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Information and Notices

Notice No | Contents | Page

EN

Price: EUR 4

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

Notice No | Contents (continued) | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

European Union Civil Service Tribunal

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 25/01)

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

OJ C 13, 14.1.2012

Past publications

OJ C 6, 7.1.2012

OJ C 370, 17.12.2011

OJ C 362, 10.12.2011

OJ C 355, 3.12.2011

OJ C 347, 26.11.2011

OJ C 340, 19.11.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 15 November 2011 — European Commission v Government of Gibraltar, United Kingdom of Great Britain and Northern Ireland, Kingdom of Spain (C-106/09), Kingdom of Spain v European Commission, Government of Gibraltar, United Kingdom of Great Britain and Northern Ireland

(Joined Cases C-106/09 P and C-107/09 P) ([1])

(Appeal — State aid — Material selectivity — Tax regime — Gibraltar — Offshore companies)

(2012/C 25/02)

Language of the case: English

Parties

C-106/09 P

Appellant: European Commission (represented by: R. Lyal, V. Di Bucci and N. Khan, Agents)

Other parties to the proceedings: Government of Gibraltar (represented by: J. Temple Lang, Solicitor, M. Llamas, Barrister, and A. Petersen, advokat), United Kingdom of Great Britain and Northern Ireland (represented by: I. Rao, Agent, D. Anderson QC and M. Gray, Barrister), Kingdom of Spain (represented by: N. Díaz Abad and J.M. Rodríguez Cárcamo, Agents)

Intervener in support of the Government of Gibraltar and United Kingdom of Great Britain and Northern Ireland: Ireland (represented by: D. O'Hagan, Agent, and B. Doherty, Barrister)

C-107/09 P

Appellant: Kingdom of Spain (represented by: N. Díaz Abad and J.M. Rodríguez Cárcamo, Agents)

Other parties to the proceedings: European Commission (represented by: R. Lyal, V. Di Bucci and N. Khan, Agents), Government of Gibraltar (represented by: J. Temple Lang, Solicitor, M. Llamas, Barrister, and A. Petersen, advokat), United Kingdom of Great Britain and Northern Ireland (represented by: I. Rao, Agent, D. Anderson QC and M. Gray, Barrister)

Re:

Appeals against the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 18 December 2008 in Joined Cases T-211/04 and T-215/04 *Government of Gibraltar* v *Commission* by which the Court annulled Commission Decision 2005/261/EC of 30 March 2004 on the aid scheme which the United Kingdom is planning to implement as regards the Government of Gibraltar Corporation Tax Reform (State aid C 66/2002 (ex N 534/2002) — United Kingdom)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 18 December 2008 in Joined Cases T-211/04 and T-215/04 Government of Gibraltar and United Kingdom v Commission;*

2. *Dismisses the action brought by the Government of Gibraltar and the action brought by the United Kingdom of Great Britain and Northern Ireland;*

3. *Orders the Government of Gibraltar and the United Kingdom of Great Britain and Northern Ireland to bear, in addition to their own costs, the costs incurred by the European Commission and the Kingdom of Spain on appeal and by the European Commission at first instance;*

4. *Orders the Kingdom of Spain and Ireland as interveners before the Court of First Instance of the European Communities and before the Court of Justice of the European Union, respectively, to bear their own costs.*

([1]) OJ C 141, 20.6.2009.

Judgment of the Court (First Chamber) of 10 November 2011 — European Commission v Portuguese Republic

(Case C-212/09) [1]

(Failure of a Member State to fulfil obligations — Articles 43 EC and 56 EC — Free movement of capital — Golden shares held by the Portuguese State in GALP Energia SGPS SA — Participation in the management of a privatised company)

(2012/C 25/03)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, and by C. Botelho Moniz, M. Rosado da Fonseca and P. Gouveia e Melo, advogados)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 56 EC — Special rights of the State and other public bodies in the company GALP Energia, SGPS SA ('golden shares')

Operative part of the judgment

The Court (First Chamber):

1. *Declares that, by maintaining in favour of the Portuguese State and other public bodies special rights in GALP Energia SGPS SA, such as those provided for in the present case by Law No 11/90 of 5 April 1990 concerning the Framework Law on Privatisations (Lei nº 11/90, Lei Quadro das Privatizações), by Decree-Law No 261-A/99 of 7 July 1999 approving the first phase of the privatisation of the share capital of GALP — Petróleos e Gás de Portugal SGPS SA (Decreto-Lei nº 261-A/99 aprova a 1.ª fase do processo de privatização do capital social da GALP — Petróleos e Gás de Portugal, SGPS, SA), and by the articles of association of that company, granted in connection with the Portuguese State's golden shares in the share capital of that company, the Portuguese Republic has failed to fulfil its obligations under Article 56 EC;*

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

[1] OJ C 180, 1.8.2009.

Judgment of the Court (First Chamber) of 24 November 2011 — European Commission v Kingdom of Spain

(Case C-281/09) [1]

(Failure by a Member State to fulfil its obligations — Directive 89/552/EEC — Television broadcasting — Advertising spots — Transmission time)

(2012/C 25/04)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and C. Vrignon, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Intervening party: United Kingdom of Great Britain and Northern Ireland, (represented by S. Behzadi-Spencer and S. Hathaway, Agents)

Re:

Failure by a Member State to fulfil its obligations — Infringement of Article 3(2) and Article 18(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23) — Transmission time granted to advertising spots

Operative part of the judgment

The Court:

1. *Declares that, by tolerating a situation in which the broadcasting of certain types of advertising, such as advertorials, telepromotion spots, sponsorship credits and micro-ads, on Spanish television channels has a duration which exceeds the maximum limit of 20 % of the transmission time within a clock hour, as laid down in Article 18(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and the Council of 30 June 1997, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive;*

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

[1] OJ C 256, 24.10.2009.

Judgment of the Court (Fourth Chamber) of 24 November 2011 — European Commission v Kingdom of Spain

(Case C-404/09) [1]

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Open-cast coal mines — 'Alto Sil' site — Special protection area — Site of Community importance — Brown bear (Ursus arctos) — Capercaillie (Tetrao urogallus))

(2012/C 25/05)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: D. Recchia and by F. Castillo de la Torre and J.-B. Laignelot, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 97/11/EEC (OJ L 175, p. 40) and Article 6(2)(3) and (4) in conjunction with Article 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, p. 7) — Opencast mining — 'Alto Sil' special conservation area (ES0000210) — Habitat of Cantabrian capercaillie.

Operative part of the judgment

The Court:

1. *Declares that, by authorising the 'Nueva Julia' and 'Ladrones' open-cast mines but failing to subject that authorisation to an assessment in order to identify, describe and assess in an appropriate manner the direct, indirect and cumulative effects of the existing open-cast mining projects, save, in relation to the 'Ladrones' mine, as regards the brown bear (Ursus arctos), the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 3 and 5(1) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997;*

2. *Declares that, from 2000, the date of designation of the 'Alto Sil' area as a special protection area under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997,*

   — *by authorising the 'Nueva Julia' and 'Ladrones' open-cast mining operations, without making the grant of the authorisations relating thereto subject to the carrying out of an appropriate assessment of the possible impacts of those projects, and, in any event, without complying with the conditions in which a project might be realised despite the risk posed by that project for the capercaillie (Tetrao urogallus), which constitutes one of the natural assets which motivated the classification of the 'Alto Sil' site as a special protection area, namely the absence of alternative solutions, the existence of imperative reasons of major public interest and communication to the European Commission of the necessary compensatory measures to ensure the overall coherence of the Natura 2000 network, and*

   — *by failing to adopt the necessary measures to prevent the deterioration of habitats including the habitats of species, and to prevent significant disturbance of the capercaillie, the presence of which on the 'Alto Sil' site was the reason for the designation of that area as a special protection area, caused by the 'Feixolín', 'Salguero-Prégame-Valdesegadas', 'Fonfría', 'Ampliación de Feixolín' and 'Nueva Julia' mines,*

   the Kingdom of Spain has failed to fulfil its obligations in relation to the 'Alto Sil' special protection area under Article 6(2) to (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 thereof;

3. *Declares that, from December 2004, by failing to adopt the necessary measures to prevent the deterioration of habitats, including the habitats of species, and the disturbances caused to species by the 'Feixolín', 'Fonfría' and 'Ampliación de Feixolín' operations, the Kingdom of Spain has failed, in relation to the 'Alto Sil' site of Community importance, to fulfil its obligations under Article 6(2) of Directive 92/43;*

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

5. *Orders the Kingdom of Spain to pay, in addition to its own costs, two thirds of the Commission's costs. The Commission is ordered to pay one third of its own costs.*

([1]) OJ C 11, 16.1.2010.

Judgment of the Court (Fifth Chamber) of 24 November 2011 — Italian Republic v European Commission

(Case C-458/09 P) ([1])

(Appeal — Aide granted by the Italian authorities in favour of newly listed companies — Legislation granting fiscal advantages)

(2012/C 25/06)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri and P. Gentili, Agents)

Other party to the proceedings: European Commission (represented by: V. Di Bucci, D. Grespan and E. Righini, Agents)

Intervener in support of the applicant: Republic of Finland (represented by: M. Pere and H. Leppo, Agents)

Re:

Appeal against the judgment of 4 September 2009 in Case T-211/05 Italy v Commission, by which the Court of First Instance (Third Chamber) dismissed the application for annulment of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (OJ 2006 L 94, p. 42)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

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

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Third Chamber) of 17 November 2011 — European Commission v Italian Republic

(Case C-496/09) ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — Failure to comply with the judgment — Article 228 EC — Financial penalties)

(2012/C 25/07)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Pignataro, E. Righini and B. Stromsky, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, Agent, F. Arena and S. Fiorentino, avvocati dello Stato)

Re:

Failure of a Member State to fulfil obligations — Article 228 EC — Failure to comply with the judgment of the Court of Justice of 1 April 2004 in Case C-99/02 — Application for a penalty payment to be imposed

Operative part of the judgment

The Court:

1. *Declares that, by failing, by the date of expiry of the period prescribed in the reasoned opinion issued by the Commission of the European Communities on 1 February 2008 pursuant to Article 228 EC, to take all the measures needed to comply with the judgment of 1 April 2004 in Case C-99/02 Commission v Italy concerning the recovery from the recipients of the aid which was found to be unlawful and incompatible with the common market by Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment, the Italian Republic has failed to fulfil its obligations under that decision and Article 228(1) EC;*

2. *Orders the Italian Republic to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of an amount calculated by multiplying the basic amount of EUR 30 million by the percentage of the unlawful aid that has not yet been recovered, or not shown to have been recovered, at the end of the period concerned, compared to the total amount not yet recovered on the date of delivery of the present judgment, for every six months of delay in implementing the necessary measures to comply with the judgment of 1 April 2004 in Case C-99/02 Commission v Italy, from the present judgment until compliance with the judgment of 1 April 2004;*

3. *Orders the Italian Republic to pay to the European Commission, into the 'European Union own resources' account, a lump sum of EUR 30 million;*

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

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Grand Chamber) of 15 November 2011 — European Commission v Federal Republic of Germany

(Case C-539/09) ([1])

(Failure of a Member State to fulfil obligations — Court of Auditors' declared intention to carry out audits in a Member State — Member State's objection — Powers of the Court of Auditors — Article 248 EC — Audit of the cooperation of the national administrative authorities in the field of value added tax — Regulation (EC) No 1798/2003 — Community revenue — Own resources accruing from value added tax)

(2012/C 25/08)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Caeiros and B. Conte, acting as Agents)

Defendant: Federal Republic of Germany (represented by: C. Blaschke and N. Graf Vitzthum, acting as Agents)

Intervening parties in support of the applicant: European Parliament (represented by: R. Passos and E. Waldherr, acting as Agents), Court of Auditors of the European Union, (represented initially by R. Crowe, and subsequently by T. Kennedy and B. Schäfer, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 10 EC and Article 248(1), (2) and (3) EC, and of Article 140(2) and Article 142(1) of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1) — Refusal to allow the Court of Auditors to carry out checks in Germany concerning administrative cooperation in the field of value added tax — Scope of the Court of Auditors' audit powers

Operative part of the judgment

The Court:

1. *Declares that, by objecting to the conduct by the Court of Auditors of the European Union of audits in Germany concerning administrative cooperation under Council Regulation (EC) No 1798/2003 of 7 October 2003 on administrative cooperation in the field of value added tax and the provisions for its implementation, the Federal Republic of Germany has failed to fulfil its obligations under Article 248(1) to (3) EC;*

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

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

4. *Orders the European Parliament and the Court of Auditors of the European Union to bear their own costs.*

([1]) OJ C 51, 27.2.2010.

Judgment of the Court (Grand Chamber) of 16 November 2011 — Bank Melli Iran v Council of the European Union; French Republic; United Kingdom of Great Britain and Northern Ireland; European Commission

(Case C-548/09 P) ([1])

(Appeals — Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran to prevent nuclear proliferation — Freezing of the funds of a bank — Failure to notify the decision — Legal basis — Rights of the defence)

(2012/C 25/09)

Language of the case: French

Parties

Appellant: Bank Melli Iran (represented by: L. Defalque, avocate)

Other parties to the proceedings: Council of the European Union (represented by: M. Bishop and R. Szostak, acting as Agents); French Republic (represented by: E. Belliard, G. de Bergues, L. Butel and E. Ranaivoson, acting as Agents); United Kingdom of Great Britain and Northern Ireland (represented by: S. Hathaway, acting as Agent, and D. Beard, Barrister); European Commission (represented by: S. Boelaert and M. Konstantinidis, acting as Agents)

Re:

Appeal brought against the judgment delivered by the Court of First Instance (Second Chamber) on 14 October 2009 in Case T-390/08 Bank Melli Iran v Council by which the Court dismissed the appellant's action for annulment of paragraph 4 of Table B in the annex to Council Decision 2008/475/EC of 23 June 2008 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2008 L 163, p. 29) in so far as it relates to Bank Melli Iran and its branches — No individual notification of that decision — Breach of essential procedural requirements — No legal basis for the decision to freeze the appellant's funds — Failure to respect the rights of the defence and the principle of effective judicial protection — Infringement of the principle of proportionality and of the right to property

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bank Melli Iran to pay the costs.*

([1]) OJ C 80, 27.3.2010.

Judgment of the Court (Third Chamber) of 24 November 2011 (reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium)) — Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)

(Case C-70/10) ([1])

(Information society — Copyright — Internet — 'Peer-to-peer' software — Internet service providers — Installation of a system for filtering electronic communications in order to prevent file sharing which infringes copyright — No general obligation to monitor information transmitted)

(2012/C 25/10)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellant: Scarlet Extended SA

Respondent: Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)

Intervening parties: Belgian Entertainment Association Video ASBL (BEA Video), Belgian Entertainment Association Music ASBL (BEA Music), Internet Service Provider Association ASBL (ISPA)

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Directives 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45), 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31), 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

('Directive on electronic commerce') (OJ 2000 L 178, p. 1), 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ('Directive on privacy and electronic communications') (OJ 2002 L 201, p. 37) — Processing of data passing through the internet — Installation by operators of a system for filtering electronic communications, *in abstracto* and as a preventive measure in order to identify users allegedly using files infringing copyright or related rights — Application, of its own motion, by the national court of the principle of proportionality — European Convention for the Protection of Human Rights and Fundamental Freedoms — Right to respect for privacy — Right to freedom of expression

Operative part of the judgment

Directives:

— *2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');*

— *2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;*

— *2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;*

— *95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; and*

— *2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications),*

read together and construed in the light of the requirements stemming from the protection of the applicable fundamental rights, must be interpreted as precluding an injunction made against an internet service provider which requires it to install a system for filtering

— *all electronic communications passing via its services, in particular those involving the use of peer-to-peer software;*

— *which applies indiscriminately to all its customers;*

— *as a preventive measure;*

— *exclusively at its expense; and*

— *for an unlimited period,*

which is capable of identifying on that provider's network the movement of electronic files containing a musical, cinematographic or audio-visual work in respect of which the applicant claims to hold intellectual-property rights, with a view to blocking the transfer of files the sharing of which infringes copyright.

([1]) OJ C 113, 1.5.2010.

Judgment of the Court (First Chamber) of 17 November 2011 (reference for a preliminary ruling from the Hof van Cassatie, Belgium) — Procureur-generaal bij het Hof van Beroep te Antwerpen v Zaza Retail BV

(Case C-112/10) ([1])

(Regulation (EC) No 1346/2000 — Insolvency proceedings — Opening of territorial insolvency proceedings — Conditions laid down by the applicable national law preventing the opening of main insolvency proceedings — Creditor empowered to request the opening of territorial insolvency proceedings)

(2012/C 25/11)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Procureur-generaal bij het Hof van Beroep te Antwerpen

Defendant: Zaza Retail BV

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 3(4)(a) and (b) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — International jurisdiction to open insolvency proceedings — Jurisdiction of the courts of the Member State in which the debtor does not have the centre of its main interests but in which it does have one of its establishments — Concepts of 'conditions laid down' and of 'creditor'.

Operative part of the judgment

1. *The expression 'conditions laid down' in Article 3(4)(a) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, which refers to conditions, which, under the law of the Member State where the debtor has the centre of its main interests, prevent the opening of main insolvency proceedings in that State, must be interpreted as not referring to conditions excluding particular persons from the category of persons empowered to request the opening of such proceedings.*

2. *The term 'creditor' in Article 3(4)(b) of the Regulation, which is used to designate the persons empowered to request the opening of territorial insolvency proceedings, must be interpreted as not including an authority of a Member State whose task under the national law of that State is to act in the public interest, but which does not intervene as a creditor, or in the name or on behalf of those creditors.*

([1]) OJ C 113, 1.5.2010.

Judgment of the Court (Fifth Chamber) of 10 November 2011 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — FOGGIA — Sociedade Gestora de Participações Sociais SA v Secretário de Estado dos Assuntos Fiscais

(Case C-126/10) ([1])

(Approximation of laws — Directive 90/434/EEC — Common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States — Article 11(1)(a) — Valid commercial reasons — Restructuring or rationalisation of the activities of companies participating in operations — Definition)

(2012/C 25/12)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: FOGGIA — Sociedade Gestora de Participações Sociais SA

Defendant: Secretário de Estado dos Assuntos Fiscais

Intervener: Ministério Público

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Article 11(1)(a) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) — Operations pursuing the ends of tax evasion or avoidance — Meaning of 'valid commercial reasons' and 'restructuring or rationalisation of the activities of companies participating in operations'

Operative part of the judgment

Article 11(1)(a) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, is to be interpreted as meaning that, in the case of a merger operation between two companies of the same group, the fact that, on the date of the merger operation, the acquired company does not carry out any activity, does not have any financial holdings and transfers to the acquiring company only substantial tax losses of undetermined origin, even though that operation has a positive effect in terms of cost structure savings for that group, may constitute a presumption that the operation has not been carried out for 'valid commercial reasons' within the meaning of Article 11(1)(a). It is incumbent on the national court to verify, in the light of all the circumstances of the dispute on which it is required to rule, whether the constituent elements of the presumption of tax evasion or avoidance, within the meaning of that provision, are present in the context of that dispute.

([1]) OJ C 134, 22.5.2010.

Judgment of the Court (Grand Chamber) of 22 November 2011 (reference for a preliminary ruling from the Landesarbeitsgericht Hamm — Germany) — KHS AG v Winfried Schulte

(Case C-214/10) ([1])

(Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Lapse of right to paid annual leave not taken because of illness on the expiry of a period laid down by national rules)

(2012/C 25/13)

Language of the case: German

Referring court

Landesarbeitsgericht Hamm

Parties to the main proceedings

Applicant: KHS AG

Defendant: Winfried Schulte

Re:

Reference for a preliminary ruling — Landesarbeitsgericht Hamm — Interpretation of Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — Right to payment in lieu of untaken paid annual leave of a worker who could not exercise his right to paid annual leave, on account of sick leave, during the reference period and whose unfitness for work persisted for several years until the end of his employment relationship — Collective agreement allowing payment in lieu of paid annual leave which has not been taken to be made only at the end of the employment relationship and providing that entitlement to paid annual leave which has not been taken because of illness lapses 15 months after the end of the reference period.

Operative part of the judgment

Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national provisions or practices, such as collective agreements, which limit, by a carry-over period of 15 months on the expiry of which the right to paid annual leave lapses, the accumulation of entitlement to such leave of a worker who is unfit for work for several consecutive reference periods.

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (Third Chamber) of 10 November 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) and the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v The Rank Group plc

(Joined Cases C-259/10 and C–260/10) ([1])

(Taxation — Sixth VAT Directive — Exemptions — Article 13B(f) — Betting, lotteries and other forms of gambling — Principle of fiscal neutrality — Mechanised cash bingo — Slot machines — Administrative practice departing from the legislative provisions — 'Due diligence' defence)

(2012/C 25/14)

Language of the case: English

Referring court

Court of Appeal (England and Wales) (Civil Division) and the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom)

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: The Rank Group PLC

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Article 13B(f) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemption for betting, lotteries and other forms of gambling — Mechanised cash bingo — National legislation providing for a difference in VAT treatment of supplies which are identical from the point of view of the consumer or meet the same needs of consumers — Difference in treatment according to the amount of the stake and the amount of the prize — Breach of the principle of fiscal neutrality

Operative part of the judgment

1. *The principle of fiscal neutrality must be interpreted as meaning that a difference in treatment for the purposes of value added tax of two supplies of services which are identical or similar from the point of view of the consumer and meet the same needs of the consumer is sufficient to establish an infringement of that principle. Such an infringement thus does not require in addition that the actual existence of competition between the services in question or distortion of competition because of such difference in treatment be established;*

2. *Where there is a difference in treatment of two games of chance as regards the granting of an exemption from value added tax under Article 13B(f) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, the principle of fiscal neutrality must be interpreted as meaning that no account should be taken of the fact that those two games fall into different licensing categories and are subject to different legal regimes relating to control and regulation;*

3. *In order to assess whether, in the light of the principle of fiscal neutrality, two types of slot machine are similar and require the same treatment for the purposes of value added tax it must be established whether the use of those types of machine is comparable from the point of view of the average consumer and meets the same needs of that consumer, and the matters to be taken into account in that connection are, inter alia, the minimum and maximum permitted stakes and prizes and the chances of winning;*

4. *The principle of fiscal neutrality must be interpreted as meaning that a taxable person cannot claim reimbursement of the value added tax paid on certain supplies of services in reliance on a breach of that principle, where the tax authorities of the Member State concerned have, in practice, treated similar services as exempt supplies, although they were not exempt from value added tax under the relevant national legislation;*

5. *The principle of fiscal neutrality must be interpreted as meaning that a Member State which has exercised its discretion under Article 13B(f) of the Sixth Directive 77/388 and has exempted from value added tax the provision of all facilities for playing games of chance, while excluding from that exemption a category of machines which meet certain criteria, may not contest a claim for reimbursement of VAT based on the breach of that principle by arguing that it responded with due diligence to the development of a new type of machine not meeting those criteria.*

([1]) OJ C 209, 31.7.2010.

Judgment of the Court (Third Chamber) of 24 November 2011 (reference for a preliminary ruling from Înalta Curte de Casație și Justiție — Romania) — Circul Globus București (Circ & Variete Globus București) v Uniunea Compozitorilor și Muzicologilor din România — Asociația pentru Drepturi de Autor — UCMR — ADA

(Case C-283/10) ([1])

(Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Article 3 — Concept of 'communication of a work to a public present at the place where the communication originates' — Dissemination of musical works in the presence of an audience without paying the collective management organisation the appropriate copyright fee — Entry into contracts, with the authors of the works, for copyright waiver — Scope of Directive 2001/29)

(2012/C 25/15)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: Circul Globus București (Circ & Variete Globus București)

Defendant: Uniunea Compozitorilor și Muzicologilor din România — Asociația pentru Drepturi de Autor — UCMR — ADA

Re:

Reference for a preliminary ruling — Inalta Curte de Casație și Justiție — Interpretation of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Dissemination of musical works in the presence of an audience without paying the collective management organisation the appropriate copyright fee — Entry into contracts, with the authors of the works, for copyright waiver — Concept of 'communication of a work to a public present at the place where the communication originates' — Scope of Directive 2001/29

Operative part of the judgment

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society and, more specifically, Article 3(1) thereof, must be interpreted as referring only to communication to a public which is not present at the place where the communication originates, to the exclusion of any communication of a work which is carried out directly in a place open to the public using any means of public performance or direct presentation of the work.

