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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 30/01)

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

OJ C 13, 15.1.2011

Past publications

OJ C 346, 18.12.2010

OJ C 328, 4.12.2010

OJ C 317, 20.11.2010

OJ C 301, 6.11.2010

OJ C 288, 23.10.2010

OJ C 274, 9.10.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 25 November 2010 — European Commission v Italian Republic

(Case C-47/09) [1]

(Approximation of laws — Cocoa and chocolate products — Labelling — Addition of the word 'pure' or the phrase 'pure chocolate' to the labelling of certain products)

(2011/C 30/02)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: F. Clotuche-Duvieusart and D. Nardi, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption (OJ 2000 L 197, p. 9) and Article 2(1)(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 (OJ 2000 L 109, p. 29) — Labelling of chocolate products — Inclusion of the word 'puro' or the phrase 'cioccolato puro' in the labelling of chocolate products containing only cocoa butter by way of vegetable fat.

Operative part of the judgment

The Court:

1. *Declares that, by providing that the adjective 'pure' may be added to the sales name of chocolate products which do not contain vegetable fats other than cocoa butter, the Italian Republic has failed to fulfil its obligations under Article 3(5) of Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption and under Article 3(1) of that directive, read in conjunction with Article 2(1)(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;*

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

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[1] OJ C 82, 4.4.2009.

Judgment of the Court (Third Chamber) of 2 December 2010 (reference for a preliminary ruling from the Baranya Megyei Bíróság (Hungary)) — Ker-Optika Bt. v ÀNTSZ Dél-dunántúli Regionális Intézete

(Case C-108/09) [1]

(Free movement of goods — Public health — Selling of contact lenses via the Internet — National legislation authorising the sale of contact lenses solely in medical supply shops — Directive 2000/31/EC — Information society — Electronic commerce)

(2011/C 30/03)

Language of the case: Hungarian

Referring court

Baranya Megyei

Parties to the main proceedings

Applicant: Ker-Optika Bt.

Defendant: ÀNTSZ Dél-dunántúli Regionális Intézete

Re:

Reference for a preliminary ruling — Baranya Megyei Bíróság — Interpretation of Articles 28 and 30 EC and of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ 2000 L 178, p. 1) — Marketing of contact lenses on the internet — National rules reserving the sale of contact lenses to shops selling medical supplies

Operative part of the judgment

The national rules relating to the selling of contact lenses fall within the scope of Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal market ('Directive on electronic commerce'), since they concern the act of selling such lenses via the Internet. On the other hand, the national rules relating to the supply of contact lenses are not covered by that directive.

Articles 34 TFEU and 36 TFEU, and Directive 2000/31, must be interpreted as precluding national legislation which authorises the selling of contact lenses only in shops which specialise in medical devices.

([1]) OJ C 141, 20.6.2009.

Judgment of the Court (Grand Chamber) of 23 November 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany)) — Land Baden-Württemberg v Panagiotis Tsakouridis

(Case C-145/09) ([1])

(Freedom of movement for persons — Directive 2004/38/EC — Articles 16(4) and 28(3)(a) — Union citizen born and having resided for over 30 years in the host Member State — Absences from the host Member State — Criminal convictions — Expulsion decision — Imperative grounds of public security)

(2011/C 30/04)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: Land Baden-Württemberg

Defendant: Panagiotis Tsakouridis

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof Baden-Württemberg — Interpretation of Article 16(4) and 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and Corrigenda in OJ 2004 L 229, p. 35 and OJ 2007 L 204, p. 28) — Decision to expel a European citizen, who was born and had resided for more than thirty years in the host Member State, on account of a number of criminal convictions — Interpretation of the concept of 'imperative grounds of public security' and of the conditions for the loss of protection against expulsion, acquired on account of the abovementioned provision

Operative part of the judgment

1. *Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that, in order to determine whether a Union citizen has resided in the host Member State for the 10 years preceding the expulsion decision, which is the decisive criterion for granting enhanced protection under that provision, all the relevant factors must be taken into account in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State, reasons which may establish whether those absences involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.*

2. *Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(3) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State for the preceding 10 years. Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(2) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is covered by the concept of 'serious grounds of public policy or public security'.*

([1]) OJ C 153, 4.7.2009.

Judgment of the Court (First Chamber) of 2 December 2010 (reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Germany)) — Agrargut Bäbelin GmbH & Co. KG v Amt für Landwirtschaft Bützow

(Case C-153/09) [1]

(Common agricultural policy — Integrated administration and control system for certain aid schemes — Regulation (EC) No 1782/2003 — Single payment scheme — Set-aside entitlements — Article 54(6) — Regulation (EC) No 796/2004 — Article 50(4) — Declaration of entire area available for the purposes of activating set-aside entitlements — Article 51(1) — Sanction)

(2011/C 30/05)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: Agrargut Bäbelin GmbH & Co. KG

Defendant: Amt für Landwirtschaft Bützow

Re:

Reference for a preliminary ruling — Verwaltungsgericht Schwerin — Interpretation of Article 54 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) and of Articles 50 and 51 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Regulation (EC) No 1782/2003 (OJ 2003 L 141, p. 18) — Agricultural aid — Obligation on the farmer to claim set-aside entitlements before any other entitlement in order to prevent overdeclaration — Infringement of that obligation by a farmer who, after the setting aside of an area, does not have any arable land — Sanctions

Operative part of the judgment

1. *Article 54(6) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 319/2006 of 20 February 2006, must be interpreted as meaning that a farmer may apply for aid under the payment entitlements at his disposal, including in conjunction with areas that are not eligible for set-aside, only if he has first activated all of his set-aside entitlements.*

2. *Article 51 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Regulation (EC) No 1782/2003, as amended by Commission Regulation (EC) No 659/2006 of 27 April 2006, read in conjunction with Article 50(4) of that regulation, must be interpreted as meaning that, in the light of the principle of legal certainty, the sanction set out in Article 51(1) is not applicable to a farmer who, while having failed to activate all of his set-aside entitlements, on the ground that he did not have a sufficient number of hectares eligible for set-aside, activated payment entitlements based on permanent pasture.*

[1] OJ C 180, 1.8.2009.

Judgment of the Court (Third Chamber) of 2 December 2010 (reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia)) — Schenker SIA v Valsts ieņēmumu dienests

(Case C-199/09) [1]

(Regulation (EEC) No 2454/93 — Provisions for the implementation of the Community Customs Code — Article 6(2) — Application for binding tariff information — Meaning of 'one type of goods')

(2011/C 30/06)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Schenker SIA

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 6(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Meaning of 'one type of goods' — Goods differing as to quality or characteristics but capable of being classified under the same Combined Nomenclature code — Issue of a single set of binding tariff information for all those goods or specific tariff information for each one

Operative part of the judgment

Article 6(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 1602/2000 of 24 July 2000, must be interpreted as meaning that an application for binding tariff information may relate to different goods provided that these all belong to one and the same type of goods. Only goods which have similar characteristics and whose distinguishing features are completely irrelevant for the purposes of their tariff classification may be regarded as belonging to one type of goods for the purposes of that provision.

([1]) OJ C 193, 15.8.2009.

