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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 73/01)

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

OJ C 65, 3.3.2012

Past publications

OJ C 58, 25.2.2012

OJ C 49, 18.2.2012

OJ C 39, 11.2.2012

OJ C 32, 4.2.2012

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OJ C 13, 14.1.2012

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 26 January 2012 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — ADV Allround Vermittlungs AG, in liquidation v Finanzamt Hamburg-Bergedorf

(Case C-218/10) [1]

(VAT — Sixth Directive — Articles 9, 17 and 18 — Determination of the place where services are supplied — Concept of 'supply of staff' — Self-employed persons — Need to ensure that a provision of services is assessed identically in relation to the provider and in relation to the recipient)

(2012/C 73/02)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: ADV Allround Vermittlungs AG, in liquidation

Defendant: Finanzamt Hamburg-Bergedorf

Re:

Reference for a preliminary ruling — Finanzamt Hamburg — Interpretation of the sixth indent of Article 9(2)(e) and Articles 17(1), 17(2)(a), 17(3)(a) and 18(1)(a) 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) — Determination of the place where a service, consisting of the provision to the recipient of the service of self-employed persons not in the employ of the provider, is deemed to be supplied for tax purposes — Concept of 'staff' — Need to ensure an identical assessment of whether a transaction is liable to VAT in relation to the service provider, on the one hand, and to the recipient of that service, on the other

Operative part of the judgment

1. *The sixth indent of Article 9(2)(e) 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 the 'supply of staff' referred to in that provision also includes the supply of self-employed persons not in the employ of the trader providing the service.*

2. *Articles 17(1), 17(2)(a), 17(3)(a) and 18(1)(a) of Sixth Directive 77/388 must be interpreted as not requiring the Member States to amend their domestic procedural rules in such a way as to ensure that the taxability and liability to value added tax of a service are assessed in a consistent way in relation to the provider and in relation to the recipient of that service, even though they fall within the jurisdiction of different tax authorities. However, those provisions require the Member States to adopt the measures that are necessary to ensure that value added tax is collected accurately and that the principle of fiscal neutrality is respected.*

[1] OJ C 221, 14.8.2010.

Judgment of the Court (Grand Chamber) of 24 January 2012 (reference for a preliminary ruling from the Cour de cassation — France) — Maribel Dominguez v Centre informatique du Centre Ouest Atlantique, Préfet de la région Centre,

(Case C-282/10) [1]

(Social policy — Directive 2003/88/EC — Article 7 — Right to paid annual leave — Precondition for entitlement imposed by national rules — Absence of the worker — Length of the leave entitlement based on the nature of the absence — National rules incompatible with Directive 2003/88 — Role of the national court)

(2012/C 73/03)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Maribel Dominguez

Respondents: Centre informatique du Centre Ouest Atlantique, Préfet de la région Centre,

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 7 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) — Paid annual leave for workers — Entitlement to leave irrespective of the nature of the worker's absence and its duration — National rules making the granting of such leave conditional on a minimum of ten days' actual work during the reference year — Obligation on the national court to refrain from applying national provisions that conflict with European Union law

Operative part of the judgment

1. *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 precluding national provisions or practices which make entitlement to paid annual leave conditional on a minimum period of ten days' or one month's actual work during the reference period.*

2. *It is for the national court to determine, taking the whole body of domestic law into consideration, in particular Article L. 223-4 of the Code du travail, and applying the interpretative methods recognised by domestic law, with a view to ensuring that Article 7 of Directive 2003/88 is fully effective and achieving an outcome consistent with the objective pursued by it, whether it can find an interpretation of that law that allows the absence of the worker due to an accident on the journey to or from work to be treated as being equivalent to one of the situations covered by that article of the Code du travail.*

   If such an interpretation is not possible, it is for the national court to determine whether, in the light of the legal nature of the respondents in the main proceedings, the direct effect of Article 7(1) of Directive 2003/88 may be relied upon against them.

   If the national court is unable to achieve the objective laid down in Article 7 of Directive 2003/88, the party injured as a result of domestic law not being in conformity with European Union law can none the less rely on the judgment of 19 November 1991 in Joined Cases C-6/90 and C-9/90 Francovich and Others in order to obtain, if appropriate, compensation for the loss sustained.

3. *Article 7(1) of Directive 2003/88 must be interpreted as not precluding a national provision which, depending on the reason for the worker's absence on sick leave, provides for a period of paid annual leave equal to or exceeding the minimum period of four weeks laid down in that directive.*

(1) OJ C 234, 28.8.2010.

Judgment of the Court (Grand Chamber) of 17 January 2012 (reference for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — A. Salemink v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-347/10) (1)

(Social security for migrant workers — Regulation (EEC) No 1408/71 — Worker employed on gas-drilling platform on the continental shelf adjacent to the Netherlands — Compulsory insurance — Refusal to pay invalidity benefit)

(2012/C 73/04)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: A. Salemink

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Re:

Reference for a preliminary ruling — Rechtbank Amsterdam — Interpretation of Articles 45 TFEU and 355 TFEU, Article 52 TEU and Titles I and II of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) — National compulsory sickness insurance scheme not applicable to persons who are working on a drilling platform situated on the Netherlands section of the continental shelf for an employer established in the Netherlands and who are resident in the territory of another Member State

Operative part of the judgment

Article 13(2)(a) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, and Article 39 EC must be interpreted as precluding an employee, working on a fixed installation on the continental shelf adjacent to a Member State, from being in a position in which he is not compulsorily insured under national statutory employee insurance in that Member State solely on the ground that he is not resident there but in another Member State.

(1) OJ C 246, 11.9.2010.

Judgment of the Court (Fifth Chamber) of 19 January 2012 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Suiker Unie GmbH — Zuckerfabrik Anklam v Hauptzollamt Hamburg-Jonas

(Case C-392/10) [1]

(Regulation (EC) No 800/1999 — Article 15(1) and (3) — Agricultural products — System of export refunds — Differentiated export refund — Conditions for granting — Import of the product into the third country of destination — Payment of import duties)

(2012/C 73/05)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Suiker Unie GmbH — Zuckerfabrik Anklam

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of Article 15(1) and (3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11) and of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Product exported from a Member State to a third State for the purpose of substantial processing under the inward processing procedure without payment of import duty — Export of the product resulting from that processing to another third State — Conditions for the grant of a differentiated export refund — Need to place the product in free circulation in the third State of destination with payment of import duty?

Operative part of the judgment

Article 15(1) and (3) of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products, as amended by Commission Regulation (EC) No 444/2003 of 11 March 2003, must be interpreted as meaning that the condition for receipt of a differentiated refund laid down by that article, namely completion of the customs import formalities, is not satisfied when in the third country of destination, following release for inward processing without collection of import duties, the product undergoes a 'substantial processing or working' within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code and the product resulting from that processing or working is exported to a third country.

[1] OJ C 288, 23.10.2010.

Judgment of the Court (Second Chamber) of 26 January 2012 (reference for a preliminary ruling from the Bundesarbeitsgericht — Germany) — Bianca Kücük v Land Nordrhein-Westfalen

(Case C-586/10) [1]

(Social policy — Directive 1999/70/EC — Clause 5(1)(a) of the Framework Agreement on fixed-term work — Successive fixed-term employment contracts — Objective reasons liable to justify the renewal of such contracts — National rules justifying the use of fixed-term contracts in cases of temporary replacement — Permanent or recurring need for replacement staff — Taking into account of all circumstances surrounding the renewal of successive fixed-term contracts)

(2012/C 73/06)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Bianca Kücük

Defendant: Land Nordrhein-Westfalen

Re:

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Clause 5(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — National rules allowing the temporary replacement of employees as an objective reason justifying the use of fixed-term contracts — 'Objective reasons' liable to justify the renewal of such contracts

Operative part of the judgment

Clause 5(1)(a) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that a temporary need for replacement staff, provided for by national legislation such as that at issue in the main proceedings, may, in principle, constitute an objective reason under that clause. The mere fact that an employer may have to employ temporary replacements on a recurring, or even permanent, basis and that those replacements may also be covered by the hiring of employees under employment contracts of indefinite duration does not mean that there is no objective reason under clause 5(1)(a) of the Framework Agreement or that there is abuse within the meaning of that clause. However, in the assessment

of the issue whether the renewal of fixed-term employment contracts or relationships is justified by such an objective reason, the authorities of the Member States must, for matters falling within their sphere of competence, take account of all the circumstances of the case, including the number and cumulative duration of the fixed-term employment contracts or relationships concluded in the past with the same employer.

([1]) OJ C 89, 19.3.2011.

Judgment of the Court (Second Chamber) of 26 January 2012 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny Izba Finansowa Wydzial I — Poland) — Minister Finansów v Kraft Foods Polska SA

(Case C-588/10) ([1])

(Taxation — VAT — Directive 2006/112/EC — Article 90(1) — Price reduction after the transaction was effected — National legislation which makes reduction in the taxable amount subject to the requirement that the supplier of the goods or services be in possession of acknowledgment of receipt of a correcting invoice by the purchaser of the goods or services — Principle of VAT neutrality — Principle of proportionality)

(2012/C 73/07)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny Izba Finansowa Wydzial I

Parties to the main proceedings

Applicant: Minister Finansów

Defendant: Kraft Foods Polska SA

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Taxable amount — Price reduction after the transaction was effected — National legislation which makes reduction in the taxable amount subject to the other party to the contract obtaining and confirming receipt of a corrected invoice

Operative part of the judgment

The requirement that, in order to be entitled to reduce the taxable amount as set out in the initial invoice, the taxable person must be in possession of acknowledgment of receipt of a correcting invoice by the purchaser of the goods or services constitutes a condition for the purpose Article 90(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

The principles of the neutrality of value added tax and proportionality do not, in principle, preclude such a requirement. However, where it is impossible or excessively difficult for the taxable person who is a supplier of goods or services to obtain such acknowledgment of receipt within a reasonable period of time, he cannot be denied the opportunity of establishing, by other means, before the national tax authorities of the Member State concerned, first, that he has taken all the steps necessary in the circumstances of the case to satisfy himself that the purchaser of the goods or services is in possession of the correcting invoice and is aware of it and, second, that the transaction in question was in fact carried out in accordance with the conditions set out in the correcting invoice.