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (Fourth Chamber) of 10 November 2011 (reference for a preliminary ruling from the Rechtbank, Haarlem — Netherlands) — X v Inspecteur van de Belastingdienst Y (C-319/10) X BV v Inspecteur van de Belastingdienst P (C-320/10)

(Joined Cases C-319/10 and C-320/10) ([1])

(Common Customs Tariff — Combined nomenclature — Tariff classification — Boneless, frozen and salted chicken meat — Validity and interpretation of Regulations (EC) Nos 535/94, 1832/2002, 1871/2003, 2344/2003 and 1810/2004 — Additional note 7 to Chapter 2 of the combined nomenclature — Decision of the WTO Dispute Settlement Body — Legal effects)

(2012/C 25/16)

Language of the case: Dutch

Referring court

Rechtbank, Haarlem

Parties to the main proceedings

Applicants: X (C-319/10), X BV (C-320/10)

Defendants: Inspecteur van de Belastingdienst Y (C-319/10), Inspecteur van de Belastingdienst P (C-320/10)

Re:

Reference for a preliminary ruling — Rechtbank Haarlem — Interpretation and validity of Commission Regulation (EC) No 535/94 of 9 March 1994 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1994 L 68, p. 15), Commission Regulation (EC) No 1832/2002 of 1 August 2002 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2002 L 290, p. 1), Commission Regulation (EC) No 1871/2003 of 23 October 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 275, p. 5) and Commission Regulation (EC) No 2344/2003 of 30 December 2003 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2003 L 346, p. 38) — Boneless, frozen, salted chicken cuts — Tariff classification

Operative part of the judgment

In circumstances such as those in the main proceedings, where the declarations for the customs procedure for 'release for free circulation' were made before 27 September 2005, it is not possible to rely on the decision of 27 September 2005 of the Dispute Settlement Body of the World Trade Organisation (WTO), adopting a report by the WTO appellate body (WT/DS269/AB/R, WT/DS286/AB/R) and two reports by a special WTO group (WT/DS269/R and WT/DS286/R), as amended by the appellate body, neither in the context of interpretation of the additional note 7 to Chapter 2 of the combined

nomenclature in Commission Regulation (EC) No 1810/2004 of 7 September 2004 amending Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, nor in the context of assessment of the validity of that additional note.

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Fourth Chamber) of 24 November 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) — United Kingdom) — Medeva BV v Comptroller General of Patents, Designs and Trade Marks

(Case C-322/10) ([1])

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining a certificate — Concept of a 'product protected by a basic patent in force' — Criteria — Existence of further or different criteria for a medicinal product comprising more than one active ingredient or for a vaccine against multiple diseases ('Multi-disease vaccine' or 'multivalent vaccine')

(2012/C 25/17)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Medeva BV

Defendant: Comptroller General of Patents, Designs and Trade Marks

Re:

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) — Interpretation of Article 3(a) and (b) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Conditions for obtaining a certificate — Concept of a 'product protected by a basic patent in force' — Criteria — Whether there exist further or different criteria for a medicinal product comprising more than one active ingredient or for a multi-disease vaccine

Operative part of the judgment

1. *Article 3(a) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as precluding the competent industrial property office of a Member State from granting a supplementary protection certificate relating to active ingredients which are not specified in the wording of the claims of the basic patent relied on in support of the application for such a certificate.*

2. *Article 3(b) of Regulation No 469/2009 must be interpreted as meaning that, provided the other requirements laid down in Article 3 are also met, that provision does not preclude the competent industrial property office of a Member State from granting a supplementary protection certificate for a combination of two active ingredients, corresponding to that specified in the wording of the claims of the basic patent relied on, where the medicinal product for which the marketing authorisation is submitted in support of the application for a special protection certificate contains not only that combination of the two active ingredients but also other active ingredients.*

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Eighth Chamber) of 24 November 2011 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Gebr. Stolle GmbH & Co. KG (C-323/10, C-324/10 and C-326/10), Doux Geflügel GmbH (C-325/10) v Hauptzollamt Hamburg-Jonas

(Joined Cases C-323/10 to C-326/10) ([1])

(Regulation (EEC) No 3846/87 — Agriculture — Export refunds — Poultrymeat — Fowls of the species Gallus domesticus, drawn and plucked)

(2012/C 25/18)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicants: Gebr. Stolle GmbH & Co. KG (C-323/10, C-324/10 and C-326/10), Doux Geflügel GmbH (C-325/10)

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds (OJ 1987 L 366, p. 1), as amended by Commission Regulation (EC) No 2765/1999 of 16 December 1999 (OJ 1999 L 338, p. 1) — Heading 0207 12 90 — Fowls of the species *Gallus domesticus*, plucked but not completely drawn as provided for under that heading of the nomenclature

Operative part of the judgment

1. *Subheading 0207 12 90 of Annex I to Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds, as amended by Commission Regulation (EC) No 2091/2005 of 15 December 2005 publishing, for 2006, the agricultural product nomenclature for export refunds, must be interpreted as meaning that a poultry carcass under that subheading has to be completely drawn, so that it is prejudicial to its tariff classification if part of the guts or trachea, for example, are still attached to the carcass following a mechanical gutting process.*

2. *Product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Commission Regulation (EC) No 2765/1999 of 16 December 1999, must be interpreted as meaning that an 'irregular composition' allows for the presence in a carcass of a maximum of only four giblets from those which it lists, of one or more than one type, provided that the total of four is adhered to.*

3. *Subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which one of the giblets listed in that subheading, namely the neck, heart, liver and gizzard, is present more than once, does not come under that subheading.*

4. *Subheading 0207 12 10 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that, for the purposes of the export refund classification, a poultry carcass to which some small quill feathers, plumage feathers, quill ends and hairs are still attached after going through a mechanical plucking process comes under that subheading, provided that those remaining feathers are compatible with the characteristic of a chicken ready for roasting and with sound and fair marketable quality.*

5. *Product code 0207 12 90 9990 of Annex I to Regulation No 3846/87, as amended by Regulation No 2765/1999, must be interpreted as meaning that a poultry carcass in which the trachea is still attached to the neck does not come under that product code.*

6. *When a customs office seeks to determine whether goods presented for export comply with the tariff heading stated in the export declaration, the results of a partial examination of declared goods are valid for all the goods declared, in accordance with Article 70(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. A margin of error does not have to be allowed within which it may be found that an anomaly is not prejudicial to a refund.*

(1) OJ C 209, 31.7.2010.
OJ C 274, 9.10.2010.

Judgment of the Court (First Chamber) of 17 November 2011 (reference for a preliminary ruling from the Okresní soud v Chebu — Czech Republic) — Hypoteční banka, a.s. v Udo Mike Lindner

(Case C-327/10) (1)

(Jurisdiction and the enforcement of judgments in civil and commercial matters — Mortgage loan contract concluded by a consumer who is a national of one Member State with a bank established in another Member State — Legislation of a Member State making it possible, in the case where the exact domicile of the consumer is unknown, to bring an action against the latter before a court of that State)

(2012/C 25/19)

Language of the case: Czech

Referring court

Okresní soud v Chebu

Parties to the main proceedings

Applicant: Hypoteční banka, a.s.

Defendant: Udo Mike Lindner

Re:

Reference for a preliminary ruling — Okresní soud v Chebu — Interpretation of Article 81 TFEU and Articles 16(2), 17.3 and 24 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), as well as of Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Jurisdiction in respect of a mortgage loan contract concluded by a consumer who is a national of one Member State with a bank established in another Member State — Legislation of a Member State making it possible, in the case where the domicile of the consumer is unknown, to bring an action against the latter before a court of that State

Operative part of the judgment

1. *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the application of the rules of jurisdiction laid down by that regulation requires that the situation at issue in the proceedings of which the court of a Member State is seised is such as to raise questions relating to determination of the international jurisdiction of that court. Such a situation arises in a case such as that in the main proceedings, in which an action is brought before a court of a Member State against a national of another Member State whose domicile is unknown to that court.*

2. *Regulation No 44/2001 must be interpreted as meaning that:*

— *in a situation such as that in the main proceedings, in which a consumer who is a party to a long-term mortgage loan contract, which includes the obligation to inform the other party to the contract of any change of address, renounces his domicile before proceedings against him for breach of his contractual obligations are brought, the courts of the Member State in which the consumer had his last known domicile have jurisdiction, pursuant to Article 16(2) of that regulation, to deal with proceedings in the case where they have been unable to determine, pursuant to Article 59 of that regulation, the defendant's current domicile and also have no firm evidence allowing them to conclude that the defendant is in fact domiciled outside the European Union;*

— *that regulation does not preclude the application of a provision of national procedural law of a Member State which, with a view to avoiding situations of denial of justice, enables proceedings to be brought against, and in the absence of, a person whose domicile is unknown, if the court seised of the matter is satisfied, before giving a ruling in those proceedings, that all investigations required by the principles of diligence and good faith have been undertaken with a view to tracing the defendant.*

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Second Chamber) of 10 November 2011 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Republic of Latvia) — Norma-A SIA, Dekom SIA v Latgales plānošanas reģions, successor to the rights of Ludzas novada dome

(Case C-348/10) ([1])

(Public procurement — Directive 2004/17/EC — Article 1(3)(b) — Directive 92/13/EEC — Article 2d(1)(b) — Concept of 'service concession' — Provision of public bus services — Right to operate the services and compensation of the service provider for losses — Risk associated with operation of the service limited by national law and the contract — Appeal procedures in the field of public contracts — Direct applicability of Article 2d(1)(b) of Directive 92/13/EEC to contracts concluded before the expiry of the time-limit for the transposition of Directive 2007/66/ECcopy keywords without brackets)

(2012/C 25/20)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicants: Norma-A SIA, Dekom SIA

Defendant: Latgales plānošanas reģions, successor to the rights of Ludzas novada dome

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 1(3)(b) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) and Article 2f(1)(b) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31) — Notion of service concession — Contract granting the right to provide public bus services, where the consideration consists in the right to operate the services and the contracting authority compensates the service provider for losses arising as a result of the provision of services, and national legislation and that contract limit the risk associated with operation of the service — Appeal procedures in the field of public contracts — Action for annulment of the concession contract — Direct applicability in Latvia of Article 2f(1)(b) of Directive 92/13/EEC to public contracts concluded before the deadline for transposing Directive 2007/66/EC had expired

Operative part of the judgment

1. *Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors must be interpreted as meaning that a contract by which a contracting party, pursuant to the rules of public law and the terms of the contract which govern the provision of the services in question, does not bear a significant share of the risk run by the contracting authority is to be regarded as a 'service contract' within the meaning of Article 1(2)(d) of that directive. It is for the national court to assess whether the transaction at issue in the main proceedings must be regarded as a service concession or a public service contract by taking account of all the characteristics of that transaction.*

2. *Article 2d(1)(b) of Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive*

2007/66/EC of the European Parliament and of the Council of 11 December 2007, does not apply to public contracts concluded before the expiry of the time-limit for transposition of Directive 2007/66.

([1]) OJ C 246, 11.09.2010.

Judgment of the Court (Third Chamber) of 24 November 2011 — European Commission v Italian Republic

(Case C-379/10) ([1])

(Failure to fulfil obligations — General principal of the liability of Member States for infringements of European Union law by one of their courts adjudicating at last instance — Exclusion of any liability on the part of the Member State for an interpretation of the rules of law or an assessment of the facts and evidence carried out by a court adjudicating at last instance — Limitation by the national legislature of the Member State's liability to cases of intentional fault or serious misconduct committed by such a court)

(2012/C 25/21)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Pignataro and M. Nolin, acting as Agents

Defendant: Italian Republic (represented by: G. Palmieri, Agent and G. De Bellis, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of the general principle of the liability of Member States for infringement of European Union law by one of their courts adjudicating at last instance — Liability limited to cases of intentional fault or serious misconduct.

Operative part of the judgment

The Court:

1. *Declares that*

— *by excluding all liability of the Italian State for damage caused to individuals through an infringement of European Union law on the part of a court adjudicating at last instance when that infringement results from an interpretation of the rules of law or an assessment of the facts and evidence carried out by that court and*

— *by limiting that liability to cases of intentional fault or serious misconduct,*

pursuant to Article 2(1) and (2) of Law No 117on the reparation of damage caused in the exercise of judicial functions and the civil liability of judges [legge n. 117 (sul) risarcimento dei danni cagionati nell' esercizio delle funzioni giudiziarie e responsabilità civile dei magistrati], of 13 April 1988 the Italian Republic has failed to fulfil its obligations under the general principal of the liability of Member States for infringements of European Union law by one of their courts adjudicating at last instance;

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

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Fourth Chamber) of 10 November 2011 (reference for a preliminary ruling from the Amtsgericht Bruchsal — Germany) — Criminal proceedings against QB (*)

(Case C-405/10) ([1])

(Protection of the environment — Regulations (EC) Nos 1013/2006 and 1418/2007 — Control of shipments of waste — Prohibition on the shipment of spent catalysts to Lebanon)

(2012/C 25/22)

Language of the case: German

Referring court

Amtsgericht Bruchsal

Party in the main proceedings

QB (*)

Re:

Reference for a preliminary ruling — Amtsgericht Bruchsal — Interpretation of Article 37 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1), read in conjunction with Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply (OJ 2007 L 316, p. 6) — Prohibition on the shipment of waste which falls within waste category B 1120 (catalysts) to Lebanon

Operative part of the judgment

Articles 36(1)(f) and 37 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, read in conjunction with Commission Regulation (EC) No 1418/2007 of 29 November 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation No 1013/2006 to certain countries to which the OECD Decision on

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(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

the control of transboundary movements of wastes does not apply, as amended by Commission Regulation (EC) No 740/2008 of 29 July 2008, must be interpreted as meaning that the export from the European Union to Lebanon of waste, intended for recovery, which falls within category B1120 in List B in Part 1 of Annex V to Regulation No 1013/2006 is prohibited.

([1]) OJ C 288, 23.10.2010.

Judgment of the Court (Fourth Chamber) of 17 November 2011 (reference for a preliminary ruling from the High Court of Justice (Queen's Bench Division) — United Kingdom) — Deo Antoine Homawoo v GMF Assurances SA

(Case C-412/10) ([1])

(Judicial cooperation in civil matters — Law applicable to non-contractual obligations — Regulation (EC) No 864/2007 — Scope ratione temporis)

(2012/C 25/23)

Language of the case: English

Referring court

High Court of Justice (Queen's Bench Division)

Parties to the main proceedings

Applicant: Deo Antoine Homawoo

Defendant: GMF Assurances SA

Re:

Reference for a preliminary ruling — High Court of Justice (Queen's Bench Division) (United Kingdom) — Interpretation of Articles 15(c), 31 and 32 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ 2007 L 199, p. 40) and of Article 297 TFEU — Temporal scope — Scope of the law applicable to the facts giving rise to damage

Operative part of the judgment

Articles 31 and 32 of Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('Rome II'), read in conjunction with Article 297 TFEU, must be interpreted as requiring a national court to apply the Regulation only to events giving rise to damage occurring after 11 January 2009 and that the date on which the proceedings seeking compensation for damage were brought or the date on which the applicable law was determined by the court seised have no bearing on determining the scope ratione temporis of the Regulation.

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Fourth Chamber) of 24 November 2011 (reference for a preliminary ruling from the High Court of Justice (England and Wales), Chancery Division (Patents Court) (United Kingdom)) — Georgetown University, University of Rochester, Loyola University of Chicago v Comptroller General of Patents, Designs and Trade Marks

(Case C-422/10) ([1])

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining a certificate — Concept of a 'product protected by a basic patent in force' — Criteria — Existence of further or different criteria for a medicinal product comprising more than one active ingredient or for a vaccine against multiple diseases ('Multi-disease vaccine' or 'multivalent vaccine'))

(2012/C 25/24)

Language of the case: English

Referring court

High Court of Justice (England and Wales), Chancery Division (Patents Court) (United Kingdom)

Parties to the main proceedings

Applicants: Georgetown University, University of Rochester, Loyola University of Chicago

Defendant: Comptroller General of Patents, Designs and Trade Marks

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(b) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Conditions for obtaining certificate — Whether it is possible to issue a supplementary protection certificate for an active ingredient or combination of active ingredients if that active ingredient or combination of active ingredients is protected by a basic patent in force within the meaning of Article 3(a) of the regulation

Operative part of the judgment

Article 3(b) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that, provided the other requirements laid down in Article 3 are also met, that provision does not preclude the competent industrial property office of a Member State from granting a supplementary protection certificate for an active ingredient specified in the wording of the claims of the basic patent relied on, where the medicinal product for which the marketing authorisation is submitted in support of the supplementary protection certificate application contains not only that active ingredient but also other active ingredients.

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Fourth Chamber) of 17 November 2011 (reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Hristo Gaydarov v Direktor na Glavna direktsia 'Ohranitelna politsia' pri Ministerstvo na vatreshnite raboti

(Case C-430/10) [1]

(Freedom of movement of a Union citizen — Directive 2004/38/EC — Prohibition on leaving national territory due to a criminal conviction in another country — Drug trafficking — Whether measure can be justified on grounds of public policy)

(2012/C 25/25)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Hristo Gaydarov

Defendant: Direktor na Glavna direktsia 'Ohranitelna politsia' pri Ministerstvo na vatreshnite raboti

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Article 27(1) and (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77), Recitals 5 and 20 in the preamble to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1), and Article 71(1)and(2) of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders e (OJ 2000 L 239, p. 19) — Restriction on the freedom of movement of a Union citizen — Prohibition on leaving national territory because of a crime relating to drug trafficking committed in a third State — Whether measure justifiable by reasons of public policy for the purposes of general and individual prevention.

Operative part of the judgment

Article 21 TFEU and Article 27 of Directive 2004/38/EC of the European Parliament and the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, do not preclude national legislation that permits the restriction of the right of a national of a Member State to travel to another Member State in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that (i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and (iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.

[1] OJ C 301, 6.11.2010.

Judgment of the Court (Fourth Chamber) of 17 November 2011 (reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Petar Aladzhov v Zamestnik direktor na Stolichna direktsia na vatreshnite raboti kam Ministerstvo na vatreshnite raboti

(Case C-434/10) [1]

(Freedom of movement of a Union citizen — Directive 2004/38/EC — Prohibition on leaving national territory because of non payment of a tax liability — Whether measure can be justified on grounds of public policy)

(2012/C 25/26)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Petar Aladzhov

Defendant: Zamestnik direktor na Stolichna direktsia na vatreshnite raboti kam Ministerstvo na vatreshnite raboti

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Article 27(1) and (2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Restriction of the exercise of the right of freedom of movement of a Union citizen — Natural person, as the representative of a debtor commercial company, prohibited from leaving national territory because of the non-recovery of 'considerable' debts owed to a public authority — Measure justified on grounds of public policy

Operative part of the judgment

1. *European Union law does not preclude a legislative provision of a Member State which permits an administrative authority to prohibit a national of that State from leaving it on the ground that a tax liability of a company of which he is one of the managers has not been settled, subject, however, to the twofold condition that the measure at issue is intended to respond, in certain exceptional circumstances which might arise from, inter alia, the nature or amount of the debt, to a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society and that the objective thus pursued does not solely serve economic ends. It is for the national court to determine whether that twofold condition is satisfied.*

2. *Even if a measure imposing a prohibition on leaving the territory such as that applying to Mr Aladzhov in the main proceedings has been adopted under the conditions laid down in Article 27(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, the conditions laid down in Article 27(2) thereof preclude such a measure,*

   — *if it is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and*

   — *if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it.*

   It is for the referring court to determine whether that is the position in the case before it.

([1]) OJ C 317, 20.11.2010.

Judgment of the Court (Fourth Chamber) of 17 November 2011 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — J. C. van Ardennen v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-435/10) ([1])

(Directive 80/987/EEC — Protection of employees in the event of the insolvency of their employer — Insolvency benefit — Payment subject to registration as a job-seeker)

(2012/C 25/27)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: J. C. van Ardennen

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Re:

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of Articles 4, 5 and 10 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (OJ 1980 L 283, p. 23), as amended by Directive 2002/74/EC (OJ 2002 L 270, p. 10) — Extent of the guarantee offered by the guarantee institution — National legislation obliging employees to register immediately as job-seekers before they apply for payment of outstanding pay claims.

Operative part of the judgment

Articles 3 and 4 of Council Directive 80/987/EEC of 20 October 1980 relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 must be interpreted as precluding a national rule which obliges employees to register as job-seekers in the event of the insolvency of their employer, in order to fully assert their right to payment of outstanding wage claims, such as those in issue in the main proceedings.

([1]) OJ C 317, 20.11.2010.

Judgment of the Court (Second Chamber) of 10 November 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Lüdenscheid v Christel Schriever

(Case C-444/10) ([1])

(VAT — Sixth Directive — Article 5(8) — Concept of a 'transfer of a totality of assets or part thereof' — Transfer of the stock and fittings concomitant with the conclusion of a contract of lease of the business premises)

(2012/C 25/28)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Lüdenscheid

Defendant: Christel Schriever

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 5(8) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Possibility for the Member States to exempt from VAT the transfer of a totality of assets — Lease for an indefinite period of the shop premises of a retail outlet together with the transfer to the lessee of ownership of the stock and shop fittings of the retail outlet — Possibility of categorising such a transaction as a 'transfer of a totality of assets' for the purposes of Article 5(8) of Directive 77/388/EEC.

Operative part of the judgment

Article 5(8) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that there is a transfer of a totality of assets, or a part thereof, for the purposes of that provision, where the stock and fittings of a retail outlet are transferred concomitantly with the conclusion of a contract of lease, to the transferee, of the premises of that outlet for an indefinite period but terminable at short notice by either party, provided that the assets transferred are sufficient for the transferee to be able to carry on an independent economic activity on a lasting basis.

([1]) OJ C 317, 20.11.2010.

Judgment of the Court (Second Chamber) of 17 November 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Oliver Jestel v Hauptzollamt Aachen

(Case C-454/10) ([1])

(Community Customs Code — Second indent of Article 202(3) — Customs debt incurred through unlawful introduction of goods — Meaning of 'debtor' — Participation in unlawful introduction — Person acting as intermediary in conclusion of contracts of sale relating to goods introduced unlawfully)

(2012/C 25/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Oliver Jestel

Defendant: Hauptzollamt Aachen

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the second indent of Article 202(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Customs debt incurred through the unlawful introduction of goods into the customs territory of the European Union — Person acting as intermediary in conclusion of contracts of sale relating to goods introduced unlawfully without directly taking part in that introduction — Conditions under which such a person can be considered to be a debtor of a customs debt.

Operative part of the judgment

The second indent of Article 202(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that a person who, without being directly involved in the introduction of goods, participated in the introduction as intermediary in the conclusion of contracts of sale relating to those goods must be considered to be a debtor of a customs debt incurred through the unlawful introduction of goods into the customs territory of the European Union where that person was aware, or should reasonably have been aware, that that introduction was unlawful, which is a matter for the national court to determine.

([1]) OJ C 317, 20.11.2010.

Judgment of the Court (Third Chamber) of 24 November 2011 (references for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) (C-468/10), Federación de Comercio Electrónico y Marketing Directo (FECEMD) (C-469/10) v Administración del Estado

(Joined Cases C-468/10 and C-469/10) ([1])

(Processing of personal data — Directive 95/46/EC — Article 7(f) — Direct effect)

(2012/C 25/30)

Language of the cases: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Asociación Nacional de Establecimientos Financieros de Crédito (ASNEF) (C-468/10), Federación de Comercio Electrónico y Marketing Directo (FECEMD) (C-469/10)

Defendant: Administración del Estado

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 7(f) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Processing of data by controllers and communication to the addressees to satisfy their respective legitimate interests — Additional requirements — Direct effect of the provisions of a directive

Operative part of the judgment

1. *Article 7(f) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as precluding national rules which, in the absence of the data subject's consent, and in order to allow such processing of that data subject's personal data as is necessary to pursue a legitimate interest of the data controller or of the third party or parties to whom those data are disclosed, require not only that the fundamental rights and freedoms of the data subject be respected, but also that the data should appear in public sources, thereby excluding, in a categorical and generalised way, any processing of data not appearing in such sources.*

2. *Article 7(f) of Directive 95/46 has direct effect.*

([1]) OJ C 346, 18.12.2010.

Judgment of the Court (Third Chamber) of 10 November 2011 (reference for a preliminary ruling from the Højesteret, Denmark) — Partrederiet Sea Fighter v Skatteministeriet

(Case C-505/10) ([1])

(Directive 92/81/EEC — Excise duties on mineral oils — Exemption — Concept of 'navigation' — Fuel used for an excavator affixed to a vessel and operating independently of the vessel's engine)

(2012/C 25/31)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Partrederiet Sea Fighter

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Art. 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12) — Exemption for mineral oils used as fuel for the purposes of navigation — Concept of 'for the purposes of navigation' — Mineral oils used as fuel for an excavator which is affixed to a vessel but having its own separate motor and fuel tank and thus operating independently of the vessel's propulsion motor.

Operative part of the judgment

Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils, as amended by Council Directive 94/74/EC of 22 December 1994, must be interpreted as meaning that mineral oils supplied for use in an excavator which is affixed to a vessel but which, because it has its own separate motor and fuel tank, operates independently of the vessel's propulsion engine, are not exempt from excise duties.

([1]) OJ C 13, 15.1.2011.

Judgment of the Court (Seventh Chamber) of 10 November 2011 — LG Electronics, Inc v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-88/11 P) ([1])

(Appeal — Community trade mark — Word sign 'KOMPRESSOR PLUS' — Refusal to register — Regulation (EC) No 40/94 — Article 7(1)(c) — Descriptive character — Consideration of new evidence by the General Court — Distortion of the facts and evidence)

(2012/C 25/32)

Language of the case: French

Parties

Appellant: LG Electronics, Inc. (represented by: J. Blanchard, avocat)

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

Re:

Appeal against the judgment of the General Court (Second Chamber) of 16 December 2010 in Case T-497/09 *LG Electronics* v *OHIM* dismissing the appellant's action against the decision of the First Board of Appeal of OHIM of 23 September 2009 (Case R 397/2009-1) concerning an application for registration of the word sign KOMPRESSOR PLUS as a Community trade mark — Descriptive nature of the mark — Article 7(1)(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Consideration of new facts by the General Court — Distortion of the evidence

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders LG Electronics Inc. to pay the costs.*

([1]) OJ C 120, 16.4.2011.