Judgment of the Court (Third Chamber) of 25 November 2010 (reference for a preliminary ruling from the Finanzgericht Hamburg (Germany)) — Barsoum Chabo v Hauptzollamt Hamburg-Hafen

(Case C-213/09) ([1])

(Customs union — Regulation (EC) No 1719/2005 — Common Customs Tariff — Recovery of import customs duties — Imports of processed foodstuffs — Preserved mushrooms — CN subheading 2003 10 30 — Levy of an additional amount — Principle of proportionality)

(2011/C 30/07)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Barsoum Chabo

Defendant: Hauptzollamt Hamburg-Hafen

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Validity of Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2005 L 286, p. 1) as regards the additional amount charged on the import of products falling under subheading 2003 1030 000 — Preserved mushrooms — Principle of proportionality

Operative part of the judgment

Examination of the question referred has disclosed nothing capable of affecting the validity of the amount of the specific customs duty of EUR 222 per 100 kilograms of net drained weight, which applies under Commission Regulation (EC) No 1719/2005 of 27 October 2005 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff and is charged on imports of preserved mushrooms of the genus Agaricus coming under subheading 2003 10 30 of the Combined Nomenclature in that annex and effected outside the quota opened by Commission Regulation (EC) No 1864/2004 of 26 October 2004 opening and providing for the administration of tariff quotas for preserved mushrooms imported from third countries, as amended by Commission Regulation (EC) No 1995/2005 of 7 December 2005.

([1]) OJ C 205, 29.8.2009.

Judgment of the Court (Fifth Chamber) of 2 December 2010 (reference for a preliminary ruling from the Giudice di pace di Cortona (Italy)) — Edyta Joanna Jakubowska v Alessandro Maneggia

(Case C-225/09) ([1])

(European Union rules on the practice of the profession of lawyer — Directive 98/5/EC — Article 8 — Prevention of conflicts of interest — National rules prohibiting the practice of the profession of lawyer concurrently with employment as a part-time public employee — Removal from the register of lawyers)

(2011/C 30/08)

Language of the case: Italian

Referring court

Giudice di pace di Cortona

Parties to the main proceedings

Applicant: Edyta Joanna Jakubowska

Defendant: Alessandro Maneggia

Re:

Reference for a preliminary ruling — Giudice di pace di Cortona — Interpretation of Article 6 of Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of the freedom to provide services (OJ 1977 L 78, p. 17), Article 8 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ 1998 L 77, p. 36), and Articles 3, 4, 10, 81 and 98 EC — National rules providing for the incompatibility of the practice of the profession of lawyer concurrently with employment as a part-time public employee — Removal from the register of lawyers who did not choose between private practice and part-time employment.

Operative part of the judgment

1. *Articles 3(1)(g) EC, 4 EC, 10 EC, 81 EC and 98 EC do not preclude national rules which prevent part-time public officials from practising the profession of lawyer, despite their being qualified to do so, by laying down that they are to be removed from the register of the competent Bar Council;*

2. *Article 8 of Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained must be interpreted as meaning that it is open to a host Member State to impose on lawyers registered with a Bar in that Member State who are also, whether full or part-time, in the employ of another lawyer, an association or firm of lawyers, or a public or private enterprise, restrictions on the exercise of the profession of lawyer concurrent with that employment, provided that those restrictions do not go beyond what is necessary in order to attain the objective of preventing conflicts of interest and apply to all the lawyers registered in that Member State.*

([1]) OJ C 205, 29.8.2009.

Judgment of the Court (Third Chamber) of 2 December 2010 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division (United Kingdom)) — Everything Everywhere Ltd (formerly T-Mobile UK Ltd) v The Commissioners of Her Majesty's Revenue & Customs

(Case C-276/09) ([1])

(Sixth VAT Directive — Exemption — Article 13B(d)(1) and (3) — Negotiation of credit — Transactions concerning payments and transfers — Existence of two separate supplies of services or of a single supply — Additional charges invoiced where certain methods of payment are used for mobile telephone services)

(2011/C 30/09)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Chancery Division

Parties to the main proceedings

Applicant: Everything Everywhere Limited (formerly T-Mobile UK Ltd)

Defendant: The Commissioners of Her Majesty's Revenue & Customs

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Chancery Division — Interpretation of Art. 13B(d)(3) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemptions — Scope — Meaning of 'services having the effect of transferring funds and entailing changes in the legal and financial situation' — Services debiting one account and crediting another account by the corresponding amount — Services not including the carrying out of tasks consisting in debiting one account and crediting another with the corresponding amount but which, where a transfer of funds results, may be seen as having been the cause of that transfer — System of payment for calls from a mobile telephone

Operative part of the judgment

For the purposes of collecting value added tax, the additional charges invoiced by a provider of telecommunications services to its customers, where the latter pay for those services not by Direct Debit or by Bankers' Automated Clearing System transfer but by credit card, debit card, cheque or cash over the counter at a bank or authorised

payment agent acting on behalf of that service provider, do not constitute consideration for a supply of services distinct and independent from the principal supply of services consisting in the supply of telecommunications services.

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (Eighth Chamber) of 2 December 2010 (references for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Vassiliki Stylianou Vandorou (C-422/09), Vassilios Alexandrou Giankoulis (C-425/09), Ioannis Georgiou Askoxilakis (C-426/09) v Ipourgos Ethnikis Pedias kai Thriskevmaton

(Joined Cases C-422/09, C-425/09 and C-426/09) ([1])

(Articles 39 EC and 43 EC — Directive 89/48/EC — Recognition of diplomas — 'Professional experience')

(2011/C 30/10)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicants: Vassiliki Stylianou Vandorou (C-422/09), Vassilios Alexandrou Giankoulis (C-425/09), Ioannis Georgiou Askoxilakis (C-426/09)

Defendant: Ipourgos Ethnikis Pedias kai Thriskevmaton

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Art. 4(1)(b) of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Interpretation of Art. 1(3) of Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor (OJ 2001 L 206, p. 1) — Access to or pursuit of a regulated profession under the same conditions as nationals — Profession of accountant/tax advisor — 'Professional experience'

Operative part of the judgment

A national authority responsible for recognition of professional qualifications acquired in another Member State is bound, pursuant to Articles 39 EC and 43 EC, to take into account, when setting any supplementary requirements to compensate for substantial differences between the education and training undertaken by an applicant and the education and training required in the host Member State, all practical experience which, in whole or in part, covers those differences.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 25 November 2010 (reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany)) — Günter Fuß v Stadt Halle

(Case C-429/09) ([1])

(Social policy — Protection of the safety and health of workers — Directives 93/104/EC and 2003/88/EC — Organisation of working time — Fire-fighters employed in the public sector — Article 6(b) of Directive 2003/88/EC — Maximum weekly working time — Exceeded — Reparation for loss or damage caused by breach of European Union law — Conditions on which right to reparation depends — Procedural rules — Obligation to make a prior application to the employer — Form and extent of reparation — Additional time off in lieu or financial compensation — Principles of equivalence and effectiveness)

(2011/C 30/11)

Language of the case: German

Referring court

Verwaltungsgericht Halle

Parties to the main proceedings

Applicant: Günter Fuß

Defendant: Stadt Halle

Re:

Reference for a preliminary ruling — Verwaltungsgericht Halle — Interpretation of Council Directive 93/104/EC of 23 November 1993 (OJ 1993 L 307, p. 18) and 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) and, in particular, Article 6(b), Article 16(b) and the second paragraph of Article 19 of Directive 2003/88/EC — National rules providing, in contravention of those directives, a working time exceeding 48 hours per week for officials on operational duties in the professional fire service — Right of an official who has exceeded the maximum number of working hours to compensation in the form of time off in lieu or financial remuneration

Operative part of the judgment

1. *A worker such as Mr Fuß in the main proceedings who has completed, as a fire-fighter employed in an operational service in the public sector, a period of average weekly working time exceeding that provided for in Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, may rely on European Union law to establish the liability of the authorities of the Member State concerned in order to obtain reparation for the loss or damage sustained as a result of the infringement of that provision.*

2. *European Union law precludes national legislation, such as that at issue in the main proceedings,*

   — *which makes a public sector worker's right to reparation for loss or damage suffered as a result of the infringement by the authorities of the Member State concerned of a rule of European Union law — in the present case Article 6(b) of Directive 2003/88 — conditional on a concept of fault going beyond that of a sufficiently serious breach of European Union law, it being for the referring court to establish whether such a condition exists, and*