([1]) OJ C 89, 19.3.2011.

Judgment of the Court (Second Chamber) of 19 January 2012 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v Nike International Ltd, Aurelio Muñoz Molina

(Case C-53/11 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 58 — Regulation (EC) No 2868/95 — Rules 49 and 50 — Word mark R10 — Opposition — Assignment — Admissibility of an appeal — Concept of 'person entitled to appeal' — Applicability of the OHIM Guidelines)

(2012/C 73/08)

Language of the case: Spanish

Parties

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

Other parties to the proceedings: Nike International Ltd (represented by: M. de Justo Bailey, abogado), Aurelio Muñoz Molina

Re:

Appeal against the judgment of the General Court (Fourth Chamber) of 24 November 2010 in Case T-137/09 *Nike International Ltd* v *OHIM — Aurelio Muñoz Molina*, whereby the General Court annulled the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 January 2009 (Case R 551/2008-1).

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 24 November 2010 in Case T-137/09 Nike International v OHIM — Muñoz Molina (R10) in so far as in that judgment, the General Court, in breach of Article 58 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, as amended by Council Regulation (EC) No 1891/2006 of 18 December 2006, and Rule 49 of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94, as amended by Commission Regulation (EC) No 1041/2005 of 29 June 2005, held that the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), in its decision of 21 January 2009 (Case R 551/2008-1), infringed Rules 31(6) and 50(1) of Regulation No 2868/95, as amended by Regulation No 1041/2005, by declaring the appeal brought by Nike International Ltd to be inadmissible;*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 152, 21.5.2011.

Judgment of the Court (Eighth Chamber) of 26 January 2012 — European Commission v Republic of Slovenia

(Case C-185/11) ([1])

(Failure of a Member State to fulfil obligations — Direct insurance other than life assurance — Directives 73/239/EEC and 92/49/EEC — Incorrect and incomplete transposition)

(2012/C 73/09)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: K.-Ph. Wojcik, M. Žebre and N. Yerrell, acting as Agents)

Defendant: Republic of Slovenia (represented by: A. Vran, agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 56 and 63 of the Treaty on the functioning of the European Union — Infringement of Article 8(3) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3) and of Articles 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive; OJ 1992 L 228, p. 1)

Operative part of the judgment

The Court:

1. *Declares that by incorrectly and incompletely transposing into national law First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, as amended by Directive 2005/68/EC of the European Parliament and the Council of 16 November 2005 and Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), as amended by Directive 2005/68, the Republic of Slovenia has failed to fulfil its obligations under Article 8(3) of Directive 73/239 and Articles 29 and 39 of Directive 92/49;*

2. *Dismisses the action for the remainder;*

3. *Orders the European Commission and the Republic of Slovenia each to bear their own costs.*

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Seventh Chamber) of 26 January 2012 — European Commission v Republic of Poland

(Case C-192/11) ([1])

(Failure of a Member State to fulfil obligations — Directive 2009/147/EC — Conservation of wild birds — Scope of the system of protection — Derogations from the prohibitions laid down by the directive)

(2012/C 73/10)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Herrmann and S. Petrova, acting as Agents)

Defendant: Republic of Poland (represented by: M. Szpunar, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 1, 5 and 9(1) and (2) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) — Scope — Protection restricted only to species of birds occurring in national territory — Incorrect definition of the conditions for derogating from the prohibitions laid down by the directive

Operative part of the judgment

The Court:

1. *Declares that by not applying national conservation measures to all species of naturally occurring birds in the wild state in the European territory of the Member States, which are entitled to protection under Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, and also by not correctly defining the conditions to be complied with in order to be able to derogate from the prohibitions laid down by that directive, the Republic of Poland has failed to fulfil its obligations under Articles 1, 5 and 9(1) and (2) of that directive;*

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

([1]) OJ C 211, 16.7.2011.

Order of the Court (Fourth Chamber) of 17 November 2011 (references for a preliminary ruling from the Conseil d'État — Belgium) — Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Alix Walsh (C-177/09 and C-179/09), Jean-Marie Solvay de la Hulpe (C-177/09), Action et défense de l'environnement de la Vallée de la Senne et de ses affluents ASBL (ADESA), Réserves naturelles RNOB ASBL, Stéphane Banneux, Zénon Darquenne (C-178/09), Les amis de la Forêt de Soignes ASBL (C-179/09) v Région wallonne

(Joined Cases C-177/09 to C-179/09) ([1])

(Assessment of the effects of projects on the environment — Directive 85/337/EEC — Scope — Concept of 'specific act of national legislation' — Aarhus Convention — Access to justice in environmental matters — Extent of the right to a review procedure in respect of a legislative act)

(2012/C 73/11)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Le Poumon vert de la Hulpe ASBL, Jacques Solvay de la Hulpe, Marie-Noëlle Solvay, Alix Walsh (C-177/09 and C-179/09), Jean-Marie Solvay de la Hulpe (C-177/09), Action et défense de l'environnement de la Vallée de la Senne et de ses affluents ASBL (ADESA), Réserves naturelles RNOB ASBL, Stéphane Banneux, Zénon Darquenne (C-178/09), Les amis de la Forêt de Soignes ASBL (C-179/09)

Defendant: Région wallonne

Interveners: Codic Belgique SA, Federal Express European Services Inc. (FEDEX) (C-177/09 and C-179/09), Intercommunale du Brabant wallon (IBW) (C-178/09)

Re:

References for a preliminary ruling — Conseil d'État — Interpretation of Articles 1, 5, 6, 7, 8 and 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) — Interpretation of Articles 6 and 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved, on behalf of the European Community, by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) — Recognition, as specific acts of national legislation, of certain consents 'ratified' by decree in respect of which there are overriding reasons in the general interest? — Absence of a full right to a review procedure in respect of a decision to authorise projects capable of having significant effects on the environment — Whether the existence of such a right is optional or mandatory — Environmental consent granted for the operation of an administrative and training centre in la Hulpe

Operative part of the order

1. *Article 1(5) 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 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337, as amended by Directive 2003/35.*

2. *Article 9(2) of the Convention on access to information, public participation in decision making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that:*

— *when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law;*

— *if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.*

([1]) OJ C 180, 1.8.2009.

Order of the Court (Third Chamber) of 17 January 2012 (reference for a preliminary ruling from the Højesteret — Denmark) — Infopaq International A/S v Danske Dagblades Forening

(Case C-302/10) ([1])

(Copyright — Information society — Directive 2001/29/EC — Article 5(1) and (5) — Literary and artistic works — Reproduction of short extracts of literary works — Newspaper articles — Temporary and transient reproductions — Technological process consisting in scanning of articles followed by conversion into text file, electronic processing of the reproduction and storage of part of that reproduction — Acts of temporary reproduction which form an integral and essential part of such a technological process — Purpose of those acts being the lawful use of a work or protected subject-matter — Independent economic significance of those acts)

(2012/C 73/12)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Claimant: Infopaq International A/S

Defendant: Danske Dagblades Forening

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Articles 2 and 5(1) and (5) 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) — Company which has as its main activity the compilation of summaries of newspaper articles by means of scanning — Storage of an extract of an article consisting of a search word with the five words which precede it and the five words which follow it — Temporary acts of reproduction which constitute an integral and essential part of a technological process

Operative part of the order

1. *Article 5(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 must be interpreted as meaning that the acts of temporary reproduction carried out during a 'data capture' process, such as those in issue in the main proceedings,*

   fulfil the condition that those acts must constitute an integral and essential part of a technological process, notwithstanding the fact that they initiate and terminate that process and involve human intervention;

   fulfil the condition that those acts of reproduction must pursue a sole purpose, namely to enable the lawful use of a protected work or a protected subject-matter;

   fulfil the condition that those acts must not have an independent economic significance provided, first, that the implementation of those acts does not enable the generation of an additional profit going beyond that derived from the lawful use of the protected work and, secondly, that the acts of temporary reproduction do not lead to a modification of that work.

2. *Article 5(5) of Directive 2001/29 must be interpreted as meaning that, if they fulfil all the conditions laid down in Article 5(1) of that directive, the acts of temporary reproduction carried out during a 'data capture' process, such as those in issue in the main proceedings, must be regarded as fulfilling the condition that the acts of reproduction may not conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the rightholder.*

([1]) OJ C 221, 14.8.2010.

Order of the Court (Fourth Chamber) of 25 November 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) — United Kingdom) — Yeda Research and Development Company Ltd, Aventis Holdings Inc v Comptroller General of Patents, Designs and Trade Marks

(Case C-518/10) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — 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 — Marketing authorisation — Medicinal product placed on the market containing only one active ingredient whereas the patent claims a combination of active ingredients)

(2012/C 73/13)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Yeda Research and Development Company Ltd, Aventis Holdings Inc

Defendant: Comptroller General of Patents, Designs and Trade Marks

Re:

Reference for a preliminary ruling — Court of Appeal (Civil Division) (England and Wales) — Interpretation of 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 (OJ 2009 L 152, p. 1) — Conditions for obtaining a certificate — Definition of 'product protected by a basic patent in force' — Criteria — Effect of Agreement 89/695/EEC relating to Community patents on the evaluation of those criteria if there is indirect or contributory infringement for the purpose of Article 26 of that agreement

Operative part of the order

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 where the active ingredient specified in the application, even though identified in the wording of the claims of the basic patent as an active ingredient forming part of a combination in conjunction with another active ingredient, is not the subject of any claim relating to that active ingredient alone.

([1]) OJ C 13, 15.1.2011.

Order of the Court of 13 October 2011 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-560/10 P) ([1])

(Appeal — Public service contracts — Management and maintenance of the 'Your Europe' portal — Rejection of the tender — Regulations (EC, Euratom) No 1605/2002 and No 2342/2002 — Full copy of the evaluation report — Principles of transparency and equal treatment — Rights to good administration and to a fair hearing — Errors of law — Distortion of the evidence — Clear inadmissibility — Clearly unfounded ground of appeal)

(2012/C 73/14)

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, Agents)

Re:

Appeal against the judgment of the General Court (Fifth Chamber) of 9 September 2010 in Case T-300/07 *Evropaïki Dynamiki* v *Commission* annulling the Commission's decision of 13 July 2007 rejecting the tender submitted by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in tendering procedure ENTR/05/78 for Lot 2 (Infrastructure Management) for the management and maintenance of the 'Your Europe' portal and awarding that 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 72, 5.3.2011.