Judgment of the Court (Grand Chamber) of 15 November 2011 (reference for a preliminary ruling from the Verwaltungsgerichtshof, Austria) — Murat Dereci, Vishaka Heiml, Alban Kokollari, Izunna Emmanuel Maduike, Dragica Stevic v Bundesministerium für Inneres

(Case C-256/11) ([1])

(Citizenship of the Union — Right of residence of nationals of third countries who are family members of Union citizens — Refusal based on the citizen's failure to exercise the right to freedom of movement — Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement — EEC-Turkey Association Agreement — Article 13 of Decision No 1/80 of the Association Council — Article 41 of the Additional Protocol — 'Standstill' clauses)

(2012/C 25/33)

Language of the case: German

Referring court

Verwaltungsgerichtshof, Austria

Parties to the main proceedings

Applicants: Murat Dereci, Vishaka Heiml, Alban Kokollari, Izunna Emmanuel Maduike, Dragica Stevic

Defendant: Bundesministerium für Inneres

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Article 20 TFEU, Article 41(1) of the Additional Protocol of 23 November 1970 annexed to the Agreement establishing an Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (JO 1972 L 293, p. 4), and Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, drawn up by of the Association Council set up by the aforementioned Agreement — Citizenship of the Union — Right of citizens of the Union and members of their families to reside freely in the territory of a Member State — Situation in which the citizen of the Union resides in the Member State of which he or she is a national — Conditions governing the granting of a residence permit to family members who are nationals of non-member countries.

Operative part of the judgment

1. *European Union law and, in particular, its provisions on citizenship of the Union, must be interpreted as meaning that it does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify.*

2. *Article 41(1) of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, must be interpreted as meaning that the enactment of new legislation more restrictive that the previous legislation, which, for its part, relaxed earlier legislation concerning the conditions for the exercise of the freedom of establishment of Turkish nationals at the time of the entry into force of that protocol in the Member State concerned must be considered to be a 'new restriction' within the meaning of that provision.*

([1]) OJ C 219, 23.07.2011.

Order of the Court (Seventh Chamber) of 29 September 2011 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Angelo Grisoli v Regione Lombardia

(Case C-315/08) ([1])

(Article 104(3), first indent, of the Rules of Procedure — Article 49 TFEU — Freedom of establishment — Public health — Pharmacies — Proximity — Supply of medicinal products to the population — Operating authorisation — Territorial distribution of pharmacies — Minimum distance between pharmacies)

(2012/C 25/34)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Angelo Grisoli

Defendant: Regione Lombardia

Other party to the proceedings: Commune di Roccafranca

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 152 and 153 EC — Opening of new pharmacies — National legislation fixing limits on the basis of the number of inhabitants and laying down the conditions for authorising the opening of a new pharmacy

Operative part of the order

Article 49 TFEU does not preclude national legislation, such as that at issue in the main proceedings, which limits the establishment of new pharmacies by providing that

— *in towns with a population of less than 4 000 inhabitants, only one pharmacy may be set up and*

— *in towns with more than 4 000 inhabitants, the establishment of a new pharmacy is subject to conditions, such as the exceeding by at least 50 % of the number of inhabitants needed for a pharmacy and a minimum distance from already existing pharmacies,*

on condition that such legislation permits, by way of derogation from its basic rules, the establishment of a sufficient number of pharmacies to guarantee an appropriate pharmaceutical service in areas with special demographic or geographical characteristics, something which it is for the national court to ascertain.

([1]) OJ C 260, 11.10.2008.

Order of the Court (Sixth Chamber) of 9 September 2011 (reference for a preliminary ruling from the Corte d'appello di Milano (Italy)) — Cassina S.p.A v Alivar Srl, Galliani Host Arredamenti Srl

(Case C-198/10) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Industrial and commercial property — Directive 98/71/EC — Legal protection of designs — Article 17 — Obligation concerning the cumulation of design protection with copyright protection — National law precluding copyright protection in the case of designs which entered the public domain before its entry into force)

(2012/C 25/35)

Language of the case: Italian

Referring court

Corte d'appello di Milano

Parties to the main proceedings

Applicant: Cassina S.p.A

Defendants: Alivar Srl, Galliani Host Arredamenti Srl

Re:

Reference for a preliminary ruling — Corte d'appello di Milano — Interpretation of Articles 17 and 19 of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs — National legislation which transposed the directive into national law by introducing copyright protection for designs — Right of a Member State to extend the conditions for the grant of such protection

Operative part of the order

Article 17 of Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs, must be interpreted as precluding legislation of a Member State which either excludes, either completely or within the limits of prior use, from protection by the law of copyright of that Member State designs which have entered the public domain before the entry into force of that legislation, with regard to all third parties who have previously manufactured or marketed in the national territory products based on those designs before that date.

([1]) OJ C 179, 3.7.2010.

Order of the Court (Seventh Chamber) of 12 September 2011 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-289/10 P) ([1])

(Appeal — Public service contracts — Call for tenders — Analysis, development, maintenance and support of telematic systems for the monitoring of products subject to excise duty — Rejection of the tender — Failure to state reasons for that rejection)

(2012/C 25/36)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, dikigoros)

Other party to the proceedings: European Commission (represented by: M. Wilderspin, acting as Agent)

Re:

Appeal against the judgment of the General Court (Third Chamber) of 19 March 2010 in Case T-50/05 *Evropaïki Dynamiki* v *Commission*, by which the General Court dismissed an action for annulment of the Commission's decision of 18 November 2004 rejecting the appellant's tender in a tendering procedure relating to the analysis, development, maintenance and support of telematic systems to control the movement of products subject to excise duty and awarding the contract to another tenderer

Operative part of the order

1. *The appeal is dismissed.*

2. *Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE shall pay the costs.*

(1) OJ C 246, 11.9.2010.

Order of the Court of 22 September 2011 (reference for a preliminary ruling from the Tribunal de première instance de Liège — Belgium — Hubert Pagnoul v Belgian State)

(Case C-314/10) (1)

(Articles 92(1), 103(1) and the first subparagraph of Article 104(3) of the Rules of Procedure — Reference for a preliminary ruling — Examination of compatibility of national rule both with European Union law and with national Constitution — National legislation requiring preliminary review procedure in case of constitutionality — Charter of Fundamental Rights of the European Union — Need for a connection with European Union law — Manifest lack of jurisdiction of the Court of Justice)

(2012/C 25/37)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicant: Hubert Pagnoul

Defendant: Belgian State

Re:

Reference for a preliminary ruling — Tribunal de première instance de Liège — Interpretation of Articles 6 TEU, 267 TFEU and 47 of the Charter of Fundamental Rights of the European Union — Obligatory preliminary referral to the constitutional court by national courts in cases of presumed infringement of fundamental rights by national legislation — Compatibility with European Union law of the provision of national law requiring that preliminary referral — Possibility for national courts to review compatibility of national rules with international treaties where the constitutional court has declared the national legislation at issue to be compatible with the fundamental rights guaranteed by the Constitution

Operative part of the order

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the question referred for a preliminary ruling by the Tribunal de première instance de Liège (Belgium).

(1) OJ C 246, 11.9.2010.

Order of the Court (Fifth Chamber) of 22 September 2011 (reference for a preliminary ruling from the Court of First Instance, Liège, Belgium) — Richard Lebrun and Marcelle Howet v Belgian State

(Case C-538/10) (1)

(Articles 92(1), 103(1), 104(3), first subparagraph, of the Rules of Procedure — Reference for a preliminary ruling — Examination of the conformity of a national provision with both European Union law and the national constitution — National legislation granting priority to an interlocutory procedure for the review of constitutionality — Charter of Fundamental Rights of the European Union — Requirement of link with European Union law — Clear absence of jurisdiction of the Court)

(2012/C 25/38)

Language of the case: French

Referring court

Court of First Instance, Liège

Parties to the main proceedings

Applicants: Richard Lebrun and Marcelle Howet

Defendant: Belgian State

Re:

Reference for a preliminary ruling — Court of First Instance, Liège — Interpretation of Articles 6 TEU, 267 TFEU and 47 of the Charter of Fundamental Rights of the European Union — Prior obligation on national courts to refer matter to Constitutional Court where it supposes that national legislation may be in conflict with fundamental rights — Compliance with European Union law of the national provision requiring such a prior reference — Right of national courts to review compliance of national law with international treaties where the Constitutional Court has declared the national legislation at issue compatible with the fundamental rights guaranteed by the constitution

Operative part of the order

It is clear that the Court of Justice of the European Union has no jurisdiction to answer the question referred for a preliminary ruling by the Court of First Instance, Liège, Belgium.

(1) OJ C 38, 5.2.2011.

Order of the Court (Fifth Chamber) of 30 September 2011 — Sociedade Quinta do Portal, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Vallegre, Vinhos do Porto SA

(Case C-541/10 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — Community word mark PORTO ALEGRE — Earlier national word mark VISTA ALEGRE — Relative ground for refusal — Likelihood of confusion — Declaration of invalidity of the mark)

(2012/C 25/39)

Language of the case: Portuguese

Parties

Appellant: Sociedade Quinta do Portal, SA (represented by: F. Bolota Belchior, advogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. López Ronda and G. Macias Bonilla, abogados), Vallegre, Vinhos do Porto SA

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 8 September 2010 in Case T-369/09 *Quinta do Portal* v *OHIM — Vallegre*, by which the General Court dismissed the action brought against the decision of the First Board of Appeal of OHIM of 18 June 2009 (Case R 1012/2008-1) relating to proceedings for a declaration of invalidity between Vallegre, Vinhos do Porto SA and Sociedade Quinta do Portal, SA

Operative part of the order

1. *The appeal is dismissed.*

2. *Quinta do Portal, SA is ordered to pay the costs.*

([1]) OJ C 38, 5.2.2011.

Order of the Court (Sixth Chamber) of 13 September 2011 — Hans-Peter Wilfer v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-546/10 P) ([1])

(Appeal — Community trade mark — Figurative sign representing the headstock of a guitar — Refusal to register — Absolute ground for refusal — Lack of distinctiveness — Ex officio examination of the facts — Articles 7(1)(b) and 74(1) of Regulation (EC) No 40/94 — Admissibility of evidence submitted for the first time before the General Court — Equality of treatment)

(2012/C 25/40)

Language of the case: German

Parties

Appellant: Hans-Peter Wilfer (represented by: W. Prinz, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, agent)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 8 September 2010 in Case T-458/08 *Wilfer* v *OHIM*, by which the General Court dismissed the action of annulment brought against the decision of the Fourth Board of Appeal of OHIM of 25 July 2008, dismissing the appeal against the decision of the examiner who partially refused registration of the figurative sign representing the headstock of a guitar coloured silver, grey and brown as a Community trade mark for certain goods in Classes 9 to 15 — Distinctiveness of a figurative sign constituted by the two-dimensional representation of part of the product

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Wilfer is ordered to pay the costs.*

([1]) OJ C 30, 29.1.2011.

Order of the Court of 20 September 2011 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-561/10 P) ([1])

(Appeal — Public service contracts — Invitation to tender — Computing services for the maintenance of the SEI-BUD/AMD/CR systems — Rejection of the tender — Inadequate statement of reasons — Incorrect assessment of the facts and evidence)

(2012/C 25/41)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, dikigoros)

Other party to the proceedings: European Commission (represented by: S. Delaude and N. Bambara, acting as Agents)

Re:

Appeal against the judgment of the General Court (Fifth Chamber) of 9 September 2010 in Case T-387/08 *Evropaïki Dynamiki* v *Commission* dismissing an application (i) for annulment of the decision of the Publications Office of the European Union of 20 June 2008 rejecting the tender submitted by the appellant in Call for Tender for computing

services — maintenance of the SEI-BUD/AMD/CR systems and related services (AO 10185) (OJ 2008/S 43-058884) and of the decision to award the contract to another tenderer, and (ii) for damages.

Operative part of the order

1. *The appeal is dismissed.*

2. *Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE shall pay the costs.*

([1]) OJ C 72, 5.3.2011.

Order of the Court (Eighth Chamber) of 21 September 2011 — Longevity Health Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Biofarma SA

(Case C-316/11 P) ([1])

(Appeal — Community trade mark — Proceedings before the Board of Appeal of OHIM — Failure to comply with the obligation to pay the appeal fee within the period prescribed — Decision of the Board of Appeal declaring that the appeal is deemed not to have been filed)

(2012/C 25/42)

Language of the case: English

Parties

Appellant: Longevity Health Products, Inc. (represented by: J. Korab, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Biofarma SA

Re:

Appeal against the order of the General Court (Second Chamber) of 15 April 2011 in Case T-96/11 *Longevity Health Products* v *OHIM — Biofarma* by which that court dismissed an action brought by the applicant for word mark 'VITACHRON FEMALE' for goods and services in, inter alia, class 5 against Decision R 1357/2010-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 10 January 2011, declaring that the appeal against the Opposition Division's decision — which refused registration of that mark in the opposition proceedings brought by the proprietor of the national marks 'VITATHION' for goods and services in class 5 — was deemed not to have been filed since the appeal fee had not been paid within the time-limit.

Operative part of the order

1. *The appeal is dismissed.*

2. *Longevity Health Products, Inc. shall bear its own costs.*

([1]) OJ C 269, 10.9.2011.

Order of the Court (Eighth Chamber) of 21 September 2011 — Longevity Health Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Biofarma SA

(Case C-378/11 P) ([1])

(Appeal — Community trade mark — Proceedings before the Board of Appeal of OHIM — Failure to comply with the obligation to pay the appeal fee within the period prescribed — Decision of the Board of Appeal declaring that the appeal is deemed not to have been filed)

(2012/C 25/43)

Language of the case: English

Parties

Appellant: Longevity Health Products, Inc. (represented by: J. Korab, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Biofarma SA

Re:

Appeal against the order of the General Court (Second Chamber) of 15 April 2011 in Case T-95/11 *Longevity Health Products* v *OHIM — Biofarma (VITACHRON MALE)* by which that court dismissed an action brought by the applicant for the word mark 'VITACHRON MALE' for goods and services in, inter alia, Class 5 against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 10 January 2011 in Case R 1356/2010-4, declaring that the appeal against the Opposition Division's decision — which refused registration of that mark in the opposition proceedings brought by the proprietor of the national marks 'VITATHION' for goods and services in Class 5 — was deemed not to have been filed since the appeal fee had not been paid within the time-limit.

Operative part of the order

1. *The appeal is dismissed.*

2. *Longevity Health Products, Inc. shall bear its own costs.*

([1]) OJ C 269, 10.9.2011.

Reference for a preliminary ruling from the Tribunale di Adria (Italy) lodged on 18 August 2011 — Criminal proceedings against Sagor MD

(Case C-430/11)

(2012/C 25/44)

Language of the case: Italian

Referring court

Tribunale di Adria

Party to the main proceedings

Sagor MD

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC [1] preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

[1] OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (Netherlands) lodged on 10 October 2011 — UPC Nederland BV v Gemeente Hilversum

(Case C-518/11)

(2012/C 25/45)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam

Parties to the main proceedings

Applicant: UPC Nederland BV

Defendant: Gemeente Hilversum

Questions referred

1. Does a service consisting of the supply of free-to-air radio and television packages via cable, for the delivery of which both transmission costs and an amount relating to (charges for) payments made to broadcasters and copyright collecting societies in connection with the publication of their content are charged, fall within the scope of the new regulatory framework [for electronic communications networks]?

2. (a) Does the Municipality [of Hilversum], against the background of the liberalisation of the telecommunications sector and the objectives of the new regulatory framework, including a strict coordination and consultation process before a national regulatory authority acquires (exclusive) competence to intervene in retail tariffs by means of a measure such as price control, still have the power (task) to protect the general interest of its inhabitants by intervening in retail tariffs by means of a tariff-limiting clause?

   (b) If not, does the new regulatory framework preclude the Municipality from applying a tariff-limiting clause agreed in the context of the sale of its cable network operation?

3. If Questions 2(a) and (b) are answered in the negative, the following question arises:

   Is a public authority, such as the Municipality, in a situation such as that at issue here, (still) bound by loyalty to the European Union ('Union loyalty') if, in entering into and then applying the tariff-limiting clause, it is not performing a public duty but is acting in the context of a private-law competence (see also Question 6(a))?

4. If the new regulatory framework is applicable and the Municipality is bound by Union loyalty:

   (a) Does the obligation of Union loyalty in conjunction with (the objectives of) the new regulatory framework, including a strict coordination and consultation process before a national regulatory authority can intervene in retail tariffs by means of a measure such as price control, preclude the Municipality from applying the tariff-limiting clause?

(b) If not, is the answer to Question 4(a) different with regard to the period after the Commission, in its 'letter of serious doubt', expressed serious doubts about the compatibility of the price control proposed by [the Independent Post and Telecommunications Authority] OPTA with the objectives of the new regulatory framework as set out in Article 8 of the Framework Directive, and OPTA consequently abandoned that measure?

5. (a) Is Article 101 TFEU a provision relating to public policy, which means that the national court must apply that provision of its own motion beyond the ambit of the dispute within the meaning of Articles 24 and 25 of the Wetboek van Burgerlijke Rechtsvordering (Netherlands Code of Civil Procedure) ('Rv')?

(b) If so, which of the facts that came to light during the proceedings would justify the national court proceeding of its own motion to examine the applicability of Article 101 TFEU? Is the national court bound to do so also if that examination might lead to the supplementation of facts within the meaning of Article 149 Rv, once the parties have been given an opportunity to comment?

6. If Article 101 TFEU must be applied beyond the ambit of the dispute between the parties and having regard to (the objectives of) the new regulatory framework; the application thereof by OPTA and the European Commission; the alignment of concepts used in the new regulatory framework, such as significant market power and definition of the relevant markets, with similar concepts in European competition law, the following questions arise from the facts that have come to light during the proceedings:

(a) Is the Municipality, in its sale of its cable network operation and its agreement to the tariff-limiting clause in that context, to be regarded as an undertaking within the meaning of Article 101 TFEU (see also Question 3)?

(b) Is the tariff-limiting clause to be regarded as a hardcore restriction for the purposes of Article 101(1)(a) TFEU and as defined in Commission Notice 2001/C 368/07 on agreements of minor importance which do not appreciably restrict competition [under Article 81(1) of the Treaty establishing the European Community] (*de minimis*) ([1]) (… point 11)? If so, is there thus an appreciable restriction of competition within the meaning of Article 101(1) TFEU? If not, is the answer affected by the circumstances mentioned in Question 6(d) (below)?

(c) If the tariff-limiting clause is not a hardcore restriction, does it have an effect which restricts competition (purely) because:

— the Netherlands competition authority has ruled that UPC has not abused its dominant position by virtue of the (higher) tariffs it charged for performing the same services as the supply of the basic package via cable, in the same market;

— the Commission, in its letter of serious doubt, expressed serious doubts about the compatibility with the objectives set out in Article 8 of the Framework Directive of intervening (*ex ante* by means of price control) in retail tariffs for services such as UPC's supply of the basic package via cable? Is the answer affected by the fact that OPTA abandoned the proposed price control as a result of the Commission's letter?

(d) Does the Agreement [on the future operation of the Hilversum cable network] containing the tariff-limiting clause appreciably restrict competition within the meaning of Article 101(1) TFEU (also) taking into account that:

— under the new regulatory framework, UPC is considered to be an undertaking with significant market power (Commission Notice 2001/C 368/07, point 7);

— virtually all Netherlands municipalities which, during the 1990s, sold their cable network operations to cable operators including UPC, retained powers under those agreements with regard to the pricing of the basic package (Commission Notice 2001/C 368/07, point 8)?

(e) Must the Agreement containing the tariff-limiting clause be regarded as (being capable of) having an appreciable effect on inter-State trade within the meaning of Article 101(1) TFEU and as further defined in the Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ 2004 C 101, p. 81), given that:

— under the new regulatory framework, UPC is considered to be an undertaking with significant market power;

— OPTA has followed the European consultation procedure in order to take a price control measure in respect of services such as the supply of the basic package via cable by cable operators with significant market power such as UPC, a procedure which, under the new regulatory framework, must be followed if a proposed measure would affect trade between Member States;

— the Agreement at that time represented a value of NLG 51 million (over EUR 23 million);

— virtually all Netherlands municipalities which, during the 1990s, sold their cable network operations to cable operators including UPC, retained powers under those agreements with regard to the pricing of the basic package?

7. Does the national court still have the power under Article 101(3) TFEU to declare a prohibition under Article 101(1) TFEU inapplicable in respect of the tariff-limiting clause, in the light of the new regulatory framework and the Commission's serious doubts in its letter of serious doubt about the compatibility with the objectives of competition law of (*ex ante*) intervention in retail tariffs? Is the answer affected by the fact that OPTA abandoned the proposed price control as a result of the Commission's letter?

8. Does the European penalty of invalidity under Article 101(2) TFEU allow for some latitude in respect of its effects in terms of time having regard to the circumstances at the time of the conclusion of the Agreement (the beginning of the liberalisation of the telecommunications sector) and later developments in the telecommunications sector, including the entry into force of the new regulatory framework and the consequent serious objections expressed by the Commission against the introduction of price control?

([1]) OJ 2001 C 368, p. 13.

Reference for a preliminary ruling from the Oberster Gerichtshof (Supreme Court) (Austria) lodged on 12 October 2011 — Amazon.com International Sales Inc. and Others v Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft m.b.H.

(Case C-521/11)

(2012/C 25/46)

Language of the case: German

Referring court

Oberster Gerichtshof (Supreme Court)

Parties to the main proceedings

Applicants: Amazon.com International Sales Inc., Amazon EU S.à.r.l., Amazon.de GmbH, Amazon.com GmbH in liquidation, Amazon Logistik GmbH

Defendant: Austro-Mechana Gesellschaft zur Wahrnehmung mechanisch-musikalischer Urheberrechte Gesellschaft m.b.H.

Questions referred

1. Can a legislative scheme be regarded as establishing 'fair compensation' for the purposes of Article 5(2)(b) of Directive 2001/29/EC, where

   (a) the persons entitled under Article 2 of Directive 2001/29/EC have a right to equitable remuneration, exercisable only through a collecting society, against persons who, acting on a commercial basis and for remuneration, are first to place on the domestic market recording media capable of reproducing the works of the rightholders,

   (b) this right applies irrespective of whether the media are marketed to intermediaries, to natural or legal persons for use other than for private purposes or to natural persons for use for private purposes, and

   (c) the person who uses the media for reproduction with the authorisation of the rightholder or who prior to its sale to the final consumer re-exports the media has an enforceable right against the collecting society to obtain reimbursement of the remuneration?

2. If Question 1 is answered in the negative:

   2.1. Does a scheme establish 'fair compensation' for the purposes of Article 5(2)(b) of Directive 2001/29/EC if the right specified in Question 1(a) applies only where recording media are marketed to natural persons who use the recording media to make reproductions for private purposes?

   2.2. If Question 2.1 is answered in the affirmative: Where recording media are marketed to natural persons must it be assumed until the contrary is proven that they will use such media with a view to making reproductions for private purposes?

3. If Question 1 or 2.1 is answered in the affirmative:

   Does it follow from Article 5 of Directive 2001/29/EC or other provisions of EU law that the right to be exercised by a collecting society to payment of fair compensation does not apply if, in relation to half of the funds received, the collecting society is required by law not to pay these to the persons entitled to compensation but to distribute them to social and cultural institutions?

4. If Question 1 or 2.1 is answered in the affirmative:

   Does Article 5(2)(b) of Directive 2001/29/EC or other provision of EU law preclude the right to be exercised by a collecting society to payment of fair compensation if in another Member State — possibly on a basis not in conformity with EU law — equitable remuneration for putting the media on the market has already been paid?

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 17 October 2011 — Lowlands Design Holding BV, other party: Minister van Financiën

(Case C-524/11)

(2012/C 25/47)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Lowlands Design Holding BV

Respondent: Minister van Financiën

Question referred

How should CN subheadings 6209 20, 6211 42 and CN subheading 9404 30 be interpreted for the purposes of the tariff classification of articles for babies or for young children such as those at issue here?

Reference for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 18 October 2011 — IVD GmbH & Co. KG v Ärztekammer Westfalen-Lippe

(Case C-526/11)

(2012/C 25/48)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant and appellant: IVD GmbH & Co. KG

Defendant and respondent: Ärztekammer Westfalen-Lippe

Other party to the proceedings: WWF Druck + Medien GmbH

Question referred

Is a body governed by public law (here: professional association) within the meaning of the second paragraph of Article 1(9)(c) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1] 'financed, for the most part, by the State …' or is it subject to 'management supervision' by the State, if:

— the body has the right by law to raise contributions from its members but does not set the amount of those contributions or the extent of the services to be financed thereby;

— the fees regulations, however, require approval by the State?

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[1] OJ 2010 L 134, p. 114.