   — *which makes a public sector worker's right to reparation for the loss or damage suffered as a result of the infringement by the authorities of the Member State concerned of Article 6(b) of Directive 2003/88 conditional on a prior application having been made to his employer in order to secure compliance with that provision.*

3. *The reparation, for which the authorities of the Member States are responsible, of the loss or damage caused by them to individuals as a result of breaches of European Union law must be commensurate with the loss or damage sustained. In the absence of relevant European Union law provisions, it is for the national law of the Member State concerned to determine, while ensuring observance of the principles of equivalence and effectiveness, first, whether reparation for the loss or damage suffered by a worker such as Mr Fuß in the main proceedings, as a result of the breach of a rule of European Union law, should take the form of additional time off in lieu or financial compensation for the worker and, second, the rules concerning the method of calculation of that reparation. The reference periods provided for in Articles 16 to 19 of Directive 2003/88 are irrelevant in that regard.*

4. *The answers to the questions referred by the referring court are the same irrespective of whether the facts of the main proceedings fall under the provisions of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, or those of Directive 2003/88.*

(1) OJ C 24, 30.1.2010.

Judgment of the Court (Fourth Chamber) of 2 December 2010 — Holland Malt BV v European Commission, Kingdom of the Netherlands

(Case C-464/09 P) (1)

(Appeal — State aid — Guidelines for aid in the agriculture sector — Point 4.2.5 — Malt market — No normal market outlets — Aid measure declared incompatible with the common market)

(2011/C 30/12)

Language of the case: English

Parties

Appellants: Holland Malt BV (represented by: O. Brouwer, A. Stoffer and P. Schepens, advocaten)

Other parties to the proceedings: European Commission (represented by: L. Flynn and A. Stobiecka-Kuik, Agents) Kingdom of the Netherlands (represented by: C. Wissels and Y. de Vries, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 9 September 2009 in Case T-369/06 *Holland Malt BV* v *Commission — Holland Malt BV, supported by the Kingdom of the Netherlands* v *Commission* by which that Court dismissed an application for annulment of Commission Decision 2007/59/EC of 26 September 2006 declaring as incompatible with the common market the aid granted by the Netherlands in favour of Holland Malt BV for the creation of a malt production plant at Eemshaven (Groningen), in the form of investment aid of EUR 7 425 000, subject to the condition precedent of its approval by the Commission (State aid No C 14/2005 — ex N 149/2004) (OJ 2007 L 32, p. 76) — Application of the Guidelines for State aid in the agriculture sector

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Holland Malt BV to pay the costs.*

(1) OJ C 24, 30.1.2010.

Judgment of the Court (Sixth Chamber) of 2 December 2010 — European Commission v Portuguese Republic

(Case C-526/09) ([1])

(Failure of a Member State to fulfil its obligations — Environment — Directive 91/271/EEC — Urban waste-water treatment — Article 11(1) and (2) — Discharge of industrial waste water into collecting systems and urban waste water treatment plants — Subject to prior regulations and/or specific authorisations — Lack of authorisation)

(2011/C 30/13)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and G. Braga da Cruz, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 11(1) and (2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40) — Licence to discharge waste water — 'Estação de Serviço Sobritos'

Operative part of the judgment

The Court:

1. *declares that, by permitting the discharge of industrial waste water from the industrial site Estação de Serviço Sobritos L[da], situated in the Matosinhos urban area, without adequate authorisation to that effect, the Portuguese Republic has failed to fulfil its obligations under Article 11(1) and (2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment;*

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

([1]) OJ C 51, 27.02.2010.

Judgment of the Court (Eighth Chamber) of 2 December 2010 — European Commission v Hellenic Republic

(Case C-534/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2008/1/EC — Pollution prevention and control — Requirements for the granting of permits for existing installations)

(2011/C 30/14)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and A. Alcover San Pedro, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8) — Requirements for the granting of permits for existing installations — Obligation to ensure that such installations operate in accordance with the requirements of the directive

Operative part of the judgment

The Court:

1. *Declares that, by failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of that directive, not later than 30 October 2007, without prejudice to specific Community legislation, the Hellenic Republic has failed to fulfil its obligations under Article 5(1) of that directive;*

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

([1]) OJ C 37, 13.2.2010.

Judgment of the Court (Third Chamber) of 24 November 2010 — European Commission v Council of the European Union

(Case C-40/10) ([1])

(Actions for annulment — Regulation (EU, Euratom) No 1296/2009 — Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Method of adjustment — Article 65 of the Staff Regulations — Articles 1 and 3 to 7 of Annex XI to the Staff Regulations — Exception clause — Article 10 of Annex XI to the Staff Regulations — Council's discretion — Adjustment differing from that proposed by the Commission — Review clause allowing for intermediate adjustment of remunerations)

(2011/C 30/15)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Currall, G. Berscheid and J.-P. Keppenne, Agents)

Defendant: Council of the European Union (represented by: M. Bauer and D. Waelbroeck, Agents)

Intervener in support of the applicant: European Parliament (represented by: S. Seyr and A. Neergaard, Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented by: B. Weis Fogh, Agent), Federal Republic of Germany (represented by: J. Möller and B. Klein, Agents), Hellenic Republic (represented by: A. Samoni-Rantou and S. Chala, Agents), Republic of Lithuania (represented by: D. Kriaučiūnas and R. Krasuckaitė, Agents), Republic of Austria (represented by: E. Riedl, Agent), Republic of Poland (represented by: M. Szpunar, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: S. Behzadi-Spencer and L. Seeboruth, Agents)

Re:

Action for annulment — Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2009 L 348, p. 10) — Failure to respect the method for the adjustment of salaries and pensions for a reference period — Breach of Article 65 of the Staff Regulations of officials and of Articles 1 and 3 to 7 of Annex XI thereto — Discretion of the Council — Protection of legitimate expectations and the 'patere legem quam ipse fecisti' principle — Review clause allowing the intermediate adjustment of remuneration

Operative part of the judgment

The Court:

1. *Annuls Articles 2 and 4 to 18 of Council Regulation (EU, Euratom) No 1296/2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto;*

2. *Maintains the effects of Articles 2 and 4 to 17 of Regulation No 1296/2009 until the entry into force of a new regulation adopted by the Council of the European Union in order to ensure compliance with this judgment;*

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

4. *Orders the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Republic of Lithuania, the Republic of Austria, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own coasts.*

([1]) OJ C 51, 27.2.2010.

Order of the Court (Seventh Chamber) of 6 October 2010 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 2 de Granada-Spain) — Carlos Sáez Snchez, Patricia Rueda Vargas v Junta de Andalucía, Manual Jalón Morente and Others

(Case C-563/08) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Article 49 TFEU — Freedom of establishment — Public health — Pharmacies — Proximity — Provision of medicinal products to the public — Operating licence — Territorial distribution of pharmacies — Establishment of limits based on population density — Minimum distance between pharmacies keywords)

(2011/C 30/16)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 2 de Granada-Spain

Parties to the main proceedings

Applicants: Carlos Sáez Sánchez, Patricia Rueda Vargas

Defendants: Junta de Andalucía, Manual Jalón Morente and Others

Re:

Reference for a preliminary ruling — Juzgado de lo Contencioso-Administrativo No 2 de Granada — Interpretation of Article 43 EC — Legislation laying down the conditions for the opening of new pharmacies — Limits according to the number of inhabitants and the need to maintain a minimum distance between the pharmacies

Operative part of the order

Article 49 TFEU must be interpreted as not precluding, in principle, national legislation, such as that at issue in the cases before the referring court, which imposes restrictions on the issue of licences for the opening of new pharmacies, by providing that:

— *in each pharmaceutical area, a single pharmacy may be opened, as a general rule, per unit of 2800 inhabitants;*

— *a supplementary pharmacy may not be opened until that threshold has been exceeded, that pharmacy being established for the fraction above 2000 inhabitants; and*

— *each pharmacy must be a minimum distance away from existing pharmacies, that distance being, as a general rule, 250 metres.*

Nevertheless, Article 49 TFEU precludes such national legislation in so far as the basic '2800 inhabitants' and '250 metres' rules prevent, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain.

