ISSN 1977-091X

Official Journal of the European Union

C 311

English edition

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Volume 54

22 October 2011

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Price:
EUR 4

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COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 311/01)

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

OJ C 305, 15.10.2011

Past publications

OJ C 298, 8.10.2011

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OJ C 282, 24.9.2011

OJ C 269, 10.9.2011

OJ C 252, 27.8.2011

OJ C 238, 13.8.2011

These texts are available on:

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Election of the President of the Civil Service Tribunal

(2011/C 311/02)

On 6 October 2011, in accordance with Article 4(1) of Annex I to the Statute of the Court of Justice and Article 6(1) of the Rules of Procedure, the Judges of the Civil Service Tribunal elected S. VAN RAEPENBUSCH as President, for the period from 7 October 2011 to 30 September 2014.

Composition of the Chambers and attachment of the Judges to Chambers

(2011/C 311/03)

By decision of 30 November 2005, [1] the Tribunal decided to sit in three Chambers and as a full Court. By decision of 10 October 2011, for the period from 7 October 2011 to 30 September 2014, the Tribunal elected as Presidents of the Chambers Judges H. KREPPEL and M. I. ROFES I PUJOL and attached the Judges to the Chambers as follows:

First Chamber

H. KREPPEL, President of Chamber,

E. PERILLO and R. BARENTS, Judges,

Second Chamber

M. I. ROFES I PUJOL, President of Chamber,

I. BORUTA and K. BRADLEY, Judges,

Third Chamber, sitting with three Judges

S. VAN RAEPENBUSCH, President of the Tribunal,

I. BORUTA, E. PERILLO, R. BARENTS and K. BRADLEY, Judges.

In the Third Chamber, the President will sit, alternately, either with Judges I. BORUTA and E. PERILLO or with Judges R. BARENTS and K. BRADLEY, subject always to connections between cases.

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[1] OJ 2005 C 322, p. 16.

Criteria for the assignment of cases to Chambers

(2011/C 311/04)

On 10 October 2011, in accordance with Article 4 of Annex I to the Statute of the Court of Justice and Article 12 of the Rules of Procedure, the Tribunal decided to assign cases, as soon as the application has been lodged, to the First, Second and Third Chambers in turn depending on the order in which they are lodged at the Registry and without prejudice to Articles 13, 14 and 46(2) of the Rules of Procedure.

The President of the Tribunal may derogate from the above rules on assignment for reasons of connections between cases and to ensure a balanced and coherent workload within the Tribunal.

Designation of the judge to replace the President of the Tribunal for the purpose of dealing with applications for interim measures

(2011/C 311/05)

On 10 October 2011, in accordance with Article 103(2) of the Rules of Procedure, the Tribunal decided that, for the period from 7 October 2011 to 30 September 2012, Judge H. KREPPEL will replace the President of the Tribunal for the purpose of dealing with applications for interim measures in the event of the President's absence or his being prevented from attending.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 8 September 2011 (reference for a preliminary ruling from the Corte suprema di cassazione (Italy)) — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v Paint Graphos Soc. coop. arl (C-78/08), Adige Carni Soc. coop. arl, in liquidation v Agenzia delle Entrate, Ministero dell'Economia e delle Finanze (C-79/08), and Ministero delle Finanze v Michele Franchetto (C-80/08)

(Joined Cases C-78/08 to C-80/08) [1]

(Reference for a preliminary ruling — Admissibility — State aid — Tax advantages granted to cooperative societies — Categorisation as State aid within the meaning of Article 87 EC — Compatibility with the common market — Conditions)

(2011/C 311/06)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate (C-78/08), Adige Carni Soc. coop. arl, in liquidation (C-79/08), Ministero delle Finanze (C-80/08)

Defendants: Paint Graphos Soc. coop. arl (C-78/08), Agenzia delle Entrate, Ministero dell'Economia e delle Finanze (C-79/08), Michele Franchetto (C-80/08)

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Articles 81 EC, 87 EC and 88 EC, Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ 2003 L 207, p. 1) and Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (OJ 2003 L 207, p. 25) — Concept of aid granted the by Member States — Italian law granting tax advantages to agricultural and producers' and workers' cooperative societies

Operative part of the judgment

Tax exemptions, such as those at issue in the main proceedings, granted to producers' and workers' cooperative societies under national legislation such as that set out in Article 11 of Decree No 601/1973 of the President of the Republic of 29 September 1973 concerning rules on tax benefits, in the version in force from 1984 to 1993, constitute State aid within the meaning of Article 87(1) EC only in so far as all the requirements for the application of that provision are met. As regards a situation such as that which gave rise to the disputes before the referring court, it is for that court to determine in particular whether the tax exemptions in question are selective and whether they may be justified by the nature or general scheme of the national tax system of which they form part, by establishing in particular whether the cooperative societies at issue in the main proceedings are in fact in a comparable situation to that of other operators in the form of profit making legal entities and, if that is indeed the case, whether the more advantageous tax treatment enjoyed by those cooperative societies, first, forms an inherent part of the essential principles of the tax system applicable in the Member State concerned and, second, complies with the principles of consistency and proportionality.

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[1] OJ C 116, 9.5.2008.

Judgment of the Court (Third Chamber) of 8 September 2011 — European Commission v Kingdom of the Netherlands, Federal Republic of Germany

(Case C-279/08 P) [1]

(Appeal — State aid — Article 87(1) EC — Emission trading scheme for nitrogen oxides — Classification of the national measure as State aid — Decision declaring aid to be compatible with the common market — Concept of selectivity — Advantage financed through State resources — Protection of the environment — Obligation to state the reasons for decision — Admissibility)

(2011/C 311/07)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: C. Urraca Caviedes, K. Gross and H. van Vliet, Agents)

Other parties to the proceedings: Kingdom of the Netherlands (represented by: C.M. Wissels and D.J.M. de Grave, Agents), Federal Republic of Germany (represented by: M. Lumma, B. Klein and T. Henze, Agents)

Interveners in support of the Kingdom of the Netherlands: French Republic (represented by: G. de Bergues, A.-L. Vendrolini, J. Gstalter and B. Cabouat, Agents), Republic of Slovenia (represented by: V. Klemenc, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson, S. Behzadi-Spencer, S. Ossowski and H. Walker, Agents, and by K. Bacon, Barrister)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber, Extended Composition) of 10 April 2008 in Case T-233/04 *Kingdom of the Netherlands* v *Commission*, by which the Court of First Instance annulled Commission Decision C(2003) 1761 final of 24 June 2003 relating to State aid N 35/2003 concerning the emission trading scheme for nitrogen oxides notified by the Kingdom of the Netherlands

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 10 April 2008 in Case T-233/04 Netherlands v Commission;*

2. *Dismisses the cross-appeals;*

3. *Dismisses the action at first instance;*

4. *Orders the Kingdom of the Netherlands to pay the costs incurred by the European Commission relating to the proceedings at first instance and to bear its own costs in those proceedings.*

5. *Orders the European Commission and the Kingdom of the Netherlands to bear their own costs relating to the appeal.*

6. *Orders the Federal Republic of Germany, the French Republic, the Republic of Slovenia and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 223, 30.8.2008.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Østre Landsret (Denmark)) — Lady & Kid A/S, Direct Nyt ApS, A/S Harald Nyborg Isenkram- og Sportsforretning, KID-Holding A/S v Skatteministeriet

(Case C-398/09) ([1])

(Refusal to reimburse a tax paid in error — Unjust enrichment arising from the link between the introduction of that tax and the abolition of other taxes)

(2011/C 311/08)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicants: Lady & Kid A/S, Direct Nyt ApS, A/S Harald Nyborg Isenkram- og Sportsforretning, KID-Holding A/S

Defendant: Skatteministeriet

Re:

Reference for preliminary ruling — Østre Landsret — Interpretation of the judgment of the Court in Joined Cases C-192/95 to C-218/95 *Comateb and Others* and of the principles of Community law governing unjust enrichment — Refusal to reimburse a national tax held to be incompatible with Community law, on grounds of unjust enrichment arising from the direct link between the introduction of the unlawful tax and the abolishment of other taxes charged on another basis — Non-reimbursement having the effect of placing product importers at a disadvantage in relation to purchasers of similar domestic products due to the proportionally greater payment of the unlawful tax by the former as compared to the latter.

Operative part of the judgment

The rules of European Union law on recovery of sums wrongly paid must be interpreted to the effect that recovery of sums wrongly paid can give rise to unjust enrichment only when the amounts wrongly paid by a taxpayer under a tax levied in a Member State in breach of European Union law have been passed on direct to the purchaser. Consequently, European Union law precludes a Member State from refusing reimbursement of a tax wrongfully levied on the ground that the amounts wrongly paid by the taxpayer have been set off by a saving made as a result of the concomitant abolition of other levies, since such a set-off cannot be regarded, from the point of view of European Union law, as an unjust enrichment as regards that tax.

([1]) OJ C 312, 19.12.2009.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany)) — Karl Heinz Bablok and Others v Freistaat Bayern

(Case C-442/09) ([1])

(Genetically modified food for human consumption — Regulation (EC) No 1829/2003 — Articles 2 to 4 and 12 — Directive 2001/18/EC — Article 2 — Directive 2000/13/EC — Article 6 — Regulation (EC) No 178/2002 — Article 2 — Apicultural products — Presence of pollen from genetically modified plants — Consequences — Placing on the market — Definition of 'organism' and 'food for human consumption containing ingredients produced from genetically modified organisms')

(2011/C 311/09)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Karl Heinz Bablok, Stefan Egeter, Josef Stegmeier, Karlhans Müller, Barbara Klimesch

Defendant: Freistaat Bayern

Intervening parties: Monsanto Technology LLC, Monsanto Agrar Deutschland GmbH, Monsanto Europe SA/NV

Re:

Reference for a preliminary ruling — Bayerischer Verwaltungsgerichtshof — Interpretation of Article 2.5 and 2.10, Articles 3(1), 4(2) and 12(2) of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1) — Unintentional and adventitious presence in apicultural products of pollen from genetically modified plants which is no longer capable of reproducing — Possible repercussions on the procedure for placing such products on the market — Concept of 'genetically modified organism' and 'produced from GMOs'

Operative part of the judgment

1. *The concept of a genetically modified organism within the meaning of Article 2.5 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed must be interpreted as meaning that a substance such as pollen derived from a variety of genetically modified maize, which has lost its ability to reproduce and is totally incapable of transferring the genetic material which it contains, no longer comes within the scope of that concept.*

2. *Article 2.1, 2.10 and 2.13 and Article 3(1)(c) of Regulation No 1829/2003, Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, and Article 6(4)(a) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs must be interpreted as meaning that, when a substance such as pollen containing genetically modified DNA and genetically modified proteins is not liable to be considered as a genetically modified organism, products such as honey and food supplements containing such a substance constitute 'food … containing ingredients produced from [genetically modified organisms]' within the meaning of Article 3(1)(c) of Regulation No 1829/2003. That classification may be made irrespective of whether contamination by the substance in question was intentional or adventitious.*

3. *Articles 3(1) and 4(2) of Regulation No 1829/2003 must be interpreted as meaning that, when they imply an obligation to authorise and supervise a foodstuff, a tolerance threshold such as that provided for in respect of labelling in Article 12(2) of that regulation may not be applied to that obligation by analogy.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Fourth Chamber) of 8 September 2011 (references for a preliminary ruling from the Conseil d'État (France)) — Monsanto SAS and Others v Ministre de l'Agriculture et de la Pêche

(Joined Cases C-58/10 to C-68/10) ([1])

(Agriculture — Genetically modified animal feed — Emergency measures — Measure adopted by a Member State — Provisional suspension of an authorisation granted pursuant to Directive 90/220/EEC — Legal basis — Directive 2001/18/EC — Article 12 — Sectoral legislation — Article 23 — Safeguard clause — Regulation (EC) No 1829/2003 — Article 20 — Existing products — Article 34 — Regulation (EC) No 178/2002 — Articles 53 and 54 — Conditions of application)

(2011/C 311/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Monsanto SAS (C-58/10 and C-59/10), Monsanto Agriculture France SAS (C-58/10 and C-59/10), Monsanto International SARL (C-58/10 and C-59/10), Monsanto Technology LLC (C-58/10 and C-59/10), Monsanto Europe SA (C-59/10), Association générale des producteurs de maïs (AGPM) (C-60/10), Malaprade SCEA and Others (C-61/10), Pioneer Génétique SARL (C-62/10), Pioneer Semences SAS (C-62/10), Union française des semenciers (UFS), formerly Syndicat des établissements de semences agréés pour les semences de maïs (Seproma) (C-63/10), Caussade Semences SA (C-64/10), Limagrain Europe SA, formerly Limagrain Verneuil Holding SA (C-65/10), Maïsadour Semences SA (C-66/10), Ragt Semences SA (C-67/10), Euralis Semences SAS (C-68/10), Euralis Coop (C-68/10)

Defendant: Ministre de l'Agriculture et de la Pêche

Intervening parties: Association France Nature Environnement (C-59/10 and C-60/10), Confédération paysanne (C-60/10)

Re:

References for a preliminary ruling — Conseil d'État — Interpretation of Articles 20 and 34 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1), Articles 12 and 23 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of

genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) and Articles 53 and 54 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) — Provisional suspension or prohibition on the use or sale of varieties of maize seed derived from a genetically modified maize line, after authorisation to place that product on the market — Power of the national authorities to adopt such measures — Concepts of 'risk' and 'serious risk' to the environment — Criteria for identifying the risk, evaluating its probability and assessing its effects

Operative part of the judgment

1. *In circumstances such as those of the disputes in the main proceedings, genetically modified organisms such as MON 810 maize, which were authorised as, inter alia, seeds for the purpose of planting under Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms and which were notified as existing products in accordance with the conditions set out in Article 20 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, and were subsequently the subject of a pending application for renewal of authorisation, may not have their use or sale provisionally suspended or prohibited, by a Member State, under Article 23 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220; such measures may, however, be adopted pursuant to Article 34 of Regulation No 1829/2003.*

2. *Article 34 of Regulation No 1829/2003 authorises a Member State to adopt emergency measures only in accordance with the procedural conditions set out in Article 54 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, compliance with which it is for the national court to ascertain.*

3. *With a view to the adoption of emergency measures, Article 34 of Regulation No 1829/2003 requires Member States to establish, in addition to urgency, the existence of a situation which is likely to constitute a clear and serious risk to human health, animal health or the environment.*

(1) OJ C 100, 17.4.2010.