Reference for a preliminary ruling from the Hessisches Landessozialgericht (Germany) lodged on 19 October 2011 — Angela Strehl v Bundesagentur für Arbeit Nürnberg

(Case C-531/11)

(2012/C 25/49)

Language of the case: German

Referring court

Hessisches Landessozialgericht

Parties to the main proceedings

Applicant: Angela Strehl

Defendant: Bundesagentur für Arbeit Nürnberg

Question referred

Is the first sentence of Article 68(1) of Council Regulation (EEC) No 1408/71 [1] to be interpreted as meaning that the wage or salary of a person who is not a genuine frontier worker (Article 71(1)(b)(ii) of Council Regulation (EEC) No 1408/71) received by that person in respect of his last employment in another Member State is also to be taken into account by the competent institution of the Member State of residence during the calculation of benefits, if it is not followed by employment in the State of residence and if registration of unemployment only takes place there 11 months after the termination of the employment in the other Member State?

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[1] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 149, p. 2 English special edition: Series I Chapter 1971).

Reference for a preliminary ruling from the Oberlandesgericht Köln (Germany) lodged on 19 October 2011 — Susanne Leichenich v Ansbert Peffekoven, Ingo Horeis

(Case C-532/11)

(2012/C 25/50)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: Susanne Leichenich

Defendant: Ansbert Peffekoven, Ingo Horeis

Questions referred

1. Is Article 13(B)(b) of the Sixth Council Directive 77/388/EEC ([1]) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes, to be interpreted as meaning that the concept of the leasing or letting of immovable property covers the letting of a houseboat, including the mooring place and landing stage belonging to it, which is designed exclusively for stationary long-term use as a discotheque/restaurant establishment at a demarcated and identifiable mooring place on the water? Does the reply depend on the means whereby the houseboat is attached to the land or on the cost of removing the fastenings of the boat?

2. If the answer to the first question in question 1 above is in the affirmative: Is Article 13(B)(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 to be interpreted as meaning that the term 'vehicles' which, according to the judgment in Case C-428/02 *Fonden Marselisborg Lystbådehavn*, includes boats, is not applicable to a leased houseboat which has no means of self-propulsion (engine) and which has been let for exclusive long-term use at the locality in question and not for the purpose of locomotion? Does the letting of the houseboat and the landing stage, including the areas of land and water on which they are situated, constitute a single tax-free service or is it necessary to differentiate for VAT purposes between the letting of the houseboat and that of the landing stage?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Action brought on 19 October 2011 — European Commission v Kingdom of Belgium

(Case C-533/11)

(2012/C 25/51)

Language of the case: French

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and A. Marghelis, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that the Kingdom of Belgium has failed to fulfil its obligations under Article 260(1) of the Treaty on the Functioning of the European Union, since it has failed to take all the measures necessary to comply with the judgment of the Court of Justice of 8 July 2004 in Case C-27/03;

— order the Kingdom of Belgium to pay to the Commission the proposed penalty payment of EUR 55 836 for each day of delay in complying with the judgment in Case C-27/03, from delivery of the judgment in the present case until the date on which the judgment in Case C-27/03 has been complied with;

— order the Kingdom of Belgium to pay to the Commission the daily lump sum of EUR 6 204, from 8 July 2004, the date on which the judgment in Case C-27/03 was delivered, until delivery of the judgment in the present case or until the date on which the judgment in Case C-27/03 has been complied with, if earlier;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission submits that, in the case of the Bruxelles-Capitale (Brussels-Capital) agglomeration and six agglomerations with a with a p.e. (population equivalent) of more than 10 000 in the Walloon Region, the collecting systems for urban waste water still fail to comply with the requirements of Article 3(1) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment. ([1])

In addition, in the case of the Bruxelles-Capitale agglomeration, one agglomeration of more than 10 000 p.e. in the Flemish Region and 19 agglomerations of more than 10 000 p.e. in the Walloon Region, the systems for treating the urban waste water discharged into sensitive areas still fail to comply with the requirements laid down in Article 5(2) and (3) of Directive 91/271/EEC.

The Commission thereby concludes that Belgium has not yet taken the measures necessary to comply fully with the judgment of the Court of 8 July 2004.

([1]) OJ 1991 L 135, p. 40.

Reference for a preliminary ruling from the Landesgericht Salzburg (Austria) as Employment and Social Court lodged on 21 October 2011 — Hermine Sax v Pensionsversicherungsanstalt, Landesstelle Salzburg

(Case C-538/11)

(2012/C 25/52)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Hermine Sax

Defendant: Pensionsversicherungsanstalt Landesstelle Salzburg

Questions referred

1. Are Regulation (EC) No 883/2004, in particular Article 7 and Title III, Chapter 1 (Sickness benefits), and Regulation (EC) No 987/2009 to be interpreted as meaning that a person needing long-term care who is receiving an Austrian pension may demand the payment of care allowance under the Bundespflegegeldgesetz (Federal Law on care allowance, BPGG) as a sickness benefit in cash, irrespective of her main residence in Germany, if she meets the other requirements for entitlement under the BPGG and do those regulations thus preclude the application of the national provision in Paragraph 3 BPGG?

2. If the reply to the first question is in the affirmative:

   Are Regulation (EC) No 883/2004, in particular Articles 10 and 11(3)(e), and also Articles 21, 29 and 34 and/or Title III, Chapter 1 (Sickness benefits), and Regulation (EC) No 987/2009 to be interpreted as meaning that a person needing long-term care who is receiving a double pension, to be exact, an Austrian pension and a German pension, may demand the payment of care allowance under the BPGG as a sickness benefit in cash, irrespective of her main residence in Germany, if she meets the other requirements for entitlement under the BPGG and do those regulations thus preclude the application of the national provision in Paragraph 3 BPGG?

3. If the reply to the second question is in the affirmative:

   How are Regulation (EC) No 883/2004, in particular Articles 10 and 34, and Article 31, and Regulation (EC) No 987/2009 to be interpreted where there are concurrent benefits, with set-off, from the social security system for covering the risk of need for long-term care, that is to say, in the present case, entitlement to a combination benefit of German care allowance (choice between benefit in kind and cash benefit) and entitlement to Austrian care allowance, more specifically:

   3.1. Is only the cash benefit granted by Germany, the State of residence, or only the care benefit in kind or the entire care benefit (total of care allowance and value of care benefit in kind) to be set off against the Austrian care allowance under the BPGG which is to be exported, and is regard to be had to the differing price levels in the Member States concerned?

   3.2. Is it necessary, when effecting the required set-off, to consider whether the State of residence grants care benefits with equivalent cover or are such care benefits from the State of residence to be left out of account when effecting set-off where those benefits are provided for only in the State of residence by the social security system to cover the risk of need for long term care?

   3.3. Must the Social Court hearing the action brought by the person needing long-term care examine the substantive conditions for set-off if the defendant institution has not initiated a procedure within the meaning of Article 31 of Regulation (EC) No 987/2009, has made no submissions concerning the question of benefits with equivalent cover and, in particular, has omitted to inform the person needing long-term care of the prohibition of concurrent benefits?

Reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium), lodged on 24 October 2011 — Daniel Levy and Carine Sebbag v État Belge, SPF Finances

(Case C-540/11)

(2012/C 25/53)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Claimants: Daniel Levy and Carine Sebbag

Defendants: État Belge — SPF Finances

Question referred

Is a Member State acting in compliance with Community law, and specifically in compliance with Article 56 EC, read in conjunction with Articles 10 EC, 57[2] EC and 293 EC, if it undertakes, in a double taxation convention with another Member State, to eliminate the double taxation of dividends resulting from the division of the power of taxation laid down in that convention but subsequently amends its national law in such a way that such double taxation is no longer relieved?

Reference for a preliminary ruling from the Vrhovno Sodišče Republike Slovenije (Republic of Slovenia) lodged on 25 October 2011 — Jožef Grilc v Slovensko zavarovalno združenje GIZ

(Case C-541/11)

(2012/C 25/54)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Jožef Grilc

Defendant: Slovensko zavarovalno združenje GIZ

Question referred

Where a person has suffered damage as a result of a road traffic accident that occurred in a Member State other than his State of residence and was caused by a vehicle insured and normally based in a Member State, must the second subparagraph of Article 6(1) of Directive 2000/26/EC [1] be interpreted as meaning that the compensation body of the Member State of residence of the injured party has the capacity to be a party to legal proceedings instituted by the injured party in order to obtain compensation if, within three months of the injured party's presenting his claim to the insurance undertaking responsible for the vehicle which caused the damage or its claims representative, neither the insurance undertaking nor its claims representative has provided a reasoned reply to the claim?

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[1] OJ 2000 L 181, p. 65.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 24 October 2011 — Staatssecretaris van Financiën, other party: Codirex Expeditie BV

(Case C-542/11)

(2012/C 25/55)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Codirex Expeditie BV

Question referred

At what point in time are non-Community goods assignated a customs-approved treatment or use within the meaning of Article 50 [1] of the Community Customs Code where goods with the status of goods 'in temporary storage' are declared for placing under the external Community customs transit procedure?

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

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 24 October 2011 — Woningstichting Maasdriel, other party: Staatssecretaris van Financiën

(Case C-543/11)

(2012/C 25/56)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Woningstichting Maasdriel

Other party: Staatssecretaris van Financiën

Question referred

Must Article 135(1)(k) of the VAT Directive 2006, [1] in conjunction with Article 12(1) and (3) of that directive, be interpreted as precluding in all cases the exemption from VAT of the supply of land which has not been built on which has come into existence by the demolition of existing buildings thereon, demolition which was carried out with a view to the construction of new buildings?

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

Reference for a preliminary ruling from the Finanzgericht Rheinland-Pfalz (Germany) lodged on 24 October 2011 — Helga Petersen, Peter Petersen v Finanzamt Ludwigshafen

(Case C-544/11)

(2012/C 25/57)

Language of the case: German

Referring court

Finanzgericht Rheinland-Pfalz

Parties to the main proceedings

Applicants: Helga Petersen, Peter Petersen

Defendant: Finanzamt Ludwigshafen

Question referred

Is a legal provision compatible with Article 49 of the Treaty establishing the European Community (in the version of the Nice Treaty signed on 26 February 2001; now Article 56 of the Treaty on the Functioning of the European Union) if it makes a tax exemption for income of an employee who is taxable in Germany dependent on the employer being established in Germany, but does not provide for such exemption if the employer is established in another EU Member State?

Reference for a preliminary ruling from the Verwaltungsgericht Frankfurt (Oder) (Germany) lodged on 24 October 2011 — Agrargenossenschaft Neuzelle e.G. v Landrat of the Landkreis Oder-Spree

(Case C-545/11)

(2012/C 25/58)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt (Oder)

Parties to the main proceedings

Applicant: Agrargenossenschaft Neuzelle e.G.

Defendant: Landrat of the Landkreis Oder-Spree

Questions referred

1. Is Article 7(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 [1] establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers to be regarded as valid to the extent that for the years 2009 to 2012 it provides for a reduction in direct payments in excess of 5 %?

2. Is Article 7(2) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers to be regarded as valid?

[1] OJ 2009 L 30, p. 16.

Reference for a preliminary ruling from the Arbeidshof te Antwerpen (Belgium), lodged on 31 October 2011 — Edgard Mulders v Rijksdienst voor Pensioenen

(Case C-548/11)

(2012/C 25/59)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Appellant: Edgard Mulders

Respondent: Rijksdienst voor Pensioenen

Question referred

Is Article 46 of Council Regulation (EEC) No 1408/71 [1] 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 infringed in the case where, in the calculation of the pension of a migrant worker, a period of incapacity for work during which a work incapacity benefit was awarded and contributions under the Netherlands General Law on Old-Age Pensions were paid is not regarded as being a 'period of insurance' within the meaning of Article 1(r) of Regulation (EEC) No 1408/71?

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

Appeal brought on 2 November 2011 by Internationaler Hilfsfonds eV against the order of the General Court (Fourth Chamber) made on 21 September 2011 in Case T-141/05 RENV Internationaler Hilfsfonds eV v European Commission

(Case C-554/11 P)

(2012/C 25/60)

Language of the case: German

Parties

Appellant: Internationaler Hilfsfonds eV (represented by: H. Kaltenecker, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

(a) set aside the order of 21 September 2011 and refer the case back to the General Court, directing it to carry out a new assessment after delivery of the judgment in Case T-300/10;

in the alternative, rule on the case itself;

(b) order the Commission to pay the costs which arose out of the interlocutory proceedings to which the order under appeal relates and the costs of the appeal.

Pleas in law and main arguments

The appeal is against the order of the General Court of 21 September 2011 in Case T-141/05 RENV, by which that Court held that there was no longer any need to adjudicate on proceedings which the appellant and applicant at first instance had brought against a decision of the Commission in 2005. The original action was directed against the Commission's refusal to grant the appellant full access to the file in respect of the contract LIEN 97-2011.

By the appeal the appellant criticises the order of the General Court on the grounds of incorrect application of the rules of procedure, in particular the inadequate coordination of the proceedings in Cases T-36/10 and T-141/05 RENV, by which its interests were, according to the appellant, seriously undermined. In addition, the General Court made an incorrect decision on costs to the appellant's disadvantage.

Reference for a preliminary ruling from the Simvoulio tis Epikrateias lodged on 3 November 2011 — Enosis Epangelmation Asfaliston Ellados (EEAE), Sillogos Asfalistikon Praktoron Nomou Attikis (SPATE), Panellinios Sillogos Asfalistikon Simboulon (PSAS), Sindesmos Ellinon Mesiton Asfaliseon (SEMA), Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSAS) v Ipourgos Anaptixis and Omospondias Asfalistikon Sillogon Ellados

(Case C-555/11)

(2012/C 25/61)

Language of the case: Greek

Referring court

Simvoulio tis Epikrateias (Council of State)

Parties to the main proceedings

Applicants: Enosis Epangelmation Asfaliston Ellados (Hellenic Association of Insurance Professionals, EEAE), Sillogos Asfalistikon Praktoron Nomou Attikis (Attica Association of Insurance Agents, SPATE), Panellinios Sillogos Asfalistikon Simboulon (Hellenic Association of Insurance Advisors, PSAS), Sindesmos Ellinon Mesiton Asfaliseon (Hellenic Insurance Broker Association, SEMA), Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (Hellenic Association of Insurance Advisor Coordinators, PSAS).

Defendants: Ipourgos Anaptixis (Minister for Development), Omospondias Asfalistikon Sillogon Ellados (Federation of Hellenic Insurance Associations)

Question referred

Does the provision of the second subparagraph of Article 2(3) of Directive 2002/92/EC, which states: 'These activities (those listed in the first subparagraph of that provision) when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation', mean that an employee of an insurance undertaking who does not have the qualifications required under Article 4(1) of that directive is permitted to pursue the activity of insurance mediation on an incidental basis, and not as his main professional activity, even if that employee does not have an employment relationship with the undertaking, which however supervises his actions, or does the directive permit that activity to be pursued only within the framework of an employment relationship?

Reference for a preliminary ruling from the Juzgado Contencioso-Administrativo de Valladolid (Spain) lodged on 3 November 2011 — María Jesús Lorenzo Martínez v Dirección Provincial de Educación Valladolid

(Case C-556/11)

(2012/C 25/62)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo de Valladolid

Parties to the main proceedings

Applicant: María Jesús Lorenzo Martínez

Defendant: Dirección Provincial de Educación Valladolid

Question referred

Does the fact that an individual is an established (career) civil servant and, as such, belongs to one of the staff groups into which the public teaching service is organised constitute an objective ground sufficient to justify the individual 'continuing-professional-education' component of the special increment (also commonly referred to as the '*sexenio*' or six-yearly increment) being paid — once it is demonstrated that they have satisfied the relevant requirements — only to established civil servants forming part of the public teaching service?

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland) lodged on 4 November 2011 — Maria Kozak v Dyrektor Izby Skarbowej w Lublinie

(Case C-557/11)

(2012/C 25/63)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Maria Kozak

Respondent: Dyrektor Izby Skarbowej w Lublinie (Director of the Tax Chamber, Lublin)

Question referred

Where an in-house transport service is supplied by a travel agent within the framework of an all-inclusive price which is charged to a tourist for a tourist service supplied to him that is taxed under Articles 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) which lay down a special VAT scheme for travel agents, is that in-house transport service taxable — as a necessary element for the supply of that tourist service — at the standard rate of tax applicable to tourist services, or at the reduced rate of tax applicable to passenger transport services under Article 98 of that directive, in conjunction with point 5 of Annex III thereto?

([1]) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Commissione tributaria provinciale di Parma (Italy) lodged on 7 November 2011 — Danilo Debiasi v Agenzia delle Entrate — Ufficio di Parma

(Case C-560/11)

(2012/C 25/64)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Parma

Parties to the main proceedings

Applicant: Danilo Debiasi

Defendant: Agenzia delle Entrate — Ufficio di Parma

Question referred

Is there a conflict between national legislation and Community law, in particular between, on the one hand, Articles 19(5) and 19a of Presidential Decree No 633/72 and, on the other, Article 17(2)(a) of Directive 77/388/EEC, ([1]) document COM (2001) 260 final of 23 May 2001 and document COM (2000) 348 final of 7 June 2000, and 'unequal treatment' as regards the VAT rules applied by the various Member States of the European Union, given that different rates of VAT are applied to the same healthcare services?

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

Reference for a preliminary ruling from the Juzgado de lo Mercantil de Alicante (Spain) lodged on 8 November 2011 — Fédération Cynologique Internationale v Federación Canina Internacional de Perros de Pura Raza

(Case C-561/11)

(2012/C 25/65)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de Alicante

Parties to the main proceedings

Applicant: Fédération Cynologique Internationale

Defendant: Federación Canina Internacional de Perros de Pura Raza

Question referred

In proceedings for infringement of the exclusive right conferred by a Community trade mark, does the right to prevent the use thereof by third parties in the course of trade provided for in Article 9(1) of Council Regulation (EC) No 207/2009 ([1]) of 26 February 2009 on the Community trade mark extend to any third party who uses a sign that involves a likelihood of confusion (because it is similar to the Community trade mark and the services or goods are similar) or, on the contrary, is the third party who uses that sign (capable of being confused) which has been registered in his name as a Community trade mark excluded until such time as that subsequent trade mark registration has been declared invalid?

([1]) OJ 2009 L 78, p. 1.

Reference for a preliminary ruling from Tribunalul Sibiu (Romania) lodged on 10 November 2011 — Mariana Irimie v Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu

(Case C-565/11)

(2012/C 25/66)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Mariana Irimie

Defendants: Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu

Question referred

Can the principle of the effectiveness, equivalence and proportionality of remedies in relation to infringements of Community law to which individuals are subjected as the result of the application of legislation which does not conform to Community law arising from the case-law of the Court of Justice of the European Union and the right to property laid down in Article 6 of the Treaty on the Functioning of the European Union and Article 17 of the Charter of Fundamental Rights of the European Union be regarded as precluding provisions of national law which limit the amount of damage which could be recovered by an individual who has suffered an infringement of his rights?

Reference for a preliminary ruling from the Vestre Landsret (Denmark), lodged on 14 November 2011 — Agroferm A/S v Ministeriet for Fødevarer, Landbrug og Fiskeri

(Case C-568/11)

(2012/C 25/67)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Agroferm A/S

Defendant: Ministeriet for Fødevarer, Landbrug og Fiskeri

Questions referred

1. Does a product which is manufactured from sugar fermented with the aid of *Corynebacterium glutamicum* bacteria and which — as specified in more detail in Annex 1 to the order for reference — consists of approximately 65 % lysine sulphate, in addition to impurities from the manufacturing process (unmodified raw materials, reagents used in the manufacturing process, and by-products), come under heading 2309, heading 2922 or heading 3824 in the Combined Nomenclature, in the version resulting from Annex I to [Commission] Regulation (EC) No 1719/2005 ([1]) of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff?

   Is it relevant in this connection whether the impurities have been retained deliberately with a view to making the product particularly suitable, or to improve its suitability, for feed production, or whether the impurities have been retained because it is not necessary or expedient to remove them? What guidelines should be used to assess this matter in any given case?

   Is it relevant to the answer that it is possible to manufacture other products containing lysine, including 'pure' (≥ 98 %) lysine and lysine-HCl products that have a higher lysine content than the lysine sulphate product described above, and is it relevant in this connection that the amount of lysine sulphate and other impurities in the lysine sulphate product described above corresponds to that contained in other producers' lysine sulphate products? What guidelines should be used to assess this matter in any given case?

2. If it is assumed that, according to the principle of legality, the production was not covered by the refund scheme, would it be contrary to European Union law for the national authorities, in compliance with national principles of legal certainty and the principle of the protection of legitimate expectations, to refrain, in a case such as the present, from seeking recovery of refund amounts that the producer accepted in good faith?

3. If it is assumed that, according to the principle of legality, the production was not covered by the refund scheme, would it be contrary to European Union law for the national authorities, in compliance with national principles of legal certainty and the principle of the protection of legitimate expectations, to honour, in a case such as the present, commitments (refund certificates) which were subject to time-limits and which the producer accepted in good faith?

([1]) OJ 2005 L 286, p. 1.

Reference for a preliminary ruling from the Tribunalul Comercial Cluj (Romania) lodged on 14 November 2011 — SC Volksbank România SA v Andreia Câmpan and Ioan Dan Câmpan

(Case C-571/11)

(2012/C 25/68)

Language of the case: Romanian

Referring court

Tribunalul Comercial Cluj

Parties to the main proceedings

Applicant: SC Volksbank România SA

Defendants: Andreia Câmpan and Ioan Dan Câmpan

Question referred

Having regard to the fact that, in accordance with Article 4(2) of Directive 93/13/EEC, ([1]) assessment of the unfair nature of contractual terms must relate neither to the definition of the main subject-matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language,

and

given that, under Article 2(2)(a) of Directive 2008/48/EC, ([2]) the definition provided in Article 3(g) of that directive of 'the total cost of the credit to the consumer', which includes all the fees which the consumer is required to pay in connection with the credit agreement, does not apply for the purposes of determining the subject-matter of a credit agreement secured by a mortgage,

can the concepts of 'subject-matter' and/or of 'price', as used in Article 4(2) of Directive 93/13/EEC, be interpreted as meaning that a fee referred to by the parties as a 'risk commission', which is provided for under a credit agreement secured by a mortgage and which is calculated on the basis of '0.22% of the credit balance' and payable monthly, throughout the entire period of validity of the credit agreement, on pre-determined repayment dates falls within the 'subject-matter' and/or 'price' of the credit agreement secured by mortgage?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29)
(2) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66)

Reference for a preliminary ruling from the Administrativen Sad — Veliko Tarnovo lodged on 11 November 2011 — Menidzharski biznes reshenia OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto', gr. Veliko Tarnovo, pri Tsentralno Upravlenie na Natsionalna Agentsia po Prihodite

(Case C-572/11)

(2012/C 25/69)

Language of the case: Bulgarian

Referring court

Administrativen Sad — Veliko Tarnovo

Parties to the main proceedings

Applicant: Menidzharski biznes reshenia OOD

Defendants: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto', gr. Veliko Tarnovo, pri Tsentralno Upravlenie na Natsionalna Agentsia po Prihodite

Question referred

Is Article 203 in conjunction with Article 168(a) of Council Directive 2006/112/EC (1) of 28 November 2006 on the common system of value added tax to be interpreted, in cases like the main proceedings and having regard to the principles of fiscal neutrality and protection of legitimate expectations, to the effect that a deduction of VAT may be refused, despite the elimination of the risk of any loss in tax revenues, if that risk was eliminated only with respect to the accounting of the VAT shown in a supplier's invoice with the State Treasury, without the elimination of the risk of loss in tax revenues affecting the actions or intentions of the supplier which resulted in the fraudulent content of an invoice in which the VAT was shown as payable by the supplier

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

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 16 November 2011 — Eleftherios-Themistoklis Nasiopoulos v Ipourgos Igias kai Pronias

(Case C-575/11)

(2012/C 25/70)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Eleftherios-Themistoklis Nasiopoulos

Defendant: Ipourgos Igias kai Pronias (Minister for Health and Social Welfare)

Question referred

For the purposes of Article 43 of the Treaty establishing the European Community, is the aim of safeguarding the provision of a high level of health services sufficient, taking account also of the principle of proportionality, to justify a restriction on the freedom of establishment, which arises in the system of provisions that are in force in a certain Member State (the host Member State) and that: (a) allow only persons who have a right to engage, in that Member State, in the regulated profession of physiotherapist to carry out certain professional activities, (b) preclude the possibility of partial access to that profession and (c) therefore mean that a national of the host Member State who has acquired in another Member State (the Member State of origin) a qualification which permits him to engage in a profession regulated in the latter Member State that is connected with the provision of health services (but does not permit him, because the requirements of Council Directive 92/51/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25) are not fulfilled, to engage in the profession of physiotherapist in the host Member State) is entirely unable to carry out in the host Member State, by way of partial access to the profession of physiotherapist, just some of the activities coming under the latter profession, that is to say, those which the person concerned has the right to carry out in the Member State of origin?

Appeal brought on 18 November 2011 by Deltafina SpA against the judgment of the General Court (Third Chamber) delivered on 9 September 2011 in Case T-12/06 Deltafina v Commission

(Case C-578/11 P)

(2012/C 25/71)

Language of the case: Italian

Parties

Appellant: Deltafina SpA (represented by: J.-F. Bellis and F. Di Gianni, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside, in whole or in part, the judgment under appeal in so far as it dismisses the appellant's action;

— Annul, in whole or in part, the Commission's decision of 20 October 2005 in so far as it concerns the appellant;

— Cancel or reduce the fine imposed on the appellant, including on the basis of the Court's unlimited jurisdiction under Article 261 TFEU;

— In the alternative, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice;

— Order the Commission to pay the costs of these proceedings and of the proceedings before the General Court.