Order of the Court of 10 November 2011 — Kalliope Agapiou Joséphidès v European Commission, the Education, Audiovisual and Culture Executive Agency (EACEA)

(Case C-626/10 P) ([1])

(Appeal — Access to documents — Regulation (EC) No 1049/2001 — Article 4(1)(b) and (2), first indent — Protection of private life and integrity of the individual — Protection of commercial interests — Regulation (EC) No 58/2003 — Executive agencies — Competence to handle confirmatory requests regarding applications for access to documents — Principle of transparency — 'Overriding public interest' — Errors of law)

(2012/C 73/15)

Language of the case: French

Parties

Appellant: Kalliope Agapiou Joséphidès (represented by: C. Joséphidès and H. Joséphidès, dikigorio)

Other parties to the proceedings: European Commission (represented by: G. Rozet and M. Owsiany-Hornung, Agents), The Education, Audiovisual and Culture Executive Agency (EACEA) (represented by: H. Monet, Agent))

Re:

Appeal brought against the judgment of the General Court (Seventh Chamber) of 21 October 2010 in Case T-439/08 *Agapiou Joséphidès v Commission and EACEA*, by which the General Court dismissed the action brought by the applicant seeking annulment, first, of the decision of EACEA of 1 August 2008 relating to an application for access to

documents concerning the allocation of a Jean Monnet centre of excellence to the University of Cyprus and, second, of Commission Decision C(2007) 3749 of 8 August 2007 relating to an individual decision to allocate subsidies in the context of the lifelong learning programme, a Jean Monnet sub-programme — Infringement of the right of access to documents and of the principle of transparency — Errors of law

Operative part of the order

1. *The appeal is dismissed.*

2. *Mrs Agapiou Joséphidès is ordered to pay the costs.*

([1]) OJ C 103, 2.4.2011.

Order of the Court (Fourth Chamber) of 25 November 2011 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — University of Queensland, CSL Ltd v Comptroller-General of Patents, Designs and Trade Marks

(Case C-630/10) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — 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 73/16)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: University of Queensland, CSL Ltd

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(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 — 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')

Operative part of the order

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 identified 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 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.*

3. *In the case of a basic patent relating to a process by which a product is obtained, Article 3(a) of Regulation No 469/2009 precludes a supplementary protection certificate being granted for a product other than that identified in the wording of the claims of that patent as the product deriving from the process in question. Whether it is possible to obtain the product directly as a result of that process is irrelevant in that regard.*

([1]) OJ C 89, 19.3.2011.

Order of the Court (Fourth Chamber) of 25 November 2011 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Daiichi Sankyo Company v Comptroller-General of Patents, Designs and Trade Marks

(Case C-6/11) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Articles 3 and 4 — 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)

(2012/C 73/17)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Daiichi Sankyo Company

Defendant: Comptroller-General of Patents, Designs and Trade Marks

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division, Patents Court) — Interpretation of Articles 3(a) and 4 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 — Existence of further or different criteria for a medicinal product comprising more than one active ingredient

Operative part of the order

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 identified in the wording of the claims of the basic patent relied on in support of the application for such a certificate.

([1]) OJ C 63, 26.2.2011.

Order of the Court of 26 October 2011 — Fernando Marcelino Victoria Sánchez v European Parliament, European Commission

(Case C-52/11 P) ([1])

(Appeal — Action for failure to act — Letter addressed to the Parliament and Commission — Response — Decision to take no further action — Appeal manifestly unfounded and manifestly inadmissible)

(2012/C 73/18)

Language of the case: Spanish

Parties

Appellant: Fernando Marcelino Victoria Sánchez (represented by: P. Suarez Plácido, abogado)

Other parties to the proceedings: European Parliament (represented by: N. Lorenz, N. Görlitz and P. López-Carceller, Agents), European Commission (represented by: I. Martínez del Peral and L. Lozano Palacios, Agents)

Re:

Appeal brought against the order of the General Court (Fourth Chamber) of 17 November 2010 in Case T-61/10 *Victoria Sánchez* v *Parliament and Commission*, by which the General Court dismissed an action seeking a declaration that the European Parliament and the European Commission failed to act, in so far as they unlawfully abstained from responding to the letter of 6 October 2009 sent by the appellant, an application for an injunction and a request for protective measures

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Victoria Sánchez is ordered to pay the costs.*

([1]) OJ C 103, 2.4.2011.

Order of the Court (Eighth Chamber) of 9 December 2011 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brugge — Belgium) — Connoisseur Belgium BVBA v Belgische Staat

(Case C-69/11) ([1])

(Article 104(3), first subparagraph, of the Rules of Procedure — Sixth VAT Directive — Article 11.A(1)(a) — Taxable amount — Costs not charged by the taxable person)

(2012/C 73/19)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brugge

Parties to the main proceedings

Applicant: Connoisseur Belgium BVBA

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Brugge — Interpretation of Article 11.A(1)(a) 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) and of Article 73 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Hiring-out of pleasure craft — Agreement on the allocation of costs between the undertaking providing the craft for hire and the undertaking which hires them — Possibility of charging certain costs to the hiring undertaking — No charge made — National provision requiring VAT to be paid on those costs which are not charged

Operative part of the order

Article 11.A(1)(a) 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, in circumstances such as those in the main proceedings, value added tax is not due on costs or amounts which could contractually have been charged to the other contracting party but which were not so charged.

(1) OJ C 145, 14.5.2011.

Order of the Court (First Chamber) of 15 December 2011 (reference for a preliminary ruling from the Hof van Cassatie van België — Belgium) — Inno NV v Unie van Zelfstandige Ondernemers VZW (UNIZO), Organisatie voor de Zelfstandige Modedetailhandel VZW (Mode Unie), Couture Albert BVBA

(Case C-126/11) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 2005/29/EC — Unfair commercial practices — National legislation prohibiting announcements of price reductions and those suggestive of such reductions)

(2012/C 73/20)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Inno NV

Defendants: Unie van Zelfstandige Ondernemers VZW (UNIZO), Organisatie voor de Zelfstandige Modedetailhandel VZW (Mode Unie), Couture Albert BVBA

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22)

Operative part of the order

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC and Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which lays down a general prohibition on announcements of price reductions and those suggestive of such reductions in the period preceding the period of sales, in so far as that provision pursues objectives related to consumer protection.

(1) OJ C 152, 21.5.2011.

Order of the Court (Sixth Chamber) of 1 December 2011 — Longevity Health Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Performing Science LLC

(Case C-222/11 P) (1)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(d) — Word sign '5 HTP' — Application for a declaration of invalidity — Appeal manifestly unfounded)

(2012/C 73/21)

Language of the case: German

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) (represented by: G. Schneider, Agent), Performing Science LLC

Re:

Appeal against the judgment of the General Court (Sixth Chamber) of 9 March 2011 in Case T-190/09 *Longevity Health Products* v *OHIM — Performing Science (5 HTP)* relating to an action brought against the decision of the Fourth Board of Appeal of OHIM of 21 April 2009 (Case R 595/2008-4) concerning invalidity proceedings between Performing Science LLC and Longevity Health Products, Inc. — Distinctive character of the word sign 5 HTP

Operative part of the order

1. *The appeal is dismissed.*

2. *Longevity Health Products Inc. is ordered to pay the costs.*

(1) OJ C 252, 27.8.2011.

Order of the Court (Sixth Chamber) of 14 December 2011 (reference for a preliminary ruling from the Tribunalul Alba, Romania) — Corpul Național al Polițiștilor v Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR), Inspectoratul de Poliție al Județului Alba (IPJ)

(Case C-434/11) [1]

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Admissibility of national legislation providing for salary reductions in relation to various categories of public officials — Failure to implement European Union law — Court clearly lacking jurisdiction)

(2012/C 73/22)

Language of the case: Romanian

Referring court

Tribunalul Alba

Parties to the main proceedings

Applicant: Corpul Național al Polițiștilor

Defendants: Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR), Inspectoratul de Poliție al Județului Alba (IPJ)

Re:

Reference for a preliminary ruling — Tribunalul Alba — Interpretation of Article 17(1), 20 and 21 of the Charter of Fundamental Rights of the European Union — Admissibility of national legislation providing for salary reductions in relation to various categories of public officials — Infringement of the right to property and the principles of equal treatment and non-discrimination

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction to reply to the question referred by the Tribunalul Alba, Romania, by decision of 28 July 2011.

[1] OJ C 331, 12.11.2011.

Order of the Court (Sixth Chamber) of 14 December 2011 (reference for a preliminary ruling from Tribunalul Dâmbovița — Romania) — Victor Cozman v Teatrul Municipal Târgoviște

(Case C-462/11) [1]

(Reference for a preliminary ruling — First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Whether national legislation establishing reductions in the salaries of several categories of public-sector employee is lawful — Lack of connection to European Union law — Clear lack of jurisdiction of the Court)

(2012/C 73/23)

Language of the case: Romanian

Referring court

Tribunalul Dâmbovița

Parties to the main proceedings

Applicant: Victor Cozman

Defendant: Teatrul Municipal Târgoviște

Re:

Reference for a preliminary ruling — Tribunalul Dâmbovița — Interpretation of Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms — Whether national legislation establishing reductions in the salaries of several categories of public-sector employee is lawful — Nature of remuneration rights — Limitations

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the questions referred for a preliminary ruling by Tribunalul Dâmbovița (Romania) by decision of 7 February 2011.

[1] OJ C 331, 12.11.2011.