([1]) OJ C 69, 21.03.2009.

Order of the Court (Sixth Chamber) of 1 October 2010 (reference for a preliminary ruling from the Tribunale di Rossano (Italy)) — Franco Affatato v Azienda Sanitaria Provinciale di Cosenza

(Case C-3/10) ([1])

(Article 104(3) of the Rules of Procedure — Social policy — Directive 1999/70/EC — Clause 5 of the Framework Agreement on fixed-term work — Fixed-term employment contracts in the public sector — Successive contracts — Abuse — Preventive measures — Sanctions — Conversion of fixed-term contracts to a contract of unlimited duration — Prohibition — Compensation for damage — Principles of equivalence and effectiveness)

(2011/C 30/17)

Language of the case: Italian

Referring court

Tribunale di Rossano (Italy)

Parties to the main proceedings

Applicant: Franco Affatato

Defendant: Azienda Sanitaria Provinciale di Cosenza

Re:

Reference for a preliminary ruling — Tribunale di Rossano — Interpretation of Clauses 2, 3, 4 and 5 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Compatibility of certain provisions of national law on socially useful workers/publicly useful workers — National legislation that allows not indicating the reason for the first a fixed-term contract for workers in the education sector — Concept of a state body — Inclusion of a person with the characteristics of Poste Italiane SpA

Operative part of the order

1. *The first 12 questions referred by the Tribunale di Rossano (Italy), by decision of 21 December 2009, are manifestly inadmissible.*

2. *Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that:*

— *it does not preclude national legislation, such as that in Article 36(5) of Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment in public administrations, which prohibits, in the event of abuse resulting from the use of successive fixed-term employment contracts by a public sector employer, the conversion of those contracts to a contract of unlimited duration, where the internal legal order of the Member State concerned contains, in the sector under consideration, other effective measures to avoid and, as necessary, penalise the abusive use of successive fixed-term contracts. Nevertheless, it is for the national court to assess to what extent the conditions for application and the effective implementation of the relevant provisions of domestic law constitute an adequate measure for the prevention and, as necessary, penalisation of the abusive use by the public administration of successive fixed-term employment contracts or relationships;*

— *it is, as such, in no way liable to affect the fundamental political and constitutional structures or the essential functions of the Member State concerned within the meaning of Article 4(2) TEU.*

3. *That framework agreement must be interpreted as meaning that measures provides for by national legislation, such as that at issue in the main proceedings, in order to penalise the abusive use of fixed-term employment contracts or relationships must not be less favourable than those governing similar internal situations or make it practically impossible or excessively difficult to exercise the rights conferred by the legal order of the European Union. It is for the national court to assess to what extent the provisions of domestic law intended to penalise the abusive use by the public administration of successive fixed-term employment contracts or relationships comply with those principles.*

([1]) OJ C 63, 13.3.2010.

Order of the Court (Eighth Chamber) of 16 November 2010 (reference for a preliminary ruling from the Krajský súd v Prešove (Slovak Republic)) — Pohotovosť s.r.o. v Iveta Korčkovská

(Case C-76/10) ([1])

(Preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms — Directive 2008/48/EC — Directive 87/102 — Consumer credit contracts — Annual percentage rate of charge — Arbitration proceedings — Arbitration award — Power of the national court to examine of its own motion whether certain terms are unfair)

(2011/C 30/18)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: Pohotovosť s.r.o.

Defendant: Iveta Korčkovská

Re:

Reference for a preliminary ruling — Krajský súd v Prešove — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66) — Consumer credit contract stipulating an usurious interest rate and recourse to arbitration proceedings in the case of dispute — Power of the national court hearing a case concerning the enforcement of a final arbitration award to examine of its own motion whether those terms are unfair

Operative part of the order

1. *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts requires a national court, hearing an application for enforcement of a final arbitral award issued without the participation of the consumer, of its own motion, where the necessary information on the legal and factual state of affairs is available to it for this purpose, to consider the fairness of the penalty contained in a credit agreement concluded by a creditor with a consumer, that penalty having been applied in that award, if, according to national procedural rules, such an assessment may be conducted in similar proceedings under national law.*

2. *It is for the national court concerned to determine whether a term in a credit agreement such as that at issue in the main proceedings providing, according to the findings of that court, for the consumer to pay a disproportionately high sum in compensation must, in the light of all the circumstances attending the conclusion of the contract, be regarded as unfair within the meaning of Articles 3 and 4 of Directive 93/13. If that is the case, it is for that court to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that term.*

3. *In circumstances such as those in the main proceedings, the failure to mention the APR in a consumer credit contract, the mention of the APR being essential information in the context of Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998, may be a decisive factor in the assessment by a national court of whether a term of a consumer credit agreement concerning the cost of that credit in which no such mention is made is written in plain, intelligible language within the meaning of Article 4 of Directive 93/13. If that is not the case, that court has the power to assess, of its own motion, whether, in the light of all the circumstances attending the conclusion of that contract, the failure to mention the APR in the term of that contract concerning the cost of that credit is likely to confer on that term an unfair nature within the meaning of Articles 3 and 4 of Directive 93/13.*

   However, notwithstanding the power which is given to assess that contract in the light of Directive 93/13, Directive 87/102 is to be interpreted as allowing national courts to apply of their own motion the provisions transposing Article 4 of the latter directive into national law and as providing that the failure to mention the APR in a consumer credit contract means that the credit granted is deemed to be interest-free and free of charge.

([1]) OJ C 134, 22.5.2010.

Order of the Court (Seventh Chamber) of 29 September 2010 (reference for a preliminary ruling from the Rechtbank Breda (Netherlands)) — VAV-Autovermietung GmbH v Inspecteur van de Belastingsdienst/Douane Zuid/kantoor Roosendaal

(Case C-91/10) [1]

(First subparagraph of Article 104(3) of the Rules of Procedure — Freedom to provide services — Articles 49 EC to 55 EC — Motor vehicles — Use in one Member State of a motor vehicle registered and hired in another Member State — Taxation of that vehicle in the first Member State upon its first use on the national road network)

(2011/C 30/19)

Language of the case: Dutch

Referring court

Rechtbank Breda (Netherlands)

Parties to the main proceedings

Applicant: VAV-Autovermietung GmbH

Defendant: Inspecteur van de Belastingsdienst/Douane Zuid/kantoor Roosendaal

Re:

Reference for a preliminary ruling — Rechtbank Breda — Interpretation of Articles 56 TFEU to 62 TFEU — National legislation providing for the levy of a registration tax upon the first use of a vehicle on the national road network

Operative part of the order

Articles 49 EC to 55 EC must be interpreted as meaning that they preclude national legislation, such as that at issue in the main proceedings, pursuant to which a person residing or established in one Member State who uses, in that Member State, a motor vehicle registered and hired in another Member State must, upon the first use of that vehicle on the road network of the first Member State, pay in full a tax the balance of which, calculated according to the duration of use of the vehicle on the network, is reimbursed, without interest, after that use has ended.

[1] OJ C 113, 1.5.2010.