Pleas in law and main arguments

The appellant relies on four grounds of appeal.

1. The General Court erred in concluding that Deltafina acted in breach of its duty to cooperate by failing to inform the Commission of the disclosure of information concerning its cooperation with the Commission. It should have ruled, instead, on the issue whether, in the light of the agreement reached concerning the 'rules of the game' at the meeting between the Commission and Deltafina on 14 March 2002, the Commission was entitled to find that Deltafina had failed to have regard to its duty to cooperate on the basis that it disclosed that it had applied for immunity at the meeting held at APTI's offices on 4 April 2002.

   In so doing, the General Court substituted itself for the parties by defining ex post the conditions governing Delatafina's duty to cooperate, failed to rule on the principal plea relied on by Deltafina and infringed its rights of defence.

2. The General Court failed to make adequate or correct findings of fact because, instead of using measures of enquiry provided for in Article 65 of its Rules of Procedure, at the hearing it heard evidence, following an allegedly informal, and thus defective, procedure from two participants at the meeting of 24 March 2002 on the subject of the 'rules of the game', without having regard, therefore, to the guarantees laid down in Articles 68 and 76 of the Rules of Procedure, and disregarded fundamental rules on obtaining evidence.

3. The General Court failed to observe the principle that it should adjudicate within a reasonable time. The proceedings before the General Court were excessively lengthy, lasting five years and eight months, more than 43 months elapsing between the end of the written procedure and the decision to open the oral procedure.

4. Lastly, the General Court unlawfully refused to rule, in accordance with its unlimited jurisdiction, on the argument that the fine imposed on Deltafina was disproportionate and discriminatory, in so far as the Commission applied the same level of reduction to the fine of Deltafina as that of Dimon Italia, in spite of the substantial difference between their respective contributions to the finding of an infringement. Case T-13/03 *Nintendo* v *Commission* established the principle that the Commission is not entitled to disregard the principle of equal treatment in appraising the cooperation provided by undertakings during the administrative procedure, which must be compared from both a chronological point of view and a qualitative point of view.

Appeal brought on 22 November 2011 by Muhamad Mugraby against the order of the General Court (Third Chamber) delivered on 6 September 2011 in Case T-292/09: Muhamad Mugraby v Council of the European Union, European Commission

(Case C-581/11 P)

(2012/C 25/72)

Language of the case: English

Parties

Appellant: Muhamad Mugraby (represented by: S. Delhaye, Advocate)

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

Form of order sought

The applicant claims that the Court should:

1. find that the Commission has failed to act on:

   i) the Applicant's request that the commission submit a recommendation to the Council regarding the suspension of Community assistance for Lebanon as set forth in article 28 of Regulation (EC) No 1638/2006 [1], such measures being both required and available under said Regulation;

ii) the Applicant's request that the Commission, as the agency directly responsible for implementing the various Union assistance programs for Lebanon, suspend the implementation of these programs pending the resolution of Lebanon's continuing violation of fundamental rights, more specifically those of Applicant;

2. find that the Council, in its function as part of the EU-Lebanon Association Council, as failed to act on the Applicant's request to invite the Commission to recommend that the Council take specific and effective measures regarding Union assistance for Lebanon under the Association Agreement [2] between Lebanon and the Community, in order to fulfil the parties' obligations under the Agreement;

3. Find that the EU, the Commission, in its function as guardian of the Treaties and as the agency directly responsible for implementing the various Union assistance programs for Lebanon, and the Council, in its function as part of the EU-Lebanon Association Council, have incurred non-contractual liability for damages suffered by Applicant as a result of their consistent failure from December 2002 onwards to effectively utilize the available resources and instruments towards effective enforcement of the human rights clause in the Association Agreement;

4. Order the Commission, in part as reparation in kind, to propose to the Council the suspension of the EU-Lebanon Association Agreement, pending the resolution of Lebanon's failures to comply with article 2 of the Association Agreement with regard to Applicant;

5. Order the Commission to limit the performance of current assistance programs (which are carried out and/or supervised by the Commission) to those programs that are aimed specifically at promoting fundamental rights and which do not constitute financial aid to the Lebanese authorities, pending the resolution of Lebanon's failure to comply with Article 2 of the Association Agreement with regard to Applicant;

6. Order the Council to invite the Commission to make a recommendation as outlined under (4) above, and to act through the institutions of the Association Agreement to the same end;

7. Order the EU, Council and Commission, Defendants in the First Instance, to compensate Applicant's material and moral damages, in an amount to be fixed ex aequo et bono at not less than EUR 5 000 000, and to pay the costs.

Pleas in law and main arguments

The applicant submits that the contested order should be set aside on the following grounds:

The General Court erred in law:

— In dismissing the application on the grounds of inadmissibility where no grounds for inadmissibility exist;

— In violating the right of the applicant to name all the defendants;

— In violating the applicant's rights of defence by ignoring the arguments put forward by the applicant;

— In omitting to rule on all of the requests for relief put forward by the applicant;

— In ignoring EU law and the EU's obligations under international law, and in basing the order on regulations issued by one of the EU institutions.

The applicant also submits that the General Court misinterpreted the EU-Lebanon Association Agreementand that it lacked a legal basis for its interpretation of 'broad discretion' and for its finding that it lacked the power to issue orders to the Council of the EU and to the European Commission.

As a consequence of the above, the applicant claims that the General Court has denied him justice.

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[1] Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument OJ L 310, p. 1

[2] Interim agreement on trade and trade-related matters between the European Community, on the one part, and the Republic of Lebanon, on the other part (OJ 2002 L 262, p.2)

Appeal brought on 24 November 2011 by Rügen Fisch AG against the Judgment of the General Court (Third Chamber) delivered on 21 September 2011 in Case T-201/09 Rügen Fisch AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs); other party to the proceedings: Schwaaner Fischwaren GmbH

(Case C-582/11 P)

(2012/C 25/73)

Language of the case: German

Parties

Appellant: Rügen Fisch AG (represented by: O. Spuhler and M. Geitz, Rechtanwälte)

Other parties to the proceedings:

— Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

— Schwaaner Fischwaren GmbH

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 21 September 2011 in Case T-201/09 and annul the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 in appeal case R 230/2007-4;

— in the alternative, set aside the judgment referred to above and refer the case back to the General Court of the European Union;

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

Grounds of appeal and main arguments

The appellant basis its appeal on the following grounds:

In the judgment under appeal, the General Court wrongly assumed that the registration of the word sign SCOMBER MIX as a Community trade mark was precluded by the absolute ground for refusal in Article 7(1)(c) of Regulation No 207/2009 ([1]) as a result of the descriptive character of the mark in dispute.

The General Court's assumption constitutes an infringement of Article 7(1)(c) in conjunction with Article 51(1)(a) of Regulation No 207/2009. The word sign SCOMBER MIX is not descriptive since, from the point of view of the relevant consumer, it is a purely fanciful name, which is clearly understood to be a trade mark.

The goods and services covered by the trade mark application at issue were determined with the average consumer in mind. However, the average consumer is not familiar with the Latin language or the zoological term 'scomber'. The word sign SCOMBER MIX therefore satisfies the minimum level of distinctiveness required under European Union law for the registration of a Community trade mark.

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

Appeal brought on 23 November 2011 by Dow AgroSciences Ltd, Dow AgroSciences LLC, Dow AgroSciences, Dow AgroSciences Export, Dow Agrosciences BV, Dow AgroSciences Hungary kft, Dow AgroSciences Italia Srl, Dow AgroSciences Polska sp. z o.o., Dow AgroSciences Iberica, SA, Dow AgroSciences s.r.o., Dow AgroSciences Danmark A/S, Dow AgroSciences GmbH against the judgment of the General Court (Third Chamber) delivered on 9 September 2011 in Case T-475/07: Dow AgroSciences Ltd and Others v Commission

(Case C-584/11 P)

(2012/C 25/74)

Language of the case: English

Parties

Appellants: Dow AgroSciences Ltd, Dow AgroSciences LLC, Dow AgroSciences, Dow AgroSciences Export, Dow Agrosciences BV, Dow AgroSciences Hungary kft, Dow AgroSciences Italia Srl, Dow AgroSciences Polska sp. z o.o., Dow AgroSciences Iberica, SA, Dow AgroSciences s.r.o., Dow AgroSciences Danmark A/S, Dow AgroSciences GmbH (represented by: C. Mereu, avocat, K. Van Maldegem, avocat)

Other party to the proceedings: European Commission

Form of order sought

The Appellants claim that the Court should:

— Set aside the judgment of the General Court in Case T-475/07; and

— Annul Commission Decision 2007/629/EC of 20 September 2007 ([1]) concerning the non-inclusion of trifluralin in Annex I to Directive 91/414 ([2]) and the withdrawal of authorisations for plant protection products containing that substance; or

— alternatively, refer the case back to the General Court; and

— Order the Respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment in respect of Commission Decision 2007/629/EC of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance, the General Court breached Community law. In particular, the Appellants contend that the General Court committed a number of errors in its interpretation of the facts and of the legal framework as applicable to the Appellants' situation. That resulted in it making a number of errors in law, in particular:

— in failing to find that the Appellants were requested by the Rapporteur Member State and EFSA to submit further data to clarify the dossier, in accordance with Article 8(5) of Regulation 451/2000 ([3]);

— in failing to find that the Commission did not follow the proper course of the regulatory procedure as prescribed in the Council Decision 1999/468 ([4]) and in holding that the Commission did not breach Article 5 of Council Decision 1999/468; and

— in failing to find that the Commission assessed trifluralin against criteria outside the scope of Directive 91/414, for which there is no basis in the relevant legal framework, and therefore acted *ultra vires*.

For these reasons the Appellants claim that the judgment of the General Court in Case T-475/07 should be set aside and the Commission Decision 2007/629/EC should be annulled.

([1]) OJ L 255, p. 42
([2]) OJ L 230, p. 1
([3]) OJ L 55, p. 25
([4]) OJ L 184 p. 23

Appeal brought on 24 November 2011 by Regione Puglia against the order of the General Court (First Chamber) delivered on 14 September 2011 in Case T-84/10 Regione Puglia v Commission

(Case C-586/11 P)

(2012/C 25/75)

Language of the case: Italian

Parties

Appellant: Regione Puglia (represented by: F. Brunelli and A. Aloia, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order made on 14 September 2011 by the General Court, notified to the appellant on 15 September 2011, declaring that the action in Case T-84/10 is inadmissible;

— Accordingly, analyse the substance of the case and, consequently, annul Decision C(2009) 10350 of the European Commission of 22 December 2009 concerning 'the lifting of the suspension of interim payments from the European Regional Development Fund relating to the programme to which this decision refers', confirming the validity and applicability only of the provision made in Article 4;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The appellant alleges, first, procedural irregularities in the proceedings before the court at first instance, which were seriously detrimental to the appellant, namely the omission of the oral procedure provided for in Article 114(3) of the Rules of Procedure of the General Court.

Second, the appellant claims that the General Court infringed Community law, first, by misinterpreting the fourth paragraph of Article 263 TFEU and Council Regulation (EC) No 1260/1999, ([1]) in conjunction with Article 4(2) and (3) TFEU and Article 5(3) TFEU, and, second, failing to state adequate grounds for its findings, in breach of Article 81 of its Rules of Procedure.

([1]) OJ 1999 L 161, p. 1.

Appeal brought on 24 November 2011 by Omnicare, Inc. against the judgment of the General Court (First Chamber) delivered on 9 September 2011 in Case T-289/09: Omnicare, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

(Case C-587/11 P)

(2012/C 25/76)

Language of the case: English

Parties

Appellant: Omnicare, Inc. (represented by: M. Edenborough QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

Form of order sought

The appellant seeks an Order that the judgment under appeal be annulled. Further, the Appellant seeks an Order for its costs of this appeal and before the General Court.

Pleas in law and main arguments

The Appellant relies upon a single plea in law, namely that the General Court wrongly applied Article 8(1)(b) of Council Regulation (EC) № 207/2009 ([1]) (the 'New Regulation'). This case involves an opposition brought by Astellas Pharma GmbH (formerly Yamanouchi Pharma GmbH) (the 'Opponent') based upon the Opponent's German trade mark registration № 394 01348 and an allegation of the existence of confusion pursuant to Article 8(1)(b) of the Council Regulation (EC) № 40/94 ([2]) ('the Old Regulation') (but which is identical to the pertinent parts of the New Regulation). As the earlier mark had been registered for more than five years before the Opposition was commenced, it was necessary for the Opponent to prove that the mark has been put to genuine use in order for it to be used as a basis for the Opposition.

It is submitted that the General Court wrongly held that the earlier trade mark upon which the Opponent relied had, as a matter of law, been put to genuine use. It is not disputed that the mark in question had actually been used in the course of trade by or with the consent of the Opponent in relation to the services for which it was registered. However, that use was in relation to the provision of services for which no charge was levied. Accordingly, as a matter of law, such use cannot be invoked to establish that the mark had been put to genuine use. This point has been the subject of some case law, which the Appellant submits (a) was mis-applied by the General Court, and (b) is inconsistent in any event. Accordingly, the matter of the legal consequences that ought to be drawn in such a factual scenario needs to be resolved by this Court.

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

Appeal brought on 24 November 2011 by Omnicare, Inc. against the judgment of the General Court (First Chamber) delivered on 9 September 2011 in Case T-290/09: Omnicare, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

(Case C-588/11 P)

(2012/C 25/77)

Language of the case: English

Parties

Appellant: Omnicare, Inc. (represented by: M. Edenborough QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

Form of order sought

The appellant seeks an Order that the judgment under appeal be annulled. Further, the Appellant seeks an Order for its costs of this appeal and before the General Court.

Pleas in law and main arguments

The Appellant relies upon a single plea in law, namely that the General Court wrongly applied Article 8(1)(b) of Council Regulation (EC) № 207/2009 (1) (the 'New Regulation'). This case involves an opposition brought by Astellas Pharma GmbH (formerly Yamanouchi Pharma GmbH) (the 'Opponent') based upon the Opponent's German trade mark registration № 394 01348 and an allegation of the existence of confusion pursuant to Article 8(1)(b) of the Council Regulation (EC) № 40/94 (2) ('the Old Regulation') (but which is identical to the pertinent parts of the New Regulation). As the earlier mark had been registered for more than five years before the Opposition was commenced, it was necessary for the Opponent to prove that the mark has been put to genuine use in order for it to be used as a basis for the Opposition.

It is submitted that the General Court wrongly held that the earlier trade mark upon which the Opponent relied had, as a matter of law, been put to genuine use. It is not disputed that the mark in question had actually been used in the course of trade by or with the consent of the Opponent in relation to the services for which it was registered. However, that use was in relation to the provision of services for which no charge was levied. Accordingly, as a matter of law, such use cannot be invoked to establish that the mark had been put to genuine use. This point has been the subject of some case law, which the Appellant submits (a) was mis-applied by the General Court, and (b) is inconsistent in any event. Accordingly, the matter of the legal consequences that ought to be drawn in such a factual scenario needs to be resolved by this Court.

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

Appeal brought on 25 November 2011 by Alliance One International, Inc. against the judgment of the General Court (Third Chamber) delivered on 9 September 2011 in Case T-25/06: Alliance One International, Inc. v European Commission

(Case C-593/11 P)

(2012/C 25/78)

Language of the case: English

Parties

Appellant: Alliance One International, Inc. (represented by: C. Osti, A. Prastaro, G. Mastrantonio, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside, in its entirety, the judgment of the General Court of 9 September 2011 in case T-25/06 Alliance One v. Commission; and, in case the state of the proceedings so permits,

— annul Article 1(1) of the Contested Decision, in so far it relates to SCC, Dimon and Alliance One; and accordingly

— reduce the fines imposed on Transcatab and Dimon Italia (Mindo) so that the fines do not exceed 10 % of their turnover in the last fiscal year; and

— reduce the fine imposed on Transcatab and Dimon Italia (Mindo) as the multiplying factor is not applicable anymore since it was based on the group size;

— in any event, order the Commission to pay all the costs, including those incurred by Alliance One before the General Court.

Pleas in law and main arguments

Alliance One seeks: (i) the annulment, in its entirety, of the Contested Judgment; and, in addition, (ii) the annulment of Article 1(1) of the decision of the Commission of 20 October 2005 in case COMP/C.38.281/B.2 — Raw tobacco — Italy, in so far it relates to Standard Commercial Corp. ('**SCC**'), Dimon Inc. ('**Dimon**') and Alliance One; and accordingly (iii) a reduction of the fines imposed on Transcatab S.p.A. ('**Transcatab**') and Dimon Italia S.r.l. ('**Dimon Italia**'; now Mindo) so that the fines do not exceed 10 % of their turnover in the last fiancial year; or alternatively (iv) a reduction of the fine imposed on Trancatab and Dimon Italia (now Mindo) as the multiplying factor is not applicable; (v) in any event, to order the Commission to pay all the costs, including those incurred by Alliance One before the General Court.

Alliance One submits that the contested judgment should be set aside on the following grounds:

— Firstly the General Court infringed Article 296 TFEU and Articles 48 and 49 of the Charter of Fundamental Rights of the EU. The failure to conduct a concrete and full analysis of the relevant evidence produced by the Appellant in order to rebut the presumption of decisive influence and, consequently, to adequately substantiate its reasoning for the rejecting that evidence made the presumption of exercise of control all but rebuttable and this amounted to a breach of the principles of presumption of innocence, legality and individual liability.

— Secondly, the General Court, by rejecting the evidence offered by Alliance One, misapplied the general principles relating to the burden of proof and the procedural rules of evidence and, in any event, breached the Appellant's right of defence.

Appeal brought on 25 November 2011 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (First Chamber) delivered on 9 September 2011 in Case T-232/06: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-597/11 P)

(2012/C 25/79)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis and M. Dermitzakis, Δικηγόροι)

Other party to the proceedings: European Commission

Form of order sought

The appellant claim that the Court should:

— Set aside the decision of the General Court.

— Exercise its full Jurisdiction and annul the decision of the Commission (DG Taxation and Customs Union) to reject the bid of the Appellant, filed in response to the Call for Tender (the 'CfT') TAXUD/2005/AO-001 for specification, development, maintenance and support of customs IT services relating to IT projects of the DG-TAXUD 'CUST-DEV' (OJ 2005/S 187-183846) and to award the same Call for Tender to another bidder, communicated to the applicant by letter dated 19 June 2006 and award the requested Damages

— Alternatively Refer to the General Court the case in order to rule on the substance of the case.

— Order the Commission to pay the Appellant's legal and other costs including those incurred in connection with the initial procedure.

Pleas in law and main arguments

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

First, the Appellant submits that he General Court committed an error in law adopting an erroneous interpretation of Article 89 (1) and 98 (1) of the Financial Regulation, and of Article 140 (1) and (2) and Article 141 (2) of the Implementing Rules, of the principles of equality of treatment, non-discrimination, transparency and freedom of competition.

Second, the Appellant submits that the General Court erred in law misinterpreting, and distorting the submitted evidence.

Furthermore, the Appellant submits that the General Court erred in law by interpreting erroneously the amendment of the Selection Criteria as well as by not examining the existence of numerous manifest errors of assessment in the evaluation of the tender and by providing insufficient motivation of the attacked Judgment.

Appeal brought on 25 November 2011 against the Order of the General Court (Sixth Chamber) delivered on 20 September 2011 in Case T-267/10 Land Wien v European Commission

(Case C-608/11 P)

(2012/C 25/80)

Language of the case: German

Parties

Appellant: Land Wien (represented by: W.-G. Schärf, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— revise the order of the General Court of the European Union (Sixth Chamber) of 20 September 2011 in Case T-267/10 so as to take full account of the substance of its claim;

— order the European Commission to pay the costs of the proceedings at first instance and on appeal.

Grounds of appeal and main arguments

The appeal has been brought against the order to the General Court of 20 September 2011, by which that court dismissed the appellant's action seeking, essentially, the annulment of the Commission's decision of 25 March 2010 to discontinue the procedure relating to the appellant's complaint concerning a plan to expand units 3 an 4 of the Mochovce nuclear power plant in the Slovak Republic, and a declaration that the Commission has failed to act, within the meaning of Article 265 TFEU, since it failed to communicate all of the documents requested in that regard in infringement of 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. [1]

The General Court infringed the Euratom Treaty in failing to interpret it in the light of the TFEU. The General Court failed to recognise that the TFEU declares as a legally enforceable right the right of access to documents laid down in Article 42 of the Charter of Fundamental Rights, on which the appellant may rely directly to obtain from the Commission all the information which it retained in relation to the expansion of the nuclear power station in Mochovce.

Contrary to what the General Court found, the Commission's letter in response to the question put by the appellant constitutes a challengeable decision for the purposes of Article 263 TFEU. This results from the settled case-law of the Court of Justice and in particular from its judgment of 11 November 1981 in Case 60/81 (*IBM*).

[1] OJ 2001 L 145, p. 43.

Appeal brought on 1 December 2011 by Luigi Marcuccio against the judgment of the General Court (Fourth Chamber) delivered on 14 September 2011 in Case T-236/02 Marcuccio v Commission

(Case C-617/11 P)

(2012/C 25/81)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (represented by: G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of 14 September 2011 in Case T-236/02 in so far as it rejected the claims seeking compensation and reparation made by the appellant in his written submissions at first instance;

— Order the Commission to pay the costs and allow in their entirety and without any exception whatsoever the claims seeking compensation and reparation;

— In the alternative, refer the case back in part to the General Court for a fresh decision on the claims seeking compensation and reparation.

Pleas in law and main arguments

— Errors of procedure so serious as to damage irreparably the interests of the appellant;

— total failure to state grounds, as well irrational, tautological, illogical and inconsistent reasoning, and misinterpretation and misapplication of Annex X to the Staff Regulations of Officials of the European Union, of the rules on the interpretation of laws and of the conditions governing the liability of a European Union institution for payment of compensation for damage;

— confused and arbitrary reasoning and distortion and misrepresentation of the facts;

— distortion and misrepresentation of the facts and misinterpretation and misapplication of the rules on the admissibility of documents instituting proceedings.

Appeal brought on 2 December 2011 by New Yorker SHK Jeans GmbH & Co. KG, formerly New Yorker SHK Jeans GmbH against the judgment of the General Court (Sixth Chamber) delivered on 29 September 2011 in Case T-415/09: New Yorker SHK Jeans GmbH & Co. KG, formerly New Yorker SHK Jeans GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Vallis K. — Vallis A. & Co. O.E.

(Case C-621/11 P)

(2012/C 25/82)

Language of the case: English

Parties

Appellant: New Yorker SHK Jeans GmbH & Co. KG, formerly New Yorker SHK Jeans GmbH (represented by: V. Spitz, A. Gaul, T. Golda, S. Kirschstein-Freund, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Vallis K. — Vallis A. & Co. O.E.

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union of September 29, 2011 in Case T-415/09 and

   (a) annul the decision of the First Board of Appeal of the Office For Harmonization in the Internal Market (Trade Marks and Designs) of July 30, 2009 in so far as the appeal is dismissed and the rejection of the application for goods in class 25 is confirmed,

   alternatively,

   (b) refer the case back to the General Court for final judgment.

2. order the Office for Harmonization in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings of first instance and on appeal.

Pleas in law and main arguments

— The consideration of additional evidence of use filed after the expiry of the deadline set by the Office for submitting such evidence is a violation of Articles 42 (2), (3), 76 (2), CTMR [1] (formerly Articles 43 (2), (3), 74 (2) CTMR) and Rule 22 (2) CTMIR.

— The submission of evidence proving genuine use of the opposition mark is subject to Rule 22 (2) CTMIR only. The wording of Rule 22 (2) CTMIR does not confer discretion. Therefore, Article 76 (2) CTMR does not apply in so far. In case genuine use of the opposition mark has not been proven within the period set by the Office in accordance with Rule 22 (2) sentence 1 CTMIR, the opposition shall be rejected.

— Consequently, in case the Office invites the opponent to hand in observations in reply to the applicant's arguments with respect to the proof of use filed, in accordance with Article 75 CTMR and Rule 20 (4) CTMIR, the opponent may submit its observations. However, further evidence of use filed cannot be taken into consideration as it was filed after the expiry of term. By taking into account the evidence filed late it infringed Article 42 (2)' (3) CTMR and Rule 22 (2) CTMIR.

— The mere submission of observations by the applicant in which it contests the sufficiency of the evidence filed within the deadline does not justify the taking into account of additional evidence of use.

— Even if Article 76 (2) CTMR is considered applicable as regards additional proof of use filed after the expiry of term of Rule 22 (2) CTMIR, in the current case, Articles 42 (2), (3), 76 (2) CTMR and Rule 22 (2) CTMIR have been infringed.

— The evidence submitted subsequently was no additional evidence. Additional evidence requires that the evidence filed within the first time limit proved genuine use of the opposition mark and that the evidence filed at a later date only substantiates the facts already proven. Thus, the General Court infringed Article 76 (2) CTMR by allowing application of that provision in appeal proceedings.