Order of the Court (Sixth Chamber) of 14 December 2011 (references for a preliminary ruling from the Tribunalul Argeș, Romania) — Andrei Emilian Boncea, Filofteia Catrinel Boncea, Adriana Boboc, Cornelia Mihăilescu (C-483/11), Mariana Budan (C-484/11) v Statul român

(Joined Cases C-483/11 and C-484/11) [1]

(Reference for a preliminary ruling — Articles 43, 92(1) and 103(1)of the Rules of Procedure — Charter of Fundamental Rights of the European Union — Compensation payable to persons sentenced in political trials under the Communist regime — Right to compensation for non-material harm suffered — Failure to implement European Union law — Court clearly lacking jurisdiction)

(2012/C 73/24)

Language of the case: Romanian

Referring court

Tribunalul Argeș

Parties to the main proceedings

Applicants: Andrei Emilian Boncea, Filofteia Catrinel Boncea, Adriana Boboc, Cornelia Mihăilescu (C-483/11), Mariana Budan (C-484/11)

Defendant: Statul român

Intervener: Iulian-Nicolae Cujbescu (Case C-484/11)

Re:

References for a preliminary ruling — Tribunalul Argeș — Interpretation of Article 5 of the Convention on the Protection of Human Rights and Fundamental Freedoms and of Article 8 of the Universal Declaration of Human Rights — Compensation payable to persons sentenced in political trials under the Communist regime — Admissibility of national legislation reducing the right to compensation for non-material harm suffered

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction to reply to the questions referred by the Tribunalul Argeș, Romania, by decisions of 4 April and 4 July 2011.

[1] OJ C 347, 26.11.2011

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 November 2011 — Consulta Regionale Ordine Ingegneri della Lombardia and Others v Comune di Pavia

(Case C-564/11)

(2012/C 73/25)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Consulta Regionale Ordine Ingegneri della Lombardia, Ordine degli Ingegneri della Provincia di Brescia, Ordine degli Ingegneri della Provincia di Como, Ordine degli Ingegneri della Provincia di Cremona, Ordine degli Ingegneri della Provincia di Lecco, Ordine degli Ingegneri della Provincia di Lodi, Ordine degli Ingegneri della Provincia di Milano, Ordine degli Ingegneri della Provincia di Pavia, Ordine degli Ingegneri della Provincia di Varese

Defendant: Comune di Pavia

Question referred

Does Directive 2004/18/EC of the European Parliament and of the Council [1] on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and, in particular, Article 1(2)(a) and (d), Article 2 and Article 28 thereof and Categories 8 and 12 of Annex II thereto, preclude national legislation under which it is possible for written agreements to be entered into by two awarding authorities for scientific and technical consulting studies and services for the drafting of the measures making up the municipal town and country planning programme, as defined by the national and regional legislation for the sector, the financial consideration for which does not, by definition, represent true remuneration, in so far as the administrative authority responsible for carrying out this task may act as an economic operator?

[1] OJ 2004 L 134, p. 114.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 30 November 2011 — T-Mobile Austria GmbH v Verein für Konsumenteninformation

(Case C-616/11)

(2012/C 73/26)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: T-Mobile Austria GmbH

Respondent on a point of law: Verein für Konsumenteninformation

Questions referred

1. Is Article 52(3) of Directive 2007/64/EC [1] to be interpreted as meaning that it is also applicable to the contractual relationship between a mobile phone operator, as payee, and that operator's private customer (the consumer), as payer?

2. Are a cash payment form signed by the payer in person and/or the procedure for ordering transfers based on a signed cash payment form and the agreed procedure for ordering transfers through online banking (telebanking) to be regarded as 'payment instruments' within the meaning of Article 4.23 and Article 52(3) of Directive 2007/64/EC?

3. Is Article 52(3) of Directive 2007/64/EC to be interpreted as precluding the application of provisions of national law which prohibit a payee from levying charges in general and from levying different charges for different payment instruments in particular?

[1] Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (OJ 2007 L 319, p. 1).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 5 December 2011 — Staatssecretaris van Financiën v Pactor Vastgoed BV

(Case C-622/11)

(2012/C 73/27)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: Pactor Vastgoed BV

Question referred

Does the Sixth Directive [1] allow, in the event that the VAT initially deducted in accordance with Article 20 of the Sixth Directive is adjusted in such a way that the amount of the deduction must be reimbursed in full or in part, that amount to be charged to a person other than the taxable person who applied the deduction in the past, in particular — as is the case when Article 12a of the Wet (op de omzetbelasting 1968) (Law on turnover tax 1968) is applied — to a person to whom a property has been supplied by that taxable person?

[1] 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).

Reference for a preliminary ruling from the High Court of Ireland (Ireland) made on 9 December 2011 — Anglo Irish Bank Corporation Ltd v Quinn Investments Sweden AB and others

(Case C-634/11)

(2012/C 73/28)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Anglo Irish Bank Corporation Ltd

Defendants: Quinn Investments Sweden AB, Sean Quinn, Ciara Quinn, Collette Quinn, Sean Quinn Junior, Brenda Quinn, Aoife Quinn, Stephen Kelly, Peter Darragh Quinn, Niall McPartland Indian Trust AB

Questions referred

1. The within reference concerns Article 28 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 [1] ('Council Regulation (EC) No 44/2001') ('Article 28') and the procedures to be adopted by a national court (the courts of 'State A') in adjudicating upon an objection under Article 28 to the jurisdiction of that court to hear and determine a set of proceedings ('the third proceedings') in circumstances where the courts of State A are:-

(a) seised first of a set of proceedings ('the first proceedings') which may be related to proceedings ('the second proceedings') commenced before the Courts of another Member State ('State B'); and

(b) seised also of a set of proceedings ('the third proceedings') which may be related to the second proceedings; and

(c) presented with an objection pursuant to Article 28 of Council Regulation (EC) No 44/2001 to the jurisdiction of the Courts of State A to hear and determine the third proceedings based on an argument that the second proceedings (before the Courts of State B) and the third proceedings (before the Courts of State A) are related actions within the meaning of the said Article 28.

2. Specifically, the judgment of the Court of Justice of the European Union (the 'Court of Justice') is requested in relation to the following questions:

(1) Whether it is necessary for the Courts of State A to await the outcome of an anticipated application to and decision by the Courts of State B as to whether or not the Courts of State B should stay or dismiss the second proceedings pursuant to Article 28 of Council Regulation (EC) No 44/2001 prior to the Courts of State A taking a decision on whether to stay or dismiss the third proceedings;

(2) If it is not necessary for the Courts of State A to await the outcome of an anticipated application to and decision by the Courts of State B as to whether or not the Courts of State B should stay or dismiss the second proceedings pursuant to Article 28 of Council Regulation (EC) No 44/2001 prior to the Courts of State A taking a decision on whether to stay or dismiss the third proceedings, whether the Courts of State A are entitled to have regard to the fact of the first proceedings in deciding whether to stay or dismiss the third proceedings;

(3) In the event that the Courts of State B decide that they do have jurisdiction over the second proceedings, whether the Courts of State A are entitled to have regard to the fact of the first proceedings in deciding whether to stay or dismiss the third proceedings pursuant to Article 28 of Council Regulation (EC) No 44/2001;

(4) Whether the fact that the third proceedings could have been (but were not) maintained as a counterclaim in the first proceedings by the Plaintiff in the third proceedings is a material factor and, if so, the proper considerations which the Courts of State A should afford to that factor in their determination as to whether they should decline jurisdiction over, or stay, the third proceedings pursuant to Article 28 of Council Regulation (EC) No 44/2001.

(1) OJ L 12, p. 1

Action brought on 13 December 2011 — European Commission v Republic of Poland

(Case C-639/11)

(2012/C 73/29)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: G. Wilms, G. Zavvos and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— Declare that, by making the registration in Poland of private motor vehicles which are new or have been previously registered in other Member States and which have their steering equipment on the right-hand side dependent on the transfer of the steering wheel to the left-hand side, the Republic of Poland has failed to fulfil its obligations under Article 2a of Directive 70/311/EEC relating to type approval of steering equipment, ([1]) Article 4(3) of Framework Directive 2007/46/EC on EC type approval for motor vehicles ([2]) and Article 34 of the Treaty on the Functioning of the European Union;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Commission argues that the Republic of Poland is in breach of Article 2a of individual Directive 70/311/EEC, Article 4(3) of Framework Directive 2007/46/EC and Article 34 TFEU.

Traffic in the Republic of Poland drives on the right. In order for a motor vehicle to be registered in Poland, Polish provisions require a certificate attesting that the vehicle has passed a technical inspection. Pursuant to regulations issued by the Minister for Infrastructure, ([3]) the outcome of the technical inspection of vehicles with the steering wheel on the right-hand side from the outset cannot be positive (that is to say, the technical condition is deemed not to be in accordance with the technical requirements in force). As a result, private motor vehicles which have the steering wheel on the right-hand side and which have been approved in Member States in which traffic drives on the left (the United Kingdom, Ireland, Malta and Cyprus) cannot be registered in Poland. The Polish authorities also fail to take account of the fact that such motor vehicles may previously have been registered in other Member States in which traffic drives on the right.

In the Commission's view, the fact that it is impossible to register, in Poland, private motor vehicles (new and second-hand) which have been brought to Poland from a Member State in which traffic drives on the left, primarily by Polish nationals taking advantage of the benefit of free movement within the European Union cannot find justification in any overriding requirement of public interest in the form of ensuring road safety.

If motor vehicles which have their steering equipment on the right-hand side and which are not registered in Poland may, without any restriction, be used in Poland, the prohibition on registration of such vehicles is not, in the Commission's view, an appropriate or, in any event, proportionate means by which to achieve the declared objective.

In the opinion of the Commission, it is precisely the long-term use of such a vehicle in traffic on the right that results in the acquisition of a routine and does not constitute, from the point of view of road safety, a greater threat than occasional/temporary transport by means of such a vehicle. Furthermore, there are other, less drastic means, in the form, for instance, of an additional mirror, which facilitate a vehicle with the steering wheel on the right when overtaking in traffic which uses the right side of the road.

(1) Council Directive of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ, English Special Edition 1970(II), p. 375).