Reference for a preliminary ruling from the Landgericht Essen (Germany) lodged on 15 October 2010 — Dr Biner Bähr, in his capacity as liquidator in respect of the assets of Hertie GmbH v HIDD Hamburg-Bramfeld B.V.1

(Case C-494/10)

(2011/C 30/20)

Language of the case: German

Referring court

Landgericht Essen

Parties to the main proceedings

Applicant: Dr Biner Bähr, in his capacity as liquidator in respect of the assets of Hertie GmbH

Defendant: HIDD Hamburg-Bramfeld B.V.1

Questions referred

1. Does the Court adhere in principle to its case-law in *Seagon* v *Deko* (Case C-339/07 [2009] ECR I-00767) to the effect that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction under Article 3(1) of Council Regulation No 1346/2000 of 29 May 2000 on insolvency proceedings [1] to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State even where, in addition to a claim arising from the right to seek to have a transaction set aside by virtue of insolvency, the claims pursued are primarily claims arising from rules on the maintenance of capital laid down in national company law which, from an economic point of view, are directed at the same assets as, or assets additional to, those pursued by the claim arising from the right to seek to have a transaction set aside by virtue of insolvency and which are independent of the opening of insolvency proceedings?

2. If question 1 is to be answered in the negative: Does an action to set a transaction aside by virtue of insolvency the subject-matter of which is concurrently and primarily a claim independent of insolvency proceedings which is pursued by the liquidator on the basis of company law and which, from an economic point of view, is directed at the same or additional assets, fall within the scope of the exception *ratione materiae* provided for in Article 1(2)(b) of Regulation No 44/2001, [2] or is international jurisdiction to decide such an action determined in accordance with Regulation No 44/2001, in derogation from the judgment of the Court in *Seagon* v *Deko*?

3. Do 'matters relating to a contract' within the meaning of Article 5(1)(a) of Regulation No 44/2001 arise even where the connection between the parties to the dispute is attributable merely to an indirect relationship consisting in a 100 % holding by the group's parent company in each of the companies party to the dispute?

(1) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings; OJ 2000 L 160, p. 1.
(2) 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.

Reference for a preliminary ruling from the Conseil d'État (France), lodged on 15 October 2010 — Centre hospitalier universitaire de Besançon v Thomas Dutrueux, Caisse primaire d'assurance maladie du Jura

(Case C-495/10)

(2011/C 30/21)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Centre hospitalier universitaire de Besançon

Respondents: Thomas Dutrueux, Caisse primaire d'assurance maladie du Jura

Questions referred

1. Having regard to the provisions of Article 13 thereof, does Directive 85/374/EEC of 25 July 1985 (1) permit the implementation of a liability system based on the special situation of patients in public health establishments, in so far as it recognises, inter alia, that they have the right to obtain from such establishments, even in the absence of fault on the part of those establishments, compensation for injury caused by the failure of products and equipment which they use, without prejudice to the possibility for the establishment to seek indemnity from the producer?

2. Does Directive 85/374 limit the possibility for Member States to define the liability of persons who use defective equipment or products while providing services and, in so doing, cause damage to the recipient of those services?

(1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

Reference for a preliminary ruling from the Amtsgericht Waldshut-Tiengen — Landwirtschaftsgericht (Germany) lodged on 21 October 2010 — Rico Graf and Rudolf Engel v Landratsamt Waldshut, Landwirtschaftsamt

(Case C-506/10)

(2011/C 30/22)

Language of the case: German

Referring court

Amtsgericht Waldshut-Tiengen — Landwirtschaftsgericht

Parties to the main proceedings

Applicants: Rico Graf and Rudolf Engel

Defendant: Landratsamt Waldshut — Landwirtschaftsamt

Question referred

Is Paragraph 6(1)(a) of the Law of the German *Land* of Baden-Württemberg on Implementation of the Law on property transactions and of the Law on agricultural tenancy transactions (Ausführungsgesetz zum Grundstücksverkehrsgesetz und zum Landpachtverkehrsgesetz), as amended on 21 February 2006 (Gesetzblatt, p. 85), compatible with the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ? (1)

(1) OJ 2002 L 114, p. 6.

Action brought on 25 October 2010 — European Commission v Kingdom of the Netherlands

(Case C-508/10)

(2011/C 30/23)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: M. Condou-Durande and R. Troosters, acting as Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by requiring third-country nationals and their family members applying for long-term resident status to pay high and unfair charges, the Kingdom of the Netherlands has failed to fulfil its obligations under Directive 2003/109/EC [1] and, accordingly, its obligations under Article 258 TFEU;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission regards the amount of EUR 201 to EUR 830, depending on the case, for the processing of an application for long-term resident status as disproportionate by comparison with the sum of EUR 30 which EU citizens are required to pay for a residence permit. Such a procedure cannot, therefore, be regarded as 'fair'. In the Commission's view, irrespective of whether they constitute payment for actual costs arising, such high charges can be 'a means of hindering the exercise of the right of residence' within the meaning of recital 10 in the preamble to the directive, and thus have a deterrent effect on third-country nationals wishing to avail themselves of the rights afforded to them by the directive. Moreover, this is supported by the fact that the Commission is receiving complaints in that respect from citizens.

[1] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 26 October 2010 — Josef Geistbeck and Thomas Geistbeck v Saatgut-Treuhandverwaltungs GmbH

(Case C-509/10)

(2011/C 30/24)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Josef Geistbeck and Thomas Geistbeck

Defendant: Saatgut-Treuhandverwaltungs GmbH

Questions referred

The following questions on the interpretation of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ('the Regulation on plant variety rights' or 'the CPVR Regulation') [1] and of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights ('the Community Planting Regulation') [2] are referred to the Court of Justice of the European Union pursuant to point (b) of the first paragraph and the third paragraph of Article 267

(a) Must the reasonable compensation which a farmer must pay to the holder of a Community plant variety right in accordance with Article 94(1) of the CPVR Regulation because he has used propagating material of a protected variety obtained through planting and has not fulfilled the obligations laid down in Article 14(3) of the CPVR Regulation and Article 8 of the Community Planting Regulation, be calculated on the basis of the average amount of the fee charged for the licensed production of a corresponding quantity of propagating material of protected varieties of the plant species concerned in the same area, or must the (lower) remuneration which would be payable in the event of authorised planting under the fourth indent of Article 14(3) of the CPVR Regulation and Article 5 of the Community Planting Regulation be taken as a basis for the calculation instead?

(b) In the event that only the remuneration for authorised planting must be taken as a basis for the calculation: in the circumstances described above, may the holder, in the event of a single intentional or negligent infringement, calculate the damage for which he must be compensated in accordance with Article 94(2) of the CPVR Regulation as a lump sum based on the fee for the grant of a licence for the production of propagating material?

(c) Is it permitted or even required, when assessing the reasonable compensation due under Article 94(1) of the CPVR Regulation or the further compensation due under Article 94(2) of the CPVR Regulation, for the special monitoring costs of an organisation which protects the rights of numerous holders to be taken into account in such a way that double the compensation usually agreed, or double the remuneration due under the fourth indent of Article 14(3) of the CPVR Regulation, is awarded?

[1] OJ 1994 L 227, p.1.
[2] OJ 1995 L 173, p. 14.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 27 October 2010 — Finanzamt Hildesheim v BLC Baumarkt GmbH & Co. KG

(Case C-511/10)

(2011/C 30/25)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Finanzamt Hildesheim

Respondent: BLC Baumarkt GmbH & Co. KG

Question referred

Is the third subparagraph of Article 17(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes [1] to be interpreted as authorising the Member States to prescribe primarily an apportionment criterion other than the transaction formula for apportioning the input tax on the construction of a mixed-use building?