Judgment of the Court (Fourth Chamber) of 8 September 2011 (reference for a preliminary ruling from the Rechtbank van Eerste Aanleg te Brussel (Belgium)) — Q-Beef NV (C-89/10), Frans Bosschaert (C-96/10) v Belgische Staat (C-89/10), Belgische Staat, Vleesgroothandel Georges Goossens en Zonen NV, Slachthuizen Goossens NV (C-96/10)

(Joined Cases C-89/10 and C-96/10) (1)

(National charges incompatible with EU law — Charges paid under a financial support scheme and levies declared contrary to EU law — Scheme replaced by another scheme found to be compatible — Recovery of charges improperly levied — Principles of equivalence and effectiveness — Duration of the limitation period — Day on which the time-limit starts to run — Claims to recover from the State and from individuals — Different time-limits)

(2011/C 311/11)

Language of the case: Dutch

Referring court

Rechtbank van Eerste Aanleg te Brussel

Parties to the main proceedings

Applicants: Q-Beef NV (C-89/10), Frans Bosschaert (C-96/10)

Defendants: Belgische Staat (C-89/10), Belgische Staat, Vleesgroothandel Georges Goossens en Zonen NV, Slachthuizen Goossens NV (C-96/10)

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Brussel — Interpretation of the Community law on the principles of equivalence and effectiveness — National charges incompatible with Community law — Charges paid under a system of financial support and contributions which was declared contrary to Community law — System replaced by a new system held to be compatible — Reimbursement of charges levied but not due — Limitation period

Operative part of the judgment

1. *EU law does not preclude, in circumstances such as those in the main proceedings, the application of a five-year limitation period which is laid down in the national legal system for claims in respect of debts owed by the State to claims for the reimbursement of charges paid in breach of that law under a 'hybrid system of aid and charges'.*

2. *EU law does not preclude national legislation which, in circumstances such as those in the main proceedings, grants an individual a longer limitation period to recover charges from an individual acting as an intermediary, to whom he unwarrantedly paid the charges and who paid them on behalf of that first individual for the benefit of the State, whereas, if that first individual had paid those charges directly to the State, the action of that individual would have been restricted by a shorter time-limit, by way of derogation from the ordinary rules governing actions between private individuals for the recovery of sums paid but not due, on condition that the individuals acting as intermediaries may effectively bring actions against the State for sums which may have been paid on behalf of other individuals.*

3. *In circumstances such as those in the main proceedings, the Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law at issue is incompatible with EU law has no bearing on the starting date of the limitation period laid down by national law in respect of claims against the State.*

([1]) OJ C 113, 1.5.2010.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Tribunale di Venezia — Italy) — Ivana Scattolon v Ministero dell'Istruzione, dell'Università e della Ricerca

(Case C-108/10) ([1])

(Social policy — Directive 77/187/EEC — Maintenance of the rights of workers in the event of a transfer of an undertaking — Meaning of 'undertaking' and 'transfer' — Transferor and transferee governed by public law — Application, from the date of transfer, of the collective agreement in force with the transferee — Salary treatment — Whether length of service completed with the transferor to be taken into account)

(2011/C 311/12)

Language of the case: Italian

Referring court

Tribunale Ordinario di Venezia

Parties to the main proceedings

Applicant: Ivana Scattolon

Defendant: Ministero dell'Istruzione, dell'Università e della Ricerca

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Venezia — Scope of Council Directives 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26) and 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Interpretation of Article 3(1) of Directive 77/187/EEC — Transfer of local authority cleaning staff from a local authority to the State — Safeguarding of rights, including length of service with the local authority

Operative part of the judgment

1. *The takeover by a public authority of a Member State of staff employed by another public authority and entrusted with the supply to schools of auxiliary services including, in particular, tasks of maintenance and administrative assistance constitutes a transfer of an undertaking falling within Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, where that staff consists in a structured group of employees who are protected as workers by virtue of the domestic law of that Member State.*

2. *Where a transfer within the meaning of Directive 77/187 leads to the immediate application to the transferred workers of the collective agreement in force with the transferee, and where the conditions for remuneration are linked in particular to length of service, Article 3 of that directive precludes the transferred workers from suffering, in comparison with their situation immediately before the transfer, a substantial loss of salary by reason of the fact that their length of service with the transferor, equivalent to that completed by workers in the service of the transferee, is not taken into account when determining their starting salary position with the latter. It is for the national court to examine whether, at the time of the transfer at issue in the main proceedings, there was such a loss of salary.*

([1]) OJ C 134, 22.5.2010.

Judgment of the Court (First Chamber) of 8 September 2011 (reference for a preliminary ruling from the Conseil d'État — Belgium) — European Air Transport SA v Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

(Case C-120/10) ([1])

(Air transport — Directive 2002/30/EC — Noise-related operating restrictions at Community airports — Noise level limits that must be observed when overflying built-up areas near an airport)

(2011/C 311/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: European Air Transport SA

Defendants: Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Articles 2(e), 4(4) and 6(2) of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ 2002 L 85, p. 40) — Limits on noise levels to be complied with by aircraft over-flying urban territories located near an airport — Concept of 'operating restrictions' — Restrictions adopted in connection with aircraft which are marginally compliant — Whether it is possible to impose such restrictions on the basis of the noise level as measured on the ground — Effect of the Convention on International Civil Aviation (Chicago Convention)

Operative part of the judgment

Article 2(e) of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports must be interpreted as meaning that an 'operating restriction' is a prohibition, absolute or temporary, that prevents the access of a civil subsonic jet aeroplane to a European Union airport. Consequently, national environmental legislation imposing limits on maximum noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport, does not itself constitute an 'operating restriction' within the meaning of that provision, unless, in view of the relevant economic, technical and legal contexts, it can have the same effect as prohibitions of access to the airport in question.

([1]) OJ C 148, 5.6.2010.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Tribunale di Isernia — Italy) — Criminal proceedings against Aldo Patriciello

(Case C-163/10) ([1])

(Member of the European Parliament — Protocol on Privileges and Immunities — Article 8 — Criminal proceedings for the offence of making false accusations — Statements made outside the precincts of the Parliament — Definition of opinion expressed in the performance of parliamentary duties — Immunity — Conditions)

(2011/C 311/14)

Language of the case: Italian

Referring court

Tribunale di Isernia

Party in the main proceedings

Aldo Patriciello

Re:

Reference for a preliminary ruling — Tribunale di Isernia — Interpretation of Article 9 of the Protocol on the privileges and immunities of the European Communities (OJ 1967 152, p. 13) — Member of the European Parliament charged with slander following a false accusation levelled at a representative of the forces of law and order — Notion of the expression of an opinion in the performance of parliamentary duties

Operative part of the judgment

Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the court making the reference to determine whether those conditions have been satisfied in the case in the main proceedings.

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 8 September 2011 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo nº 12 de Sevilla (Spain)) — Francisco Javier Rosado Santana v Consejería de Justicia y Administración Pública de la Junta de Andalucía

(Case C-177/10) ([1])

(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Application of the framework agreement to the civil service — Principle of non-discrimination)

(2011/C 311/15)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo nº 12 de Sevilla

Parties

Applicant: Francisco Javier Rosado Santana

Defendant: Consejería de Justicia y Administración Pública de la Junta de Andalucía

Re:

Reference for a preliminary ruling — Juzgado de lo Contencioso-Administrativo No 12 de Sevilla — Interpretation of 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) — Clause 4 of the Annex (principle of non-discrimination) — Scope — Discrimination held to be permissible by the constitutional court — Obligations of the national court

Operative part of the judgment

1. *Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, set out in the Annex thereto, must be interpreted, on the one hand, as applying to contracts and relationships concluded with the public authorities and other public-sector bodies and, on the other, as precluding any difference in treatment as between career civil servants and comparable interim civil servants of a Member State, based solely on the ground that the latter are employed for a fixed term, unless different treatment is justified on objective grounds for the purposes of clause 4(1) of the framework agreement.*

2. *Clause 4 of the framework agreement on fixed-term work must be interpreted as precluding account not being taken of periods of service completed as an interim civil servant in a public administration for the purposes of permitting such a person, who has subsequently become a career civil servant, to obtain an internal promotion available only to career civil servants, unless that exclusion is justified by objective grounds for the purposes of clause 4(1) of that agreement. The mere fact that the interim civil servant completed those periods of service under a fixed-term employment contract or relationship does not constitute such an objective ground.*

3. *The primary law of the European Union, Directive 1999/70 and the framework agreement are to be interpreted as not precluding, in principle, national legislation which provides that, where an action brought by a career civil servant challenging a decision rejecting his candidature for a competition is based on the fact that the promotion procedure was contrary to clause 4 of the framework agreement, that action must be brought within two months of the publication of the competition notice. Nevertheless, such a time-limit could not be relied upon against a career civil servant, who has been a candidate in that competition, who has been admitted to the tests and whose name was placed on the definitive list of successful candidates for that competition, if that were liable to render practically impossible or excessively difficult the exercise of the rights conferred by the framework agreement. In those circumstances, time for the purposes of the two-month time-limit could run only from notification of the decision annulling the civil servant's admission to that competition and his appointment as a career civil servant in the higher group.*

([1]) OJ C 179, 3.7.2010.

Judgment of the Court (Eighth Chamber) of 8 September 2011 — European Commission v Portuguese Republic

(Case C-220/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Pollution and nuisances — Treatment of urban waste water — Articles 3, 5 and 6 — Failure to identify sensitive areas — Failure to implement more stringent treatment of discharges in sensitive areas)

(2011/C 311/16)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and S. Pardo Quintillán, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and M.J. Lois, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40)

Operative part of the judgment

The Court:

1. *Declares that,*

   — *by identifying as less sensitive areas all the coastal waters of the Island of Madeira and all the coastal waters of the Island of Porto Santo;*

   — *by subjecting to treatment less stringent than that prescribed in Article 4 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment urban waste water from agglomerations with a population equivalent of more than 10 000, such as the agglomerations of Funchal and Câmara de Lobos, discharged into the coastal waters of the Island of Madeira;*

   — *by failing to ensure, with regard to an agglomeration along the estuary of the River Tagus, namely Quinta do Conde, the provision of collecting systems for urban waster water in accordance with Article 3 of the directive;*

   — *by failing to ensure, with regard to the agglomerations of Albufeira/Armação de Pêra, Beja, Chaves and Viseu and four agglomerations discharging on the left bank of the Tagus estuary, Barreiro/Moita, Corroios/Quinta da Bomba, Quinta do Conde and Seixal, treatment more stringent than that prescribed in Article 4 of the directive;*

   the Portuguese Republic has failed to fulfil its obligations under Articles 3, 5 and 6 of Directive 91/271;

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

([1]) OJ C 209, 31.7.2010.

Judgment of the Court (Second Chamber) of 8 September 2011 (references for a preliminary ruling from the Bundesarbeitsgericht (Germany)) — Sabine Hennigs (C-297/10) v Eisenbahn-Bundesamt, Land Berlin (C-298/10) v Alexander Mai

(Joined Cases C-297/10 and C-298/10) ([1])

(Directive 2000/78/EC — Articles 2(2) and 6(1) — Charter of Fundamental Rights of the European Union — Articles 21 and 28 — Collective agreement on pay for public sector contractual employees of a Member State — Pay determined by reference to age — Collective agreement abolishing the determination of pay by reference to age — Maintenance of established rights)

(2011/C 311/17)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicants: Sabine Hennigs (C-297/10), Land Berlin (C-298/10)

Defendants: Eisenbahn-Bundesamt (C-297/10), Alexander Mai (C-298/10)

Re:

References for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Article 21 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389), as implemented by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Remuneration of contractual public sector employees of a Member State — National rules providing for differences in basic pay according to age

Operative part of the judgment

1. *The principle of non-discrimination on grounds of age proclaimed in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, more particularly Articles 2 and 6(1) of that directive, must be interpreted as precluding a measure laid down by a collective agreement such as that at issue in the main proceedings which provides that, within each salary group, the basic pay step of a public sector contractual employee is determined on appointment by reference to the employee's age. The fact that European Union law precludes that measure and that it appears in a collective agreement does not interfere with the right to negotiate and conclude collective agreements recognised in Article 28 of the Charter of Fundamental Rights of the European Union.*

2. *Articles 2 and 6(1) of Directive 2000/78 and Article 28 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding a measure in a collective agreement, such as that at issue in the main proceedings in Case C-297/10, which replaces a system of pay leading to discrimination on grounds of age by a system of pay based on objective criteria while maintaining, for a transitional period limited in time, some of the discriminatory effects of the earlier system in order to ensure that employees in post are transferred to the new system without suffering a loss of income.*

([1]) OJ C 260, 25.9.10.

Order of the Court (Fifth Chamber) of 13 July 2011 (reference for a preliminary ruling from the Curtea de Apel Craiova — Romania) — Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului pentru Mediu v Claudia Norica Vijulan

(Case C-335/10) ([1])

(Article 104(3), first subparagraph of the Rules of Procedure — Domestic taxation — Article 110 TFEU — Pollution tax levied at the time of registration of motor vehicles)

(2011/C 311/18)

Language of the case: Romanian

Referring court

Curtea de Apel Craiova

Parties to the main proceedings

Applicants: Administrația Finanțelor Publice a Municipiului Târgu-Jiu, Administrația Fondului pentru Mediu

Defendant: Claudia Norica Vijulan

Re:

Reference for a preliminary ruling — Curtea de Apel Craiova — Registration of second-hand cars previously registered in other Member States — Environmental tax levied on motor vehicles at the time of their first registration in a given Member State — Compatibility of the national legislation with Art. 110 TFEU — Temporary exemption for vehicles having certain characteristics

Operative part of the order

Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax levied on motor vehicles at the time of their first registration in that Member State, where that tax measure is designed to discourage putting second-hand vehicles purchased in other Member States into circulation in that Member State, without discouraging the purchase of second-hand vehicles of comparable age and use on the domestic market.

([1]) OJ C 274, 09.10.2010.

Order of the Court (Fifth Chamber) of 13 July 2011 (reference for a preliminary ruling from the Curtea de Apel Bacău (Romania)) — Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău v Lilia Druțu

(Case C-438/10) ([1])

(Article 104(3), first indent of the Rules of Procedure — Internal impositions — Article 110 TFEU — Introduction of a pollution tax on first registration of motor vehicles)

(2011/C 311/19)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicants: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Defendant: Lilia Druțu

Re:

Reference for a preliminary ruling — Curtea de Appel Bacău Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in other Member States — Environmental tax on motor vehicles on first registration in a Member State — Compatibility of national legislation with Article 110 TFEU — Discrimination compared with second-hand vehicles already registered in that Member State and not subject to that tax on subsequent sale and new registration

Operative part of the order

Article 110 TFEU must be interpreted as meaning that it precludes a Member State from introducing a pollution tax on motor vehicles on first registration in that Member State if that fiscal measure is set up in such a way as to discourage the placing on the market in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of a similar age and condition on the national market.

([1]) OJ C 328, 4.12.2010.

Order of the Court of 9 June 2011 — Télévision française 1 SA (TF1) v European Commission, Métropole télévision (M6), Canal +, French Republic, France Télévisions

(Case C-451/10 P) ([1])

(Appeal — State aid — Article 86(2) EC — Public service broadcasting — Decision not to raise objections — Proof — Economic efficiency of the undertaking)

(2011/C 311/20)

Language of the case: French

Parties

Appellant: Télévision française 1 SA (TF1) (represented by: J.-P. Hordies, avocat)

Other parties to the proceedings: European Commission (represented by: T. Maxian Rusche and B. Stromsky, Agents), Métropole télévision (M6), Canal + (represented by: E. Guillaume, avocat), French Republic (represented by: G. de Bergues and J. Gstalter, Agents), France Télévisions (represented by: J.-P. Gunther and A. Giraud, avocats)

Re:

Appeal brought against the judgment of the General Court (Fifth Chamber) delivered on 1 July 2010 in Joined Cases T-568/08 and T-573/08 *TF1 and M6* v *Commission,* by which the General Court dismissed the appellant's action for annulment of Commission Decision C(2008) 3506 final of 16 July 2008 relating to the proposed grant, by the French Republic, of capital funding of EUR 150 million to France Télévisions SA — Infringement of the rules relating to the burden of proof and the taking of evidence — Infringement of Article 106(2) TFEU — Concept of 'service of general economic interest' — No serious difficulties

Operative part of the order

1. *The appeal is dismissed;*

2. *Télévision française 1 SA (TF1) is ordered to pay the costs;*

3. *Canal + and the French Republic are ordered to bear their own costs.*

([1]) OJ C 328, 4.12.2010.