(2) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

(3) Paragraph 9(2) of the Regulation of 31 December 2002, Point 5.1 of Annex I to the Regulation of the Minister for Infrastructure of 16 December 2003 and Point 6.1 of Annex I to the Regulation of the Minister for Infrastructure of 18 September 2009 replacing and repealing the Regulation of 16 December 2003.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 19 December 2011 — Staatssecretaris van Financiën, other party: X BV

(Case C-651/11)

(2012/C 73/30)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Other Party: X BV

Questions referred

1. Is the disposal of 30 % of the shares in a company — to which the transferor of those shares supplies services that are subject to value added tax (VAT) — equivalent to the transfer of (part of) a totality of assets within the meaning of Article 5(8) and/or of services within the meaning of Article 6(5) of the Sixth Directive? (1)

2. If the answer to Question 1 is in the negative, is the disposal referred to in that question equivalent to the transfer of (part of) a totality of assets within the meaning of Article 5(8) and/or of services within the meaning of Article 6(5) of the Sixth Directive, where the other shareholders, who also supply services that are subject to VAT to the company whose shares have been disposed of, transfer all the other shares in that company to the same person (almost) at the same time?

3. If the answer to the second question is also in the negative, can the disposal referred to in Question 1 be regarded as the transfer of (part of) the undertaking for the purposes of Article 5(8) and/or Article 6(5) of the Sixth Directive, taking into account the fact that that disposal is closely linked to management activities carried out for that participation?

(1) 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).

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 21 December 2011 — Belgian Electronic Sorting Technology NV v Bert Peelaers and Visys NV

(Case C-657/11)

(2012/C 73/31)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Belgian Electronic Sorting Technology

Defendants: Bert Peelaers

Visys NV

Question referred

Is the term 'advertising' in Article 2 of Council Directive 84/450/EEC (1) of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising and in Article 2 of Directive 2006/114/EC (2) of 12 December 2006 concerning misleading and comparative advertising to be interpreted as encompassing, on the one hand, the registration and use of a domain name and, on the other, the use of metatags in a website's metadata?

(1) OJ L 250, p. 17.

(2) OJ L 376, p. 21.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Toscana (Italy) lodged on 27 December 2011 — Daniele Biasci and Others v Ministero dell'Interno, Questura di Livorno

(Case C-660/11)

(2012/C 73/32)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Toscana

Parties to the main proceedings

Applicants: Daniele Biasci, Alessandro Pasquini, Andrea Milianti, Gabriele Maggini, Elena Secenti, Gabriele Livi

Defendants: Ministero dell'Interno, Questura di Livorno

Questions referred

1. Are Articles 43 EC and 49 EC to be interpreted as in principle precluding legislation of a Member State, such as Article 88 of the Testo unico delle leggi di pubblica sicurezza (Consolidated Law on public security; 'the TULPS'), under which 'a permit to organise betting may be granted exclusively to persons holding a licence or authorisation issued by a Ministry or another body to which the law reserves the right to organise and manage betting, and also to persons to whom that responsibility has been entrusted by the licence-holder or by the holder of an authorisation, by virtue of such licence or authorisation', and Article 2(2b) of Decree-Law No 40 of 25 March 2010, converted by Law No 73/2010, under which 'Article 88 of the (TULPS), which references to Royal Decree No 773 of 18 June 1931, as subsequently amended, is to be interpreted as meaning that the permit provided for therein, where it is granted for commercial businesses involving gaming and the collection of bets for cash prizes, shall be deemed to be effective only after the operators of those businesses have been granted the appropriate license to carry on such gaming and collect such bets by the Independent Authority for the Administration of State Monopolies of the Ministry of Economic and Financial Affairs'?

2. Are Articles 43 EC and 49 EC to be interpreted as in principle also precluding national legislation, such as Article 38(2) of Decree-Law No 223 of 4 July 2006, converted by Law No 248/2006…? [1]

   The question concerning the compatibility of Article 38(2) with the abovementioned principles of Community law relates solely to the parts of that provision in which: (a) there is a general tendency to protect licences issued before the legal framework was amended; (b) obligations are introduced to open new sales points at a distance from those already authorised which could ultimately ensure de facto the maintenance of pre-existing commercial positions. The question further relates to the general interpretation placed on Article 38(2) by the Independent Authority for the Administration of State Monopolies by inserting in licensing agreements (Article 23(3)) a clause relating to lapse of the licence where analogous cross-border activities are engaged in directly or indirectly.

3. If the answer is in the affirmative, that is to say that it considers compatible with Community law the national rules cited in the preceding paragraphs, is Article 49 EC to be interpreted further as meaning that, where the freedom to provide services is restricted for reasons in the public interest, consideration must be given in advance to whether sufficient account is not already taken of this public interest by the legal provisions, checks and investigations to which the service provider is subject in the State in which he is established?

4. If the answer is in the affirmative, as set out in the preceding paragraph, must the referring court take account, in the context of its examination of the proportionality of a similar restriction, of the fact that the relevant provisions of the State in which the service provider is established provide for a degree of control which is equal to or actually exceeds that of the State in which the services are provided?

[1] That part of question 2 where the full text of Article 38(2) — published in GURI No 153 of 4 July 2006 — was reproduced has been omitted.

Action brought on 22 December 2011 — European Commission v Republic of Cyprus

(Case C-662/11)

(2012/C 73/33)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: E. Montaguti and G. Zavvos)

Defendant: Republic of Cyprus

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Article 24 of, in conjunction with Annex VII to, the Act of

Accession of the Republic of Cyprus relating to the removal of the restrictions existing in its national legislation that concern the acquisition by EU/EEA nationals of residences for secondary use, by 1 May 2009 at the latest, and in any event by not notifying those provisions to the Commission, the Republic of Cyprus has failed to fulfil its obligations under that act;

— order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

The Commission submits that, in view of Article 24 of, in conjunction with Annex VII to, the Act of Accession of the Republic of Cyprus to the European Union, the authorities of the Republic of Cyprus had to bring into force by 1 May 2009 at the latest the laws, regulations and administrative provisions necessary in order that the restrictions in force in its national legislation placed upon the acquisition by EU/EEA nationals of residences for secondary use are removed. Those restrictions constitute a direct infringement of the free movement of capital as laid down in Article 63 of the Treaty on the Functioning of the European Union.

The Cypriot Government sent a draft law concerning amendment of the restrictions in force, and maintains that it has been submitted for approval to the Council of Ministers with the objective of it being examined as rapidly as possible and being transmitted to the parliament to be voted upon.

The Commission observes that the infringement of a freedom enshrined by the Treaty by provisions of a Member State's national legislation can be removed only by the adoption of equally binding provisions. Therefore, the enclosing of a mere draft law, which has not acquired any legislative force, with the Republic of Cyprus's letter in response cannot be equated to a binding act removing the provisions in force regarding the acquisition by EU/EEA nationals of residences for secondary use.

The Commission submits that, by not adopting the laws, regulations and administrative provisions necessary for the removal of the restrictions existing in its national legislation that concern the acquisition by EU/EEA nationals of residences for secondary use or in any event by not notifying those provisions to the Commission, the Cypriot Government has failed to fulfil its obligations to comply with Article 24 of the Act concerning the conditions of accession of the Republic of Cyprus, in conjunction with Annex VII to that act relating to the transitional provisions that concern Cyprus.

Reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany) lodged on 30 December 2011 — M and Others v Federal Republic of Germany

(Case C-666/11)

(2012/C 73/34)

Language of the case: German

Referring court

Oberverwaltungsgericht für das Land Nordrhein-Westfalen

Parties to the main proceedings

Applicants: M, N, O, P, Q

Defendant: Federal Republic of Germany

Questions referred

1. In court proceedings concerning a declaration of lack of responsibility and an order that he be removed to the Member State responsible in the view of the Member State in which an application for asylum was lodged (requesting Member State), may an asylum seeker rely on the fact that the transfer has not taken place within the time-limit of six months under Article 19(4) of Council Regulation (EC) No 343/2003 of 18 February 2003 ([1]) and therefore that the responsibility lies with the requesting Member State?

2. Does a suicide attempt, even one which is faked, as a result of which transfer to the Member State responsible is not possible, constitute absconding within the meaning of the second sentence of Article 19(4) of Council Regulation (EC) No 343/2003?

3. In court proceedings concerning a declaration of lack of responsibility and an order that he be removed, may an asylum seeker rely on a transfer of responsibility under the second sentence of Article 9(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003? ([2])

4. If the requesting Member State informs the Member State responsible that the transfer which has already been organised has been postponed, but not that the transfer cannot be carried out within the time-limit of six months, does this prevent the transfer of responsibility under the second sentence of Article 9(2) of Commission Regulation (EC) No 1560/2003 of 2 September 2003?

5. Does the asylum seeker have a right, enforceable by him in the courts, to require a Member State to examine the assumption of responsibility under the first sentence of Article 3(2) of Council Regulation (EC) No 43/2003 and to inform him about the grounds for its decision?

(1) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

(2) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 222, p. 3).

Action brought on 22 December 2011 — European Commission v Kingdom of Spain

(Case C-678/11)

(2012/C 73/35)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: W. Roels and F. Jimeno Fernández, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that the Kingdom of Spain has failed to meet its obligations under Article 56 TFEU (formerly Article 49 TEC) and Article 36 of the EEA Agreement by adopting and maintaining in force Article 46(c) of the consolidated version of the Ley de Regulación de los Planes y Fondos de Pensiones, Article 86 of Real Decreto Legislativo 6/2004 of 29 October 2004 approving the consolidated version of the Ley de ordenación y supervisión de los seguros privados, Article 10 of Real Decreto Legislativo 5/2004 approving the consolidated version of the Ley del Impuesto sobre la renta de los no residentes, and Article 47 of Ley 58/2003 (General Tributaria) of 17 December 2003, pursuant to which foreign pension funds based in other Member States and which offer occupational pension schemes in Spain, and insurance companies which operate in Spain under the freedom to provide services, inter alia, are required to designate a tax representative who is resident in Spain.

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. The Spanish tax law provisions referred to above require tax payers who are not resident in Spain to designate a tax representative who is resident in Spain. In particular, that requirement is imposed on foreign pension funds based in other Member States and which offer occupational pension schemes in Spain, and insurance bodies which operate in Spain under the freedom to provide services.

2. The Commission considers that the requirement to designate a tax representative resident in Spain in the cases referred to constitutes an obstacle to the free movement of services in so far as it imposes an additional burden on the entities and physical persons mentioned, who are required to solicit the services of a representative. In addition, that requirement constitutes an obstacle to the free movement of services for persons resident, and undertakings established, in a Member State other than Spain wishing to provide tax representation services to entities or physical persons operating in Spain.

