

**Re:**

Appeal against the judgment of the General Court (Second Chamber) of 27 September 2011 in Case T-30/03 RENV 3F v *Commission* by which the General Court dismissed the application for annulment of Commission Decision C(2002) 4370 final of 13 November 2002 finding the tax-reduction measures applicable to seafarers on board Danish vessels to be State aid compatible with the common market (Case C-319/07 P referred back after successful appeal)

**Operative part of the judgment**

*The Court:*

1. Dismisses the appeal;
2. Orders Falles Fagligt Forbund (3F) to pay the costs;
3. Orders the Kingdom of Denmark to bear its own costs.

(<sup>1</sup>) OJ C 65, 3.3.2012.

**Appeal brought on 23 November 2012 by Luigi Marcuccio against the order of the General Court (Third Chamber) delivered on 11 September 2012 in Case T-241/03 REV Marcuccio v Commission**

(Case C-534/12 P)

(2013/C 71/08)

*Language of the case: Italian*

**Parties**

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

*Other party to the proceedings:* European Commission

**Form of order sought**

— Set aside in its entirety the order of the General Court of the European Union of 11 September 2012 in Case T-241/03 REV.

- (a) Declare to be admissible the application lodged by the appellant on 27 December 2011 for revision of the order of the First Chamber of the General Court of 17 May 2006 in the proceedings already decided by the General Court in Case T-241/03, the application of 27 December 2011 having initiated the proceedings at first instance and, as a consequence, order that the case be proceeded with as a matter of law, and
- (b) order the respondent to reimburse the appellant in respect of the costs incurred by him in connection with the present proceedings; or

— in the alternative, refer the case back to the General Court so that it may give a fresh ruling on the admissibility of the application of 27 December 2011 and, subsequently, if appropriate, proceed with the case.

**Pleas in law and main arguments**

1. *Erroros in procedendo*, affecting the appellant's interests, inherent in the serious *errores in iudicando*, including, inter alia: (a) total failure to investigate adequately and to state reasons in the order under appeal; (b) breach of essential procedural requirements; (c) breach of the principle of mandatory jurisdiction on the part of the proper court specified by law to hear a case; (d) breach of the first subparagraph of Article 64(4) of the Rules of Procedure of the General Court, of Article 127(1) and (2) of those rules and, lastly, of the procedural right by which the appellant is vested with authority to propose to the Court, at any time, a measure of organisation of procedure relating to the case.
2. Breach of the first and second subparagraphs of Article 44 of the Statute of the Court of Justice of the European Union.
3. Breach of a principle of law contained in a judgment of the EU judicature, namely the judgment delivered by the Court of Justice of the European Union on 13 October 1977 in Case C-56/75 REV *Elz v EC*.
4. Total failure to investigate adequately and to state reasons in the order under appeal, on the grounds, inter alia, of distortion and misapplication of the facts and the appellant's assertions.

**Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 3 December 2012 — KONE AG, Otis GmbH, Schindler Aufzüge und Fahrtreppen GmbH, Schindler Liegenschaftsverwaltung GmbH, ThyssenKrupp Aufzüge GmbH v ÖBB-Infrastruktur AG**

(Case C-557/12)

(2013/C 71/09)

*Language of the case: German*

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Appellants:* KONE AG, Otis GmbH, Schindler Aufzüge und Fahrtreppen GmbH, Schindler Liegenschaftsverwaltung GmbH, ThyssenKrupp Aufzüge GmbH

*Respondent:* ÖBB-Infrastruktur AG

### Question referred

Is Article 101 TFEU (Article 81 EC, Article 85 of the EC Treaty) to be interpreted as meaning that any person may claim from members of a cartel damages also for the loss which he has been caused by a person not party to the cartel who, benefiting from the protection of the increased market prices, raises his own prices for his products more than he would have done without the cartel (umbrella pricing), so that the principle of effectiveness laid down by the Court of Justice of the European Union requires grant of a claim under national law?

— consequently, interpreted Article 4 of Annex V to those Regulations as implying that the right to carry over annual leave exceeding the limit laid down in that provision may be granted only where the official has been unable to take leave for reasons connected with his activity as an official and the duties he has thus been required to perform.

The persons referred to in Article 23 of the Statute of the Court of Justice of the European Union and the parties to the proceedings before the General Court of the European Union are invited to lodge their written observations on those questions at the Court of Justice of the European Union within one month of the service of the present decision.

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**Decision of the Court (Reviewing Chamber) of 11 December 2012 to review the judgment of the General Court (Appeal Chamber) delivered on 8 November 2012 in Case T-268/11 P Commission v Strack**

(Case C-579/12 RX)

(2013/C 71/10)

*Language of the case: German*

### Parties to the proceedings before the General Court

*Appellant:* European Commission

*Other party to the proceedings:* Guido Strack

### Questions to be reviewed

The review shall concern the questions whether – having regard to the case-law of the Court of Justice relating to the entitlement to paid annual leave as a principle of European Union social law, which is also expressly affirmed in Article 31(2) of the Charter of Fundamental Rights of the European Union and is covered in particular by Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) – the judgment of the General Court of the European Union of 8 November 2012 in Case T 268/11 P Commission v Strack affects the unity or consistency of European Union law inasmuch as the General Court, as an appeal court:

— interpreted Article 1e(2) of the Staff Regulations of Officials of the European Union to the effect that it does not include the requirements relating to the organisation of working time contained in Directive 2003/88, in particular, paid annual leave, and

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**Appeal brought on 13 December 2012 by Koninklijke Wegembouw Stevin BV against the judgment delivered by the General Court (Sixth Chamber) on 27 September 2012 in Case T-357/06 Koninklijke Wegembouw Stevin v Commission**

(Case C-586/12 P)

(2013/C 71/11)

*Language of the case: Dutch*

### Parties

*Appellant:* Koninklijke Wegembouw Stevin BV (represented by: E. Pijnacker Hordijk, advocaat)

*Other party to the proceedings:* European Commission

### Form of order sought

The appellant claims that the Court of Justice should:

— partially set aside the judgment under appeal, in so far as the General Court held therein that the Commission demonstrated to the requisite legal standard that KWS acted as leader in the cartel established by the Commission;

— partially annul Article 1(j) of the contested decision, <sup>(1)</sup> in so far as the Commission imposed a fine of EUR 27.36 million on KWS;

— set a new fine for KWS in the amount of EUR 27.36 million – 0.5 × EUR 17.1 million = EUR 18.81 million;