mark or sign cited in opposition: International trade mark registration No 935598 of the word mark 'babylove', for goods in classes 3, 5, 8, 9, 10, 11, 12, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30 and 32; International trade mark registration No 979365 of the word mark 'Baby Love', for goods in classes 3, 5, 8, 9, 10, 11, 12, 16, 18, 20, 21, 24, 25, 26, 28, 29, 30 and 32

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the decision of the Opposition Division; upheld the opposition and rejected the contested Community trade mark application for part of the goods in class 10 and 25; dismissed the appeal for the remainder

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal incorrectly assessed likelihood of confusion.

Action brought on 3 October 2011 — Deutsche Bahn and Others v Commission

(Case T-521/11)

(2011/C 355/43)

Language of the case: German

Parties

Applicants: Deutsche Bahn AG (Berlin, Germany), Deutsche Umschlaggesellschaft Schiene-Straße (DUSS) mbH (Bodenheim, Germany), DB Netz AG (Frankfurt am Main, Germany), DB Schenker Rail GmbH (Mainz, Germany), DB Schenker Rail Deutschland AG (Mainz, Germany) (represented by: W. Deselaers, J. Brückner and O. Mross, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's inspection decision of 14 July 2011, notified on 26 July 2011;

— Annul all measures taken on the basis of the inspections, which took place on the basis of that unlawful decision;

— In particular order the Commission to return all the copies of the documents made during the inspections, on pain of annulment of the future Commission decision by the General Court; and

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2011) 5230 of 14 July 2011 (Case COMP/39.678 — DB I and Case COMP/39.731 — DB II), ordering, in accordance with Article 20(4) of Regulation No 1/2003, inspections of Deutsche Bahn AG and all legal persons directly or indirectly controlled by the latter, by reason of a potentially anti-competitive model of a strategic use of the infrastructure administered by companies of the DB group.

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

1. First plea: infringement of the fundamental right to inviolability of one's premises by reason of lack of prior judicial authorisation.

2. Second plea: infringement of the fundamental right to an effective legal remedy by reason of the lack of possibility of prior judicial review of the inspection decision, both from a factual and legal point of view.

3. Third plea: unlawfulness of the inspection decision, as it is based on information obtained by the Commission in infringement of defence rights.

The information was obtained by the Commission in the course of implementing the inspection decision of 14 March 2011 in the context of a very broad inquiry ('fishing expedition'). The information obtained when implementing the second inspection decision of 30 March 2011 was also unlawful because the decision on which that search was based also relied on the unlawfully obtained information and that information had also been obtained on the basis of an unlawful inspection decision.

4. Fourth plea: infringement of defence rights by reason of a disproportionately wide and non-specific description of the subject-matter of the inspection.

5. Fifth plea: infringement of the principle of proportionality.

The Commission does not have jurisdiction over the subject-matter of the inspection and could in any event have obtained the relevant information through the competent Bundesnetzagentur [federal network agency] or by means of a simple request for information from the applicants.

Action brought on 4 October 2011 — Maxima Grupė v OHIM — Bodegas Maximo (MAXIMA PREMIUM)

(Case T-523/11)

(2011/C 355/44)

Language in which the application was lodged: English

Parties

Applicant: Maxima Grupė, UAB (Vilnius, Lithuania) (represented by: R. Žabolienė and E. Saukalas, lawyers)

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

Other party to the proceedings before the Board of Appeal: Bodegas Maximo, SL (Oyón, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 August 2011 in case R 1584/2010-4; and

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'MAXIMA PREMIUM', for goods in classes 3, 5, 16, 29, 30, 31, 32 AND 33 — Community trade mark application No 6981443

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

Mark or sign cited in opposition: Community trade mark registration No 6642284, of the word mark 'MAXIMO', for goods in class 33

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal found that there was a likelihood of confusion without taking into account all the relevant aspects of the present case, including inherently low distinctive character of 'MAXIMO/MAXIMA', similarity of the signs, and the fact that the relevant public is highly attentive and well informed.