3. The provisions in question infringe Article 56 TFEU (formerly Article 49 TEC) and Article 36 of the EEA Agreement.

Appeal brought on 27 December 2011 by Alliance One International, Inc., formerly Dimon, Inc., against the judgment of the General Court (Fourth Chamber) delivered on 12 October 2011 in Case T-41/05: Alliance One International, Inc., formerly Dimon Inc., v European Commission

(Case C-679/11 P)

(2012/C 73/36)

Language of the case: English

Parties

Appellant: Alliance One International, Inc (formerly Dimon, Inc.) (represented by: M Odriozola, A Vide, Lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 12 October 2011 in Case T-41/05 insofar as it rejects the pleas in law alleging manifest error of assessment in the application of Article 101(1) TFEU and Article 23(2) Regulation 1/2003 (1), failure to state sufficient reasons and breach of the principle of equal treatment for the finding that Alliance One International, Inc., formerly Dimon, Inc. was jointly and severally liable;

— annul the decision of the Commission of 20 October 2004 in Case COMP/C.38.238/B.2 — Raw Tobacco Spain insofar as it relates to the Appellant and reduce the fine imposed on the appellants accordingly; and

— order the Commission to pay the costs.

Pleas in law and main arguments

1. Alliance One International Inc. Formerly Dimon Inc., (the 'Appellant') respectfully request that: i) the judgment of the General Court of 12 October 2011 in Case T-41/05 be set aside by the Court of Justice insofar as it deems Alliance One International, Inc. ('AOI'), formerly Dimon Inc., ('Dimon') jointly and severally liable for the infringement committed by Agroexpansión; that ii) the decision of the Commission of 20 October 2004 in Case COMP/C.38.238/B.2 — Raw Tobacco Spain be annulled insofar as it relates to the Appellant and that the fine imposed on the Appellant should be reduced accordingly; and iii) the Commission pays the costs.

2. First the Appellant submits that the Commission and the General Court misapplied Article 101(1) of the TFEU Treaty and Article 23(2) of Regulation 1/2003 by holding AOI liable for the infringement committed by Agroexpansión. The Appellant submits that the General Court breached its rights of defence and Article 296 TFEU by clarifying in the judgment (and therefore ex post facto) the reasoning regarding the standard of proof applied in the Commission's decision. Consequently, the Appellant submits that the General Court erred in law in defining the method for attributing liability, in particular by adopting a dual basis method, which served to discriminate between companies on the strength of their case on appeal but otherwise failed to establish a standard. In addition, the General Court could not have ignored the fact that the Commission failed to support its views in the decision regarding the absence of a rebuttal.

3. Second, the General Court's judgment deprives the Appellant of its rights derived under the general principles of EU law, the rights contained in the ECHR and the Charter of Fundamental Rights, now part of the Lisbon Treaty and therefore having the full weight of primary law.

4. Third, although the General Court confirms that the Appellant could not have been held liable for the infringement on the part of Agroexpansión in respect of the period prior to 18 November 1997, it nevertheless fails to draw the necessary conclusions from the Commission's mistake and allows the Appellant to be discriminated against. First the Appellant submits that the starting amount of the fine should have been increased by only 30 %, otherwise, Dimon would be discriminated against vis-à-vis the other addressees of the decision. Second, the Appellant respectfully submits that the Commission erred in considering Dimon's turnover in 2003 for the purposes of justifying the increase of the starting amount of the fine on the basis of the fifth paragraph of Section 1A of the 1998 Guidelines.

5. Finally, the Appellant respectfully submits that it was entitled to the legitimate expectation that it would benefit from a reduction of the fine pursuant to the third indent of Section B, Point 3 of the 1998 Guidelines on fines. In this regard, the General Court erred because: (i) it considered that the attenuating circumstance was not applicable in this case due to the nature of the infringement; and (ii) accepted the Commission's argument according to which the Appellant already benefited from the attenuating circumstance.

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

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Toscana (Italy) lodged on 2 January 2012 — Cristian Rainone and Others v Ministero dell'Interno and Others

(Case C-8/12)

(2012/C 73/37)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Toscana

Parties to the main proceedings

Applicants: Cristian Rainone, Orentino Viviani, Miriam Befani

Defendants: Ministero dell'Interno, Questura di Prato, Questura di Firenze

Questions referred

1. Are Articles 43 EC and 49 EC to be interpreted as in principle precluding legislation of a Member State, such as Article 88 of the Testo unico delle leggi di pubblica sicurezza (Consolidated Law on public security; 'the TULPS'), under which 'a permit to organise betting may be granted exclusively to persons holding a licence or authorisation issued by a Ministry or another body to which the law reserves the right to organise and manage betting, and also to persons to whom that responsibility has been entrusted by the licence-holder or by the holder of an authorisation, by virtue of such licence or authorisation', and Article 2(2b) of Decree-Law No 40 of 25 March 2010, converted by Law No 73/2010, under which 'Article 88 of the (TULPS), which references to Royal Decree No 773 of 18 June 1931, as subsequently amended, is to be interpreted as meaning that the permit provided for therein, where it is granted for commercial businesses involving gaming and the collection of bets for cash prizes, shall be deemed to be effective only after the operators of those businesses have been granted the appropriate license to carry on such gaming and collect such bets by the Independent Authority for the Administration of State Monopolies of the Ministry of Economic and Financial Affairs'?

2. Are Articles 43 EC and 49 EC to be interpreted as in principle also precluding national legislation, such as Article 38(2) of Decree-Law No 223 of 4 July 2006, converted by Law No 248/2006, under which 'Article 1(287) of Law No 311 of 30 December 2004 shall be replaced by the following:

"287. By measures of the Ministry of Economic and Financial Affairs — Independent Authority for the Administration of State Monopolies — the new rules for distributing gambling on events other than horse racing shall be laid down in accordance with the following criteria:

… (l) laying down the procedures for safeguarding licensees for the collection of bets at fixed odds on events other than horse racing governed by the regulations contained in Decree No 111 of 1 March 2006 of the Minister for Economic and Financial Affairs.'"

The question whether Article 38(2) is compatible with Articles 43 EC and 49 EC relates, in particular, to the extent to which under Article 38(2) there is a general tendency to protect licences issued before the legal framework was amended and a number of restrictions and measures are provided for which could ultimately ensure *de facto* the maintenance of pre-existing commercial positions, as evidenced, for example, by the obligations to open new sales points at a distance from those already authorised. The question further relates to the general interpretation placed on Article 38(2) by the Independent Authority for the Administration of State Monopolies by inserting in licensing agreements a clause relating to lapse of the licence where analogous cross-border activities are engaged in directly or indirectly.

3. If the answer is in the affirmative, that is to say that it considers compatible with Community law the national rules cited in the preceding paragraphs, is Article 49 EC to be interpreted further as meaning that, where the freedom to provide services is restricted for reasons in the public interest, consideration must be given in advance to whether sufficient account is not already taken of this public interest by the legal provisions, checks and investigations to which the service provider is subject in the State in which he is established?

4. If the answer is in the affirmative, as set out in the preceding paragraph, must the referring court take account, in the context of its examination of the proportionality of a similar restriction, of the fact that the relevant provisions of the State in which the service provider is established provide for a degree of control which is equal to or actually exceeds that of the State in which the services are provided?

Reference for a preliminary ruling from the Tribunal de Commerce de Verviers (Belgium) lodged on 6 January 2012 — Corman-Collins SA v La Maison du Whisky SA

(Case C-9/12)

(2012/C 73/38)

Language of the case: French

Referring court

Tribunal de Commerce de Verviers

Parties to the main proceedings

Applicant: Corman-Collins SA

Defendant: La Maison du Whisky SA

Questions referred

1. Should Article 2 of Regulation No 44/2001, ([1]) where appropriate in conjunction with Article 5(1)(a) and (b), be interpreted as precluding a rule of jurisdiction, such as that set out in Article 4 of the Belgian Law of 27 July 1961, which provides for the jurisdiction of Belgian courts where the exclusive distributor has its registered office in Belgian territory and where the distribution agreement covers all or part of that territory, irrespective of where the grantor of the exclusive distribution rights has its registered office, where the latter is the defendant?

2. Should Article 5(1)(a) of Regulation No 44/2001 be interpreted as meaning that it applies to an exclusive distribution of goods agreement, pursuant to which one party purchases goods from another party for resale in the territory of another Member State?

3. If Question 2 is answered in the negative, should Article 5(1)(b) of Regulation No 44/2001 be interpreted as meaning that it refers to an exclusive distribution agreement, such as that at issue between the parties?

4. If Questions 2 and 3 are answered in the negative, is the contested obligation in the event of the termination of an exclusive distribution agreement the obligation of the seller-grantor or that of the buyer-distributor?

([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 (OJ 2001 L 12, p. 1).

Appeal brought on 11 January 2012 by Sheilesh Shah, Akhil Shah against the judgment of the General Court (Fifth Chamber) delivered on 10 November 2011 in Case T-313/10: Three-N-Products Private Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-14/12 P)

(2012/C 73/39)

Language of the case: English

Parties

Appellants: Sheilesh Shah, Akhil Shah (represented by: M. Chapple, Barrister)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Three-N-Products Private Ltd.

Form of order sought

The appellants claim that the Court should order that:

— the Judgment be annulled;

— the Decision be affirmed;

— the CTM Application be allowed to proceed to registration.

— the Respondent pays to the Appellants the costs incurred by the Appellants in connection with this Appeal, the hearing before the General Court and the Decision.

Pleas in law and main arguments

The Appellants respectfully submit that the General Court erred as a matter of law in the following respects:

The General Court wrongly decided that there was no likelihood of confusion between the trade mark in suit and the two earlier registered trade marks upon which the Respondent relies (one a word mark of AYUR and the other figurative mark containing the word AYUR), given the weak distinctive character of the earlier marks and the low overall similarity between the signs at issue;

In particular the General Court wrongly decided that although the letters U and I added respectively in the middle and at the end of the word AYUR, give difference to the trade mark in suit, such difference is '*not such as to attract the attention of the consumer*';

Also in particular the General court wrongly decided that there were no significant and substantial visual, phonetic and conceptual differences between the signs at issue.