Order of the Court (Fifth Chamber) of 29 June 2011 — adp Gauselmann GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-532/10 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Figurative mark Archer Maclean's Mercury — Opposition by the proprietor of the national word mark Merkur)

(2011/C 311/21)

Language of the case: English

Parties

Appellant: adp Gauselmann GmbH (represented by: P. Koch Moreno, abogada)

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

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 9 September 2010 in Case T-106/09 *adp Gauselmann* v *OHIM* by which the General Court dismissed an action for annulment brought by the proprietor of the national word mark 'Merkur' for goods in Classes 6, 9, 28, 35, 37, 41 and 42 against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 12 January 2009 in Case R 1266/2007-1 dismissing the appeal against the Opposition Division's decision, which rejected the opposition brought by the appellant against the registration of the figurative mark 'Archer Maclean's Mercury' in respect of goods in Classes 9, 16 and 28 — Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Likelihood of confusion — Criteria for assessment

Operative part of the order

1. *The appeal is dismissed.*

2. *adp Gauselmann GmbH shall pay the costs.*

([1]) OJ C 38, 5.2.2011.

Order of the Court (Seventh Chamber) of 7 July 2011 — MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-536/10 P) [1]

(Appeal — Community trade mark — Absolute ground for refusal — Lack of distinctive character — Word sign 'ROI ANALYZER')

(2011/C 311/22)

Language of the case: German

Parties

Appellant: MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor (represented by: W. Göpfert, Rechtsanwalt)

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

Re:

Appeal against the judgment of the General Court (Second Chamber) delivered on 10 September 2010 in Case T-233/08 *MPDV Mikrolab* v *OHIM*, by which the General Court dismissed the action for annulment of the decision of the Fourth Board of Appeal of OHIM of 15 April 2008 dismissing the appeal against the examiner's decision to refuse registration of the word sign 'ROI ANALYZER' as a Community trade mark for certain goods and services in Classes 9, 35 and 42 — Distinctive character of the mark

Operative part of the order

1. *The appeal is dismissed as being in part manifestly inadmissible and in part manifestly unfounded;*

2. *MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor is ordered to pay the costs.*

[1] OJ C 30, 29.1.2011.

Order of the Court (Fifth Chamber) of 13 July 2011 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău v Lilia Druțu

(Case C-573/10) [1]

(Article 104(3), first indent of the Rules of Procedure — Internal taxation — Article 110 TFEU — Introduction of a pollution tax on first registration of motor vehicles)

(2011/C 311/23)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicants: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Defendant: Lilia Druțu

Re:

Reference for a preliminary ruling — Curtea de Appel Bacău Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in other Member States — Environmental tax on motor vehicles on first registration in a Member State — Compatibility of national legislation with Article 110 TFEU — Discrimination compared with second-hand vehicles already registered in that Member State and not subject to that tax on subsequent sale and new registration

Operative part of the order

Article 110 TFEU must be interpreted as meaning that it precludes a Member State from introducing a pollution tax on motor vehicles on first registration in that Member State if that fiscal measure is set up in such a way as to discourage the placing on the market in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of a similar age and condition on the national market.

[1] OJ C 46, 12.2.2011.

Reference for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 27 May 2011 — Dansk Funktionærforbund, Serviceforbundet, acting on behalf of Frank Frandsen v Cimber Air A/S

(Case C-266/11)

(2011/C 311/24)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Dansk Funktionærforbund, Serviceforbundet, acting on behalf of Frank Frandsen

Defendant: Cimber Air A/S

Question referred

Is Council Directive 2000/78/EC [1] to be interpreted as meaning that the prohibition on all forms of discrimination on grounds of age precludes national rules from upholding a collective agreement between an airline company and the trade organisation representing that company's pilots which provides for compulsory retirement at 60 years of age, when that agreement provision, which applied also before the entry into force of the Council Directive and before the entry into force of the national implementing legislation, has as its purpose the protection of aviation safety on the basis of a general consideration of reduced performance ability with age, without a specific assessment of the individual pilot's performance ability, but such that the individual pilot may apply to be allowed to continue in his employment for a year at a time following approval by a committee made up of employer and employee representatives?

[1] OJ 2000 L 303, p. 16.

Appeal brought on 24 June 2011 by United States Polo Association against the judgment of the General Court (Second Chamber) delivered on 13 April 2011 in Case T-228/09: United States Polo Association v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Textiles CMG, SA

(Case C-327/11 P)

(2011/C 311/25)

Language of the case: English

Parties

Appellant: United States Polo Association (represented by: P. Goldenbaum, Rechtsanwältin, T. Melchert, Rechtsanwalt and I. Rohr, Rechtsanwältin)

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

Form of order sought

The appellant claims that the Court should:

— set aside the Judgement of the General Court of 13 April 2011 in case T-228/09,

— annul the decision of the Board of Appeal R 08861/2008-4,

— order OHIM to pay its own costs and those of the appellant,

— and, should Textiles CMG S.A. intervene in the proceedings, order Textiles CMG S.A. to pay its own costs.

Pleas in law and main arguments

The appellant submits that the judgment of the General Court is vitiated by misinterpretation and misapplication of Article 8 (1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 (now Article 8(1)(b) of Regulation No. 207/2009) on the Community Trade Mark [1].

Based on this misinterpretation and misapplication, the General Court wrongly came to the conclusion that the Board of Appeal had been correct in finding that there was a likelihood of confusion between the trade marks **U.S. POLO ASSN.** (contested application) and **POLO-POLO** (earlier mark).

The General Court did not carry out a correct and complete global assessment of the likelihood of confusion and it did not sufficiently take into account or misapplied the principles of the case-law of the Court of Justice of the European Union in this regard.

The main arguments of the appellant regarding the deficiencies of the General Court's finding can be summarized as follows:

1. The General Court has misapplied the principles laid down in case 120104 Medion [2005] ECR 1-8551 regarding the possible independent distinctive role of one element in a composite sign although it does not dominate the overall impression.

   The General Court has first — correctly — denied that the word 'POLO' was dominant in the younger mark but has then — wrongly — derived an alleged independent distinctive function of the element 'POLO' from the fact that the other elements 'U.S.' and 'ASSN.' were short initials and abbreviations and from an assumed lack of meaning and alleged insufficient level of distinctiveness. This shows a wrong understanding of the requirement of an independent distinctive function of one element in a composite sign.

   The ruling of the Medion case can by no means be construed as establishing a general rule that any element of normal distinctiveness shared by two trademarks is to be regarded as having an independent distinctive role in a composite sign. The General Court has not taken into consideration that according to the Medion case there is a relation of rule and exception, the usual case being that the average consumer perceives a mark as a whole with the possibility that the overall impression may be dominated by one or more components of the composite sign and the exception being that, if an element is not dominant in the overall impression, it can only in exceptional cases beyond the usual case have an independent distinctive role. The General Court has not submitted any reasons for such an exceptional case.

2. The General Court attributed an exclusive and decisive value to the fact that the two opposing signs share the element 'POLO' without correctly applying the principles of global assessment of the likelihood of confusion, such as emerges, in particular, from Case C-251/95 SABEL [1997] ECR 1-6191.

It has not observed the principle that the general public perceives the mark as a whole and does not analyse its various details but — with respect to the earlier mark — has just taken one component and compared it with the younger mark.

In particular, it failed to take the circumstances of the present case fully into account, by disregarding the differences between the opposing signs, in particular the striking duplication of the element 'POLO' in the earlier mark. The single element 'POLO' does neither dominate the earlier mark 'POLO-POLO' nor does it have an independent distinctive role in the composite sign and the General Court has not even alleged such a function here.

Further, the earlier mark 'POLO-POLO' viewed as a whole does not have any meaning in any Community language. Therefore, no conceptional comparison can be made.

3. The General Court has not taken into consideration the principle that it is only if all the

other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of one element.

4. The General Court's argumentation is contradictory and inconsistent in the following points:

The General Court on the one hand found that the elements 'U.S' and 'ASSN.' had no meaning as such. On the other hand, it pointed out that 'U.S.' would be perceived by the relevant public as referring to the geographical origin. Further, even if one assumed that some consumers might not understand the abbreviation 'ASSN.', consumers would have no reason to overlook or overhear it but — according to the principles laid down in the MATRA TZEN case — would all the more perceive it as a distinctive element.

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

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 8 July 2011 — Alexandra Schulz v Technische Werke Schussental GmbH und Co.KG

(Case C-359/11)

(2011/C 311/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Alexandra Schulz

Defendant: Technische Werke Schussental GmbH und Co.KG

Question referred

Is Article 3(3) of, in conjunction with point (b) and/or (c) of Annex A to, Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC ([1]) to be interpreted as meaning that a provision of national law on price variations in natural gas delivery contracts with domestic customers, who are supplied gas within the framework of the general duty to supply (standard-rate customers), satisfies the transparency requirements if, in that provision, the grounds, preconditions and scope of the price variation are not stipulated but customers are assured that gas suppliers will give them sufficient advance notice of any price increases and they have the right to terminate the contract if they are unwilling to accept the amended contractual terms and conditions as communicated?

([1]) OJ 1998 L 176, p. 57.

Reference for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 20 July 2011 — Piepenbrock Dienstleistungen GmbH & Co. KG v Kreis Düren

(Case C-386/11)

(2011/C 311/27)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Piepenbrock Dienstleistungen GmbH & Co. KG

Defendant: Kreis Düren

Other party to the proceedings: Stadt Düren

Question referred

Is a 'public contract' within the meaning of Article 1(2)(a) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]) to be understood as also meaning a contract between two local authorities whereby one of them assigns strictly limited competence to the other in return for the reimbursement of costs, in particular where the task assigned concerns only ancillary business, not official activities as such?

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

Reference for a preliminary ruling from the Nejvyšší správní soud lodged on 22 July 2011 — CS AGRO Ronov s.r.o. v Ministerstvo zemědělství

(Case C-390/11)

(2011/C 311/28)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: CS AGRO Ronov s.r.o.

Defendant: Ministerstvo zemědělství

Questions referred

1. On a proper interpretation of Article 4a(1) of Council Regulation (EC) No 320/2006, as inserted by Council Regulation (EC) No 1261/2007 [1], does the *commitment* to cease delivery of a certain amount of quota beet to the undertaking with which he has concluded a delivery contract in the preceding marketing year mean a unilateral declaration of the grower that he will not deliver sugar beet in the marketing year 2008/2009, or does that commitment mean the written termination of the contractual relationship of the grower with the sugar company concerning deliveries of sugar beet for the said marketing year?

2. May the fact that a contractual party uses a step provided for by a directly binding EU legal provision result in the unenforceability of an obligation of that contractual party under a valid private law contract, on condition that, as a result of that fact, the other contractual party is granted funds from the public budget?

[1] OJ 2007 L 58, p. 42.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 27 July 2011 — BLV Wohn- und Gewerbebau GmbH v Finanzamt Lüdenscheid

(Case C-395/11)

(2011/C 311/29)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: BLV Wohn- und Gewerbebau GmbH

Defendant: Finanzamt Lüdenscheid

Other Participant: Rolf & Co. OHG

Questions referred

1. Does the term 'construction work' within the meaning of Article 2(1) of Decision 2004/290/EC [1] encompass not only services but also supplies of goods?

2. If the authorisation to designate the recipient of the supply as the person liable for tax also extends to supplies of goods:

   Is the authorised Member State entitled to exercise the authorisation merely partially in respect of certain subcategories, such as particular types of construction work, and in respect of supplies to certain recipients?

3. If the Member State is entitled to form subcategories: Is the Member State subject to restrictions when forming subcategories?

4. If the Member State is not entitled to form subcategories generally (see Question 2 above) or on account of its failure to observe restrictions (see Question 3 above):

   (a) What are the legal consequences of the impermissible formation of subcategories?

   (b) Is the effect of the impermissible formation of subcategories that the provision of national law is not to be applied only to the benefit of particular taxable persons or in general?

[1] Council Decision 2004/290/EC of 30 March 2004 authorising Germany to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ 2004 L 94, p. 59).

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 28 July 2011 — Josef Egbringhoff v Stadtwerke Ahaus GmbH

(Case C-400/11)

(2011/C 311/30)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Josef Egbringhoff

Defendant: Stadtwerke Ahaus GmbH

Question referred

Is Article 3(5) of, in conjunction with point (b) and/or (c) of Annex A to, Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules [1] for the internal market in electricity and repealing Directive 96/92/EC to be interpreted as meaning that a provision of national law on price variations in electricity delivery contracts with domestic customers, who are supplied electricity within the framework of the general duty to supply (standard-rate customers), satisfies the transparency requirements if, in that provision, the grounds, preconditions and scope of the price variation are not stipulated but customers are assured that electricity suppliers will give them sufficient advance notice of any price increases and they have the right to terminate the contract if they are unwilling to accept the amended contractual terms and conditions as communicated?

[1] Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC — Statements made with regard to decommissioning and waste management activities (OJ 2003 L 176, p. 37).

Reference for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 28 July 2011 — Blanka Soukupová v Ministerstvo zemědělství

(Case C-401/11)

(2011/C 311/31)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Blanka Soukupová

Defendant: Ministerstvo zemědělství

Questions referred

1. May the concept of 'normal retirement age' at the time of transfer of a farm under Article 11 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [1] be interpreted as 'the age required for entitlement to a retirement pension' by a particular applicant under national legislation?

2. If the answer to the first question is in the affirmative, is it in accordance with European Union law and the general principles of European Union law for 'normal retirement age' at the time of transfer of a farm to be determined differently for individual applicants depending on their sex and the number of children they have brought up?

3. If the answer to the first question is in the negative, what criteria should the national court take into account when interpreting the concept of 'normal retirement age' at the time of transfer of a farm under Article 11 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations?

[1] OJ 1999 L 160, p. 80.

Appeal brought on 28 July 2011 by the European Commission against the judgment delivered by the General Court on 17 May 2011 in Case T-1/08 Buczek Automotive v Commission

(Case C-405/11 P)

(2011/C 311/32)

Language of the case: Polish

Parties

Appellant: European Commission (represented by: A. Stobiecka-Kuik, T. Maxian Rusche, Agents)

Other party to the proceedings: Buczek Automotive Sp. z o.o., Republic of Poland

Form of order sought

— set aside the judgment of the General Court of 17 May 2011 in Case T-1/08 *Buczek Automotive Sp. z o.o.* v *Commission* in so far as it annuls the contested decision;

— give final judgment on the issues which are the subject of the present appeal;

— refer the decision back to the General Court for fresh consideration as regards the remaining pleas put forward at first instance;

— reserve costs.