— There has been an abuse of discretion conferred by Art. 76 (2) CTMR. The Office abused its discretion by merely taking into account that the filing of further examples of use was necessary for the opponent. The question whether the submission of additional evidence is necessary for one party to the proceeding is no factor to be taken into account by the respondent. This question has to be answered by the respective party on its own. Moreover, the Office did not take into account further circumstances. It did not even give consideration to the value of the material filed first. By holding that there has been no abuse of discretion the General Court infringed applicable law.

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

Appeal brought on 6 December 2011 by Polyelectrolyte Producers Group, SNF SAS against the order of the General Court (Seventh Chamber, Extended Composition) delivered on 21 September 2011 in Case T-268/10: Polyelectrolyte Producers Group, SNF SAS v European Chemicals Agency (ECHA)

(Case C-625/11 P)

(2012/C 25/83)

Language of the case: English

Parties

Appellants: Polyelectrolyte Producers Group, SNF SAS (represented by: K. Van Maldegem, R. Cana, avocats)

Other parties to the proceedings: European Chemicals Agency (ECHA), Kingdom of the Netherlands, European Commission

Form of order sought

The applicants claim that the Court should:

— Set aside the Order of the General Court in Case T-268/10; and

— Annul the decision of the European Chemicals Agency ('ECHA') to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 ([1]) concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals in accordance with Article 59 of Regulation l907/2006 and the subsequent inclusion on 30 March 2010 of acrylamide in the candidate list of substances, in accordance with Article 59 of Regulation 1907/2006; or

— Alternatively, refer the case back to the General Court to rule on the Appellants' Application for annulment; and

— Order the Respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment in respect of the decision of ECHA to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation l907/2006 in accordance with Article 59 of Regulation l907/2006 and the subsequent inclusion on 30 March 2010 of acrylamide in the candidate list of substances, in accordance with Article 59 of Regulation 1907/2006, the General Court breached Union law. In particular, the Appellants contend that the General Court committed a number of errors in its interpretation of the facts and of the legal framework as applicable to the Appellants' situation. That resulted in it making a number of errors in law, in particular:

— Its interpretation and application of Article 102(1) of the Rules of Procedure and the case law on the calculation of time limits; and

— Its finding that the Appellants' Application for annulment of the decision of ECHA to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation l907/2006 in accordance with Article 59 of Regulation l907/2006 and the subsequent inclusion on 30 March 2010 of acrylamide in the candidate list of substances, in accordance with Article 59 of Regulation 1907/2006, is inadmissible.

For these reasons the Appellants claim that the judgment of the General Court in Case T-268/10 should be set aside and the decision of ECHA to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation l907/2006 in accordance with Article 59 of Regulation l90712006 and the subsequent inclusion on 30 March 2010 of acrylamide in the candidate list of substances, in accordance with Article 59 of Regulation 1907/2006, should be annulled.

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

Order of the President of the Second Chamber of the Court of 17 October 2011 — European Commission v Republic of Austria

(Case C-551/09) ([1])

(2012/C 25/84)

Language of the case: German

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

([1]) OJ C 63, 13.3.2010.

Order of the President of the Sixth Chamber of the Court of 28 September 2011 — European Commission v French Republic

(Case C-179/10) ([1])

(2012/C 25/85)

Language of the case: French

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

([1]) OJ C 161, 19.6.2010.

GENERAL COURT

Judgment of the General Court of 30 November 2011 — Quinn Barlo and Others v European Commission

(Case T-208/06) [1]

(Competition — Agreements, decisions and concerted practices — Market for methacrylates — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Concept of single infringement — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances)

(2012/C 25/86)

Language of the case: English

Parties

Applicants: Quinn Barlo Ltd (Cavan, Ireland); Quinn Plastics NV (Geel, Belgium); and Quinn Plastics GmbH (Mayence, Germany) (represented by: W. Blau, F. Wijckmans and F. Tuytschaever, lawyers)

Defendant: European Commission (represented initially by V. Bottka and S. Noë, and subsequently by V. Bottka and N. Khan, acting as Agents)

Re:

Application for annulment of Articles 1 and 2 of Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates) in so far as it relates to the applicants and, in the alternative, application for annulment of Article 2 of that decision in so far as it imposes a fine on the applicants or, in the further alternative, application for a reduction in that fine

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates), first, in so far as it finds that Quinn Barlo Ltd, Quinn Plastics NV and Quinn Plastics GmbH infringed Article 81 EC and Article 53 of the EEA Agreement (EEA) by participating in a complex of concerted agreements and practices, not only in respect of polymethyl-methacrylate solid sheet, but also polymethyl-methacrylate moulding compounds and polymethyl-methacrylate sanitary ware and, second, in so far as it holds those companies liable for their participation in the cartel from 1 November 1998 to 23 February 2000;*

2. *Sets the amount of the fine for which Quinn Barlo, Quinn Plastics NV and Quinn Plastics GmbH are jointly and severally liable under Article 2 of Decision C(2006) 2098 final at EUR 8 250 000;*

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

4. *Orders Quinn Barlo, Quinn Plastics NV and Quinn Plastics GmbH to bear 60 % of their own costs and to pay 60 % of the costs incurred by the European Commission;*

5. *Orders the Commission to bear 40 % of its own costs and to pay 40 % of the costs incurred by Quinn Barlo, Quinn Plastics NV and Quinn Plastics GmbH.*

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[1] OJ C 224, 16.9.2006.

Judgment of the General Court of 8 December 2011 — Deutsche Post v Commission

(Case T-421/07) [1]

(State aid — Measures taken by the German authorities in favour of Deutsche Post AG — Decision to initiate the procedure laid down in Article 88(2) EC — No prior definitive decision — Inadmissibility)

(2012/C 25/87)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund and T. Lübbig, lawyers)

Defendant: European Commission (represented initially by N. Khan and B. Martenczuk, and subsequently by Martenczuk and D. Grespan, acting as Agents)

Interveners in support of the defendant: UPS Europe NV/SA (Brussels, Belgium); and UPS Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: T. Ottervanger and E. Henny, lawyers)

Re:

Application for annulment of the Commission decision of 12 September 2007 to initiate the procedure laid down in Article 88 (2) [EC] in respect of State aid granted by the Federal Republic of Germany to Deutsche Post AG (C 36/07 (ex NN 25/07))

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Deutsche Post AG to bear its own costs and to pay those incurred by the European Commission;*

3. *Orders UPS Europe NV/SA and UPS Deutschland Inc. & Co. OHG to bear their own costs.*

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[1] OJ C 22, 26.1.2008.

Judgment of the General Court of 8 December 2011 — Evropaïki Dynamiki v Commission

(Case T-39/08) [1]

(Public service contracts — Tendering procedure — Provision of information technology services relating to the hosting, management, enhancement, promotion and maintenance of an internet portal — Rejection of a tender and award of the contract to another tenderer — Selection criteria — Award criteria — Non-contractual liability)

(2012/C 25/88)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: European Commission (represented by: E. Manhaeve and N. Bambara, Agents, assisted by J. Stuyck, lawyer)

Re:

First, application for annulment of the Commission Decision of 12 November 2007 rejecting the tender submitted by the applicant in open call for tenders EAC/04/07 relating to the hosting, management, improvement, promotion and maintenance of the Commission's internet portal for 'e-learning' (elearningeuropa.info) (OJ 2007 S 87), and awarding the contract to another tenderer, and, second, application for damages.

Operative part of the judgment

The Court:

1. *Annuls the Commission Decision of 12 November 2007 rejecting the tender submitted by the Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in open call for tenders EAC/04/07 relating to the hosting, management, enhancement, promotion and maintenance of the European Commission's internet portal on eLearning (elearningeuropa.info), and awarding the contract to another tenderer;*

2. *Dismisses the application for damages;*

3. *Orders the Commission to bear its own costs and to pay those incurred by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis.*

[1] OJ C 92, 12.4.2008.

Judgment of the General Court of 30 November 2011 — Commission v Dittert

(Case T-51/08 P) [1]

(Appeal — Civil service — Officials — Promotion — 2005 promotion procedure — Priority points — Points not allocated due to a technical problem — A* Promotion Committee — Allocation of a lower number of points than had been proposed by the applicant's superior — Failure to include the applicant in the list of officials eligible for promotion)

(2012/C 25/89)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Berscheid and K. Herrmann, Agents)

Other party to the proceedings: Daniel Dittert (Luxembourg, Luxembourg) (represented by: B. Cortese and C. Cortese, lawyers)

Re:

Appeal lodged against the judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 in Case F 109/06 *Dittert* v *Commission*, not yet published in the ECR, with a view to having that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to bear its own costs and to pay Mr Daniel Dittert's costs.*

[1] OJ C 92, 12.4.2008.

Judgment of the General Court of 30 November 2011 — Commission v Carpi Badía

(Case T-52/08 P) [1]

(Appeal — Civil service — Officials — Promotion — 2005 promotion procedure — Priority points — Points not allocated due to a technical problem — A* Promotion Committee — Allocation of a lower number of points than had been proposed by the applicant's superior — Failure to include the applicant in the list of officials eligible for promotion)

(2012/C 25/90)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Berscheid and K. Herrmann, Agents)

Other party to the proceedings: José María Carpi Badía (Luxembourg, Luxembourg) (represented by: B. Cortese and C. Cortese, lawyers)

Re:

Appeal lodged against the judgment of the Civil Service Tribunal (Second Chamber) of 22 November 2007 in Case F 110/06 *Carpi Badía* v *Commission*, not yet published in the ECR, with a view to having that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to bear its own costs and to pay Mr José María Carpi Badía's costs.*

([1]) OJ C 92, 12.4.2008.

Judgment of the General Court of 30 November 2011 — Transnational Company 'Kazchrome' and ENRC Marketing v Council and Commission

(Case T-107/08) ([1])

(Dumping — Imports of silico-manganese originating in China and Kazakhstan — Action for annulment — Export price — Comparison between export price and normal value — Calculation of the undercutting margin — Non-contractual liability)

(2012/C 25/91)

Language of the case: English

Parties

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

Defendants: Council of the European Union (represented initially by J.-P. Hix, acting as Agent, and G. Berrisch and G. Wolf, lawyers, and subsequently by J.-P. Hix and B. Driessen, acting as Agents, and G. Berrisch, lawyer); and European Commission (represented by: H. van Vliet and K. Talabér-Ritz, acting as Agents)

Intervener in support of the defendants: Euroalliages (Brussels, Belgium) (represented by: J. Bourgeois, Y. van Gerven and N. McNelis, lawyers)

Re:

Application, first, for annulment of Council Regulation (EC) No 1420/2007 of 4 December 2007 imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine (OJ 2007 L 317, p. 5), in so far as it concerns imports of silico-manganese produced by Transnational Company 'Kazchrome' AO, and, second, for damages.

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Council Regulation (EC) No 1420/2007 of 4 December 2007 imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine in so far as that article applies to imports of silico-manganese produced by Transnational Company 'Kazchrome' AO;*

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

3. *Orders Transnational Company 'Kazchrome' and ENRC Marketing AG to bear half of their own costs and to bear the costs of the European Commission;*

4. *Orders the Council of the European Union to bear half of the costs of Transnational Company 'Kazchrome' and ENRC Marketing, in addition to its own costs;*

5. *Orders Euroalliages to bear its own costs.*

([1]) OJ C 116, 9.5.2008.

Judgment of the General Court of 30 November 2011 Sniace v Commission

(Case T-238/09) ([1])

(State aid — Agreements relating to debt rescheduling — Decision declaring an aid to be incompatible with the common market — Obligation to give reasons)

(2012/C 25/92)

Language of the case: Spanish

Parties

Applicant: Sniace (Madrid, Spain) (represented by: F.J. Moncholí Fernández and S. Ratting, lawyers)

Defendant: European Commission (represented by: C. Urraca Caviedes, acting as Agent)

Re:

Annulment of Commission Decision 2009/612/CE of 10 March 2009 relating to measure C 5/2000 (ex NN 118/1997) implemented by Spain in favour of Sniace, SA, Torrelavega, Cantabria, and amending Decision 1999/395/EC (OJ 2009 L 210, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sniace SA to bear its own costs and, in addition, to pay the European Commission's costs, including those incurred in the application for interim measures.*

([1]) OJ C 193, 15.8.2009.

Judgment of the General Court of 30 November 2011 — Hartmann v OHIM (Complete)

(Case T-123/10) ([1])

(Community trade mark — Application for Community word mark 'Complete' — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — Statement of reasons — Goods forming a homogenous group — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2012/C 25/93)

Language of the case: German

Parties

Applicant: Paul Hartmann AG (Heidenheim an der Brenz, Germany) (represented by N. Aicher, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: B. Schmidt and later by: R. Manea and R. Pethke, Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 January 2010 (Case R 601/2009-4) concerning an application to register the word mark 'Complete' as a Community trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 January 2010 (Case R 601/2009-4);*

2. *Orders OHIM to bear its own costs and to pay the costs incurred by Paul Hartmann AG, including the indispensable costs incurred by the latter in the procedure before the Appeals Chamber.*

([1]) OJ C 134, 22.5.2010.

Judgment of the General Court of 7 December 2011 — El Corte Inglés v OHIM — Azzedine Alaïa (ALIA)

(Case T-152/10) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark ALIA — Earlier Community figurative mark ALAÏA PARIS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 25/94)

Language of the case: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: J.L. Rivas Zurdo, M.E. López Camba and E. Seijo Veiguela, lawyers)

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, intervener before the General Court: Azzedine Alaïa (Paris, France) (represented by: M. Holah, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 February 2010 (Case R 924/2008-4), relating to opposition proceedings between Mr Azzedine Alaïa and El Corte Inglés, SA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 3 February 2010 (Case R 924/2008-4) in so far as the Board of Appeal excluded the goods in Class 3 corresponding to the description 'Perfumery, essential oils, cosmetics, hair lotions; dentifrices' from its analysis of the likelihood of confusion between the marks at issue.*

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

3. *Orders El Corte Inglés, SA, OHIM and Mr Azzedine Alaïa each to bear their own costs.*

([1]) OJ C 148, 5.6.2010.

Judgment of the General Court of 30 November 2011 SE — Blusen Stenau v OHIM (Sport Eybl & Sports Experts (SE© SPORTS EQUIPMENT)

(Case T-477/10) ([1])

(Community trade mark — Opposition procedure — Application for Community figurative mark SE© SPORTS EQUIPMENT — Prior national word mark SE So Easy — Relative grounds for refusal — Similarity of the signs — Article 8(1)(b) of Regulation No 207/2009)

(2012/C 25/95)

Language of the case: German

Parties

Applicant: SE — Blusen Stenau GmbH (Gronau, Germany) (represented by: O. Bischof, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sport Eybl & Sports Experts GmbH (Wels, Austria) (represented by: M. Pachinger and S. Fürst., lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 July 2010 (Case R 139372009-1) concerning an opposition procedure between SE — Blusen Stenau GmbH and Sport Eybl & Sports Experts GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 July 2010 (Case R 139372009-1);*

2. *Orders OHIM to bear its own costs and pay the costs incurred by SE — Blusen Stenau GmbH;*

3. *Orders Sport Eybl & Sports Experts GmbH to bear its own costs.*

([1]) OJ C 346, 18.12.2010.

Judgment of the General Court of 7 December 2011 — HTTS v Council

(Case T-562/10) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Actions for annulment — Obligation to state the reasons on which the decision is based — Procedure by default — Application to intervene — No need to adjudicate)

(2012/C 25/96)

Language of the case: German

Parties

Applicant: HTTS (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop and Z. Kupčová, Agents)

Re:

Partial annulment of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), in so far as the applicant's name was included on the list of persons, entities and bodies whose funds and economic resources are to be frozen.

Operative part of the judgment

The Court:

1. *Decides that there is no longer any need to adjudicate on the applications to intervene submitted by the European Commission and the Federal Republic of Germany;*

2. *Annuls Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 in so far as it concerns HTTS Hanseatic Trade Trust & Shipping GmbH;*

3. *Maintains the effects of Regulation No 961/2010 in so far as it concerns the applicant for a period of no more than two months from the date of delivery of this judgment;*

4. *Orders the Council of the European Union to bear its own costs and to pay the costs incurred by HTTS Hanseatic Trade Trust & Shipping.*

([1]) OJ C 46, 12.2.2011.

Judgment of the General Court of 8 December 2011 — Aktieselskabet af 21. november 2001 v OHIM — Parfums Givenchy (only givenchy)

(Case T-586/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark 'only givenchy' — Earlier Community and national word marks ONLY — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Reputation — Article 8(5) of Regulation No 207/2009)

(2012/C 25/97)

Language of the case: English

Parties

Applicant: Aktieselskabet af 21. november 2001 (Brande, Denmark) (represented by: C. Barrett Christiansen, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Parfums Givenchy SA (Levallois-Perret, France)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 7 October 2010 (Case R 1556/2009-2) concerning opposition proceedings between Aktieselskabet af 21. november 2001 and Parfums Givenchy SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aktieselskabet af 21. november 2001 to pay the costs.*

([1]) OJ C 80, 12.3.2011.

Judgment of the General Court of 29 November 2011 — Birkhoff v Commission

(Case T-10/11 P) [1]

(Appeal — Civil service — Officials — Family allowances — Dependent child allowance — Child suffering from an infirmity preventing her from earning a livelihood — Refusal to extend payment of the allowance)

(2012/C 25/98)

Language of the case: Italian

Parties

Appellant: Gerhard Birkhoff (Weitnau, Germany) (represented by: C. Inzillo, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and B. Eggars, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 27 October 2010 in Case F-60/09 *Birkhoff* v *Commission* (not yet published in the ECR), seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (Second Chamber) of 27 October 2010 in Case F-60/09 Birkhoff v Commission (not yet published in the ECR);*

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

3. *Orders that the costs be reserved.*

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[1] OJ C 55, 19.2.2011.

Order of the General Court of 15 November 2011 — Becker Flugfunkwerk v OHIM — Harman Becker Automotive Systems (BECKER AVIONIC SYSTEMS)

(Case T-263/08) [1]

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

(2012/C 25/99)

Language of the case: English

Parties

Applicant: Becker Flugfunkwerk GmbH (Rheinmünster, Germany) (represented by: O. Griebenow, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Harman Becker Automotive Systems GmbH (Karlsbad, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 10 April 2008 (Case R 398/2007 1) relating to opposition proceedings between Harman Becker Automotive Systems GmbH and Becker Flugfunkwerk GmbH.

Operative part of the order

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

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

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[1] OJ C 223, 30.8.2008.

Order of the General Court of 15 November 2011 — Galileo International Technology v OHIM — Residencias Universitarias (GALILEO)

(Case T-188/09) [1]

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

(2012/C 25/100)

Language of the case: English

Parties

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

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 19 February 2009 (Case R 471/2005-4), concerning opposition proceedings between Residencias Universitarias, SA and Galileo International Technology, LLC.

Operative part of the order

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

2. *The applicant shall bear its own costs and pay the costs incurred by the defendant.*

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[1] OJ C 180, 1.8.2009.

Order of the President of the General Court of 2 December 2011 — Carbunión v Council

(Case T-176/11 R)

(Application for interim measures — State aid — Decision on aid intended to facilitate the closure of uncompetitive coal mines — Application for suspension of operation of a measure — Lack of standing to bring proceedings — Lack of concordance with the main action — Non-severability — Inadmissibility — Balance of interests)

(2012/C 25/101)

Language of the case: English

Parties

Applicant: Federación Nacional de Empresarios de Minas de Carbón (Carbunión) (Madrid, Spain) (represented by: K. Desai, Solicitor, S. Cisnal de Ugarte and M. Peristeraki, lawyers)

Defendant: Council of the European Union (represented initially by F. Florindo Gijón and A. Lo Monaco, and subsequently by F. Florindo Gijón and K. Michoel, acting as Agents)

Re:

Application for partial suspension of operation of Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ 2010 L 336, p. 24) and, in the alternative, application for full suspension of operation of that decision.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 15 November 2011 — Xeda International v Commission

(Case T-269/11 R)

(Application for interim measures — Plant protection products — Active substance ethoxyquin — Non-inclusion of ethoxyquin in Annex I to Directive 91/414/EEC — Withdrawal of authorisations for plant protection products containing ethoxyquin — Application to suspend the operation of a measure — Lack of urgency)

(2012/C 25/102)

Language of the case: English

Parties

Applicant: Xeda International SA (Saint-Andiol, France) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission (represented by: D. Bianchi, G. von Rintelen and P. Ondrůšek, acting as Agents)

Re:

Application for suspension of operation of Commission Decision 2011/143/EU of 3 March 2011 concerning the non-inclusion of ethoxyquin in Annex I to Council Directive 91/414/EEC and amending Commission Decision 2008/941/EC (OJ 2011 L 59, p. 71) and, if necessary, other interim measures.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 24 November 2011 — Éditions Jacob v Commission

(Case T-471/11 R)

(Application for interim measures — Competition — Concentration of enterprises — Decision declaring the concentration compatible with the common market subject to sale of assets — Annulment by the General Court of the initial decision on the Commission's approval of the purchaser of the sold assets — Application for suspension of operation of the decision on the further approval of the same purchaser — No urgency — Weighing of interests)

(2012/C 25/103)

Language of the case: French

Parties

Applicant: Éditions Odile Jacob SA (Paris, France)) (represented by: O. Fréget, M. Struys and L. Eskenazi, lawyers)

Defendant: European Commission (represented by: C. Giolito, O. Beynet and S. Noë, agents)

Re:

Application for suspension of operation of Commission Decision C(2011) 3503 of 13 May 2011 on the approval of Wendel Investissement SA as the purchaser of the assets sold in accordance with Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP)),

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 28 October 2011 — Anbouba v Council

(Case T-563/11)

(2012/C 25/104)

Language of the case: French

Parties

Applicant: Issam Anbouba (Homs, Syria) (represented by: M.-A. Bastin and J.-M. Salva, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare this application admissible in all its elements;

— Declare it well founded in all its pleas in law;

— State that the contested acts may be annulled in part since the part of the acts which is to be annulled can be separated from the act as a whole;

— Accordingly

  — Annul in part Council Decision 2011/522/CFSP of 2 September 2011, Council Decision 2011/628/CFSP of 23 September amending Decision 2011/273/CFSP concerning restrictive measures against Syria and Regulation No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria by deleting the listing of Mr Issam Anbouba and references to him as supporting the current regime in Syria;

  — Failing that, annul Council Decision 2011/522/CFSP of 2 September 2011, Council Decision 2011/628/CFSP of 23 September amending Decision 2011/273/CFSP concerning restrictive measures against Syria and Regulation No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria;

— Failing that, declare those decisions and the regulation inapplicable as regards Issam Anbouba and order the removal of his name and references from the list of persons who are the object of sanctions by the European Union;

— Order the Council provisionally to pay one euro in damages as compensation for the non-pecuniary and pecuniary harm suffered by reason of the designation of Mr Issam Anbouba as a supporter of the current regime in Syria;

— Order the Council to pay all 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:

   — firstly, infringement of the principle of the presumption of innocence guaranteed by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and by Article 48 of the Charter of Fundamental Rights of the European Union and

   — secondly, a manifest error of assessment, since the accusations against the applicant do not rest on objective facts but on mere allegations connected with his social status as a businessman.

2. Second plea in law, divided into four parts, alleging infringement of the rights of the defence and of the right to a fair hearing, of the duty to state reasons, of the right to a private life and the right to freedom of religion, since:

   — the applicant has not been sent any evidence or serious indications which could have led to his inclusion in the list of persons subject to sanction and was not heard before the adoption of the contested acts;

   — the defendant merely used a very general form of words in the contested acts, in particular without stating reasons, when drawing up the restrictive measures against the applicant;

   — the adoption of restrictive measures against the applicant has given rise to strong reactions and threats from persons or groups which are victims of the Syrian repression with which the applicant has been associated following the contested acts;

   — the true reason for the adoption of the restrictive measures against the applicant is religious in nature.

Action brought on 28 October 2011 — Farage v Parliament and Buzek

(Case T-564/11)

(2012/C 25/105)

Language of the case: English

Parties

Applicant: Nigel Paul Farage (Brussels, Belgium) (represented by: P. Bennett, Solicitor)

Defendants: European Parliament and Jerzy Buzek (Brussels, Belgium)

Form of order sought

— Revoke the decision of the President of the European Parliament, Mr Jerzy Buzek, dated 2 March 2010 imposing on the applicant a forfeiture of entitlement to daily subsistence allowance of ten days, as well as the decision of the Bureau of the European Parliament of 24 March 2010 and of the President of the European Parliament of 31 August 2011, declaring inadmissible the applicant's request for parliamentary immunity; and

— In the alternative, a declaration that none of the above-mentioned decisions are valid or ought to have been made.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Article 8 of the Protocol (No 7) on the Privileges and Immunities of the European Union (OJ 2010 C 84, p. 99), as the speech of the applicant on 24 February 2010 was made in his capacity as a member of the European Parliament. As such, the speech in question made political points and it is of prime importance that a member of the European Parliament can speak freely.

2. Second plea in law, alleging violation of free speech, as no proper account was taken of Rule 9(3) of the Rules of Procedure of the European Parliament (OJ 2011 L 116, p. 1)

3. Third plea in law, alleging violation of the right to an independent and impartial tribunal, as enshrined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as any participation of the President of the Parliament in the decision making process in the present matter, or of anybody else who was present during the plenary session of 24 February 2010 and had formed a view, disabled such person from taking part in such process.