Action brought on 18 January 2012 — European Commission v Council of the European Union

(Case C-28/12)

(2012/C 73/40)

Language of the case: English

Parties

Applicant: European Commission (represented by: G. Valero Jordana, K. Simonsson, S. Bartelt, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul the Decision of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council of 16 June 2011 on the signing, on behalf of the Union, and provisional application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part; and on the signing, on behalf of the Union, and provisional application of the Ancillary Agreement between the European Union and its Member States, of the first part, Iceland, of the second part, and the Kingdom of Norway, of the third part, on the application of the Air Transport Agreement between the United States of America, of the first part, the European Union and its Member States, of the second part, Iceland, of the third part, and the Kingdom of Norway, of the fourth part (2011/708/EU) ([1]);

— order the effects of Decision 2011/708/EU to be maintained;

— order the Council to pay the costs.

Pleas in law and main arguments

1. By way of the present application the Commission seeks the annulment of the 'Decision of the Council and of the Representatives of the Governments of the Member States of the European Union, meeting within the Council' of 16 June 2011 (Decision 2011/708/EU) (hereinafter referred to as 'the contested decision' or 'the contested measure') which was adopted in the field of air transport. It concerns the signing and provisional application of the accession of Iceland and the Kingdom of Norway to the Air Transport Agreement between the United States, of the one part, and the EU and its Member States, of the other part, as well as the signing and provisional application of the Ancillary Agreement thereto.

2. The Application is founded on the following three pleas in law:

3. The Commission argues, first, that adopting the contested decision the Council has violated Article 13 (2) of the Treaty on European Union (TEU) in conjunction with

Article 218 (2) and (5) of the Treaty on the Functioning of the European Union (TFEU), in so far as it transpires from Article 218 (2) and (5) TFEU that the Council is the institution designated to authorise the signing and provisional application of agreements. Therefore, the decision should have been solely taken by the Council and not also by the Member States, meeting within the Council.

4. With its second plea, the Commission argues that by adopting the contested decision, the Council violated the first subparagraph of Article 218 (8) TFEU in conjunction with Article 100 (2) TFEU pursuant to which the Council shall act by qualified majority. The decision of the Member States, meeting within the Council, is not a decision of the Council, but an act taken by the Member States collectively as members of their governments and not in their capacity as members of the Council. Due to its nature, such an act requires unanimity. As a result, taking both decisions as one and making it subject to unanimity divests the qualified majority rule set out in the first subparagraph of Article 218 (8) TFEU of its very nature.

5. Finally, the Council infringed the objectives set out in the Treaties and the principle of sincere cooperation laid down in Article 13 (2) TEU. The Council should have exercised its powers so as not to circumvent the institutional framework of the Union and the Union procedures set out in Article 218 TFEU and should have done so in conformity with the objectives set out in the Treaties.

([1]) OJ L 283, p. 1

Appeal brought on 26 January 2012 by Monster Cable Products, Inc. against the judgment of the General Court (Fourth Chamber) delivered on 23 November 2011 in Case T-216/10: Monster Cable Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Live Nation (Music) UK Limited

(Case C-41/12 P)

(2012/C 73/41)

Language of the case: English

Parties

Appellant: Monster Cable Products, Inc. (represented by: O. Günzel, A. Wenninger-Lenz, Rechtsanwältin)

Otherparties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Live Nation (Music) UK Limited

Form of order sought

The appellant claims that the Court should order:

— the judgment of the General court (Fourth Chamber) of the European Union of 23 November 2011 in Case T-216/10 shall be set aside;

— the defendant to pay the costs of the Appellant.

Pleas in law and main arguments

The appellant submits that by dismissing the action on the grounds laid down in the Judgment of 23 November 2001, the General Court failed to take account of all the factual background and circumstances of the proceedings, resulting in the Judgment under appeal being based on incomplete facts. Therefore, the Judgment lacks the mandatory overall assessment of all factors that must be taken into account in assessing likelihood of confusion. The Judgment is therefore erroneous and infringes Article 8 (1) (b) of Regulation No. 40/94 ([1]).

In the appellant's view, had a proper overall assessment been made, the General Court would have come to the conclusion that the decision of the First Board of Appeal of 24 February 2010 violates Article 8 (1) (b) CTMR ([2]). In summary, the appellant submits that Article 8 (1) (b) of Regulation No. 40/94 has been infringed for the following reasons:

Failure to take account of 'the average specialized consumer in the United Kingdom' as being the relevant public in relation to which the analysis of the likelihood of confusion must be carried out;

Misapplication of established legal principles for assessing similarity of goods;

Violation of the principles according to which, in order to assess likelihood of confusion, consideration should be given to all factors relevant to the individual case and, *inter alia*, to the distinctive character of the earlier mark.

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

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

Order of the President of the Court of 13 January 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Attila Belkiran v Lord Mayor of Krefeld, other party to the proceedings: The representative for federal interests at the Bundesverwaltungsgericht

(Case C-436/09) ([1])

(2012/C 73/42)

Language of the case: German

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

([1]) OJ C 24, 30.1.2010.

Order of the President of the Court of 11 January 2012 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Union of European Football Associations (UEFA), British Sky Broadcasting Ltd v Euroview Sport Ltd

(Case C-228/10) [1]

(2012/C 73/43)

Language of the case: English

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

[1] OJ C 209, 31.7.2010.

Order of the President of the Second Chamber of the Court of 25 October 2011 (reference for a preliminary ruling from the Landesarbeitsgericht Köln — Germany) — Land Nordrhein-Westfalen v Sylvia Jansen

(Case C-313/10) [1]

(2012/C 73/44)

Language of the case: German

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

[1] OJ C 274, 9.10.2010.

Order of the President of the Court of 25 November 2011 (reference for a preliminary ruling from the Tribunal da Relação de Guimarães — Portugal) — Maria das Dores Meira da Silva v Zurich — Companhia de Seguros SA

(Case C-13/11) [1]

(2012/C 73/45)

Language of the case: Portuguese

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

[1] OJ C 95, 26.3.2011.

Order of the President of the Court of 24 November 2011 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Dansk Funktionærforbund, Serviceforbundet, acting on behalf of Frank Frandsen v Cimber Air A/S

(Case C-266/11) [1]

(2012/C 73/46)

Language of the case: Danish

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

[1] OJ C 311, 22.10.2011.

Order of the President of the Court of 12 January 2012 (reference for a preliminary ruling from the Juzgado Mercantil de Barcelona — Spain) — Manuel Mesa Bertrán, Cristina Farrán Morenilla v Novacaixagalicia

(Case C-381/11) [1]

(2012/C 73/47)

Language of the case: Spanish

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

[1] OJ C 290, 1.10.2011.

Order of the President of the Court of 13 December 2011 (reference for a preliminary ruling from the Hessisches Landessozialgericht, Darmstadt — Germany) — Angela Strehl v Bundesagentur für Arbeit Nürnberg

(Case C-531/11) [1]

(2012/C 73/48)

Language of the case: German

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

[1] OJ C 25, 28.1.2012.

GENERAL COURT

Judgment of the General Court of 31 January 2012 — Spain v Commission

(Case T-206/08) ([1])

(EAGGF — 'Guarantee' section — Expenditure excluded from Community financing — Wine sector — Prohibition on new vine plantations — National monitoring systems — Lump-sum financial correction — Procedural guarantees — Error of assessment — Proportionality)

(2012/C 73/49)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented initially by: F. Díez Moreno, and subsequently by: M. Muñoz Pérez, acting as Agents)

Defendant: European Commission (represented by: F. Jimeno Fernández, acting as Agent)

Re:

Application for annulment in part of Commission Decision 2008/321/EC of 8 April 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) (OJ 2008 L 109, p. 35).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 197, 2.8.2008.

Judgment of the General Court of 1 February 2012 — Région wallonne v Commission

(Case T-237/09) ([1])

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National emission allowance allocation plan for Belgium in respect of the period from 2008 to 2012 — Article 44 of Regulation (EC) No 2216/2004 — Subsequent correction — New entrant — Decision instructing the Central Administrator of the Community independent transaction log to enter a correction into the national allocation plan table)

(2012/C 73/50)

Language of the case: French

Parties

Applicant: Région wallonne (Belgium) (represented by: J.-M. De Backer, A. Lepièce, I.-S. Brouhns and S. Engelen, lawyers)

Defendant: European Commission (represented by: E. White and O. Beynet, Agents)

Re:

Application for partial annulment of the Commission's decision of 27 March 2009 relating to the national plan for the allocation of greenhouse gas emission allowances notified by the Kingdom of Belgium for the period from 2008 to 2012, instructing the Central Administrator to enter a correction to the Belgian national allocation plan table into the Community independent transaction log.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 27 March 2009 instructing the Central Administrator to enter a correction to the Belgian national allocation plan table into the Community independent transaction log, in so far as it contains a refusal to instruct the Central Administrator to enter an allowance allocation correction in favour of installation No 116 named 'Arcelor-Cockerill Sambre_HF6_Seraing', as requested by the Kingdom of Belgium in its letter of 18 February 2009;*

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

([1]) OJ C 193, 15.8.2009.

Judgment of the General Court of 1 February 2012 — Carrols v OHIM — Gambettola (Pollo Tropical CHICKEN ON THE GRILL)

(Case T-291/09) ([1])

(Community trade mark — Invalidity proceedings — Figurative Community mark Pollo Tropical CHICKEN ON THE GRILL — Absolute grounds for refusal — No bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009)

(2012/C 73/51)

Language of the case: Spanish

Parties

Applicant: Carrols Corp. (Dover, Delaware, United States) (represented by: I. Temiño Ceniceros, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Giulio Gambettola (Los Realejos, Spain) (represented by: F. Brandolini Kujman, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 May 2009 (Case R 632/2008-1), relating to invalidity proceedings between Carrols Corp. and Mr Giulio Gambettola.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Carrols Corp. to pay the costs.*

([1]) OJ C 220, 12.9.2009.