Pleas in law and main arguments

In the appeal the Commission puts forward two pleas, namely infringement of Article 107(1) TFEU and infringement of Article 107(1) TFEU in conjunction with Article 296 TFEU and Protocol No 8 to the 2004 Act of Accession on the restructuring of the Polish steel industry [1] ('Protocol No 8').

First, the General Court infringed Article 107(1) TFEU by assessing on the basis of an incorrect legal standard the private creditor test applied by the Commission. The Court thus stated that the Commission was obliged to carry out additional calculations of the gains from various methods of enforcement and should have compared the duration of the various enforcement procedures for the recovery of public debts. The Commission submits that it is not obliged to carry out precise calculations, but to take account of the factors that a private creditor would consider when taking his decision.

In addition, the General Court infringed Article 107(1) TFEU by incorrectly placing the burden of proof on the Commission, that is to say, by placing on the Commission the obligation to adduce additional evidence — in particular as regards the duration of the various procedures or comparison of the amount of the receipts from various types or stages of effective recovery of the debts — in order to reject the argument concerning the conduct of a private creditor.

Second, the General Court infringed Article 107(1) TFEU in conjunction with Article 296 TFEU and Protocol No 8 by incorrectly finding that the Commission did not fulfil the obligation to state the reasons for which the aid would have affected trade between Member States and distorted or threatened to distort competition. The Court took no account at all of the fact that the aid in question must be recognised as distorting or threatening to distort competition on the basis of primary law, namely Protocol No 8, which constitutes the decision's legal basis, so that additional justification in the decision for the conditions relating to trade and competition was superfluous.

([1]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded — Protocol No 8 on the restructuring of the Polish steel industry (OJ 2003 L 236, p. 948).

Appeal brought on 29 July 2011 by Atlas Transport GmbH against the judgment of the General Court (Third Chamber) delivered on 16 May 2011 in Case T-145/08 Atlas Transport GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs): other party: Atlas Air Inc.

(Case C-406/11 P)

(2011/C 311/33)

Language of the case: German

Parties

Appellant: Atlas Transport GmbH (represented by: K. Schmidt-Hern, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Atlas Air Inc.

Form of order sought

— Set aside the judgment of the General Court of the European Union of 16 May 2011 in Case T-145/08;

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 January 2008 (Case R 1023/2007-1);

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to pay the costs of both legal proceedings.

Pleas in law and main arguments

By the contested decision, OHIM and the General Court infringed the third sentence of Article 59 of the Regulation on the Community trade mark (old version) which governs the obligation to state the grounds of appeal. By the contested decision, OHIM and the General Court also infringed Article 60 of the Regulation on the Community trade mark in conjunction also with Rule 20(7) of the Regulation implementing the Regulation on the Community trade mark, as well as established legal principles of the Member States. The proceedings before OHIM should imperatively have been stayed, meaning that the time-limit for bringing the appeal has not yet expired.

Reference for a preliminary ruling from the Amtsgericht Münster (Germany) lodged on 1 August 2011 — Criminal proceedings against Thomas Karl-Heinz Kerkhoff

(Case C-408/11)

(2011/C 311/34)

Language of the case: German

Referring court

Amtsgericht Münster (Germany)

Parties to the main proceedings

Thomas Karl-Heinz Kerkhoff

Staatsanwaltschaft Münster

Question referred

Is Article 11(4) of Directive 2006/126/EC ([1]) to be interpreted as meaning that a Member State is entitled to refuse, on a long-term basis, to recognise a driving licence issued by another Member State, if the holder previously had his driving licence withdrawn on the territory of the first Member State, without a separate period of suspension before a new licence is issued having been imposed or a period of suspension imposed having expired?

([1]) Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (Recast); OJ 2006 L 403, p. 18.

Appeal brought on 10 August 2011 by the Council of the European Union against the judgment of the General Court (Fifth Chamber, extended composition) delivered on 8 June 2011 in Case T-86/11 Bamba v Council

(Case C-417/11 P)

(2011/C 311/35)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: M. Bishop, B. Driessen and E. Dumitriu-Segnana, Agents)

Other parties to the proceedings: Nadiany Bamba, European Commission

Form of order sought

The Council claims that the Court should:

— set aside the judgment delivered on 8 June 2011 by the General Court (Fifth Chamber, extended composition) in Case T-86/11 *Bamba* v *Council*;

— give final judgment in the matters that are the subject of the present appeal and dismiss the application by Ms Nadiany Bamba as unfounded; and

— order Ms Nadiany Bamba to pay the costs incurred by the Council at first instance and in connection with the present appeal.

Pleas in law and main arguments

The Council puts forward two pleas in law in support of its appeal.

The appellant's main plea is that the reasoning provided in the contested measures meets the requirements of Article 296 TFEU and, consequently, the General Court erred in law in ruling that the contested measures are vitiated by an inadequate statement of reasons. The Council provided in the recitals in the preambles to the contested measures a detailed description of the particularly serious situation in Côte d'Ivoire which justified the measures taken against certain persons and entities. Moreover, the Council clearly stated the reasons why it considers that Ms Nadiany Bamba should be subject to the restrictive measures concerned.

In the alternative, the Council claims that the General Court erred in law in failing to take into account, in its assessment of whether the obligation to state reasons had been complied with, the context, which is well known to Ms Nadiany Bamba, in which the contested measures were adopted.

Reference for a preliminary ruling from the Městský soud v Praze (Czech Republic) lodged on 10 August 2011 — Česká spořitelna, a.s. v Gerald Feichter

(Case C-419/11)

(2011/C 311/36)

Language of the case: Czech

Referring court

Městský soud v Praze

Parties to the main proceedings

Applicant: Česká spořitelna, a.s.

Defendant: Gerald Feichter

Questions referred

1. May the concept of matters concerning a contract concluded by a consumer for a purpose which can be regarded as being outside his trade or profession in Article 15(1) of Council Regulation (EC) No 44/2001 [1] be interpreted as extending also to claims under a promissory note issued in incomplete form brought by the payee against the giver of the aval for the maker of the note?

2. Whether the answer to the first question is affirmative or negative, may the concept of claims relating to a contract in Article 5(1)(a) of Council Regulation (EC) No 44/2001 be interpreted in such a way that, having regard exclusively to the content of the document as such, it extends also to claims under a promissory note issued in incomplete form brought by the payee against the giver of the aval for the maker of the note?

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[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 10 August 2011 by the Prezes Urzędu Komunikacji Elektronicznej against the order made by the General Court (Seventh Chamber) on 23 May 2011 in Case T-226/10 Prezes Urzędu Komunikacji Elektronicznej v Commission

(Case C-422/11 P)

(2011/C 311/37)

Language of the case: Polish

Parties

Appellant: Prezes Urzędu Komunikacji Elektronicznej (represented by: D. Dziedzic-Chojnacka, D. Pawłowska)

Other party to the proceedings: European Commission

Form of order sought

— set the order aside and refer the case back to the General Court of the European Union for further examination;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The reason for dismissal of the action was the employment relationship between the lawyers representing the Prezes Urzędu Komunikacji Elektronicznej (President of the Office for Electronic Communications) and the Office for Electronic Communications, which, according to the General Court, precludes those lawyers from representing the applicant before it.

The Prezes Urzędu Komunikacji Elektronicznej puts forward the following pleas in law in challenging the contested order.

First, the General Court infringed the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice, in conjunction with the first paragraph of Article 53 of the Statute, and also in conjunction with the sixth paragraph of Article 254 TFEU and Article 113 of the Rules of Procedure of the General Court ('the Rules of Procedure'), because it misinterpreted the first-named provision and held that it does not cover lawyers employed under an employment contract concluded with a party to proceedings before the General Court.

Second, the General Court infringed Article 67(1) TFEU, in conjunction with Article 113 of the Rules of Procedure, because it failed to respect the different legal system and legal tradition of a Member State and it dismissed the action on the basis of finding that lawyers in an employment relationship have a lesser degree of independence than lawyers pursuing their activities in chambers independent of the client.

Third, the General Court infringed Article 5(1) and (2) TEU, in conjunction with Article 4(1) TEU and in conjunction with Article 113 of the Rules of Procedure, by holding that the provisions of the Treaty permit differentiation as to the scope of the rights of lawyers in relation to representation before the General Court although the law of the Member State does not provide for such differentiation and competence in this area has not been accorded to the European Union by the Treaties.

Fourth, the General Court infringed Article 5(4) TEU, in conjunction with Article 113 of the Rules of Procedure, by accepting that it is necessary, in order to achieve objectives of the Treaties, not to grant lawyers in an employment relationship the right to represent a party in proceedings before the General Court.

Fifth, the General Court committed a procedural infringement because the reasons stated in the contested order are inadequate.

Appeal brought on 11 August 2011 by the Republic of Poland against the order of the General Court (Seventh Chamber) of 23 May 2011 in Case T-226/10 Prezes Urzędu Komunikacji Elektronicznej v Commission

(Case C-423/11 P)

(2011/C 311/38)

Language of the case: Polish

Parties

Appellant: Republic of Poland (represented by: M. Szpunar, Agent)

Other parties to the proceedings: European Commission, Prezes Urzędu Komunikacji Elektronicznej

Form of order sought

— set aside in its entirety the order of the General Court of the European Union of 23 May 2011 in Case T-226/10.

Pleas in law and main arguments

The ground given for the dismissal of the a ction was the employment relationship linking the legal advisers representing the Prezes Urzędu Komunikacji Elektronicznej (President of the Electronic Communications Authority) with that authority, which, in the view of the General Court, made it impossible for those legal advisers to represent the applicant before the General Court. The Government of the Republic of Poland sets out the following submissions challenging the order under appeal:

First, it is submitted, there has been a breach of the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice by reason of misinterpretation thereof. The provisions of European Union law do not harmonise the permissible forms in which legal services may be provided. Nor does Article 19 of the Statute introduce restrictions in this area, referring instead directly to national provisions. In the Republic of Poland's view, Article 19 of the Statute does not provide any basis for generally and arbitrarily depriving legal advisers who provide legal assistance pursuant to their contract of employment of their right to represent parties before the Court of Justice, inasmuch as the provisions of Polish law guarantee their full independence.

Second, it is submitted that there has been an infringement of the principle of proportionality referred to in Article 5(4) TEU. In the view of the Government of the Republic of Poland, the exclusion of the possibility for a party to be represented by a legal adviser who is linked to that party by an employment relationship goes beyond what is necessary in order to guarantee that legal services are provided to a party by an independent lawyer. Less restrictive means, in material and formal terms, exist by which that objective can be achieved, in particular national rules which concern the principles governing the exercise of a profession and professional deontology.

Third, it is submitted that there has been a procedural infringement by reason of the absence of an appropriate statement of reasons. The Government of the Republic of Poland takes the view that the General Court did not set out an adequate statement of reasons for the order in Case T-226/10, and in particular did not address the specific aspects of the legal relationship linking the legal advisers to the Prezes Urzędu Komunikacji Elektronicznej.

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 11 August 2011 — Wheels Common Investment Fund Trustees Ltd, National Association of Pension Funds Ltd, Ford Pension Fund Trustees Ltd, Ford Salaried Pension Fund Trustees Ltd, Ford Pension Scheme for Senior Staff Trustee Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-424/11)

(2011/C 311/39)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Wheels Common Investment Fund Trustees Ltd, National Association of Pension Funds Ltd, Ford Pension Fund Trustees Ltd, Ford Salaried Pension Fund Trustees Ltd, Ford Pension Scheme for Senior Staff Trustee Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. Are the words 'special investment funds' in Article 13B(d)(6) of the Sixth VAT Directive [1] and Article 135(1)(g) of Directive 2006/112 [2] capable of including (i) an occupational pension scheme established by an employer that is intended to provide pension benefits to employees and/or (ii) a common investment fund in which the assets of several such pension schemes are pooled for investment purposes in circumstances where, in relation to the pension schemes in question:

   (a) the pension benefits receivable by a member are defined in advance in the legal documents creating the scheme (by reference to a formula based on the length of the member's service with the employer and the member's salary and not by reference to the value of the scheme assets;

   (b) the employer is obliged to make contributions to the scheme;

   (c) only employees of the employer can participate in the scheme and obtain pension benefits under it (a participant in the scheme is here referred to as a 'member');

   (d) an employee is free to decide whether or not to be a member;

   (e) an employee who is a member is normally obliged to make contributions to the scheme based on a percentage of his salary;

   (f) the contributions of the employer and the members are pooled by the scheme trustee and are invested (generally in securities) in order to provide a fund out of which the benefits provided for in the scheme are paid to the members;

   (g) if the scheme assets are greater than what is required to fund the benefits provided for under the scheme, the trustee of the scheme and/or the employer may, in accordance with the terms of the scheme and relevant provisions of national law, do anyone or combination of the following: (i) reduce the employer's contributions to the scheme; (ii) transfer all or a part of the benefit of the surplus to the employer; (iii) improve the benefits to members under the scheme;

   (h) if the scheme assets are less than what is required to fund the benefits provided for under the scheme, the employer is normally obliged to make up the deficit and, if the employer does not, or is unable to do so, the benefits received by members are reduced;

   (i) the scheme permits members to make additional voluntary contributions ('AVCs') which are not held by the scheme but are transferred to a third party for investment and the provision of additional benefits based on the performance of the investment made (such arrangements are not subject to VAT);

   (j) members have the right to transfer their accrued benefits under the scheme (valued by reference to the actuarial value of those benefits at the time of transfer) to other pension schemes;

   (k) the employer's and members' contributions to the scheme are not treated for the purposes of income tax levied by the Member State as income of the members;

   (l) pension benefits received by members under the scheme are treated for the purposes of income tax levied by the Member State as income of the members; and

   (m) the employer, and not the members of the scheme, bears the cost of charges made for the management of the scheme?

2. In the light of (i) the objective of the exemption in Article 13B(d)(6) of the Sixth VAT Directive and Article 135(l)(g) of Directive 2006/112, (ii) the principle of fiscal neutrality and (iii) the circumstances set out in Question 1 above:

(a) is a Member State entitled to define, in national law, the funds that fall within the concept of 'special investment funds' in such a way as to exclude funds of the type referred to in Question I above while including collective investment undertakings as defined in Directive 85/611, as amended?

(b) to what extent (if at all) are the following relevant to the question whether or not a fund of the type referred to in Question 1 above is to be identified by a Member State in its national law as 'special investment fund':

(i) the features of the fund (set out in Question 1 above);

(ii) the degree to which the fund is 'similar to and thus in competition with' investment vehicles that have already been identified by the Member State as 'special investment funds'?

3. If in answer to Question 2(b)(ii) above it is relevant to determine the degree to which the fund is 'similar to and thus in competition with' investment vehicles that have already been identified by the Member State as 'special investment funds', is it necessary to consider the existence or extent of 'competition' between the fund in question and those other investment vehicles as a separate question from the question of 'similarity'?