Action brought on 30 September 2011 — Volvo Trademark v OHIM — Hebei Aulion Heavy Industries (LOVOL)

(Case T-524/11)

(2011/C 355/45)

Language in which the application was lodged: English

Parties

Applicant: Volvo Trademark Holding AB (Göteborg, Sweden) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hebei Aulion Heavy Industries Co., Ltd (Xuanhua, China)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 July 2011 in case R 1870/2010-1;

— Reject the Community trade mark application No 5029731; and

— Order the other party to the proceedings to bear the costs of the applicant in connection with the present proceedings, the appeal before the Board of Appeal and the proceedings before the Opposition division.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'LOVOL', for goods in classes 7 and 12 — Community trade mark application No 5029731

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

Mark or sign cited in opposition: Community trade mark registration No 2361087, of the word mark 'VOLVO', for goods and services in classes 1-9, 11-12, 14, 16-18, 20-22, 24-28 and 33-42; Community trade mark application No 4804522, of the figurative mark 'VOLVO', for goods and services in classes 1-4, 6, 7, 9, 11-12, 14, 16, 18, 25, 28, 35-39 and 41; UK trade mark registration No 747361, of the figurative mark 'VOLVO', for goods in class 12; UK trade mark registration No 747362, of the word mark 'VOLVO', for goods in class 12; UK trade mark registration No 1051579, of the word mark 'VOLVO', for goods in class 7; UK trade mark registration No 1408143, of the figurative mark 'VOLVO', for goods in class 7

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal failed to take all relevant factors into account when comparing the marks, thereby mistakenly found that there was no similarity in the marks. Infringement of a rule of law related to the application of the Regulation, and in particular, the principles established by the Court of Justice of the European Union in cases C-361/04 P, Ruiz-Picasso e.a./OHMI of 12 January 2006, ECR I-643 and case C-252/07, Intel Corporation, ECR I-8823, by applying them in a rigidly formalistic manner, and consequently, by not examining the merits of the opposition under Article 8(5) of Council Regulation No 207/2009.

Action brought on 29 September 2011 — Volvo Trademark v OHMI — Hebei Aulion Heavy Industries (LOVOL)

(Case T-525/11)

(2011/C 355/46)

Language in which the application was lodged: English

Parties

Applicant: Volvo Trademark Holding AB (Göteborg, Sweden) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hebei Aulion Heavy Industries Co., Ltd (Xuanhua, China)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 June 2011 in case R 1868/2010-1;

— Reject the Community trade mark application No 5029814; and

— Order the other party to the proceedings to bear the costs of the applicant in connection with the present proceedings, the appeal before the Board of Appeal and the proceedings before the Opposition division.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark 'LOVOL', for goods in classes 7 and 12 — Community trade mark application No 5029814

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

Mark or sign cited in opposition: Community trade mark registration No 2361087, of the word mark 'VOLVO', for goods and services in classes 1-9, 11-12, 14, 16-18, 20-22, 24-28 and 33-42; Community trade mark application No 4804522, of the figurative mark 'VOLVO', for goods and services in classes 1-4, 6, 7, 9, 11-12, 14, 16, 18, 25, 28, 35-39 and 41; UK trade mark registration No 747361, of the figurative mark 'VOLVO', for goods in class 12; UK trade mark registration No 747362, of the word mark 'VOLVO', for goods in class 12; UK trade mark registration No 1051579, of the word mark 'VOLVO', for goods in class 7; UK trade mark registration No 1408143, of the figurative mark 'VOLVO', for goods in class 7

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal failed to take all relevant factors into account when comparing the marks, thereby mistakenly found that there was no similarity in the marks. Infringement of a rule of law related to the application of the Regulation, and in particular, the principles established by the Court of Justice of the European Union in cases C-361/04 P, Ruiz-Picasso e.a./OHMI of 12 January 2006, ECR I-643 and case C-252/07, Intel Corporation, ECR I-8823, by applying them in a rigidly formalistic manner, and consequently, by not examining the merits of the opposition under Article 8(5) of Council Regulation No 207/2009.

Action brought on 10 October 2011 — Schenker v Commission

(Case T-534/11)

(2011/C 355/47)

Language of the case: German

Parties

Applicant: Schenker AG (Essen, Germany) (represented by: C. Von Hammerstein, B. Beckmann and C. Munding, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested decision of the defendant of 3 August 2011 (SG.B/MKu/psi-Ares[2001]);

— Order the defendant to bear the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on four pleas in law.

1. First plea: lack of specific and case-by-case examination of the documents

   First, the Commission has not carried out a specific and case-by-case examination of the documents named in the application for access. According to the applicant, the Commission should not have been allowed to rely on a general presumption of the grounds for refusal of access. By doing so it disregarded the principles developed in the case-law concerning access to documents and the importance of the fundamental right of access to documents laid down in Article 42 of the Charter of Fundamental Rights.

2. Second plea: manifest errors in the application of the exceptions laid down in Regulation (EC) No 1049/2001 [1]

   Second, the Commission made manifest errors when applying the exceptions laid down in Regulation No 1049/2001. By applying the exceptions too broadly, the Commission disregarded the principles developed in the case-law concerning access to documents and the importance of the fundamental right of access to documents laid down in Article 42 of the Charter of Fundamental Rights.