Judgment of the General Court of 1 February 2012 — mtronix v OHIM — Growth Finance (mtronix)

(Case T-353/09) ([1])

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

(2012/C 73/52)

Language of the case: German

Parties

Applicant: mtronix OHG (Berlin, Germany) (represented by: M. Schnetzer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Growth Finance AG (Zug, Switzerland)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 June 2009 (Case R 1557/2007-4) concerning opposition proceedings between Growth Finance AG and mtronix OHG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders mtronix OHG to pay the costs.*

([1]) OJ C 282, 21.11.2009.

Judgment of the General Court of 31 January 2012 — Spar v OHIM — Spa Group Europe (SPA GROUP)

(Case T-378/09) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark SPA GROUP — Earlier national figurative marks SPAR — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation No 207/2009)

(2012/C 73/53)

Language of the case: German

Parties

Applicant: Spar Handelsgesellschaft mbH (Schenefeld, Germany) (represented by: R. Kaase and J.-C. Plate, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Spa Group Europe Ltd & Co. KG (Nuremberg, Germany)

Re:

Action for annulment of the decision of the First Board of Appeal of OHIM of 16 July 2009 (Case R 123/2008-1) in relation to opposition proceedings between Spar Handelsgesellschaft mbH and Spa Group Europe Ltd & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Spar Handelsgesellschaft mbH to pay the costs.*

([1]) OJ C 282, 21.11.2009.

Judgment of the General Court of 31 January 2012 — Cervecería Modelo v OHIM — Plataforma Continental (LA VICTORIA DE MEXICO)

(Case T-205/10) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark LA VICTORIA DE MEXICO — Earlier Community figurative mark containing the word element 'victoria' and earlier national word mark VICTORIA — Registration refused in part — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 73/54)

Language of the case: Spanish

Parties

Applicant: Cervecería Modelo, SA de CV (Mexico, Mexico) (represented by: C. Lema Devesa, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Plataforma Continental, SL (Madrid, Spain) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 March 2010 (Case R 322/2009-2) in relation to opposition proceedings between Plataforma Continental, SL and Cervecería Modelo, SA de CV.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cervecería Modelo, SA de CV to pay the costs.*

([1]) OJ C 179, 3.7.2010.

Action brought on 19 December 2011 — Dimension Data Belgium v Parliament

(Case T-650/11)

(2012/C 73/55)

Language of the case: French

Parties

Applicant: Dimension Data Belgium SA (Brussels, Belgium) (represented by: P. Levert and M. Velghe, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Parliament, notified to the applicant by email of 18 October 2011, to reject the applicant's tender for lot No 1 of the contract PE-ITEC-DIT-ITIM-TELSIS and to award lot No 1 of that contract to the company BT Belgique;

— order the European Parliament to pay the costs.

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 failure to state the reasons for the contested decision as the Parliament did not communicate any characteristics of the successful tender to the applicant.

2. Second plea in law, alleging infringement of the obligation of transparency which is incumbent on the Parliament under Articles 89, 92, 97 and 100 of the Financial Regulation ([1]) and Article 138 of the Implementing Rules ([2]) as the Parliament did not give a full, clear and precise definition of the criterion for evaluating the price of the tenders.

3. Third plea in law, alleging a manifest error of assessment in describing the criteria for evaluating the quality of the tenders, infringement of the principle of proportionality and infringement of Article 138(2) of the Implementing Rules, as the contracting authority took into consideration an evaluation criterion which is not designed to identify the tender which is most economically advantageous.

4. Fourth plea in law, alleging a manifest error of assessment in respect of the quality of the financial details and infringement of Article 139 of the Implementing Rules in the award of lot No 1 of the disputed contract to the company BT Belgique since its tender is unusually low, with the result that it should be rejected by the Parliament or, failing that, be regarded as not complying with the specifications.

([1]) 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).

([2]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1)

Action brought on 21 December 2011 — Technion — Israel Institute of Technology and Technion Research & Development v Commission

(Case T-657/11)

(2012/C 73/56)

Language of the case: French

Parties

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

Defendant(s): European Commission

Form of order sought

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

— Declare it admissible;

— Principally, declare the action well founded and annul the decision of the DG 'Information Society and Media' of the European Commission of 19 October 2011;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error of assessment and failure to state sufficient reasons, to the extent that the recovery order of 19 October 2011 is based exclusively on evidence, namely an audit report and decision of the Commission declaring certain costs ineligible on the basis of the conclusions of that audit report relating to the implementation, inter alia, of the MOSAICA contract, which are contested as regards their reasoning and whether they are well founded in Case T-546/11 *Technion — Israel Institute of Technology and Technion Research & Development* v *Commission*. [1]

2. Second plea in law, alleging infringement of the principle of unjust enrichment by the Commission. The applicants submit that:

   — the Commission would be giving itself the benefit of the services under the contract and the results of the research carried out without paying for them if it were to recover the sum claimed covering the entirety of the services provided by the employee of TECHNION, M. K., for the MOSAICA contract;

   — the applicants are entitled to claim a refund of the costs relating to the services provided under the MOSAICA contract;

   — in the event of a refund, the applicants would not only be deprived of an amount corresponding to the services actually provided, but would also have to bear an additional loss since, in addition to having to make the refund, they would have to bear the costs incurred in carrying out the services provided.

[1] OJ 2011 C 355, p. 28.

Action brought on 21 January 2012 — PT Ecogreen Oleochemicals and Others v Council

(Case T-28/12)

(2012/C 73/57)

Language of the case: English

Parties

Applicants: PT Ecogreen Oleochemicals (Kabil-Batam, Indonesia), Ecogreen Oleochemicals (Singapore) Pte Ltd (Singapore, Republic of Singapore), Ecogreen Oleochemicals GmbH (Dessau-Rosslau, Germany) (represented by: F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul the Council implementing Regulation (EU) No 1138/2011 of 8 November 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain fatty alcohols and their blends originating in India, Indonesia and Malaysia (OJ L 293, 11.11.2011, p. 1), in so far as it applies to the applicants;

— Order the Council of the European Union to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — infringement of Article 2(10)(i) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community [1] (hereafter referred to as 'the basic Regulation'); in that the Council manifestly erred in its assessment, by rejecting the applicants' claim, that PTEO and EOS constitute a single economic entity. As a result, the Council has deducted an impermissible notional commission pursuant to Article 2(10)(i) of the basic Regulation when determining the export price, since it is well-established jurisprudence that the existence of a single economic entity precludes such a deduction of a notional commission;

2. As an alternative, second plea in law, alleging

   — that the inclusion of a notional profit margin of 5 % when making an adjustment pursuant to Article 2(10)(i) of the basic Regulation constitutes an impermissible interpretation of Article 2(10)(i) of the basic Regulation. Only the actual mark-up received by the trader can be deducted from the export price. This second, alternative plea, is only raised in the case the Court would find that the Council did not make a manifest error of assessment when rejecting the applicants' claim that PTEO and EOS constitute a single economic entity.

[1] OJ L 343, 22.12.2009, p. 51

Action brought on 16 January 2012 — Icelandic Group UK v Commission

(Case T-35/12)

(2012/C 73/58)

Language of the case: English

Parties

Applicant: Icelandic Group UK Ltd (Grimsby, United Kingdom) (represented by: V. Sloane, Barrister)

Defendant: European Commission

Form of order sought

— Annul Article 1(2) of Commission Decision C(2011) 8113 FINAL of 15.11.2011 finding that repayment of import duties is not justified in a particular case (*rem* 04/2010); and

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

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 breach of essential procedural requirements and Article 906a of Commission Regulation 2454/93/EEC ([1]), as the defendant failed to observe applicant's rights of defence in the procedure leading to the adoption of Article 1(2) of the contested decision, by adopting a decision adversely affecting the rights of the applicant without giving it the right to be heard on the basis for that unfavourable decision, namely the defendant's assessment that the United Kingdom authorities had not committed an error as regards imports made from 1 December 2006 to 24 July 2007.

2. Second plea in law, alleging manifest error of assessment and breach of Article 220(2)(b), Article 236 and/or Article 239 of Council Regulation (EEC) No 2913/92 ([2]), as:

   — The defendant made a manifest error of assessment in finding that the conditions for repayment of customs duty under Article 220(2)(b) of Council Regulation (EEC) No 2913/92 were not met in the present circumstances. The assessment of the defendant that the United Kingdom authorities had not committed an error as regards imports made from 1 December 2006 to 24 July 2007 is manifestly wrong;

   — Further or alternatively, the defendant made a manifest error of assessment in deciding that the conditions for repayment of customs duty in Article 239 of Council Regulation (EEC) No 2913/92 were not met. The defendant's assessment that the circumstances of the present case do not disclose a special situation within the meaning of Article 239 was manifestly wrong.

([1]) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1)

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

Action brought on 25 January 2012 — Advance Magazine Publishers v OHIM — López Cabré (TEEN VOGUE)

(Case T-37/12)

(2012/C 73/59)

Language in which the application was lodged: English

Parties

Applicant: Advance Magazine Publishers, Inc. (New York, United States) (represented by: T. Alkin, Barrister)

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

Other party to the proceedings before the Board of Appeal: Eduardo López Cabré (Barcelona, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 November 2011 in case R 1763/2010-4, insofar as it relates to the opposition based on the earlier mark; and

— Order the opponent to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'TEEN VOGUE', for among others goods in class 18 — Community trade mark application No 5265517

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: Spanish trade mark registration No 496371 of the word mark 'VOGUE', for goods in class 18; Spanish trade mark registration No 2153619 of the figurative mark 'VOGUE moda en lluvia', for goods in class 18; Community trade mark registration No 2082287 of the word mark 'VOGUE', for goods in class 18

Decision of the Opposition Division: Partially rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 43(2) of Council Regulation No 207/2009 and/or of Rule 22(3) of Commission Regulation (EC) No 2868/95, as well as infringement of Article 8(1)(b) Council Regulation No 207/2009, as the Board of Appeal erred in law in finding that the opponent's evidence 'taken as a whole' was sufficient to prove use of the earlier mark, and as the Board of Appeal erred in finding that there was likelihood of confusion between the applicant's mark and the opposed mark.

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