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

Action brought on 26 October 2010 — European Commission v Republic of Poland

(Case C-512/10)

(2011/C 30/26)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: H.Støvlbæk and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

— hold that, in the context of the implementation of the first railway package, the Republic of Poland has failed to meet the obligations imposed on it pursuant to Article 6(3) of and Annex II to Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways, as subsequently amended, [1] and Articles 4(2) and 14(2) of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, [2] as well as pursuant to Article 6(2) and (3) of Directive 2001/14/EC, Article 6(1) of Directive 2001/14/EC in conjunction with Article 7(3) and (4) of Directive 91/440/EEC, as subsequently amended, and Articles 7(3) and 8(1) of Directive 2001/14/EC;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission raises four heads of complaint alleging failure on the part of the Republic of Poland to comply with the provisions of the first railway package.

In the first place, according to the Commission, the Republic of Poland made no provision for mechanisms designed to ensure the decision-making and organisational independence of the infrastructure manager fulfilling a fundamental role, namely PLK S.A. (Polskie Linie Kolejowe, a public limited company), vis-à-vis the holding concern, that is to say, vis-à-vis both the dominant company PKP S.A. and the other subsidiaries of the holding concern which operate as rail carriers.

Second, the Republic of Poland did not, in the opinion of the Commission, adopt appropriate measures — in accordance with the first subparagraph of Article 6(1) of Directive 2001/14/EC and Article 7(3) and (4) of Directive 91/440/EEC — with a view to ensuring that the infrastructure manager PLK S.A. would achieve financial equilibrium within an appropriate period of time. The Polish State, it is submitted, is allowing PLK S.A. to accumulate losses up to the year 2012.

Third, in the Commission's view, the Republic of Poland failed to provide for the specific system of incentives required under Article 6(2) and (3) of Directive 2001/14/EC for PLK S.A. with a view to reducing the costs and expenditure incurred in respect of use of the railway infrastructure.

Fourth, in the opinion of the Commission, the Republic of Poland did not — contrary to Article 7(3) of Directive 2001/14/EC — adopt the measures necessary to ensure that charges for minimal access to railway infrastructure would be set on the basis of the costs directly incurred as a result of operating the train service. In addition, the Polish State failed to make provision for the control mechanism required by Article 8(1) of Directive 2001/14/EC which would make it possible to conduct an examination as to whether various market segments are in a position, from an economic point of view, to bear the increased expenditure for access to and use of the railway infrastructure.

[1] OJ 1991 L 237, p. 25.
[2] OJ 2001 L 75, p. 29.

Action brought on 29 October 2010 — European Commission v French Republic

(Case C-515/10)

(2011/C 30/27)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Rozet and A. Marghelis, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure that asbestos-cement waste is treated in suitable landfills, the French Republic failed to fulfil its obligations under Article 2(e), the first subparagraph of Article 3 and Article 6(d) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste [1] and the provisions of Council Decision of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC [2];

— order French Republic to pay the costs.

Pleas in law and main arguments

The Commission relies on a single plea in law in support of its action alleging an incorrect interpretation of the provisions of Directive 1999/31/EC and, in particular, of the definition of 'waste'.

The applicant disputes the interpretation of the French authorities according to which the waste can be both inert waste and hazardous waste at the same time. According to the Commission, the directive recognises on the contrary the existence of three different categories of waste, 'hazardous', 'non-hazardous' and 'inert', resulting in different obligations and a precise distinction in the conditions of acceptance of different waste to landfill. Thus, asbestos-cement waste should be considered to be 'hazardous waste' in accordance with the list of wastes established by Decision 2000/532/EC [3], as amended by Decision 2001/573/EC [4], and the particular precautions necessary for the disposal thereof. The national legislation classifying asbestos-cement waste as inert and authorising its acceptance in a landfill for inert waste therefore does not comply with the requirements of the directive.

[1] OJ 1999 L 182, p. 1.
[2] OJ 2002 L 11, p. 27.
[3] Commission Decision of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ 2000 L 226, p. 3).
[4] Council Decision of 23 July 2001 amending Commission Decision 2000/532/EC as regards the list of wastes (OJ 2001 L 203, p. 18).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Canarias (Spain) lodged on 2 November 2010 — María Luisa Gómez Cueto v Administración del Estado

(Case C-517/10)

(2011/C 30/28)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Canarias

Parties to the main proceedings

Applicant: María Luisa Gómez Cueto

Defendant: Administración del Estado

Questions referred

1. Is Council Directive 1999/70/EC [1] of 28 June 1999 applicable to staff of the public authorities who, by their administrative-law relationship with those authorities, have the status of civil servants?

2. If the first question is answered in the affirmative, is a national law which does not provide for a rule implementing Directive 1999/70/EC to have retroactive effect from the date by which the Directive was to be transposed into domestic law contrary to Community law?

[1] concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p.43).

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 8 November 2010 — Lebara Ltd v The Commissioners for Her Majesty's Revenue & Customs

(Case C-520/10)

(2011/C 30/29)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Lebara Ltd

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Where a taxable person ('Trader A') sells phone cards representing the right to receive telecommunications services from that person, is Article 2(1) of the Sixth VAT Directive [1] to be interpreted so as to mean that Trader A makes two supplies for VAT purposes: one at the time of the initial sale of the phone card by Trader A to another taxable person ('Trader B') and one at the time of its redemption (i.e. its use by a person — 'the End User' — to make telephone calls)?

2. If so, how (consistently with EU VAT legislation) is VAT to be applied through the chain of supply where Trader A sells the phone card to Trader B, Trader B resells the phone card in Member State B and it is eventually purchased by the End User in Member State B, and the End User then uses the phone card to make telephone calls?

[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

Appeal brought on 8 November 2010 by Grúas Abril Asistencia S.L. against the order of the General Court (Second Chamber) delivered on 24 August 2010 in Case T-386/09 Grúas Abril Asistencia S.L. v European Commission

(Case C-521/10 P)

(2011/C 30/30)

Language of the case: Spanish

Parties

Appellant: Grúas Abril Asistencia, S.L. (represented by: R. García García, abogado)

Other party: European Commission

Form of order sought

Accept the arguments put forward and set aside, on completion of the necessary legal formalities, the abovementioned order of inadmissibility, declaring the action for annulment admissible, as the appellant has standing to bring it, and giving final judgment in accordance with the appellant's claims.

Pleas in law and main arguments

The appeal is brought against the order of the General Court which held inadmissible the application for annulment of the European Commission's decision not to bring any proceedings with a view to remedying the infringements complained of. The General Court reasoned that such a refusal to act was not amenable to challenge by an individual.

The appellant submits that individuals have standing to bring actions for annulment, as provided for in Article 230 EC and Article III-365 of the Treaty establishing a Constitution for Europe and in the case-law, where they are addressees of the decision which is challenged and where the decision is of direct and individual concern to them. The appellant requests that the order holding inadmissible its application for annulment be set aside and that consequently that application be allowed.

Reference for a preliminary ruling from the Sozialgericht Würzburg (Germany) lodged on 9 November 2010 — Doris Reichel-Albert v Deutsche Rentenversicherung Nordbayern

(Case C-522/10)

(2011/C 30/31)

Language of the case: German

Referring court

Sozialgericht Würzburg

Parties to the main proceedings

Applicant: Doris Reichel-Albert

Defendant: Deutsche Rentenversicherung Nordbayern

Questions referred

1. Is Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems [1] to be interpreted as precluding an arrangement in one Member State whereby child-raising periods completed in another Member State of the European Union are to be recognised as such periods completed in the former Member State only if the child-raising parent was habitually resident abroad with the child and paid compulsory contributions during the raising or immediately before the birth of the child because of employment or self-employment there or, where spouses or partners were resident abroad together, if the spouse or partner of the child-raising parent paid such compulsory contributions or did not do so solely because he or she was a person as referred to in Paragraph 5(1) and (4) of Sozialgesetzbuch VI (Social Code VI; 'SGB VI') or was exempted from compulsory insurance pursuant to Paragraph 6 SGB VI (Paragraphs 56(3), second and third sentences; 57; 249 SGB VI)?