   In the light of fundamental rights and of the principle of transparency and the rule of law, the applicant should be granted a right of access to the documents which is as extensive as possible.

3. Third plea in law: infringement of the principle of proportionality

   Third, the Commission infringed the principle of proportionality by not weighing the exceptions — approved by it in error — or at least not weighing them objectively, against the public interest in the disclosure of the documents requested. The Commission therefore disregarded the fact that the public interest in the disclosure of the documents clearly outweighed keeping them secret.

4. Fourth plea in law: infringement of Article 42 of the Charter of Fundamental Rights

   Fourth, the Commission disregarded the fact that the applicant in any case enjoys a right — guaranteed under Article 42 of the Charter of Fundamental Rights — to at least partial access to the documents applied for. The Commission deprives the fundamental right of access to documents and Regulation No 1049/2011 of practical effect by refusing all access whatsoever.

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

Action brought on 2 October 2011 — European Dynamics Luxembourg and Others v Commission

(Case T-536/11)

(2011/C 355/48)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg), European Dynamics Belgium SA (Brussels, Belgium), Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decision of the Publications Office of the European Union to select the applicants' bid submitted in response to the open call for tenders AO 10340 (lots 1, 3 and 4) 'Computing Services — Software Development, Maintenance, Consultancy and Assistance for Different Types of IT Applications' ([1]), as third contractor in the cascade mechanism for lots 1 and 4 and as second contractor in the cascade mechanism for lot 3, communicated to the applicants by letter dated 22 July 2011, and all the related decisions of the Office, including those to award the respective contract to the first and second cascade contractors; and

— Order the Publications Office of the European Union to pay damages suffered on account of the loss of opportunity and damage to the applicants' reputation and credibility in the amount of 3 450 000 euros (EUR); and

— Order the Publications Office of the European Union to pay the applicants' legal and other costs and expenses incurred in connection with the present application.

Pleas in law and main arguments

In support of their action, the applicants rely on three pleas in law, for each lot.

1. First plea in law, alleging

   — that the Publications Office of the European Union has infringed the obligation to state reasons, that it has not properly disclosed the relative merits of the successful tenderer and, in general, that it has failed to comply with the provisions of Article 100(2) of the Financial Regulation;

2. Second plea in law, alleging

   — that the Publications Office of the European Union has infringed the tender specifications, as well as applied an award criterion contrary to Article 97 of the Financial Regulation and Article 138 of the Implementing Rules;

3. Third plea in law, alleging

   — manifest errors of assessment, vague and unsubstantiated comments of the evaluation committee, modification of the award criteria included in the call for tender *a posteriori*, not notifying new criteria to tenderers in due time and mixing selection and award criteria.

([1]) OJ 2011/S 66 — 106099

Action brought on 14 October 2011 — Ghreiwati v Council

(Case T-543/11)

(2011/C 355/49)

Language of the case: French

Parties

Applicant: Emad Ghreiwati (Al Maliki, Syria) (represented by: P.-F. Gaborit, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Decision 2011/522/CFSP, Regulation (EU) No 878/2011, Decision 2011/628/PESC and Regulation (EU) No 950/2011 of the Council of the European Union in so far as they concern Mr Emad Ghreiwati;

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

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging insufficient statement of reasons, and infringement of the rights of the defence and of the right to an effective legal remedy, in so far as:

   — the contested measures, adding the name of the applicant to the list of persons concerned by the restrictive measures against Syria, do not show the reasons for the restrictive measure taken against the latter;

   — those decisions were not notified to the applicant; and

   — the evidence held against the applicant to justify the restrictive measures concerning him has still not been communicated, despite a request addressed to the Council of the European Union.

2. Second plea in law, alleging, in the alternative, a manifest error of assessment, inasmuch as neither the applicant's position as President of the Damascus Chamber of Industry nor his capacity as a shareholder of the Zouheir Ghreiwati Company supports the allegation of economic support for the Syrian regime.

Action brought on 14 October 2011 — Stichting Greenpeace Nederland and PAN Europe v Commission

(Case T-545/11)

(2011/C 355/50)

Language of the case: English

Parties

Applicants: Stichting Greenpeace Nederland (Amsterdam, Netherlands) and Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) (represented by: B. Kloostra, lawyer)

Defendant: European Commission

Form of order sought

— Declare that the Commission's decision of 10 August 2011 is in violation of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Regulation (EC) No 1049/2001 ([1]) and Regulation (EC) No 1367/2006 ([2]);

— Annul the Commission's decision of 10 August 2011; and

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

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging that Article 4(5) of Regulation (EC) No 1049/2011 does not give Member States a right of veto and that, consequently, the defendant may not rely on a Member State's opinion that the exception of Article 4(2) of the said regulation is applicable or not to the request for information lodged by the applicants.