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

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

Reference for a preliminary ruling from Supreme Court of the United Kingdom made on 12 August 2011 — Mark Alemo-Herron and others v Parkwood Leisure Ltd

(Case C-426/11)

(2011/C 311/40)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Mark Alemo-Herron, Sandra Tipping, Christopher Anderson, Stacey Aris, Audrey Beckford, Lee Bennett, Delroy Carby, Vishnu Chetty, Deborah Cimitan, Victoria Clifton, Claudette Cummings, David Curtis, Stephen Flin, Patience Ijelekhai, Rosemarie Lee, Roxanne Lee, Vivian Ling, Michelle Nicholas, Lansdail Nugent, Anne O'Connor, Shirley Page, Alan Peel, Mathew Pennington, Laura Steward

Defendant: Parkwood Leisure Ltd

Questions referred

1. Where, as in the present case, an employee has a contractual right as against the transferor to the benefit of terms and conditions which are negotiated and agreed by a third party collective bargaining body from time to time, and such right is recognised under national law as dynamic rather than static in nature as between the employee and the transferor employer, does article 3 of Council Directive 2001/23/EC (1) of 12 March 2001 read with Werhof v Freeway Traffic Systems GmbH & Co KG [2006] ECR 1-2397-

(a) require that such right be protected and enforceable against the transferee in the event of a relevant transfer to which the Directive applies; or

(b) entitle national courts to hold that such right is protected and enforceable against the transferee in the event of a relevant transfer to which the Directive applies; or

(c) prohibit national courts from holding that such right is protected and enforceable against the transferee in the event of a relevant transfer to which that Directive applies?

2. In circumstances where a Member State has fulfilled its obligations to implement the minimum requirements of article 3 of Directive 2001/23 but the question arises whether the implementing measures are to be interpreted as going beyond those requirements in a way which is favourable to the protected employees by providing dynamic contractual rights as against the transferee, is it the case that the courts of the Member State are free to apply national law to the interpretation of the implementing legislation subject, always, to such interpretation not being contrary to Community law, or must some other approach to interpretation be adopted and, if so, what approach?

3. In the present case, there being no contention by the employer that the standing of the employees' dynamic right under national law to collectively agreed terms and conditions would amount to breach of that employer's rights under article 11 of the European Convention on Human Rights and Fundamental Freedoms, is the national court free to apply the interpretation of TUPE contended for by the employees?

(1) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses
OJ L 82, p. 16

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 16 August 2011 — Margaret Kenny and others v Minister for Justice, Equality and Law Reform, Minister for Finance, Commissioner of An Garda Síochána

(Case C-427/11)

(2011/C 311/41)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: Margaret Kenny, Patricia Quinn, Nuala Condon, Eileen Norton, Ursula Ennis, Loretta Barrett, Joan Healy, Kathleen Coyne, Sharon Fitzpatrick, Breda Fitzpatrick, Sandra Hennelly, Marian Troy, Antoinette Fitzpatrick, Helena Gatley

Defendants: Minister for Justice, Equality and Law Reform, Minister for Finance, Commissioner of An Garda Síochána

Questions referred

1. In circumstances where there is prima facie indirect gender discrimination in pay, in breach of Article 141 (now Article 157 TFEU) and Council Directive 75/117/EEC ([1]), in order to establish objective justification, does the employer have to provide:

   (a) Justification in respect of the deployment of the comparators in the posts occupied by them;

   (b) Justification of the payment of a higher rate of pay to the comparators; or

   (c) Justification of the payment of a lower rate of pay to the complainants?

2. In circumstances where there is prima facie indirect gender discrimination in pay, in order to establish objective justification, does the employer have to provide justification in respect of:

   (a) The specific comparators cited by the complainants and/or

   (b) The generality of comparator posts?

3. If the answer to Question 2(b) is in the affirmative, is objective justification established notwithstanding that such justification does not apply to the chosen comparators?

4. Did the Labour Court, as a matter of Community Law, err in accepting that the 'interests of good industrial relations' could be taken into account in the determination of whether the employer could objectively justify the difference in pay?

5. In circumstances where there is prima facie indirect gender discrimination in pay, can objective justification be established by reliance on the industrial relations concerns of the respondent? Should such concerns have any relevance to an analysis of objective justification?

([1]) Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women OJ L 45, p. 19

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 16 August 2011 — Purely Creative Ltd and others v Office of Fair Trading

(Case C-428/11)

(2011/C 311/42)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Purely Creative Ltd, Strike Lucky Games Ltd, Winners Club Ltd, McIntyre & Dodd Marketing Ltd, Dodd Marketing Ltd, Adrian Williams, Wendy Ruck, Catherine Cummings, Peter Henry

Defendant: Office of Fair Trading

Questions referred

1. Does the banned practice set out in paragraph 31 of Annex 1 to Directive 2005/29/EC ([1]) prohibit traders from informing consumers that they have won a prize or equivalent benefit when in fact the consumer is invited to incur any cost, including a de minimis cost, in relation to claiming the prize or equivalent benefit?

2. If the trader offers the consumer a variety of possible methods of claiming the prize or equivalent benefit, is paragraph 31 of Annex 1 breached if taking any action in relation to any of the methods of claiming is subject to the consumer incurring a cost, including a de minimis cost?

3. If paragraph 31 of Annex 1 is not breached where the method of claiming involves the consumer in incurring de minimis costs only, how is the national court to judge whether such costs are de minimis? In particular, must such costs be wholly necessary:

(a) in order for the promoter to identify the consumer as the winner of the prize, and/or

(b) for the consumer to take possession of the prize, and/or

(c) for the consumer to enjoy the experience described as the prize?

4. Does the use of the words 'false impression' in paragraph 31 impose some requirement additional to the requirement that the consumer pays money or incurs a cost in relation to claiming the prize, in order for the national court to find that the provisions of paragraph 31 have been contravened?

5. If so, how is the national court to determine whether such a 'false impression' has been created? In particular, is the national court required to consider the relative value of the prize as compared with the cost of claiming it in deciding whether a 'false impression' has been created? If so, should that 'relative value' be assessed by reference to:

(a) the unit cost to the promoter in acquiring the prize; or

(b) to the unit cost to the promoter in providing the prize to the consumer; or

(c) to the value that the consumer may attribute to the prize by reference to an assessment of the 'market value' of an equivalent item for purchase?

([1]) 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, 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 L 149, p. 22

Action brought on 18 August 2011 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-431/11)

(2011/C 311/43)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, Agent, T. de la Mare, Barrister)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision of 6 June 2011 ([1]) on the position to be taken by the European Union in the European Economic Area (EEA) Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement;

— limit the temporal effects of such order until the Council adopts on the basis of Article 79(2)(b) TFEU a new Decision on the position to be taken by the European Union in the European Economic Area (EEA) Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement; and

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

Pleas in law and main arguments

The United Kingdom seeks the annulment pursuant to Article 264 TFEU of Council Decision 2011/407/EU of 6 June 2011 on the position to be taken by the European Union in the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement ('the Decision').

The United Kingdom seeks an order that:

(a) The Decision be annulled:

(b) Following the annulment of the Decision, that its provisions should remain effective until the Council adopts a lawful Decision on the basis of Article 79(2)(b) TFEU on the position to be taken by the European Union in the European Economic Area (EEA) Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement; and

(c) The Council pay the costs of the proceedings.

The Decision, which was adopted on the substantive legal basis of Article 48 TFEU, determined the European Union's position to be adopted in the EEA Joint Committee negotiations as to the amendment of Annex VI (Social Security) and Protocol 37 to the EEA Agreement.

The United Kingdom contends that the Council was wrong to adopt the Decision using Article 48 TFEU as the substantive legal basis. Instead, the Council should have based any such Decision on Article 79(2)(b) TFEU which provides the appropriate basis upon which to adopt a common position to conclude international arrangements whose effect in the EU is to extend social security rights to third country nationals. Article 48 TFEU provides competence only to legislate for EU national workers and the self-employed. Article 79(2)(b) by its express terms provides powers to confer rights upon third country nationals residing legally within the EU.

Pursuant to Protocol 21 measures adopted pursuant to or under all Title V legal bases, including Article 79(2)(b) TFEU, apply to the United Kingdom only if it chooses to opt in to such measures.

The annulment of the Decision is accordingly sought on the grounds that it was adopted on the wrong legal basis, the consequence of which is that the United Kingdom has been deprived of its rights under Protocol 21.

(1) Council Decision 2011/407/EU of 6 June 2011 on the position to be taken by the European Union within the EEA Joint Committee concerning an amendment to Annex VI (Social Security) and Protocol 37 to the EEA Agreement
OJ L 182, p. 12

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 26 August 2011 — Novartis AG v Actavis UK Ltd

(Case C-442/11)

(2011/C 311/44)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Novartis AG

Defendant: Actavis UK Ltd

Questions referred

Where a supplementary protection certificate has been granted for a product as defined by Regulation (EC) No 469/2009 (1) for an active ingredient, are the rights conferred by that certificate pursuant to Article 5 of the Regulation in respect of the subject matter as defined in Article 4 of the Regulation infringed:

(i) by a medicinal product that contains that active ingredient (in this case valsartan) in combination with one or more other active ingredients (in this case hydrochlorothiazide); or

(ii) only by a medicinal product that contains that active ingredient (in this case valsartan) as the sole active ingredient?

(1) 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 L 152, p. 1

Appeal brought on 30 August 2011 by the European Commission against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-196/06 Edison v Commission

(Case C-446/11 P)

(2011/C 311/45)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and V. Bottka, agents)

Other party to the proceedings: Edison SpA

Form of order sought

— Set aside the judgment of the General Court (Sixth Chamber, extended composition) of 16 June 2011, notified to the Commission on 20 June 2011;

— Refer the case back to the General Court for reconsideration;

— Reserve the decision on costs in both sets of proceedings;

— In the event that the Court finds that it can adjudicate on the substance, dismiss the action brought at first instance and order Edison SpA to pay the costs of both sets of proceedings.

Pleas in law and main arguments

The Commission relies on four grounds in support of its appeal.

(i) The General Court infringed Article 253 EC, in conjunction with Article 84 EC, in that it erred in its assessment of the purpose and scope of the obligation to state reasons with regard to the attribution of liability for infringements of Article 81 EC to the company holding all the capital in the company which participated directly in the infringement, which is based on a presumption which must be adequately rebutted. In particular, the General Court failed to take account of context and legal rules governing the matter, especially the burden of proof on the applicant. It erred in finding that the Commission was under a duty to state reasons in relation to arguments that were 'not insignificant', without requiring, as it should have required, that such arguments were capable of rebutting the presumption of liability on the part of the controlling company.

(ii) In the alternative, the General Court infringed Articles 230 EC and 253 EC, in that it reached the conclusion that inadequate reasons were given for the contested decision. First, it erred in law in its reading of the contested decision, neglecting to consider certain relevant passages. Second, it confused issues of reasoning and issues of substance in refusing to take account of explanations provided in the contested decision, finding either that the Commission had acted in breach of the appellant's rights of defence, or that such explanations were not convincing.

(iii) The General Court infringed Articles 230 EC and 253 EC and the principles of European Union law on the rights of the defence and the right to be heard before the courts of the European Union. Indeed, it incorrectly held that the Commission could not rely on arguments not referred to in the statement of objections or not repeated in the decision to address the appellant's arguments intended to rebut the presumption of liability on the part of the controlling company. That applies in particular where, as in the present case, there are documents relied on by the applicant or of which it was aware and the applicant could not have been unaware of the risk that the Commission might take them into account as evidence against it, or where it could reasonably infer from the documents in question the conclusions which the Commission intended to draw from them.

(iv) The General Court infringed Article 230 EC, in conjunction with Articles 231 EC and 253 EC, incorrectly holding that it was necessary to annul the contested decision on the ground that it contained an inadequate statement of reasons, even though the approach adopted in the decision was substantively correct.

Appeal brought on 31 August 2011 by Caffaro Srl under special administration (formerly Caffaro Srl) against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-192/06 Caffaro v Commission

(Case C-447/11 P)

(2011/C 311/46)

Language of the case: Italian

Parties

Appellant: Caffaro Srl, under special administration (formerly Caffaro Srl) (represented by: A. Santa Maria, C. Biscaretti di Ruffia and E. Gambaro, lawyers)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment under appeal and, accordingly, annul Commission Decision C(2006) 1766 final of 3 May 2006 in so far as it imposed on Caffaro Srl, jointly and severally with SNIA SpA, a fine of EUR 1 078 million or, in the alternative;

— Set aside the judgment under appeal and, as a consequence, annul the parts of the decision covered by such pleas put forward in the present notice of appeal as the Court may find to be acceptable and well founded;

— In the alternative, reduce to a nominal amount or substantially reduce the fine imposed on the appellant, taking account of the legal grounds and facts put forward in the present notice of appeal;

— In the further alternative, refer the matter back to the General Court for a fresh decision in accordance with any guidance and criteria which the Court is minded to provide in the present appeal proceedings;

— In any event, order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

By its first ground of appeal, Caffaro alleges breach of Article 101 TFEU, Article 23(2) and (3) of Regulation (EC) No 1/2003, ([1]) and the Commission Guidelines on the method of setting fines, ([2]) incorrect legal characterisation, distortion of the facts and some of the evidence, breach of the duty to state reasons and lack of reasoning and contradictory reasoning in the part of the judgment under appeal in which the General Court dismissed as irrelevant Caffaro's situation of economic dependence in the market concerned and the harm suffered by it specifically as a result of the cartel.

By its second ground of appeal, Caffaro alleges that the General Court infringed the principle of equal treatment and Article 23(2) and (3) of Regulation (EC) No 1/2003 as well as the Commission Guidelines on the method of setting fines, with regard to the reference year taken into account by the Commission in the decision in connection with what is referred to as 'different treatment'. In particular, the complaint relates to the attribution to all the participants in the purported infringement (except Caffaro) of market shares for 1999.

By the third ground of appeal, Caffaro claims that the General Court erred as regards the claim that the fact that the appellant did not participate in the unlawful contracts of 26 November 1998 did not have any effect on the duration of Caffaro's participation. In particular, Caffaro alleges breach of Article 23(2) and (3) of Regulation (EC) No 1/2003 and the Commission Guidelines on the method of setting fines with regard to duration, failure to state adequate reasons, incorrect appraisal of the facts and breach of the obligation to state reasons.

By its fourth ground of appeal, which relates to the claim that the Commission's action is out of time and therefore time-barred, Caffaro alleges misapplication of Article 25 of Regulation (EC) No 1/2003, distortion and incorrect legal characterisation of the facts, misuse of power, breach of the general principles of European Union law, breach of its rights of defence and failure to state adequate reasons in the judgment under appeal. In particular, Caffaro contends that the General Court failed to take account of the Commission's lack of action for a year after the act interrupting the limitation period, before sending to the appellant a request for information, without carrying out any investigation and without providing any express reasons.

Lastly, by the fifth ground of appeal, Caffaro alleges that the judgment under appeal failed to state adequate reasons and incorrectly assessed the attenuating circumstances on which Caffaro relied before the Commission. The appellant submits that the General Court also acted in breach of the rules of procedure and incorrectly assessed some of the evidence, to its detriment.