2. Is Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems to be interpreted, despite its wording, as meaning that, in exceptional cases, child-raising periods must be taken into account even where there has been no employment or self-employment if such a period would not otherwise be taken into account under the appropriate legislation either in the competent Member State or in another Member State in which the person was habitually resident while raising the children?

[1] OJ 2004 L 284, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 10 November 2010 — Wintersteiger AG v Products 4U Sondermaschinenbau GmbH

(Case C-523/10)

(2011/C 30/32)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Wintersteiger AG

Defendant: Products 4U Sondermaschinenbau GmbH

Questions referred

1. In the case of an alleged infringement by a person established in another Member State of a trade mark granted in the State of the court seised through the use of a keyword (AdWord) identical to that trade mark in an internet search engine which offers its services under various country-specific top-level domains, is the phrase 'place where the harmful event occurred or may occur' in Article 5(3) of Regulation (EC) 44/2001 ('Brussels I') [1] to be interpreted as meaning that:

   1.1. jurisdiction is established only if the keyword is used on the search engine website the top-level domain of which is that of the State of the court seised;

   1.2. jurisdiction is established only if the search engine website on which the keyword is used can be accessed in the State of the court seised;

   1.3. jurisdiction is dependent on the satisfaction of other requirements additional to the accessibility of the website?

2. If Question 1.3 is answered in the affirmative:

   Which criteria are to be used to determine whether jurisdiction under Article 5(3) of Brussels I is established where a trade mark granted in the State of the court seised is used as an AdWord on a search engine website with a country-specific top-level domain different from that of the State of the court seised?

[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.

Action brought on 11 November 2010 — European Commission v Portuguese Republic

(Case C-524/10)

(2011/C 30/33)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. Afonso, Agent)

Defendant: Portugal

Form of order sought

The Commission claims that the Court should:

— Declare that, in applying a special scheme to farmers which does not comply with the scheme established by the VAT Directive ([1]) because it exempts them from the payment of VAT, and in applying a zero rate flat-rate compensation whilst at the same time making a substantial negative compensation in its own resources to offset the levying of VAT, the Portuguese Republic has failed to comply with the provisions of Articles 296 to 298 of the VAT Directive.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Portuguese legislation does not provide for the flat-rate compensation of farmers in respect of input VAT. Following an audit of own resources for the years 2004 and 2005, carried out in Portugal on 13 and 14 November 2007, the Portuguese authorities reported that input VAT not deducted by farmers subject to the special scheme had increased to approximately 5.3% and 7.9% of their sales in 2004 and 2005 respectively. Since they took the view that the VAT levied in the farming sector was therefore excessive, the Portuguese authorities made a negative compensation of approximately EUR 70 million in 2004 in its calculations of the basis of assessment of own resources. After examining in detail whether the special scheme applied to farmers in Portugal is compatible with the VAT Directive, the Commission concludes that the Portuguese Republic does not comply with the obligations laid down by Articles 296 to 298 of the VAT Directive. The common flat-rate scheme laid down by the VAT Directive requires an appropriate compensation percentage to be set whenever the relevant macro-economic statistics show that the input VAT levied on farmers subject to that special scheme was not zero or close to zero.

While it is true that Member States are not allowed to set flat-rate compensation percentages which exceed the input VAT levied, since such excessive compensation would constitute State aid to the sectors concerned, it cannot be inferred from this that the Portuguese legislation, which does not provide for any compensation for farmers subject to the special scheme, is compatible with the VAT Directive. Member States may not freely disregard the macro-economic statistics and decide simply that no compensation will be paid in respect of the input VAT levied. If that were the case, the Member State would be applying to its farmers a special scheme substantially different, in its design and objectives, from the common flat-rate scheme for farmers as laid down and regulated in Chapter 2 of Title XII of the VAT Directive.

The Commission is of the view that the special scheme established by the Portuguese legislation for the transactions carried out by farmers is not a correct and consistent application of that common scheme. In fact, the legislation in question simply exempts from tax, and therefore excludes completely from the VAT system, all farmers who do not opt for the normal taxation arrangements. Bearing in mind that the farmers covered by the scheme still represent a significant proportion of the Portuguese farming sector, that option introduced by the national legislature is a serious breach of the principle that tax should be of general application, which states that VAT must be levied as generally as possible and apply to all the stages of the production and distribution of goods and to the provision of services. In addition, the establishment of an exemption applicable to the transactions carried out by farmers is not laid down in any of the provisions of the VAT Directive and directly contradicts the terms of Article 296(1) thereof, which allows Member States only to choose between three well-defined systems for the taxation of farmers: the application of the normal arrangements, the application of the simplified scheme provided for in Chapter 1 of Title XII or the application of the common flat-rate scheme provided for in Chapter 2 of that title.

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

Reference for a preliminary ruling from the Magyar Köztársaság Legfelsőbb Bírósága (Hungary) lodged on 15 November 2010 — ERSTE Bank Hungary Nyrt v Magyar Állam, B.C.L Trading GmbH, ERSTE Befektetési Zrt.

(Case C-527/10)

(2011/C 30/34)

Language of the case: Hungarian

Referring court

Magyar Köztársaság Legfelsőbb Bírósága

Parties to the main proceedings

Applicant: ERSTE Bank Hungary Nyrt

Defendants: Magyar Állam, B.C.L Trading GmbH, ERSTE Befektetési Zrt.

Intervener: dr. Bárándy és Társai Ügyvédi Iroda, Komerční banka a.s.

Question referred

Does Article 5(1) of Council Regulation (EC) No 1346/2000 [1] of 29 May 2000 on insolvency proceedings ('the Regulation') govern civil proceedings relating to the existence of rights in rem (security deposits) where the country in which the bond, and subsequently the money it represented, was deposited as a security was not a Member State of the European Union at the time when insolvency proceedings were instituted in another Member State, but was a Member State of the European Union by the time the application initiating the proceedings was submitted?

[1] OJ L 160, p. 1,

Action brought on 15 November 2010 — European Commission v Hellenic Republic

(Case C-528/10)

(2011/C 30/35)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and H. Støvlbæk)

Defendant: Hellenic Republic

Form of order sought

— declare that, by failing to adopt the necessary measures in implementing the first railway package, the Hellenic Republic has failed to fulfil its obligations under Articles 6(2) to (5) and 11 of Directive 2001/14/EC [1] and under Article 30(1), (4) and (5) of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

(i) ***Failure to apply a system of incentives to reduce the costs of provision of infrastructure and access charges***

The Commission submits that the Hellenic Republic, without advancing an adequate explanation, has not adopted the measures necessary for the actual application of a system which provides infrastructure managers with incentives to reduce the costs of provision of infrastructure and the level of access charges, thereby failing to fulfil its obligations under Article 6(2) to (5) of Directive 2001/14.

(ii) ***Failure to lay down a performance scheme***

In addition, the Commission contends that the Hellenic Republic, without advancing an adequate explanation, has not adopted the necessary measures and officially established a set of mechanisms to ensure the creation and application of a performance scheme with the objective of minimising disruption and improving the performance of the railway network in Greece, and it has therefore failed to fulfil its obligations under Article 11 of Directive 2001/14.

(iii) ***Failure to set up an independent regulatory body and to ensure that it is able to impose penalties***

Moreover, the Commission submits that the Hellenic Republic, without advancing an adequate explanation, has not created a regulatory body responsible for transport matters which is independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager, charging body, allocation body or applicant. Specifically, the National Railway Council which has responsibility operates under the supervision of the Ministry of Transport and Communications which, as is known, exerts a decisive influence on the railway undertaking TRAINOSE. This situation obviously results in a conflict of interests given the position of the public officials as members of the regulatory body who have to ensure that there is no discriminatory treatment to the detriment of the State railway undertaking's competitors while, at the same time, in the context of their regulatory duties, they must take account of the commercial interests of the railway undertaking which is overseen by the ministry itself. On the basis of the foregoing, the Commission contends that the Hellenic Republic has failed to fulfil its obligations under Article 30(1) of Directive 2001/14.