4. Fourth plea in law, alleging failure to correctly interpret Rule 152(1) and Rule 153 of the Rules of Procedure of the European Parliament, as the penalties set out in the latter provision must be read in the context of its opening words, relating primarily to serious cases of disorder or disruption '…in violation of the principles laid down in Rule 9…'.

Action brought on 4 November 2011 — Hassan v Council

(Case T-572/11)

(2012/C 25/106)

Language of the case: French

Parties

Applicant: Samir Hassan (Damas, Syria) (represented by: E. Morgan de Rivery and E. Lagathu, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul, on the basis of Article 263 of the Treaty on the Functioning of the European Union (TFEU):

  — Council Implementing Decision 2011/515/CFSP of 23 August 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria, insofar as it adds Mr Samir Hassan to the list in the annex to Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria;

  — Council Implementing Regulation (EU) No 843/2011 of 23 August 2011 implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria, insofar as it adds Mr Samir Hassan to the list in Annex II to Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria;

— Compensate Mr Hassan, on the basis of Articles 268 and 340 TFEU, for the loss caused to him by the adoption against him of the restrictive measures referred to above, as follows:

  — Hold that the Council of the European Union is non-contractually liable for the pecuniary harm suffered and which will be suffered in the future and for the non-pecuniary harm;

  — Award Mr Hassan the sum of EUR 250 000 per month, with effect from 1 September 2011, in order to compensate him for the pecuniary loss suffered;

  — Award Mr Hassan the symbolic sum of EUR 1 in respect of the non-pecuniary loss suffered, and

— Order the Council of the European Union to pay compensation for future non-pecuniary loss;

— In any event, order the Council of the European Union to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error by the Council in its assessment of the facts and an error in law resulting therefrom.

2. Second plea in law, alleging infringement of the duty to state reasons, of the rights of the defence and of the right to effective legal protection.

3. Third plea in law, alleging infringement of the right to property and the principle of proportionality.

4. Fourth plea in law, alleging infringement of the presumption of the applicant's innocence.

5. Fifth plea in law, alleging infringement by the Council of its own guidelines on the implementation and evaluation of restrictive measures in the context of common foreign and security policy.

6. Sixth plea in law, alleging a misuse of power by the Council.

7. Seventh plea in law, claiming compensation for the loss caused by the unlawful measures adopted by the Council.

Action brought on 4 November 2011 — JAS v Commission

(Case T-573/11)

(2012/C 25/107)

Language of the case: French

Parties

Applicant: JAS Jet Air Service France (JAS) (France) (represented by: T. Gallois, lawyer)

Defendant: European Commission

Form of order sought

— Annul the Commission's decision of 5 August 2011 in Case REM 01/2008 in which the Commission:

— decided that there was no special situation; and

— refused the application for remission of import duties in the amount of EUR 1 001 778,20 submitted by JAS JET AIR SERVICE on 24 January 2008;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of the obligation to state the reasons on which a decision is based, in so far as the Commission gave hypothetical reasons.

2. Second plea in law: infringement of the rights of the defence in that the Commission did not require the national administration to produce originals or copies of the customs declarations to which the application for remission related, although those documents would prove that a physical check had taken place.

3. Third plea in law: irregular examination of the case in that the burden of proof was reversed, the Commission having concluded, on the basis of the national authorities' assertion that the customs declarations in question had disappeared, that there was no proof that the customs administration had physically checked the goods. The applicant submits that the Commission cannot make good that failure on the part of the national authorities, to the detriment of the applicant.

4. Fourth plea in law: infringement of Article 239 of the Community Customs Code [1] in so far as the Commission limited the scope of the definition of 'special situation'.

5. Fifth plea in law: errors of law and manifest errors of assessment in so far as the Commission found that there was no 'special situation' for the purposes of Article 239 of the Customs Code, notwithstanding the fact that the applicant was faced with the same situation as another forwarding agent, a Dutch company, whose situation had been deemed by the Commission to constitute a 'special situation'.

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

Action brought on 7 November 2011 — Inaporc v Commission

(Case T-575/11)

(2012/C 25/108)

Language of the case: French

Parties

Applicant: Interprofession nationale porcine (Inaporc) (Paris, France) (represented by: H. Calvet, Y. Trifounovitch and C. Rexha, lawyers)

Defendant: European Commission

Form of order sought

— Annul Decision C(2011) 4376 final of 29 June 2011, State aid NN 10/2010 — France — Tax to finance a national pig and pork producers council (not yet published in the *Official Journal of the European Union*) in so far as it classifies (i) as State aid the action taken by INAPORC between 2004 and 2008 in relation to technical support, assistance with the production and marketing of quality products, research and development, as well as advertising, and (ii) the compulsory voluntary contributions used to finance that action as State resources forming an integral part of the State aid measures referred to above;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of essential procedural requirements in so far as the statement of reasons for the contested decision is insufficient having regard to Article 296 TFEU, in that it does not enable the applicant to understand the reasons that led the Commission to consider the criteria established by the case-law of the Court of Justice of the European Union in relation to State aid to be satisfied in this instance.

2. Second plea in law: infringement of Article 107(1) TFEU in that, in the contested decision, the Commission:

   — classified as State resources the compulsory voluntary contributions levied by Inaporc, and the action which that professional association takes and finances using those contributions as action imputable to the State;

   — found that there was a selective economic advantage arising from the action taken by Inaporc for the benefit of undertakings engaged in production, processing and distribution in the pigmeat sector;

   — took the view that the action taken by Inaporc may result in distortion of competition imputable to the State aid.

Action brought on 10 November 2011 — Schenker Customs Agency v Commission

(Case T-576/11)

(2012/C 25/109)

Language of the case: Dutch

Parties

Applicant: Schenker Customs Agency BV (Rotterdam, Netherlands) (represented by: A. Jansen and J. Biermasz, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision of 27 July 2011 in Case REM 01/2010;

— declare that the remission of the post-clearance duties is well founded.

Pleas in law and main arguments

Between 19 February 1999 and 19 July 2001, the applicant, as a customs agent, submitted 52 declarations in its own name for the release for free circulation of the product glyphosate. 'Taiwan' is referred to as the country of origin on all the declarations. It appeared, following an investigation by OLAF, that the glyphosate declared was of Chinese rather than Taiwanese origin. Consequently, anti-dumping duties claimed by the Netherlands customs authorities are due.

The applicant claims that the European Commission was wrong to decide that remission of the import duties was not well founded.

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

1. In the applicant's submission, the European Commission was wrong to consider that breach of the rights of the defence, the late post-clearance recovery of duties and the fact that Schenker was not able to make declarations as a direct representative are arguments that relate to the existence of the customs debt itself. According to the applicant, those arguments could well constitute a specific situation as referred to in Article 239 of Regulation No 2913/92 ([1]) and ought therefore to have been assessed on the substance.

2. In the applicant's submission, the European Commission was wrong to take the view that the issue of certificates of incorrect origin by the Taiwanese Chambers of Commerce could not constitute a specific situation for the purposes of Article 239 of Regulation No 2913/92.

3. The European Commission was wrong to take the view that its conduct in this case does not constitute a specific situation for the purposes of Article 239 of Regulation No 2913/92. The applicant submits however that the European Commission did not exercise any effective control over the fraud investigation and did not coordinate the case.

4. The European Commission was wrong to take the view that the conduct of the Netherlands authorities did not result in the applicant being placed in a specific situation. The applicant states that the European Commission failed to have regard to the fact that the Netherlands authorities did not act properly given that they were aware of the commission of fraud through the importation of glyphosate from Taiwan.

5. The European Commission was moreover wrong to consider that the applicant did not exercise all the diligence that can normally be expected of a customs agent and that remission is not therefore justified. The applicant states that no fraudulent conduct or obvious negligence can be alleged against it and refers in that regard to the decision of the Customs Chamber of the Gerechtshof Amsterdam of 18 December 2008 (see paragraph 5.2.3 of the decision).

6. The European Commission erred in not investigating all the relevant facts and circumstances.

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

Action brought on 4 November 2011 — Ethniko kai Kapodistriako Panepistimio Athinon v European Centre for Disease Prevention and Control

(Case T-577/11)

(2012/C 25/110)

Language of the case: Greek

Parties

Applicant: Ethniko kai Kapodistriako Panepistimio Athinon (National and Kapodistrian University of Athens) (Athens, Greece) (represented by: S. Gkaripis, lawyer)

Defendant: European Centre for Disease Prevention and Control (Solna, Sweden)

Form of order sought

The applicant claims that the General Court should:

— uphold the present action;

— establish the infringement, committed by the Committee for the evaluation of tenders in the contested decision, of the conditions of contract notice OJ/27/05/2011-PROC/2011/041 of the European Centre for Disease Prevention and Control (ECDC);

— annul Decision ADM-11-1737-AAbema of the European Centre for Disease Prevention and Control (ECDC) of 25 August 2011 taken against the applicant;

— order the defendant European body to re-examine the tender submitted on 22 July 2011 by the Ethniko kai Kapodistriako Panepistimio Athinon in the procedure at issue;

— order the defendant body to pay the applicant's costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Decision ADM-11-1737-AAbema of the European Centre for Disease Prevention and Control (ECDC) of 25 August 2011, by which the defendant rejected the applicant's tender in response to notice OJ/27/05/2011-PROC/2011/041 for the conclusion of a public works contract with the defendant concerning 'Systematic review and expert guidance on the public health effectiveness of molecular typing of viral pathogens'.

In support of its pleas in law, the applicant puts forward the following arguments:

1. Misappraisal of the facts concerning the applicant's tender

   The defendant body rejected the University of Athens' tender on the ground that the proposed members of the project team did not possess the requisite technical and professional ability for the work covered by the contract notice and it ruled out further examination of its proposal. In reality, however, the professional and technical activities of the members of the project team demonstrate their professional and technical sufficiency for performing the work covered by the contract notice.

2. Error in the decision as regards the assessment criteria

   The committee considered that the members of the project team in the applicant's proposal would not be able to perform a systematic review of the contract's subject-matter. However, not only did the members of the project team possess such experience, but even if that were not so the relevant condition regarding adequacy in systematic analysis had not been laid down in the contract notice as a condition which would determine the result of the assessment as an essential precondition for the award of the contract, that condition instead concerning a quality that would be assessed together with the other qualities.

3. Unlawful statement of reasons — lack of legal basis for the reasons stated

The second ground of the contested measure refers to the applicant's lack of ability to implement an evidence-based medicine approach. However, that method is not referred to at any point in the text of the contract notice as one of the criteria for selecting the most suitable contractor for performing the work put out to tender.

4. Unlawful failure to provide in the contract notice and the contested decision for the possibility of seeking administrative redress

The fact that the contract notice and the contested decision do not provide for the possibility of seeking redress before an administrative body designated by them in order to have the measure of the defendant body's committee annulled or amended is unlawful because it is contrary to the principles of good administration and legality that are enshrined in European Union law.

Action brought on 8 November 2011 — McNeil v OHIM — Alkalon (NICORONO)

(Case T-580/11)

(2012/C 25/111)

Language in which the application was lodged: English

Parties

Applicant: McNeil AB (Helsingborg, Sweden) (represented by: I. Starr, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Alkalon ApS (Copenhagen V, Denmark)

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 3 August 2011 in case R 1582/2010-2;

— Order the defendant to pay to the applicant its costs of and occasioned by this appeal.

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 word mark 'NICORONO', for goods in classes 5, 10 and 30 — Community trade mark application No 6654529

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

Mark or sign cited in opposition: Community trade mark registration No 2190239 of the word mark 'NICORETTE', for goods in classes 5, 10 and 30

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Annulled the contested decision

Pleas in law: Infringement of Articles 75, 8(1)(b) and 8(5) of Council Regulation No 207/2009, as the Board of Appeal has failed to give sufficient weight in the overall assessment to: (i) the identity of the goods concerned and the fact that this offsets a lesser degree of similarity between the marks to be compared; (ii) the fact that consumers normally perceive word marks as a whole and pay particular attention to the beginning of a mark; and (iii) the fact that the applicant's mark 'NICORETTE' has enhanced distinctiveness and an extensive reputation through significant use.

Action brought on 9 November 2011 — Dimian v OHIM — Bayer Design Fritz Bayer (BABY BAMBOLINA)

(Case T-581/11)

(2012/C 25/112)

Language in which the application was lodged: English

Parties

Applicant: Dimian AG (Nürnberg, Germany) (represented by: P. Pozzi and G. Ghisletti, lawyers)

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

Other party to the proceedings before the Board of Appeal: Bayer Design Fritz Bayer GmbH & Co. KG (Michelau, 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 3 August 2011 in case R 1822/2010-2; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'BABY BAMBOLINA', for goods in class 28 — Community trade mark registration No 6403927

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request pursuant to Article 53(1)(c) in conjunction with Article 8(4) of Council Regulation (EC) No 207/2009, and in Article 53(1)(a) in conjunction with Article 8(1)(b) and Article 8(2)(c) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1)(c) and Article 8(4) and in conjunction of Council Regulation No 207/2009, to the extent that the Board of Appeal has excluded the relevance of the mentioned catalogues referring to the period 2008-2009.

Action brought on 14 November 2011 — Solar-Fabrik v OHIM (Premium XL)

(Case T-582/11)

(2012/C 25/113)

Language of the case: German

Parties

Applicant: Solar-Fabrik AG für Produktion und Vertrieb von solartechnischen Produkten (Freiburg im Breisgau, Germany) (represented by M. Douglas, 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 1 September 2011 in Case R 245/2011-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Premium XL' for goods in Classes 9 and 11

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) and (c) of Regulation No 207/2009 as the mark applied for has distinctive character.

Action brought on 14 November 2011 — Solar-Fabrik v OHIM (Premium L)

(Case T-583/11)

(2012/C 25/114)

Language of the case: German

Parties

Applicant: Solar-Fabrik AG für Produktion und Vertrieb von solartechnischen Produkten (Freiburg im Breisgau, Germany) (represented by M. Douglas, 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 1 September 2011 in Case R 246/2011-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Premium L' for goods in Classes 9 and 11

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) and (c) of Regulation No 207/2009 as the mark applied for has distinctive character.

Action brought on 10 November 2011 — Cheverny Investments v Commission

(Case T-585/11)

(2012/C 25/115)

Language of the case: German

Parties

Applicant: Cheverny Investments (St Julians, Republic of Malta) (represented by: H. Prinz zu Hohenlohe-Langenburg, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision K(2011)275 of 26 January 2011 on State aid C-7/10 relating to the fiscal carry-forward of losses ('Sanierungsklausel'), addressed to the Federal Republic of Germany;

— alternatively, annul Commission Decision K(2011)275 of 26 January 2011 on State aid C-7/10 addressed to the Federal Republic of Germany inasmuch as on interpretation of national law the carry-forward of losses under Paragraph 8c(1a) of the Law on corporation tax (Körperschaftssteuergesetz, 'KStG') does not apply only to companies which are over-indebted or insolvent or are likely to become insolvent, but a carry-forward of losses within the meaning of Paragraph 8c(1a) leads, in so far as the further conditions are met, to a retention of the carry-forward of losses in the event of a change of share owner also for companies whose insolvency or over-indebtedness is avoidable, thus merely imminent;

— order the Commission to pay the applicant's necessary costs under Article 87(2)(1) of the Rules of Procedure.

Pleas in law and main arguments

In support of the action, the applicant claims that the Commission made an error of assessment by incorrectly finding in its analysis of Paragraph 8c(1a) of the KStG that the carry-forward of losses constituted State aid, in that it

— assumed that the provision which it objected to concerns only companies which are insolvent or likely to become insolvent, but not also those for which insolvency or over-indebtedness are merely imminent;

— assumed selectivity on the basis that the reference system used is Paragraph 8c of the KStG and not the Law on corporation tax.

In addition, the applicant claims that the Commission made errors of assessment in the contested decision, in that

— the Commission did not determine the reference system in the light of the KStG and taking account of its own Notice on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 L 384, p.3) and its proposal for a Council Directive on a common consolidated corporate tax base (CCCTB);

— did not find that the carry-forward of losses was justified by the disruption to the general economic equilibrium of 2009.

In the applicant's opinion, in the light of the foregoing, the Commission infringed Article 107(1) TFEU.

Action brought on 17 November 2011 — Oppenheim v Commission

(Case T-586/11)

(2012/C 25/116)

Language of the case: German

Parties

Applicant: Sal. Oppenheim jr. & Cie. AG & Co. KGaA (Cologne, Germany) (represented by: W. Deselaers, J. Brückner and M. Haisch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision K(2011)275, of 26 January 2011 on State aid C-7/10 relating to the fiscal carry-forward of losses ('Sanierungsklausel'), corrected by Decision K(2011) 2608 of 15 April 2011;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: no prima facie selectivity/incorrect definition of the reference framework

The applicant claims that there is no prima facie selectivity within the meaning of Article 107(1) TFEU. It argues that the Commission's determination of the reference system is incorrect and that the relevant system of reference, that is the continuation of unused losses by the company, despite an acquisition of shares, is a fundamental rule of national tax law. In addition, it is claimed that the fiscal carry-forward of losses constitutes an exception to that exception which leads back to the system of reference and therefore itself complies with the system.

2. Second plea in law: carry-forward of losses as a general measure

Under this point, the applicant claims that the carry-forward of losses constitutes a general measure and not, therefore, State aid within the meaning of Article 107(1) TFEU. It is submitted that carrying forward losses is available to all companies which are liable to tax in Germany and that they are neither openly nor covertly linked to features based on territory, size or production sector.

3. Third plea in law: justification on the basis of the nature and the internal logic of the taxation system

The applicant claims in the course of the third plea in law that the carrying-forward of losses is justified by the nature and the internal logic of the German taxation system, as it is a system — consistent exception to the exception of a forfeiture of losses pursuant to Paragraph 8c(1) of the German Law on corporation tax (Körperschaftsteuergesetz; 'KStG') which leads back to the reference system complies with it.

4. Fourth plea in law: no burden on public finances

The applicant claims that the carrying-forward of losses ('Sanierungsklausel) could not lead to a burden on public finances relevant to aid and for that reason alone it is not State aid within the meaning of Article 107(1) TFEU. The applicant argues that in a case of corporate restructuring other than the insolvency of the affected company, the only alternative to avoid insolvency is by means of restructuring, and that by the carrying-forward of losses which may enable the company to be saved, the possibility of future tax revenue from the affected company is maintained.

5. Fifth plea in law: infringement of the principle of EU law of the protection of legitimate expectations

In the fifth plea in law, the applicant claims that the Commission, through its practice and failure to object to the previous rules of Paragraph 8c KStg as well as comparable rules of other Member States, gave rise to legitimate expectations on the part of the applicant, which should also have been protected on the basis of the binding information and lack of predictability of relevance to State aid of the carrying-forward of losses.

Action brought on 14 November 2011 — S & S Szlegiel Szlegiel i Wiśniewski v OHIM — Scotch & Soda (SODA)

(Case T-590/11)

(2012/C 25/117)

Language in which the application was lodged: English

Parties

Applicant: S & S Piotr Szlegiel Jacek Szlegiel i Robert Wiśniewski sp. j. (Gorzów Wielkopolski, Republic of Poland) (represented by: R. Sikorski, adwokat)

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

Other party to the proceedings before the Board of Appeal: Scotch & Soda BV (Hoofddorp, Netherlands)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 August 2011 in case R 1570/2010-2;

— Reject in its entirety the opposition No B1438250;

— Order the defendant to register the trade mark applied for; 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 'SODA', for goods in class 25 — Community trade mark application No 6970875

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 3593498 of the word mark 'SCOTCH & SODA', for goods in class 25

Decision of the Opposition Division: Rejected the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to appreciate that there were sufficient visual, aural and conceptual differences between the marks, particularly with respect to its analysis of the conceptual meanings of the marks; (ii) to properly circumscribe and analyse the dominant element of the contested signs; and (iii) to properly take into consideration the level of attention of the average consumer of the category of goods concerned.

Action brought on 22 November 2011 — Anbouba v Council

(Case T-592/11)

(2012/C 25/118)

Language of the case: French

Parties

Applicant: Issam Anbouba (Homs, Syria) (represented by: M.-A. Bastin and J.-M. Salva, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare this application admissible in all its elements;

— Declare it well founded in all its pleas in law;

— Grant the joinder of the present application with the application in Case T-563/11;

— State that the contested acts may be annulled in part since the part of the acts which is to be annulled can be separated from the act as a whole;

— Accordingly

  — Annul in part Council Decision 2011/684/CFSP of 13 October 2011, and Regulation (EU) No 1011/2011 of 13 October 2011 by deleting the listing of Mr Issam Anbouba and references to him as supporting the current regime in Syria;

  — Failing that, annul Council Decision 2011/684/CFSP of 13 October 2011 and Regulation (EU) No 1011/2011 of 13 October 2011 concerning restrictive measures in view of the situation in Syria;

— Failing that, declare those decisions and the regulation inapplicable as regards Issam Anbouba and order the removal of his name and references from the list of persons who are the object of sanctions by the European Union;

— Order the Council provisionally to pay one euro in damages as compensation for the non-pecuniary and pecuniary harm suffered by reason of the designation of Mr Issam Anbouba as a supporter of the current regime in Syria;

— Order the Council to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant raises two pleas in law which are in essence identical or similar to those raised in Case T-563/11 *Anbouba* v *Council*.

Action brought on 28 November 2011 — Al-Chihabi v Council

(Case T-593/11)

(2012/C 25/119)

Language of the case: English

Parties

Applicant: Fares Al-Chihabi (Aleppo, Syria) (represented by: L. Ruessmann and W. Berg, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 878/2011 of 2 September 2011 [1] and Council Regulation (EU) No 1011/2011 of 13 October 2011 [2], as well as Council Decision 2011/522/CFSP of 2 September 2011 [3] and Council Decision 2011/684/CFSP of 13 October 2011 [4], and any later legislation to the extent they perpetuate and/or replace the restrictive measures, in so far as they relate to the applicant; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the right to good administration, in particular the obligation to state reasons, provided for in Article 41 of the Charter of Fundamental Rights of the European Union, Article 216 TFEU and Article 14 (2) of Council Regulation (EU) No 442/2011 [5].

2. Second plea in law, alleging violation of the applicant's rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights.

3. Third plea in law, alleging violation of the applicant's fundamental rights in an unjustified and disproportionate manner, in particular the right to property, the right to respect for one's good name and reputation, the right to engage in work and conduct a business, and the right to benefit from a presumption of innocence.

4. Fourth plea in law, alleging infringement of the applicant's right to privacy, in that the measures freezing funds and restricting the freedom of movement also constitute a disproportionate interference with the applicant's fundamental right to privacy as well as an infringement of the general principle of proportionality.

([1]) Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 228, p. 1).
([2]) Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 269, p. 18).
([3]) Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 228, p. 16).
([4]) Council Decision 2011/684/CFSP of 13 October 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 269, p. 33).
([5]) Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 121, p. 1).

Action brought on 24 November 2011 — Bricmate v Council

(Case T-596/11)

(2012/C 25/120)

Language of the case: English

Parties

Applicant: Bricmate AB (Stockholm, Sweden) (represented by: C. Dackö, A. Willems and S. De Knop, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare the action admissible;

— Annul Council Implementing Regulation (EU) No 917/2011 of 12 September 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of ceramic tiles originating in the People's Republic of China (OJ 2011 L 238, p. 1), insofar as it applies to the applicant;

— Order the defendant to pay the costs;

— In the event the action was rejected as inadmissible or dismissed on merits, order each party to pay its own 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 that

   — the injury and causation analysis are vitiated by errors of fact and a manifest error of assessment and further, that the European Commission and the Council (referred to as 'Institutions') violated the principle of due care and Articles 3(2) and 3(6) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('basic anti-dumping regulation') (OJ 2009 L 343, p. 51) by failing to objectively examine the claims that the data provided by Eurostat had been inaccurate;

2. Second plea in law, alleging

   — failure to state reasons, violation of the right of defence and further, violation of Article 17 of the basic anti-dumping regulation as regards the differences in the level of processing between ceramic tiles from China and those produced in the EU.

Action brought on 30 November 2011 — Dansk Automat Brancheforening v Commission

(Case T-601/11)

(2012/C 25/121)

Language of the case: Danish

Parties

Applicant: Dansk Automat Brancheforening (Fredericia, Denmark) (represented by: K. Dyekjær, T. Høg and J. Flodgaard)

Defendant: European Commission

Form of order sought

— Annul Article 1 of the Commission Decision of 20 September 2011 in Case No C 35/2010 (ex N 302/2010) on measures which Denmark is planning to implement in the form of duties for online gaming in the Danish Gaming Duties Act.

— Declare that Article 1 of the Commission Decision of 20 September 2011 in Case No C 35/2010 (ex N 302/2010) on measures which Denmark is planning to implement in the form of duties for online gaming in the Danish Gaming Duties Act is invalid in so far as it provides that the measure is approved as compatible with the internal market under Article 107(3)(c) TFEU.

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: the contested decision is vitiated on grounds of failure to state reasons, as the arguments put forward in support of the plea that the aid in question — which consists in duties on online gaming being lower than duties on gaming through establishments based in Denmark — is compatible with Article 107(3)(c) TFEU are unrelated to the criteria laid down in that provision.

2. Second plea in law: the contested decision should be set aside on essential procedural grounds, as the applicant was not given the opportunity to put forward its views on the application of Article 107(3)(c) TFEU.