2. Second plea in law, alleging that the exception to disclosure laid down in Article 4(2), first indent, of Regulation (EC) No 1049/2001 must be waived due to an overriding public interest in disclosing the information requested, as the conditions laid down in Article 6(1) of Regulation (EC) No 1367/2006 are met in the present case.

3. Third plea in law, alleging that the contested decision is not in accordance with Article 4(2) of Regulation (EC) No 1049/2001 and Article 4 of the Aarhus Convention as:

   — The defendant failed to evaluate the concrete risk of damage by the disclosure of the information requested to the commercial interests invoked; and

   — The defendant failed to balance the commercial interests concerned against the general interest of disclosure of environmental information as described in Article 4(4), second paragraph, of the Aarhus Convention.

The applicants further allege that should the Aarhus Convention not be directly applicable, Article 4(2) of Regulation (EC) No 1049/2001 should be applied as convention-complaint as possible.

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

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13)

Action brought on 11 October 2011 — Technion — Israel Institute of Technology and Technion Research & Development v Commission

(Case T-546/11)

(2011/C 355/51)

Language of the case: French

Parties

Applicants: Technion — Israel Institute of Technology (Haifa, Israel) and Technion Research & Development Foundation Ltd (Haifa) (represented by: D. Grisay and D. Piccininno, lawyers)

Defendant: European Commission

Form of order sought

— Accept the present application for annulment based on Article 263 of the Treaty on the Functioning of the European Union;

— Declare it admissible;

— Declare the action to be well-founded and annul the decision of 2 August 2011 of the Information Society and Media Directorate-General of the European Commission;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging breach of essential procedural requirements, is in two parts based on:

   — first, the lack and insufficiency of the statement of reasons, on the ground that the Commission does not state, for two of the four contracts concerned, the justification and evidence on which the contested decision is based for the conclusion that the eligible costs be adjusted;

— second, breach of the rights of the defence, on the ground that the Commission opposes Technion — Israel Institute of Technology being made aware of and commenting on the documents on which the decision is based.

2. Second plea in law, alleging manifest error of assessment on the ground that the contested decision does not prove, on the basis of the evidence relied upon, that the services for which the Commission claims repayment were not actually performed.

3. Third plea in law, alleging breach of the principles of legitimate expectation and proportionality on the ground that the Commission:

— adopted a decision adjusting the eligible costs although it had guaranteed the costs when the projects were put in place prior to the signature of the contracts and

— claimed an adjustment of the eligible costs in a sum exceeding the amount for which it claimed to adduce evidence.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 22 July 2011 — ZZ v Court of Justice of the European Union

(Case F-71/11)

(2011/C 355/52)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-M. Bauler, lawyer)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

Annulment of the applicant's staff report for the period from 1 January 2007 to 31 December 2007 and compensation for non-material damage.

Form of order sought

— Annul the staff report for the period from 1 January to 31 December 2007; in the alternative, annul the note of 9 September 2009 established following the annulment of the previous staff report covering the same period;

— annul the decision dismissing the complaint of 14 April 2011;

— order the defendant to pay EUR 50 000 by way of compensation for non-material damage;

— order the Court of Justice of the European Union to pay the costs.

Action brought on 28 September 2011 — ZZ v Commission

(Case F-94/11)

(2011/C 355/53)

Language of the case: German

Parties

Applicant: ZZ (represented by: H. Mannes, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of EPSO to resume open competition EPSO/AD/26/05 and to call the applicant back for a fresh oral test, and annulment of the decision to exclude him from that competition on the ground of his failure to attend that test.

Form of order sought

— Annul the defendant's decisions of 11 February and 12 August 2011;

— Declare the invitation of 14 January 2011 to the oral test unlawful;

— Rule that a mere repeat of the applicant's test is not appropriate to remedy the fundamental procedural defects found at the time of the applicant's earlier action;

— Rule that the defendant has the power to put the applicant on the reserve list even without a repeat of the test;

— Rule that the defendant must adequately compensate the applicant for the disadvantage suffered by reason of the lapse of time and must avoid any discrimination in comparison with the successful candidates;

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

— As a precaution, an order for judgment in default.

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