([1]) OJ 2003 L 1. p. 1.
([2]) OJ 1998 C 9, p. 3.

Appeal brought on 31 August 2011 by SNIA SpA against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-194/06 SNIA v Commission

(Case C-448/11 P)

(2011/C 311/47)

Language of the case: Italian

Parties

Appellant: SNIA SpA (represented by: A. Santa Maria, C. Biscaretti di Ruffia and E. Gambaro, lawyers)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment dismissing SNIA SpA's application and, accordingly, annul Commission Decision C(2006) 1766 final of 3 May 2006 in so far as it includes SNIA SpA among the addressees of the decision, imposing on it, jointly and severally with Caffaro Srl, a fine of EUR 1 078 million;

— In the alternative, refer the case back to the General Court for a fresh decision in accordance with any guidance and criteria which the Court is minded to provide in the present appeal proceedings;

— In any event, order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

By its first ground of appeal, SNIA claims that the General Court erred in law in that it automatically assumed that SNIA was liable on the basis that it had merged with Caffaro SpA and misapplied the rules governing the attribution of liability in competition matters, in particular with regard to what is referred to as the criterion of 'economic continuity', and the rules relating to the burden of proof. According to the appellant, the court at first instance also incorrectly categorised the case and distorted some of the evidence.

By its second ground of appeal, SNIA claims that the judgment under appeal failed to establish the inconsistency between the statement of objections and the contested decision with regard to the merger of SNIA and Caffaro SpA. In particular, the appellant alleges that the General Court infringed and misapplied Article 27 of Regulation (EC) No 1/2003, ([1]) breach of its rights of defence and incorrect legal characterisation and distortion of the facts and evidence.

By the third ground of appeal, SNIA alleges misapplication of Article 296 TFEU, incorrect appraisal of the evidence such as distort its content and scope and breach of the rights of the defence. In particular, the appellant criticises the judgment under appeal in that if failed to establish that the reasons given in the contested decision were inadequate and contradictory, in so far as it concluded that SNIA was jointly and severally liable. Moreover, the appellant claims 'distortion' of the content of the contested decision and breach of its rights of defence, since the General Court found that it was liable on the basis of factors upon which SNIA did not have the opportunity to comment, either during the administrative procedure or the proceedings at first instance.

([1]) OJ 2003 L 1. p. 1.

Appeal brought on 1 September 2011 by Solvay Solexis SpA against the judgment delivered by the General Court (Sixth Chamber, extended composition) on 16 June 2011 in Case T-195/06 Solvay Solexis v Commission

(Case C-449/11 P)

(2011/C 311/48)

Language of the case: Italian

Parties

Appellant: Solvay Solexis SpA (represented by: T. Salonico, G.L. Zampa and G. Barone, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment under appeal and annul the contested decision in so far as they find that Ausimont participated in the infringement before May-September 1997 and, accordingly, recalculate the amount of the fine imposed on the appellant in Article 2 of the decision;

— Set aside the judgment under appeal and annul the contested decision in so far as, with reference to the period May — September 1997, they fail to recognise the lesser gravity of Ausimont's conduct, on account of the fact that it did not participate in the agreement on the limitation of capacity and in so far as they place Ausimont in an incorrect category for the purpose of determining the basic amount of the fine and, accordingly, recalculate the amount of the fine imposed on the appellant in Article 2 of the decision; or

— In the alternative, set aside the judgment under appeal in so far as referred to in the two preceding paragraphs and refer the case back to the General Court for a fresh decision;

— Order the Commission to pay the costs.

Pleas in law and main arguments

1. Infringement of Article 101 TFEU and Article 2 of Regulation No 1/2003, [1] contradictory and insufficient statement of reasons and, in that connection, manifest distortion of the evidence, in that it has not been established that Ausimont's conduct from May 1995 to May-September 1997 can be classified as forming part of an 'agreement' or 'concerted practice'; nor are reasons given for the rejection of the objective evidence produced by the appellant to demonstrate that Ausimont's conduct during that period was highly competitive and independent.

2. Breach of the principles of equal treatment, non-discrimination and legal certainty, including in the light of the failure to have regard to the 1998 Guidelines on the method of setting fines, [2] failure to state reasons and manifest distortion of the evidence in relation to the assessment of the gravity of Ausimont's conduct and the determination of the sanction to be applied to it.

[1] OJ 2003 L 1, p. 1.
[2] OJ 1998 C 9, p. 3.

Order of the President of the Court of 5 July 2011 (reference for a preliminary ruling from the Supreme Court of the United Kingdom (United Kingdom)) — JPMorgan Chase Bank N.A., J.P. Morgan Securities Limited v Berliner Verkehrsbetriebe (BVG), Anstalt des öffentlichen Rechts

(Case C-54/11) [1]

(2011/C 311/49)

Language of the case: English

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

[1] OJ C 120, 16.4.2011.

Order of the President of the Court of 26 July 2011 (reference for a preliminary ruling from the Bundeskommunikationssenat (Austria)) — Publikumsrat des Österreichischen Rundfunks v Österreichischer Rundfunk

(Case C-162/11) [1]

(2011/C 311/50)

Language of the case: German

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

[1] OJ C 179, 18.6.2011.

GENERAL COURT

Judgment of the General Court of 14 September 2011 — Marcuccio v Commission

(Case T-236/02) [1]

(Referral to the General Court after annulment — Civil service — Officials — Employment in a non-Member state — Reassignment of post and post holder — Rights of the defence — Claim for damages — Full jurisdiction)

(2011/C 311/51)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: L. Garofolo, lawyer)

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

Re:

First, application for annulment of the European Commission's decision of 18 March 2002 which reassigned the applicant from the Directorate-General for Development, Commission Delegation in Luanda (Angola), to the Directorate General for Development in Brussels (Belgium), of all preliminary, connected or consecutive measures, in particular those relating to the recruitment of another official to occupy his post, of the Commission's notes of 13 and 14 November 2001 and of the opinion or opinions of the External Service Steering Committee, and, second, a claim for allowances in connection with his duties in Angola and damages for harm suffered.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Commission of 18 March 2002 which reassigned Mr Luigi Marcuccio from the Directorate-General for Development, Commission Delegation in Luanda (Angola), to the Directorate-General for Development in Brussels (Belgium).*

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

3. *Orders the Commission to bear its own costs and to pay the costs incurred by Mr Marcucccio.*

[1] OJ C 233, 28.9.2002.

Judgment of the General Court of 9 September 2011 — Greece v Commission

(Case T-344/05) [1]

(EAGGF — Guaranteee Section — Expenditure excluded from Community financing — Beef — Extensification payment — Arable crops — Fruit and vegetables — Aid for processing of citrus fruit — Conditions for application of 100 % flat-rate financial correction — Proportionality)

(2011/C 311/52)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias and E. Svolopoulou, agents)

Defendant: European Commission (represented by: H. Tserepa-Lacombe and L. Visaggio, agents, and by N. Korogiannakis, lawyer)

Re:

Partial annulment of Commission Decision 2055/555/EC of 15 July 2005, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2005 L 188, p. 36), in so far as it excludes certain expenditure incurred by the Hellenic Republic in the beef, arable crops and fruit and vegetables sectors.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2055/555/EC of 15 July 2005, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in so far as it excludes from Community financing expenditure incurred by the Hellenic Republic in respect of extensification payments made for the years 2000 and 2001;*

2. *Dismisses the action for the remainder;*

3. *Orders the Hellenic Republic to bear two thirds of its own costs and to pay two thirds of the costs of the European Commission;*

4. *Orders the Commission to bear one third of its own costs and to pay one third of the costs of the Hellenic Republic.*

[1] OJ C 281, 12.11.2005.

Judgment of the General Court of 9 September 2011 — Deltafina v Commission

(Case T-12/06) ([1])

(Competition — Agreements, decisions and concerted practices — Italian market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Immunity from fines — Cooperation — Fines — Proportionality — Gravity of the infringement — Attenuating circumstances)

(2011/C 311/53)

Language of the case: Italian

Parties

Applicant: Deltafina SpA (Orvieto, Italy) (represented by: R. Jacchia, A. Terranova, I. Van Bael, J.-F. Bellis and F. Di Gianni, lawyers)

Defendant: European Commission (represented initially by A. Whelan and F. Amato, subsequently by A. Whelan and V. Di Bucci, and finally by É. Gippini Fournier and L. Malferrari, Agents)

Re:

Application for annulment or, in the alternative, for reduction of the fine imposed on Deltafina by Article 2 of Commission Decision C(2005) 4012 final of 20 October 2005 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.281/B.2 — Raw tobacco — Italy).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deltafina SpA to pay the costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the General Court of 9 September 2011 — Alliance One International v Commission

(Case T-25/06) ([1])

(Competition — Agreements, decisions and concerted practices — Italian market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market sharing — Attributability of the unlawful conduct — Fines)

(2011/C 311/54)

Language of the case: English

Parties

Applicant: Alliance One International, Inc. (Danville, Virginia, United States) (represented by: C. Osti and A. Prastaro, lawyers)

Defendant: European Commission (represented: initially by É. Gippini Fournier and F. Amato, and subsequently by E. Gippini Fournier and N. Khan, Agents)

Re:

APPLICATION for partial annulment of Commission Decision C(2005) 4012 final of 20 October 2005 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.281/B.2 — Raw tobacco — Italy) and, in the alternative, application for a reduction in the fine imposed on Alliance One International.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alliance One International, Inc. to pay the costs.*

([1]) OJ C 60, 11.3.2006.

Judgment of the General Court of 15 September 2011 — Lucite International and Lucite International UK v Commission

(Case T-216/06) ([1])

(Competition — Agreements, decisions and concerted practices — Market for methacrylates — Decision finding an infringement of Article 81 EC and Article 53 of the EEA Agreement — Fines — Gravity of the infringement — Attenuating circumstances — Non-implementation in practice of the offending agreements or practices)

(2011/C 311/55)

Language of the case: English

Parties

Applicants: Lucite International Ltd (Southampton, United Kingdom); and Lucite International UK Ltd (Darwen, United Kingdom) (represented by: R. Thompson QC, S. Rose and A. Chandler, Solicitors)

Defendant: European Commission (represented initially by V. Bottka, F. Amato and I. Chatzigiannis, and subsequently by V. Bottka, I. Chatzigiannis and F. Arbault, acting as Agents)

Re:

Application for a reduction in the fine imposed on the applicants under Article 2(d) of Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the Commission's request for withdrawal of immunity;*

3. *Orders Lucite International Ltd and Lucite International UK Ltd to bear 90 % of their own costs and to pay 90 % of the costs incurred by the Commission;*

4. *Orders the Commission to bear 10 % of its own costs and to pay 10 % of the costs incurred by Lucite International and Lucite International UK.*

([1]) OJ C 237, 30.9.2006.

Judgment of the General Court of 9 September 2011 — Evropaïki Dynamiki v Commission

(Case T-232/06) ([1])

(Public service contracts — Tendering procedure — Provision of services for specification, development, maintenance and support of customs IT services relating to IT projects — Rejection of a tender — Award of the contract to another tenderer — Action for damages — Disregard of the procedural requirements — Inadmissibility — Action for annulment — Time allowed for the receipt of tenders — Time allowed for the submission of requests for information — Equal treatment — Manifest error of assessment)

(2011/C 311/56)

Language of the case: English

Parties

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

Defendant: European Commission (represented by: M. Wilderspin and E. Manhaeve, Agents)

Re:

APPLICATION for (i) annulment of the Commission's decision of 19 June 2006 not to select the tender submitted by the consortium formed by the applicant and other companies in connection with a call for tenders for specification, development, maintenance and support of customs IT services relating to IT projects 'CUST-DEV' and to award the contract to another tenderer and (ii) damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 261, 28.10.2006.

Judgment of the General Court of 15 September 2011 — Koninklijke Grolsch v Commission

(Case T-234/07) ([1])

(Competition — Agreements, decisions and concerted practices — Dutch beer market — Decision finding a single and continuous infringement of Article 81 EC — Applicant found to have participated in the infringement — Insufficient evidence — No proper statement of reasons)

(2011/C 311/57)

Language of the case: Dutch

Parties

Applicant: Koninklijke Grolsch NV (Enschede, Netherlands) (represented by: M. Biesheuvel and J. de Pree, lawyers)

Defendant: European Commission (represented by: initially, A. Bouquet, S. Noë and A. Nijenhuis, Agents, and, subsequently, A. Bouquet and S Noë, assisted by M. Slotboom, lawyer)

Re:

Application for annulment of Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case No COMP/B-2/37.766 — Dutch beer market) in so far as it concerns the applicant and, in the alternative, application for annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case No COMP/B-2/37.766 –Dutch beer market) in so far as it concerns Koninklijke Grolsch NV;*

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

([1]) OJ C 211, 8.9.2007.

Judgment of the General Court of 9 September 2011 — France v Commission

(Case T-257/07) ([1])

(Animal health — Regulation (EC) No 999/2001 — Protection against transmissible spongiform encephalopathies — Sheep and goats — Regulation (EC) No 746/2008 — Adoption of less restrictive eradication measures than those earlier prescribed — Precautionary principle)

(2011/C 311/58)

Language of the case: French

Parties

Applicant: French Republic (represented initially by E. Belliard, G. de Bergues, R. Loosli-Surrans and A.-L. During, then by E. Belliard, G. de Bergues, R. Loosli Surrans and B. Cabouat, agents)

Defendant: European Commission (represented by: M. Nolin, agent)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by I. Rao and C. Gibbs, then by I. Rao and L. Seeboruth, and then by L. Seeboruth and F. Penlington, agents, and T. Ward, Barrister)

Re:

Annulment of Commission Regulation (EC) No 746/2008 of 17 June 2008 amending Annex VII to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ 2008 L 202, p. 11), in that it authorises less restrictive measures of surveillance and eradication than those earlier prescribed for sheep and goat herds.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the French Republic to bear its own costs and to pay those of the European Commission in respect of the main proceedings and the proceedings for interim measures;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 211, 8.9.2007.

Judgment of the General Court (Sixth Chamber) of 14 September 2011 — Tegebauer v Parliament

(Case T-308/07) ([1])

(Right to petition — Petition addressed to the Parliament — Decision to take no action — Action for annulment — Actionable measure — Admissibility — Obligation to state reasons)

(2011/C 311/59)

Language of the case: German

Parties

Applicant: Ingo-Jens Tegebauer (Trier, Germany) (represented initially by R. Nieporte then by H.-B. Pfriem, lawyers)

Defendant: European Parliament (represented initially by H. Krück and M. Windisch, then by N. Lorenz and E. Waldherr, agents)

Re:

Annulment of the Decision of the Committee on Petitions of the European Parliament of 20 June 2007 to file and take no further action on the petition submitted by the applicant on 7 February 2007 (Petition No 95/2007).

Operative part of the judgment

The Court:

1. *Annuls the Decision of the Committee on Petitions of the European Parliament of 20 June 2007 to file and take no further action on the petition submitted by Mr Ingo-Jens Tegebauer on 7 February 2007 (Petition No 95/2007);*

2. *Orders the European Parliament to bear its own costs and to pay the costs incurred by Mr Tegebauer.*

([1]) OJ C 269, 10.11.2007.