3. Third plea in law: incorrect application of the law in that the Commission's decision is manifestly incorrect, as there is no power conferred in Article 107(3)(c) TFEU to declare the aid in question compatible with the Treaty and the Commission exceeded its discretion under that provision.

4. Fourth plea in law: misuse of powers in that the contested decision is not actually based on the objectives which form the background for the provision in question.

5. Fifth plea in law: the contested decision disregards the principle of proportionality, as it has not been demonstrated that the decision does not go beyond what is necessary.

Action brought on 24 November 2011 — Ecologistas en Acción-CODA v Commission

(Case T-603/11)

(2012/C 25/122)

Language of the case: Spanish

Parties

Applicant: Ecologistas en Acción-CODA (Madrid, Spain) (represented by: J. Doreste Hernández, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the rejection decision of the Secretary General of the European Commission denying access to the documents requested by the applicant in proceedings GESTDEM 2011/6, and

— order the defendant to pay the costs.

Pleas in law and main arguments

The documents to which the applicant has sought access and which are at issue in these proceedings are the same as those in Case T-341/11 *Ecologistas en acción-CODA* v *Commission*.

The pleas in law and the main arguments are the same as those raised in that case, seeking the annulment of the implied rejection decision denying the applicant access to the requested documents.

Action brought on 30 November 2011 — Henkel and Henkel France v Commission

(Case T-607/11)

(2012/C 25/123)

Language of the case: English

Parties

Applicants: Henkel AG & Co. KGaA (Düsseldorf, Germany), Henkel France (Boulogne-Billancourt, France) (represented by: R. Polley, T. Kuhn, F. Brunet and E. Paroche, lawyers)

Defendant: European Commission

Form of order sought

— annul the Commission's decision of 30 September 2011 not to transfer fifteen documents produced in the Case COMP/39.579 (consumer detergents) to the French Competition Authority;

— order that the Commission allows the applicants to rely on the requested documents in the ongoing proceedings before the Authority;

— order the Commission to pay the applicants' legal and other costs and expenses incurred in relation to the present application; and

— take any other measures that the General Court considers appropriate.

Pleas in law and main arguments

The action contains one plea. According to this single plea, the Commission unlawfully dismissed the French Competition Authority's request to transfer the requested fifteen documents and thereby infringed its duties under Article 4(3) of the Treaty on European Union and the applicants' fundamental rights of defense and the principle of equality of arms.

Appeal brought on 28 November 2011 by Luigi Marcuccio against the order of the Civil Service Tribunal of 8 September 2011 in Case F-69/10, Marcuccio v Commission

(Case T-616/11 P)

(2012/C 25/124)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Grant all the appellant's claims in the proceedings at first instance;

— Order the Commission to reimburse the appellant in respect of the costs incurred by him in the appeal proceedings;

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision on each of the claims referred to in the preceding paragraphs.

Pleas in law and main arguments

The present appeal is brought against the order of 8 September 2011 in Case T-69/10 dismissing as manifestly unfounded in law an action seeking, first, annulment of the decision by which the Commission rejected the appellant's claim for compensation for the damage arising, in his view, as a result of the fact that, in the case giving rise to the judgment of 10 June 2008 in Case T-18/04 *Marcucio* v *Commission*, a note relating to the payment of the costs of those proceedings was sent to his legal representative in those proceedings and, second, an order that the Commission pay compensation for the damage.

The appellant relies on two grounds in support of his appeal.

1. First ground, alleging absolute failure to state reasons with regard to the 'claims seeking compensation' (between paragraphs 21 and 22 of the order under appeal) and manifest uncertainty, inconsistent reasoning, failure to conduct a proper investigation, distortion and misrepresentation of the facts, self-evident, illogical, irrelevant and unreasonable reasoning, incorrect and unreasonable interpretation and application of the rules of law relating to the incurring of Aquilian liability on the part of the institutions of the European Union, of the concept of the duty to state reasons incumbent on all European Union institutions and the European Union judicature, of the concept of analogy and of the concept of unlawful conduct on the part of a European Union institution.

2. Second ground, alleging that the rulings of the court at first instance on 'the costs of the proceedings and legal costs' (between paragraphs 28 and 29 of the order under appeal) are unlawful.

Appeal brought on 6 December 2011 by Carlo De Nicola against the judgment of the Civil Service Tribunal of 28 September 2011 in Case F-13/10, De Nicola v EIB

(Case T-618/11 P)

(2012/C 25/125)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by L. Isola, lawyer)

Other party to the proceedings: European Investment Bank

Form of order sought by the appellant

The appellant claims that the Court should:

— annul:

— the measure of 23 September 2009 by which the Appeals Committee rejected the appellant's complaint against the staff report for 2008, and all related measures;

— the entire staff report for 2008;

— the promotions decided upon on 18 March 2009;

— all related, consequent and prior measures, including the guidelines laid down by the HR Directorate (in the proceedings at first instance, the appellant adjusted his claim, requesting that the guidelines be disapplied);

— order the EIB to pay compensation for the consequent material and non-material damage, to pay the costs of the proceedings, together with interest and a sum in respect of monetary depreciation;

— order the EIB to pay the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment of the Civil Service Tribunal (CST) of 28 September 2011 dismissing the appellant's action seeking: (i) annulment of the decision of 23 September 2009 adopted by the Appeals Committee of the European Investment Bank; (ii) annulment of the appellant's staff report for 2008; (iii) annulment of the promotion decisions of 18 March 2009; (iv) annulment of the decision refusing promotion; and (v) an order that the EIB pay compensation for the material and non-material damage which the appellant claims to have suffered.

The appellant relies on the following grounds of appeal:

A. The claims seeking annulment

1. The appellant complains that the CST failed to rule substantially on his application for annulment of the decision of the Appeals Committee, which forms part of his personal file and could have an adverse effect on his future career;

2. In the appellant's opinion, since he challenged two separate measures on different grounds, the CST cannot legitimately refuse to give a ruling, all the more so since, first, that court has always ruled out the possibility of consequential annulment (relating to the related, consequent and prior measures, which are not, however, independent but closely connected to the measures declared invalid and/or ineffective) and, second, the appellant also has a clear interest in a fresh decision on the part of the Appeals Committee, which is the body adjudicating on the substance of the complaint, and, unlike the General Court, can even substitute its own assessment for that given by his superiors;

3. With regard to the challenge to his staff report, the appellant complains that, of its own motion, the CST, first, unlawfully refused to take account of the numerous documented incidents of harassment to which he had been subjected in the course of the year, thus reversing the burden of proof, failed to rule on virtually all the pleas relied on — ranging from claims alleging failure to assess some of his tasks to inappropriate objectives, from failure to consider the exceptional initiative shown to bad faith on the part of his assessor etc;

4. The appellant also alleges that the grounds of the judgment under appeal are erroneous, often as a result of distortion of the application, and failure to rule on the contested unlawful aspects the 'Guide to staff reports', which were designed to enable 'friends' and not 'the best' to be promoted and to evade review by the court, having transformed the annual assessment from an absolute into a relative exercise, and never having specified the conditions under which a performance is to be regarded as excellent, very good, in keeping with expectations or inadequate;

5. Lastly, the appellant complains of the failure to indicate the criteria used to interpret the request he made to the Appeals Committee and to rule out the possibility that, in challenging the fact that he was not promoted, he did not intend to challenge only the promotions decided on by the EIB that are documented.

B. The claim for damages

6. With regard to the claim for compensation for material and non-material damage resulting from the EIB's unlawful conduct, once again the appellant alleges that the defence put forward by the CST of its own motion is inadmissible, that court having, first, reduced the claim on the basis of pleas not raised by the EIB, then rejected the claim on the grounds of pending proceedings which the EIB had withdrawn and do not exist, because they are not substantiated, because no provision is made for the defect of *litis pendenza* in the Code of Procedure and because, at best, the allegedly similar claim was pending at a different level of proceedings.

7. The appellant also alleges substantive failure to rule on his request that the limitation periods laid down by his own national law be applied, both on the grounds that his employment contract is governed by private law and that, as the weaker contracting party, he is entitled to have the more favourable rules applied to him.

8. Lastly, the appellant claims that the premiss on which the CST based its decision was incorrect, given that he intended to challenge the unlawful conduct of his employer, whereas the court persisted in identifying an unlawful act, claiming that it could apply to his private law contract those provisions which are, instead, expressly laid down for public employees.

Order of the General Court of 30 November 2011 — Leopardi Dittajuti v OHIM — Llopart Vilarós (CONTE LEOPARDI DITTAJUTI)

(Case T-303/11) [1]

(2012/C 25/126)

Language of the case: English

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

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[1] OJ C 238, 13.8.2011.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 26 September 2011 — ZZ v Commission

(Case F-90/11)

(2012/C 25/127)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: C. Pollicino, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision by which the Commission refuses to grant the applicant entitlement, on account of an accident, to a partial permanent invalidity rate

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the Commission's decision of 19 April 2011;

— give a definitive ruling to the effect that the 'Rules on insurance against the risk of accident and occupational disease for officials of the European Communities' cover 'the entire cutaneous system' and not just 'deep cutaneous burns and pathological cutaneous scarring';

— direct the Commission to set up a new medical committee, with the task of reviewing the applicant's case in the light of the correct interpretation of the 'Rules', that is to say, as construed meanwhile by the Civil Service Tribunal of the European Union in the context of its consideration of the present application;

— order the Commission to pay the costs.

Action brought on 3 October 2011 — ZZ v Commission

(Case F-99/11)

(2012/C 25/128)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision of the Commission rejecting the applicant's claim for payment of salary arrears for the period from 1 June 2005 to 21 July 2010.

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision issued by — or, in any event, attributable to — the Commission, rejecting — howsoever and whether in whole or in part — the claims set out in the application of 20 August 2010, sent to the appointing authority on 20 August 2010;

— annul, *quatenus opus est*, Note Ares(2011)217354 as registered on 28 February 2011 and received by the applicant on 6 April 2011 at the earliest;

— annul the decision issued by the Commission rejecting, howsoever, the claims set out in the complaint of 24 February 2011;

— order the Commission to pay the costs.

Action brought on 5 October 2011 — ZZ v Commission

(Case F-100/11)

(2012/C 25/129)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision by which the Commission refused to send the applicant the daily allowances linked to the decision relating to his transfer from the delegation in Angola to headquarters in Brussels.

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision issued by — or, in any event, attributable to — the Commission, rejecting — howsoever and whether in whole or in part — the claims set out in the application of 10 August 2010, sent to the appointing authority on 13 August 2010 at the latest;

— annul, *quatenus opus est*, the note of 22 December 2010, which was received by the applicant on 11 February 2011 at the earliest;

— annul the decision issued by the Commission rejecting, howsoever, the claims set out in the complaint of 24 February 2011;

— order the Commission to transfer to the applicant the daily pecuniary allowances under Article 10 of Annex VII to the Staff Regulations of Officials of the European Union, which were due to the applicant: (i) in relation to the decision of 18 March 2002, issued by the Commission, concerning the transfer of the applicant and of his post from the Commission's Delegation in Luanda (Angola) to its central headquarters in Brussels, a judgment having been handed down in relation to that decision on 14 September 2011 in Case T-236/02 *Marcuccio* v *Commission*; and (ii) as from 1 April 2002, the day on which the decision of 18 March 2002 took effect, and for the subsequent 120 calendar days;

— order the Commission to transfer to the applicant the interest on the allowances in question, that is to say, both default interest and interest to offset the monetary devaluation occurring between 31 July 2002 and the date of actual payment, the interest in question to be calculated at the rate of 10 % per annum, and with annual capitalisation with effect from 31 July 2002;

— order the Commission to pay the costs.

Action brought on 11 October 2011 — ZZ v Commission

(Case F-104/11)

(2012/C 25/130)

Language of the case: Hungarian

Parties

Applicant: ZZ (represented by: P. Homoki, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of EPSO decision to reopen the procedure for open competition EPSO/AD/56/06 and the decision of the selection board relating to the results of competition EPSO/AD/56/06 — Administrator grade A5 with Hungarian citizenship and payment of compensation.

Form of order sought

— annul the decision of EPSO of 15 January 2011 relating to the reopening of the competition in respect of the applicant;

— annul the decision of the EPSO selection board of 14 July 2011 relating to the results of competition EPSO/AD/56/06 — Administrator grade A5 with Hungarian citizenship;

— order the defendant to pay fair compensation for the loss caused to the applicant by the measure annulled through the grant of monetary compensation;

— in the alternative, order the defendant to establish a dialogue with the applicant with a view to attempting to reach an agreement offering the applicant fair compensation;

— order the Commission to pay the costs.

Action brought on 18 October 2011 — ZZ v ECB

(Case F-106/11)

(2012/C 25/131)

Language of the case: English

Parties

Applicant: ZZ (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

The annulment of the decision of the Deputy Director General of the Directorate General Human Resources, Budget and Organisation imposing on the Appellant a written reprimand as disciplinary measure.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision of the Deputy Director General of DG-H of 15 April 2011, imposing on the Appellant a written reprimand as disciplinary measure and, if necessary, of the decision of 4 August 2011 rejecting the special appeal;

— order the compensation of the Appellant's moral prejudice evaluated at EUR 10 000;

— order the ECB to pay the costs.

Action brought on 18 October 2011 — ZZ v ECDC

(Case F-107/11)

(2012/C 25/132)

Language of the case: English

Parties

Applicant: ZZ (represented by: E. Mylonas, lawyer)

Defendant: European Centre for Disease Prevention and Control

Subject-matter and description of the proceedings

The annulment of the applicant's appraisal report for the period of 1 January to 31 December 2010.

Form of order sought

The applicant claims that the Tribunal should:

— annul the appraisal report of 8 February 2011; and

— if necessary, annul:

  — the decision of the Director of ECDC of 9 September 2011 rejecting the applicant's complaint;

  — the opinion of the Joint Committee of 30 June 2011 and the decision of the appeal assessor of 5 July 2011;

  — the report of the countersigning officer of 15 April 2011;

— order the ECDC to pay the costs.

Action brought on 24 October 2011 — ZZ v Commission

(Case F-108/11)

(2012/C 25/133)

Language of the case: English

Parties

Applicant: ZZ (represented by: A. Fratini and F. Filpo, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision of the Selection Board not to admit the applicant to the open competition EPSO/AD/198/10, due to the alleged non fulfilment of the professional experience requirements.

Form of order sought

— Annul the EPSO decision not to admit the applicant to the open competition EPSO/AD/198/10;

— order the Commission to take all consequent measures in order to put the applicant in a position similar to the one he would be in, had he been admitted to the competition;

— order the Commission to pay the costs.

Action brought on 25 October 2011 — ZZ v Commission

(Case F-113/11)

(2012/C 25/134)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision of the Commission rejecting the applicant's claim for payment of salary arrears for August 2010

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision issued by — or, in any event, attributable to — the Commission, rejecting — howsoever and whether in whole or in part — the claims set out in the application of 30 August 2010;

— declare that Note Ares (2011)217354 is legally non-existent or, in the alternative, annul that measure (in either case, *quatenus opus est*);

— annul the decision issued by the Commission rejecting, howsoever, the claims set out in the complaint of 14 March 2011;

— order the Commission to pay the costs.

Action brought on 7 November 2011 — ZZ v European Commission

(Case F-116/11)

(2012/C 25/135)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Salerno, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision not to admit the applicant to the assessment tests under EPSO competition EPSO/AD/207/11.

Forms of order sought

— annul the contested decision,

— order the Commission to pay the applicant EUR 10 000 by way of compensation for non-pecuniary damage as a result of the contested decision.

— order the Commission to pay the costs.

Action brought on 8 November 2011 — ZZ v Commission.

(Case F-117/11)

(2012/C 25/136)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Vogel, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Office for administration and payment of individual rights determining the applicant's retirement pension rights and of the calculation of the number of years of pensionable service to be taken into account to determine those rights.

Form of order sought

— Annul the decision adopted by the appointing authority on 28 July 2011 rejecting the complaint made by the applicant on 3 June 2011, seeking annulment of the general implementing provisions of Articles 11 and 12 of Annex VIII to the Staff Regulations, adopted on 3 March 2011, in particular Article 9 of those general provisions, and which the appointing authority considered to be directed against the individual decision notified to the applicant on 24 May 2011, proposing a new calculation of the years of pensionable service corresponding, in the Community pension scheme, to the actuarial equivalent of the retirement pension rights acquired by the applicant under the Belgian national scheme;

— in so far as it is necessary, annul also the abovementioned decision of 24 May 2011 and, if necessary, pursuant to Article 277 of the EEC Treaty, the general implementing provisions of 3 March 2011, in particular Article 9 of those provisions;

— order the Commission to pay the costs.

Action brought on 11 November 2011 — ZZ v Commission

(Case F-118/11)

(2012/C 25/137)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision of the Commission refusing to adopt a decision on the occupational origins of the applicant's illness

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— annul the decision issued by — or, in any event, attributable to — the Commission, rejecting — howsoever and whether in whole or in part — the claims set out in the application of 30 June 2011, sent to the Commission in the person of its legal representative *pro tempore* and to the appointing authority of the Commission;

— find that the Commission has abstained from adopting a finding, for the purposes of Article 78 of the Staff Regulations of Officials of the European Union, on the occupational origins of the condition on account of which the applicant's retirement, provided for under the decision of 30 May 2005, was decided, or at the least has abstained from undertaking a review of the related finding, which — a matter which is uncertain — was adopted by the Commission when the decision of 30 May 2005 was issued;

— order the Commission to transfer to the applicant the sum of EUR 4 250, which, if and in so far as it is not paid to the applicant, will produce interest in favour of the applicant at the rate of 10 % per annum and with annual capitalisation, with effect from tomorrow and until the day on which payment of that sum takes place;

— order the Commission to transfer to the applicant the sum of EUR 50 per day for each additional day which, with effect from tomorrow, passes while the abovementioned abstention persists, up until the 180th day after 1 July 2011, it being necessary for that sum of EUR 50 to be paid at the end of the same day, failing which, or in so far as it is not so paid, it will produce interest in favour of the applicant at the rate of 10 % per annum and with annual capitalisation, with effect from the day following that on which the above payment should have been made and until the day on which the payment takes place;

— order the Commission to transfer to the applicant the sum of EUR 60 per day for each additional day which, from the 181st day after 1 July 2011, passes while the abovementioned abstention persists, up until the 270th day after 1 July 2011, it being necessary for that sum of EUR 60 to be paid at the end of the same day, failing which, or in so far as it is not so paid, it will produce interest in favour of the applicant at the rate of 10 % per annum and with annual capitalisation, with effect from the day following that on which the above payment should have been made and until the day on which the payment takes place;

— order the Commission to transfer to the applicant the sum of EUR 75 per day for each additional day which, from the 271st day after 1 July 2011, passes while the abovementioned abstention persists, up until the 360th day after 1 July 2011, it being necessary for that sum of EUR 75 to be paid at the end of the same day, failing which, or in so far as it is not so paid, it will produce interest in favour of the applicant at the rate of 10 % per annum and with annual capitalisation, with effect from the day following that on which the above payment should have been made and until the day on which the payment takes place;

— order the Commission to transfer to the applicant the sum of EUR 100 per day for each additional day which, from the 361st day after 1 July 2011, passes while the abovementioned abstention persists, *ad infinitum*, it being necessary for that sum of EUR 100 to be paid at the end of the same day, failing which, or in so far as it is not so paid, it will produce interest in favour of the applicant at the rate of 10 % per annum and with annual capitalisation, with effect from the day following that on which the above payment should have been made and until the day on which the payment takes place;

— order the Commission to pay the costs.

Action brought on 11 November 2011 — ZZ v Commission

(Case F-119/11)

(2012/C 25/138)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision of the Commission rejecting the applicant's claim for (i) compensation for the damage purportedly sustained on account of the fact that agents of the Commission entered his official lodgings in Luanda on 14, 16 and 19 March 2002 and (ii) communication to him of the copies of the photographs taken on that occasion and the destruction of all documentation relating to that event

Form of order sought

The applicant claims that the Civil Service Tribunal should:

— declare legally non-existent — or, in the alternative, annul — the decision, whatever the form in which it was adopted, by which the Commission rejected the claim of 6 September 2010 sent by the applicant to the appointing authority of the Commission;

— *quatenus oportet*, declare legally non-existent — or, in the alternative, annul — the measure, whatever the form in which it was adopted, by which the Commission rejected the complaint against the decision rejecting the claim of 6 September 2010 and the application of 20 March 2011 for annulment of that decision;

— confirm in each case as fact that agents or delegates of the Commission, or delegates of agents of the Commission, acted as follows on 14 March 2002, on 16 March 2002 and on 19 March 2002, against the wishes of the applicant that none of the following should take place at any time whatsoever, and without the applicant being informed, even briefly, and indeed without the applicant being aware that any of the following occurred: (i) they entered treacherously, on a number of occasions, the official lodgings assigned to the applicant earlier by the Commission and located in Luanda (Angola), in the Bairro Azul area, at 101-103 Rua Americo Julio de Carvalho, either by breaking and entering or by means of keys either retained unlawfully or in some way unlawfully used; and (ii) took photographs inside the aforementioned lodgings;

— confirm the unlawful nature of each of the facts giving rise to damage;

— declare that each of the facts giving rise to the damage in question is unlawful;

— order the Commission to carry out the physical destruction of the photographs;

— order the Commission to notify the applicant in writing that the physical destruction of the photographs has been carried out, at the same time providing the applicant with an abundance of substantive detail in that regard, including, in particular, the date on which the physical destruction was carried out, the place where this was done, and the person who performed the act of physical destruction;

— order the Commission to make available to the applicant, by way of compensation for the damage in question, the sum of EUR 20 000, or such greater or lesser sum as the Civil Service Tribunal may deem to be just and fair, that is to say: (i) EUR 10 000 for the damage caused by the unlawful entry of his lodgings on 14 March 2002, 16 March 2002 and 19 March 2002; and (ii) EUR 10 000 for the damage caused by the unlawful taking of photographs;

— order the Commission to make available to the applicant, with effect from the day following that on which the claim of 6 September 2010 arrived at the Commission and until the date of actual payment of the sum of EUR 20 000, the interest on that sum, applied at the rate of 10 % per annum and with annual capitalisation;

— order the Commission to pay the costs.

Action brought on 14 November 2011 — ZZ v Commission

(Case F-120/11)

(2012/C 25/139)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision appointing the new director of Directorate A 'Civil Justice' of DG JUST and of the decision rejecting the applicant's candidature for that post.

Form of order sought

— Annul the decision rejecting the applicant's candidature for the post of director of Directorate A 'Civil Justice' of the Directorate-General for Justice ('DG JUST/A') and the decision to appoint another person to that post;

— order the Commission to pay the costs.

Action brought on 22 November 2011 — ZZ v Commission.

(Case F-121/11)

(2012/C 25/140)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi and C. Bernard-Glanz, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions of the Ispra Claims Office refusing to grant authorisation for an official, posted in Jordan, to claim transport and accompaniment expenses incurred to allow his son to carry out psychotherapy in French, the child's mother tongue, in Beirut (Lebanon).

Form of order sought

— Annul the refusals to grant authorisation for the medical services sought by the applicant in favour of his son, his wife and himself, those refusals resulting from three decisions adopted respectively on 22 February, 10 March and 18 April 2011 by the Head of the Ispra Claims Office of the European Commission;

— annul the decision adopted on 12 August 2011 by the Director of Directorate D of DG Human Resources and Security of the European Commission, as the Authority empowered to conclude contracts of employment (AECE), rejecting the complaint lodged by the applicant on the basis of Article 90(2) of the Staff Regulations of Officials of the European Communities;

— order the Commission to pay the costs.

Action brought on 24 November 2011 — ZZ v FRONTEX

(Case F-124/11)

(2012/C 25/141)

Language of the case: English

Parties

Applicant: ZZ (represented by: S. A. Pappas, lawyer)

Defendant: European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

Subject-matter and description of the proceedings

The annulment of the decision to revoke a previous decision concerning the renewal of the contract of employment of the applicant.

Form of order sought

The applicant claims that the European Union Civil Service Tribunal should:

— Annul the decision of 28 March 2011 of the Executive Director of FRONTEX;

— annul the decision of 11 August 2011 of the FRONTEX Executive Director;

— order FRONTEX to pay the costs.

Action brought on 9 December 2011 — ZZ v Commission

(Case F-129/11)

(2012/C 25/142)

Language of the case: French

Parties

Applicant: ZZ (represented by: Ph.-E. Partsch and E. Raimond, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Partial annulment of the decision of the Director-General of OLAF concerning the applicant's last invitation to an interview in the framework of an internal investigation and indicating that a final report on the investigation will be adopted solely on the basis of the information collected and analysed unilaterally by OLAF if the applicant does not take up that invitation.

Form of order sought

— Annul the decision of 28 October 2011 by which OLAF, acting through its General Director, invited the applicant to attend an interview that was to take place on 1 and 2 December 2011 in the premises of OLAF, in Brussels, at eight o'clock in the morning, within the framework of the 'internal' investigation concerning reference OF/2010/0207 and notified her that a report terminating the investigation would be drawn up without first giving her the opportunity to be heard if she did not take up that invitation, as that infringes her right to a fair hearing and her fundamental rights;

— grant the applicant the sum of EUR 4 000 in damages and compensatory interest;

— order the Commission to pay the costs.

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