Judgment of the General Court of 15 September 2011 — CMB and Christof v Commission

(Case T-407/07) ([1])

(Public supply contracts — EAR procurement procedure — Supply of equipment for the treatment of medical waste — Rejection of the tender — Action for annulment — Jurisdiction of the General Court — Period allowed for commencing proceedings — Preliminary administrative complaint — Excusable error — Award criteria — Procedural rules — Obligation to state reasons — Principle of sound administration — Non-contractual liability)

(2011/C 311/60)

Language of the case: English

Parties

Applicants: CMB Maschinenbau & Handels GmbH (Gratkorn, Austria) and J. Christof GmbH (Graz, Austria) (represented initially by A. Petsche, N. Niejahr, lawyers, F. Young, Solicitor, and Q. Azau, lawyer, and subsequently by A. Petsche, N. Niejahr and Q. Azau)

Defendant: European Commission, as the legal successor of the European Agency for Reconstruction (EAR) (represented by: P. van Nuffel, F. Erlbacher and T. Scharf, acting as Agents)

Re:

First, annulment of the decision of the European Agency for Reconstruction of 29 August 2007, rejecting the tender made by the applicants in response to an invitation to tender EuropeAid/124192/D/SUP/YU concerning the supply of equipment for medical waste management (OJ 2006 S 233 248826) and awarding the contract to another tenderer, and, second, application for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders CMB Maschinenbau & Handels GmbH and J. Christof GmbH to bear their own costs and those incurred by the European Commission.*

(1) OJ C 8, 12.1.2008.

Judgment of the General Court of 9 September 2011 — Dow AgroSciences and Others v Commission

(Case T-475/07) (1)

(Plant-protection products — Active substance trifluralin — Non-inclusion in Annex I to Directive 91/414/EEC — Action for annulment — Evaluation procedure — New study and additional study — Time-limits — Concepts of 'risk' and 'hazard' — Manifest error of assessment — Draft review report — Draft directive or decision — Time-limits — Consequences of possible non-compliance — Legitimate expectations — Principle of proportionality — Decision 1999/468/EC ('the comitology decision') — Regulation (EC) No 850/2004 — Article 3(3) — Plea of illegality)

(2011/C 311/61)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, United Kingdom) and the 20 other applicants, the names of which are listed in the Annex (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission (represented by: L. Parpala and B. Doherty, acting as Agents, assisted by J. Stuyck, lawyer)

Re:

Application for annulment of Commission Decision 2007/629/EC of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2007 L 255, p. 42).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dow AgroSciences Ltd and the 20 other applicants, the names of which are listed in the Annex, to bear their own costs and also to pay the costs incurred by the European Commission.*

(1) OJ C 51, 23.2.2008.

Judgment of the General Court of 14 September 2011 — Olive Line International v OHIM — Knopf (O-live)

(Case T-485/07) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark O-live — Earlier national trade name Olive line — Relative ground for refusal — Article 8(4) of Regulation (EC) No 40/94 (now Article 8(4) of Regulation (EC) No 207/2009) — Right to prohibit use of a subsequent mark — Likelihood of confusion — Article 7 of the Spanish Trade Mark Law and Article 8(1) of Regulation No 40/94 (now Article 8(1) of Regulation No 207/2009))

(2011/C 311/62)

Language of the case: German

Parties

Applicant: Olive Line International, SL (Madrid, Spain) (represented by: P. Koch Moreno, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Reinhard Knopf (Malsch, Germany) (represented by: W. Weber, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 26 September 2007 (Case R 1478/2006-2) in opposition proceedings between Olive Line International, SL, and Mr Reinhard Knopf.

Operative part of the judgment

The Court:

1. *annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 26 September 2007 (Case R 1478/2006-2);*

2. *orders OHIM to pay the costs;*

3. *orders Mr Reinhard Knopf to bear his own costs.*

(1) OJ C 51, 23.2.2008

Judgment of the General Court of 9 September 2011 — Kwang Yang Motor Co. v OHIM — Honda Giken Kogyo (An internal combustion engine with the vent on the top)

(Case T-10/08) ([1])

(Community design — Invalidity proceedings — Registered Community design representing an internal combustion engine with the vent on the top — Earlier national design — Ground for invalidity — No individual character — Visible features of a component part of a complex product — No different overall impression — Informed user — Degree of freedom of the designer — Articles 4, 6 and 25(1)(b) of Regulation (EC) No 6/2002)

(2011/C 311/63)

Language of the case: English

Parties

Applicant: Kwang Yang Motor Co. (Kaohsiung, Taiwan) (represented by: P. Rath, W. Festl-Wietek and M. Wetzel, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Honda Giken Kogyo Kabushiki Kaisha (Tokyo, Japan) (represented by T. Musmann, H. Timmann, M. Büttner and S. von Petersdorff-Campen, lawyers)

Re:

ACTION brought against the decision of 8 October 2007 of the Third Board of Appeal of OHIM (Case R 1337/2006-3), relating to invalidity proceedings for Community designs between Honda Giken Kogyo Kabushiki Kaisha and Kwang Yang Motor Co., Ltd

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kwang Yang Motor Co., Ltd to pay the costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the General Court of 9 September 2011 — Kwang Yang Motor v OHIM — Honda Giken Kogyo (internal combustion engine)

(Case T-11/08) ([1])

(Community design — Invalidity proceedings — Registered Community design representing an internal combustion engine — Earlier national design — Ground for invalidity — No individual character — Visible features of a component part of a complex product — No different overall impression — Informed user — Degree of freedom of the designer — Articles 4, 6 and 25(1)(b) of Regulation (EC) No 6/2002)

(2011/C 311/64)

Language of the case: English

Parties

Applicant: Kwang Yang Motor Co., Ltd (Kaohsiung, Taiwan) (represented by: P. Rath, W. Festl-Wietek and M. Wetzel, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Honda Giken Kogyo Kabushiki Kaisha (Tokyo, Japan) (represented by: T. Musmann, H. Timmann, M. Büttner and S. von Petersdorff-Campen, lawyers)

Re:

Action brought against the decision of 8 October 2007 of the Third Board of Appeal of OHIM (Case R 1380/2006-3), relating to invalidity proceedings for Community designs between Honda Giken Kogyo Kabushiki Kaisha and Kwang Yang Motor Co., Ltd

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kwang Yang Motor Co., Ltd to pay the costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the General Court of 9 September 2011 — LPN v Commission

(Case T-29/08) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Refusal of access — Documents concerning proceedings for failure to fulfil obligations concerning a dam project on the river Sabor — Exception concerning the protection of the objectives of inspections, investigations and audits — Environmental information — Regulation (EC) No 1367/2006 — Obligation to carry out a specific and individual examination — Overriding public interest)

(2011/C 311/65)

Language of the case: Portuguese

Parties

Applicant: Liga para Protecção de Natureza (LPN) (Lisbon, Portugal) (represented by: P. Vinagre e Silva, lawyer)

Defendant: European Commission (represented by: P. Costa de Oliveira and D. Recchia, agents)

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

Re:

Action for annulment of the Commission decision of 22 November 2007 confirming the refusal to grant access to the documents contained in the file relating to proceedings for failure to fulfil obligations brought against the Portuguese Republic concerning a dam construction project on the river Sabor (Portugal) which could infringe Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Operative part of the judgment

The Court:

1. *Dismisses the action in so far at it relates to documents and parts of documents to which access was refused to the Liga para Protecção de Natureza (LPN) in Commission Decision SG.E.3/MIB/psi D(2008) 8639 of 24 October 2008;*

2. *Rules that there is no further need to adjudicate as to the remainder;*

3. *Orders the LPN to bear its own costs and those incurred by the European Commission;*

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

([1]) OJ C 79, 29.3.2008.

Judgment of the General Court of 13 September 2011 — Ruiz de la Prada de Sentmenat v OHIM — Quant (AGATHA RUIZ DE LA PRADA)

(Case T-522/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark AGATHA RUIZ DE LA PRADA — Earlier Community figurative mark representing a black and white flower — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2011/C 311/66)

Language of the case: Spanish

Parties

Applicant: Agatha Ruiz de la Prada de Sentmenat (Madrid, Spain) (represented by: R. Bercovitz Álvarez, 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: Mary Quant Ltd (Birmingham, United Kingdom) (represented by: R. Arnold and C. Hicks, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 September 2008 (Case R 1523/2007-1), relating to opposition proceedings between Mary Quant Ltd and Agatha Ruiz de la Prada de Sentmenat.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Agatha Ruiz de la Prada de Sentmenat to pay the costs.*

([1]) OJ C 32, 7.2.2009.

Order of the General Court of 13 September 2011 — Ruiz de la Prada de Sentmenat v OHIM — Quant Cosmetics Japan (AGATHA RUIZ DE LA PRADA)

(Case T-523/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark AGATHA RUIZ DE LA PRADA — Earlier national and Community figurative marks representing a black and white flower — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 311/67)

Language of the case: Spanish

Parties

Applicant: Agatha Ruiz de la Prada de Sentmenat (Madrid, Spain) (represented by: R. Bercovitz Álvarez, 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 intervening before the General Court: Mary Quant Cosmetics Japan Ltd (Tokyo, Japan) (represented by: R. Arnold and C. Hicks, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 September 2008 (Case R 1522/2007-1), relating to opposition proceedings between Mary Quant Cosmetics Japan Ltd and Agatha Ruiz de la Prada de Sentmenat

Operative part of the order

1. *Dismisses the action.*

2. *Orders Agatha Ruiz de la Prada de Sentmenat to pay the costs.*

[1] OJ C 32, 7.2.2009.

Judgment of the General Court of 13 September 2011 — Dredging International and Ondernemingen Jan de Nul v EMSA

(Case T-8/09) [1]

(Public service contracts — EMSA's procurement procedures — Operation of stand-by oil spill recovery vessels — Rejection of a tender — Action for annulment — Tender inconsistent with the subject of the contract — Consequences — Equal treatment — Proportionality — Definition of the subject of the contract — Failure to disclose the characteristics and relative advantages of the successful tender — Statement of reasons — Award of the contract — No right of action — Application for a declaration that the contract concluded with the successful tenderer is null and void — Claim for damages)

(2011/C 311/68)

Language of the case: English

Parties

Applicants: Dredging International NV (Zwijndrecht, Belgium) and Ondernemingen Jan de Nul NV (Hofstade-Aalst, Belgium) (represented by: R. Martens and A. Van Vaerenbergh, lawyers)

Defendant: European Maritime Safety Agency (EMSA) (represented by: J. Menze, Agent, assisted by J. Stuyck and A.-M. Vandromme, lawyers)

Re:

First, annulment of the decision of the European Maritime Safety Agency (EMSA) of 28 October 2008 to reject the applicants' bid submitted in response to a call for tenders EMSA/NEG/3/2008 regarding the service contracts for stand-by oil spill recovery vessels (Lot 2: North Sea) (OJ 2008/S 48-065631) and of the decision to award the contract to another tenderer, and, second, a request for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dredging International NV and Ondernemingen Jan de Nul NV to pay the costs.*

[1] OJ C 82, 4.4.2009.

Judgment of the General Court of 9 September 2011 — dm-drogerie markt v OHIM — Distribuciones Mylar (dm)

(Case T-36/09) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark dm — Earlier national figurative mark dm — Administrative procedure — Decisions of the Opposition Divisions — Revocation — Correction of clerical errors — Legally non-existent measure — Admissibility of appeals before the Board of Appeal — Time-limit for filing an appeal — Legitimate expectations — Articles 59, 60a, 63 and 77a of Regulation (EC) No 40/94 (now Articles 60, 62, 65 and 80 of Regulation (EC) No 207/2009) — Rule 53 of Regulation (EC) No 2868/95)

(2011/C 311/69)

Language of the case: English

Parties

Applicant: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany) (represented by: O. Bludovsky and C. Mellein, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by J. Novais Gonçalves and subsequently by G. Schneider, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Distribuciones Mylar, SA (Gelves, Spain)

Re:

Action against the decision of the First Board of Appeal of OHIM of 30 October 2008 (Case R 228/2008-1), relating to opposition proceedings between Distribuciones Mylar, SA and dm-drogerie markt GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 October 2008 (Case R 228/2008-1) relating to opposition proceedings between Distribuciones Mylar, SA and dm-drogerie markt GmbH & Co. KG in so far as it did not declare the amended version of the Opposition Division's decision of 16 May 2007 to be null and void;*

2. *Dismisses the remainder of the action;*

3. *Orders OHIM to pay the costs.*

([1]) OJ C 82, 4.4.2009.

Judgment of the General Court of 9 September 2011 — Chalk v OHIM — Reformed Spirits Company Holdings (CRAIC)

(Case T-83/09) ([1])

(Community trade mark — Community word mark CRAIC — Assignments — Registration of the transfer of the mark — Revocation — Articles 16, 17, 23 and 77a of Regulation (EC) No 40/94 (now Articles 16, 17, 23 and 80 of Regulation (EC) No 207/2009) and Rule 31 of Regulation (EC) No 2868/95)

(2011/C 311/70)

Language of the case: English

Parties

Applicant: David Chalk (Canterbury, Kent, United Kingdom) (represented by: W. James, M. Gilbert, C. Balme, Solicitors, and S. Malynicz, Barrister)

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

The other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Reformed Spirits Company Holdings Ltd (Saint Helier, United Kingdom) (represented by: C. Morcom QC)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 November 2008 (Case R 1888/2007-2) relating to an application for registration of the transfer of a Community trade mark following an assignment

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr David Chalk to pay the costs, including the costs necessarily incurred by Reformed Spirits Company Holdings Ltd for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 90, 18.4.2009.

Judgment of the General Court of 15 September 2011 — Prinz Sobieski zu Schwarzenberg v OHIM — British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg)

(Case T-271/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark Romuald Prinz Sobieski zu Schwarzenberg — Earlier national word mark JAN III SOBIESKI and earlier national figurative mark JAN III Sobieski — Failure to comply with the obligation to pay the application fee or to do so by bank transfer within the period prescribed — Decision of the Board of Appeal declaring the action to be unfounded — Article 8(3) of Regulation (EC) No 2869/95 — Application for restitutio in integrum — Lack of exceptional or unforeseeable circumstances — Article 81 of Regulation (EC) No 207/2009)

(2011/C 311/71)

Language of the case: German

Parties

Applicant: Romuald Prinz Sobieski zu Schwarzenberg (Dortmund, Germany) (represented by: U. Fitzner and U.H. Fitzner, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: British-American Tobacco Polska S.A. (Augustów, Poland)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 May 2009 (Case R 771/2008-4), relating to opposition proceedings between British-American Tobacco Polska S.A. and Romuald Sobieski zu Schwarzenberg

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Romuald Prinz Sobieski zu Schwarzenberg to pay the costs.*

[1] OJ C 220, 12.9.2009.

Judgment of the General Court of 9 September 2011 — Deutsche Bahn v OHIM — DSB (IC4)

(Case T-274/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark IC4 — Earlier Community word mark ICE and earlier national figurative mark IC — Criteria for assessing likelihood of confusion — Relative grounds for refusal — Similarity of the services — Similarity of the signs — Distinctive character of the earlier mark — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 311/72)

Language of the case: English

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: E. Haag, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: DSB (Copenhagen, Denmark) (represented by: T. Swanstrøm, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 April 2009 (Case R 1380/2007-1), relating to opposition proceedings between Deutsche Bahn AG and DSB

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 April 2009 (Case R 1380/2007-1) and the decision of the Opposition Division of OHIM of 26 July 2007;*

2. *Orders OHIM to pay the costs incurred by Deutsche Bahn AG for the purposes of the present judicial proceedings and the proceedings before the Board of Appeal;*

3. *Orders OHIM and DSB to bear their own costs.*

[1] OJ C 220, 12.9.2009.

Judgment of the General Court of 15 September 2011 — CEVA v Commission

(Case T-285/09) [1]

(Specific programme for research and technological development in the field of research into living resources — Project Seapura — Grant agreement — Arbitration clause — Application for the reimbursement of sums paid in advance under a research financing contract — Reminder letters — Action for annulment — Inadmissibility)

(2011/C 311/73)

Language of the case: French

Parties

Applicant: Centre d'étude et de valorisation des algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: European Commission (represented by: V. Joris, Agent, and E. Bouttier, lawyer)

Re:

Application for the annulment of the four reminder letters of the Commission dated 11 May 2009, by which it invited the applicant to reimburse the amount paid to it under a grant agreement concluded for a project to be carried out in the context of the specific programme for research and technological development, entitled 'Quality of Life and Management of Living Resources'.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders the Centre d'étude et de valorisation des algues SA (CEVA) to pay the costs.*

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[1] OJ C 220, 12.9.2009.

Judgment of the General Court of 9 September 2011 — Omnicare v OHIM — Astellas Pharma (OMNICARE CLINICAL RESEARCH)

(Case T-289/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark OMNICARE CLINICAL RESEARCH — Earlier national figurative mark OMNICARE — Likelihood of confusion — Similarity of the signs — Similarity of the services — Genuine use of the earlier mark)

(2011/C 311/74)

Language of the case: English

Parties

Applicant: Omnicare, Inc. (Covington, Kentucky, United States) (represented by: M. Edenborough QC)

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, intervening before the General Court: Astellas Pharma GmbH (Munich, Germany) (represented by: C. Gutiérrez Martínez, H. Granado Carpenter and M. Polo Carreño, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 14 May 2009 (Case R 401/2008-4), concerning opposition proceedings between Yamanouchi Pharma GmbH and Omnicare, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Omnicare, Inc. to pay the costs.*

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[1] OJ C 244, 10.10.2009.

Judgment of the General Court of 9 September 2011 — Omnicare v OHIM — Astellas Pharma (OMNICARE)

(Case T-290/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark OMNICARE — Earlier national figurative mark OMNICARE — Likelihood of confusion — Similarity of the signs — Similarity of the services — Genuine use of the earlier mark)

(2011/C 311/75)

Language of the case: English

Parties

Applicant: Omnicare, Inc. (Covington, Kentucky, United States) (represented by: M. Edenborough QC)

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, intervening before the General Court: Astellas Pharma GmbH (Munich, Germany) (represented by: C. Gutiérrez Martínez, H. Granado Carpenter and M. Polo Carreño, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 14 May 2009 (Case R 402/2008-4), concerning opposition proceedings between Yamanouchi Pharma GmbH and Omnicare, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Omnicare, Inc. to pay the costs.*

([1]) OJ C 244, 10.10.2009.

Judgment of the General Court of 9 September 2011 — Ergo Versicherungsgruppe v OHIM — DeguDent (ERGO)

(Case T-382/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ERGO — Prior Community and national word marks CERGO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Duty to rule on the entirety of the action — Scope of the examination to be carried out by the Board of Appeal — Article 64(1) of Regulation No 207/2009)

(2011/C 311/76)

Language of the case: German

Parties

Applicant: Ergo Versicherungsgruppe AG (Düsseldorf, Germany) (represented by: V. von Bomhard, A.W. Renck, T. Dolde and J. Pause, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: DeguDent GmbH (Hanau, Germany) (represented by: initially W. Blau, then W. Blau, D. Kaya and C. Kusulis, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 July 2009 (Case R 44/2008-4) concerning opposition proceedings between DeguDent GmbH and Ergo Versicherungsgruppe AG

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 23 July 2009 (Case R 44/2008-4) in so far as the Board of Appeal omitted to rule on the action brought before it as regards the goods in Class 5*

2. *Dismisses the remainder of the action;*

3. *Orders Ergo Versicherungsgruppe AG, DeguDent Gmbh and OHIM to bear their own costs.*

([1]) OJ C 297, 5.12.2009.

Judgment of the General Court of 15 September 2011 — centrotherm Clean Solutions v OHIM — Centrotherm Systemtechnik (CENTROTHERM)

(Case T-427/09) ([1])

(Community trade mark — Revocation proceedings — Community word mark CENTROTHERM — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009)

(2011/C 311/77)

Language of the case: German

Parties

Applicant: centrotherm Clean Solutions GmbH & Co. KG (Blaubeuren, Germany) (represented by: O. Löffel, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Centrotherm Systemtechnik GmbH (Brilon, Germany) (represented by: J. Albrecht and U. Vormbrock, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 August 2009 (Case R 6/2008-4) relating to revocation proceedings between centrotherm Clean Solutions GmbH & Co. KG and Centrotherm Systemtechnik GmbH

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 August 2009 (Case R 6/2008-4) in so far as it annuls the decision of the Cancellation Division of 30 October 2007 in part;*

2. *Orders OHIM to bear its own costs and to pay those incurred by centrotherm Clean Solutions GmbH & Co. KG;*

3. *Orders Centrotherm Systemtechnik GmbH to bear its own costs.*

([1]) OJ C 312, 19.12.2009.

Judgment of the General Court of 15 September 2011 — Centrotherm Systemtechnik v OHIM — centrotherm Clean Solutions (CENTROTHERM)

(Case T-434/09) ([1])

(Community trade mark — Revocation proceedings — Community word mark CENTROTHERM — Genuine use of the mark — Article 51(1)(a) of Regulation (EC) No 207/2009 — Examination of the facts of the Office's own motion — Article 76(1) of Regulation No 207/2009 — Admissibility of new evidence — Article 76(2) of Regulation No 207/2009 — Plea of illegality — Rule 40(5) of Regulation (EC) No 2868/95)

(2011/C 311/78)

Language of the case: German

Parties

Applicant: Centrotherm Systemtechnik GmbH (Brilon, Germany) (represented by: J. Albrecht and U. Vormbrock, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: centrotherm Clean Solutions GmbH & Co. KG (Blaubeuren, Germany) (represented by: O. Löffel, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 August 2009 (Case R 6/2008-4) relating to revocation proceedings between centrotherm Clean Solutions GmbH & Co. KG and Centrotherm Systemtechnik GmbH

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Centrotherm Systemtechnik GmbH to pay the costs;*

3. *Orders centrotherm Clean Solutions GmbH & Co. KG to bear its own costs.*

([1]) OJ C 312, 19.12.2009.

Judgment of the General Court of 13 September 2011 — Zangerl-Posselt v Commission

(Case T-62/10 P) ([1])

(Appeal — Civil service — Recruitment — Notice of competition — General competition — Non-admission to practical tests and orals — Conditions of admission — Diplomas required — Article 5(3)(a)(ii) of the Staff Regulations — Interpretation — Consideration of different language versions — Preparatory documents)

(2011/C 311/79)

Language of the case: German

Parties

Appellant: Brigitte Zangerl-Posselt (Merzig, Germany) (represented by: S. Paulmann, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and B. Eggers, agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 30 November 2009 in Case F-83/07 *Zangerl-Posselt* v *Commission* and applying for that judgment to be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ms Brigitte Zangerl-Posselt to bear her own costs and those incurred by the European Commission in the present proceedings.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 9 September 2011 — BVR v OHIM — Austria Leasing (Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich)

(Case T-197/10) ([1])

(Community trade mark — Opposition Proceedings — Application for Community figurative mark Austria Leasing Gesellschaft m.b.H Mitglied der Raiffeisen-Bankengruppe Österreich — Earlier national figurative mark Raiffeisenbank — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 311/80)

Language of the case: German

Parties

Applicant: Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR) (Berlin, Germany) (represented by: I. Rinke, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Austria Leasing GmbH (Eschborn, Germany) (represented by: B. Joachim, lawyer)

Re:

Action brought for the annulment of the decision of the First Board of Appeal of OHIM of 3 February 2010 (Case R 248/2009-1), relating to opposition proceedings between the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR) and Austria Leasing GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken e.V. (BVR) to pay the costs.*

([1]) OJ C 179, 3.7.2010.

Judgment of the General Court of 9 September 2011 — DRV v OHIM — Austria Leasing (Austria Leasing Gesellschaft m.b.H. Mitglied der Raiffeisen-Bankengruppe Österreich)

(Case T-199/10) ([1])

(Community trade mark — Opposition Proceedings — Application for Community figurative mark Austria Leasing Gesellschaft m.b.H Mitglied der Raiffeisen-Bankengruppe Österreich — Earlier national figurative mark Raiffeisen — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 311/81)

Language of the case: German

Parties

Applicant: Deutscher Raiffeisenverband e.V. (DRV) (Bonn, Germany) (represented by: I. Rinke, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Austria Leasing GmbH (Eschborn, Germany) (represented by: B. Joachim, lawyer)

Re:

Action brought for the annulment of the decision of the First Board of Appeal of OHIM of 3 February 2010 (Case R 253/2009-1), relating to opposition proceedings between Deutscher Raiffensenverband e.V. (DRV) and Austria Leasing GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deutscher Raiffeisenverband e.V. (DRV) to pay the costs.*

([1]) OJ C 179, 3.7.2010.

Judgment of the General Court of 14 September 2011 — K-Mail Order v OHIM — IVKO (MEN'Z)

(Case T-279/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark MEN'Z — Prior trade name WENZ — Relative ground for refusal — Local range of the earlier sign — Article 8(4) and Article 41(1)(c) of Regulation (EC) No 207/2009)

(2011/C 311/82)

Language of the case: German

Parties

Applicant: K-Mail Order GmbH & Co. KG (Pforzheim, Germany) (represented by: T. Zeiher and G. Stallecker, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: IVKO Industrieprodukt-Vertriebskontakt GmbH (Baar-Wanderath, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 March 2010 (Case R 746/2009-1) concerning opposition proceedings between Wenz GmbH and IVKO Industrieprodukt-Vertriebskontakt GmbH

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders K-Mail Order GmbH & Co. KG to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Action brought on 28 July 2011 — Hemofarm v OHIM — Laboratorios Diafarm (HEMOFARM)

(Case T-411/11)

(2011/C 311/83)

Language in which the application was lodged: Spanish

Parties

Applicant: Hemofarm AD farmaceutsko-hemijska industrija Vršac (Vršac, Serbia) (represented by: D. Cañadas Arcas)

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

Other party to the proceedings before the Board of Appeal: Laboratorios Diafarm, SA (Barberá del Vallès, Spain)

Form of order sought

The applicant claims that the General Court should:

— stay the proceedings brought by the applicant before the General Court in its action against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 May 2011 until OHIM and Barcelona Commercial Courts Nos 4 and 8 have adjudicated upon the applications for a declaration of invalidity and for revocation on grounds of non-use;

— in the alternative, review, annul or, if necessary, vary decision R 298/2010-4 of the Fourth Board of Appeal as regards the contested goods in Class 5, so as to reject opposition B 996 506 in relation to that class, and consequently grant the applicant's application for Community trade mark No 4 504 049 'HEMOFARM' for all the goods in Class 5 and register that mark in Classes 5 and 35 as sought.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'HEMOFARM' for goods and services in Classes 3, 5 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Diafarm, SA.

Mark or sign cited in opposition: Community and international word mark 'HEMOFARM' for goods in Classes 3 and 16 and national word marks 'HEMOPLANT' and 'HEMONET' for goods in Class 5.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

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

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

Action brought on 30 August 2011 — Longevity Health Products v OHIM — Weleda Trademark (MENOCHRON)

(Case T-473/11)

(2011/C 311/84)

Language of the case: German

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Weleda Trademark AG (Arlesheim, Switzerland)

Form of order sought

— declare the action by the company Longevity Health Products Inc. admissible;

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 July 2011 in Case R 2345/2010-4 and reject the opposition by Weleda Trademark AG to the trade mark registration CTM 005050752; and

— order the Office for Harmonisation in the Internal Market to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Longevity Health Products, Inc.

Community trade mark concerned: Word mark 'MENOCHRON' for goods and services in Classes 3, 5 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Weleda Trademark AG

Mark or sign cited in opposition: Word mark 'MENODORON' for goods and services in Classes 3, 5 and 44.

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 8 of Regulation No 207/2009, [1] because there is no likelihood that the marks at issue would be confused.

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

Appeal brought on 5 September 2011 by Luigi Marcuccio against the order of the Civil Service Tribunal of 20 June 2011 in Case F-67/10 Marcuccio v Commission

(Case T-475/11 P)

(2011/C 311/85)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant requests that the Court grant the present appeal, with all the legal consequences thus arising.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal of 20 June 2011, which dismissed as inadmissible an action seeking an order that the Commission pay compensation for the damage purportedly suffered as a result of the Commission's refusal to reimburse the appellant in respect of the recoverable costs allegedly incurred in the case which gave rise to the judgment delivered by the Tribunal on 4 November 2008 in Case F-41/06 *Marcuccio* v *Commission*.

The appellant relies on three grounds of appeal.

1. The rejection, on purported grounds of inadmissibility, of the 'third head of claim' (*sic* between paragraphs 13 and 14 of the order under appeal) made by the appellant in the application at first instance, and the 'fourth head of claim' (*sic* between paragraphs 19 and 20 of the order under appeal) made by the appellant in the application at first instance, was unlawful, including on the grounds of (a) incorrect and unreasonable interpretation and application of the notion of 'request' within the meaning of Article 90 of the Staff Regulations of Officials of the European Union and Article 91 of those rules and illogical and unreasoned failure to have regard to the relevant case-law; (b) absolute failure to state reasons, distortion and misrepresentation of the facts and irrelevant, self-evident, arbitrary, illogical, irrational and unreasonable reasoning;

2. Distortion and misrepresentation of the facts and absolute failure to carry out any preliminary investigations;

3. Failure to rule on a claim made by the appellant in the proceedings and consequent breach of the appellant's right to be heard and rights of defence.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 2 August 2011 — ZZ v Commission

(Case F-79/11)

(2011/C 311/86)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Pappas, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Compensation for material and non-material damage allegedly suffered because of the failure to take measures to implement the judgment in Case F-128/07.

Form of order sought

— Order the Commission to pay to the applicant the sum of EUR 10 000 in respect of the loss of opportunity suffered because of the failure to take implementing measures in relation to him;

— Order the Commission to pay to the applicant the sum of EUR 5 000 in respect to the non-material damage suffered through the complete failure by the Commission to notify him of how the Commission intended to give effect to the judgment of annulment;

— order the Commission to pay the costs.

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