Furthermore, the Commission contends that the Hellenic Republic, without advancing an adequate explanation, has not adopted the measures necessary for ensuring that the regulatory body is able to impose penalties in cases of a refusal to provide information or in order for a situation to be remedied. More specifically, the Hellenic Republic has not adopted the decision establishing the type of penalties, the amount of fines and the procedure for imposing and levying the latter, with the consequence that it has failed to fulfil its obligations under Article 30(1), (4) and (5) of Directive 2001/14.

[1] OJ L 75, 15.3.2001, p. 29.

Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 16 November 2010 — Ministero dell'Economia e delle Finanze, Agenzia delle Entrate v Safilo SpA

(Case C-529/10)

(2011/C 30/36)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione (Italy)

Parties to the main proceedings

Appellants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Respondent: Safilo SpA

Questions referred

1. Does the abuse of rights principle in taxation matters, as defined in Cases C-255/02 *Halifax and Others* [2006] ECR I-1609 and C-425/06 *Part Service* [2008] ECR I-897, constitute a fundamental principle of Community law only in the field of harmonised taxes and in matters governed by secondary Community law provisions, or does it extend, as a category of abuse of fundamental freedoms, to matters involving non harmonised taxes, such as direct taxes, where the tax relates to cross-border financial matters, such as the acquisition by a company of rights of usufruct over the shares of a second company established in another Member State or in a non-Member State?

2. Irrespective of the answer to the first question, is there a Community interest in provision being made by the Member States for adequate anti-avoidance measures in the field of non-harmonised taxes, and is such an interest thwarted by the failure to apply — in the context of a tax amnesty measure — the abuse of rights principle which is also recognised as a rule of national law and, if so, are the principles that may be inferred from Article 4(3) of the Treaty on European Union infringed?

3. Do the principles governing the single market impliedly preclude not only extraordinary measures in the form of a total waiver of a tax claim, but also a special measure for concluding tax disputes, the application of which is limited in time and conditional upon payment of only part of the tax due, which is considerably less than the full amount?

4. Do the principle of non-discrimination and the rules governing State aid preclude the system for concluding tax disputes at issue in the present case?

5. Does the principle of the effective application of Community law preclude extraordinary procedural rules of limited duration which remove the power to review legality (in particular concerning the correct interpretation and application of Community law) from the court of last instance, which is under an obligation to refer questions of validity and interpretation requiring a preliminary ruling to the Court of Justice of the European Union?

Action brought on 16 November 2010 — European Commission v Slovak Republic

(Case C-531/10)

(2011/C 30/37)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: C. Zadra and J. Javorský, acting as Agents)

Defendant: Slovak Republic

Form of order sought

— declare that, inasmuch as the Ministry of Transport, Postal Services and Telecommunications of the Slovak Republic concluded an agreement for the provision of consultancy services having a cross-border dimension without issuing a call for tenders, the Slovak Republic has failed to fulfil its obligations of non-discrimination and transparency under Articles 49 and 56 TFEU and Article 2 of Directive 2004/18/EC [1]

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The Ministry of Transport, Postal Services and Telecommunications of the Slovak Republic concluded an agreement for the provision of consultancy services which had a cross-border dimension on grounds of the value of the contract, of the technical information required and of the fact that the previous provider of the services was a company from another Member State. The contract was concluded without a call for tenders. There was thus a clear breach of the principle of transparency, since entities other than those notified by the ministry at its own discretion were not informed of that contract, and did not have the opportunity to submit tenders. By its breach of the principle of transparency, the ministry simultaneously breached the prohibition on discrimination, since it dealt differently with the group of undertakings which it notified of the public contract and the group — including undertakings established outside the Slovak Republic — which were not notified but could have had an interest therein. By the fact that the award of the contract was not made subject to

open competition, the ministry itself renounced the advantages arising in that situation from the existence of the internal market, and which would enable the ministry to receive the most advantageous tender for the provision of consultancy services from amongst a large number of undertakings from the European Union.

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

Reference for a preliminary ruling from the Tribunal d'instance de Roubaix (France) lodged on 17 November 2010 — CIVAD SA v Receveur des douanes de Roubaix, Directeur régional des douanes et droits indirects de Lille, Administration des douanes

(Case C-533/10)

(2011/C 30/38)

Language of the case: French

Referring court

Tribunal d'instance de Roubaix

Parties to the main proceedings

Applicant: CIVAD SA

Defendants: Receveur des douanes de Roubaix, Directeur régional des douanes et droits indirects de Lille, Administration des douanes

Questions referred

1. Does the unlawfulness of a Community regulation, which cannot in fact or in law be challenged by a trader by means of an individual action to have it annulled, amount for that trader to a case of force majeure which permits the time-limit provided for in the second sub-paragraph of Article 236(2) of the Community Customs Code to be exceeded (1)?

2. If the first question is answered in the negative, do the provisions of the third sub-paragraph of Article 236(2) of the Community Customs Code require the customs authorities to repay anti-dumping duties of their own initiative when the unlawfulness of those duties has been found following a challenge to their lawfulness by a Member State of the World Trade Organisation ('the W.T.O.'):

   1. from the time of the first communication of the country concerned contesting the lawfulness of the anti-dumping regulation;

   2. from the time of the panel report finding the unlawfulness of the anti-dumping regulation;

   3. from the time of the report of the Appellate Body of the W.T.O. which led the European Community to recognise the unlawfulness of the anti-dumping regulation?

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

Appeal brought on 19 November 2010 by 4care AG against the judgment of the General Court (Fourth Chamber) delivered on 8 September 2010 in Case T-575/08 4careAG v Office for Harmonisation in the Internal Market

(Case C-535/10 P)

(2011/C 30/39)

Language of the case: German

Parties

Appellant: 4care AG (represented by: S. Redeker, Rechtsanwältin)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Laboratorios Diafarm, S.A.

Form of order sought

— Set aside the judgment of the Fourth Chamber of the General Court of 8 September in Case T-575/08 and reject the objection by the intervener;

— Order the defendant and the intervener to bear the costs.

Pleas in law and main arguments

The present appeal seeks to set aside the judgment of the General Court, by which it dismissed the appellant's action seeking to annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 7 October 2008 concerning the rejection of its application for registration of the figurative sign 'Acumed'. The Court confirmed by its judgment the Board of Appeal's decision, according to which there was a likelihood of confusion with the earlier national word mark 'AQUAMED ACTIVE'.

The contested judgment of the Court infringes Article 58 of the Statute of the Court of Justice. The Court wrongly interpreted the distinctive character of the opposing mark, the similarity of the opposing signs and the question of the likelihood of confusion.

In the context of the assessment of distinctive character, the Court failed to take into account sufficiently the descriptive character of the term 'AQUAMED' in the opposing mark. Moreover the Court misjudged the importance of the numerous earlier third party marks referred to by the appellant. The term 'AQUAMED ACTIVE' was not only inherently weakly distinctive because of the use of descriptive sign elements which were to a large extent common on the market. In addition, the distinctive character was weakened subsequently because of the use of similar third party marks in the course of trade. Had the Court correctly assessed those elements, it would have come to the conclusion that the opposing mark 'AQUAMED ACTIVE' was at most very weakly distinctive and therefore enjoyed limited protection.

In the context of the assessment of the similarity of the signs, the Court omitted to consider significant facts and therefore failed to carry out a comprehensive assessment. The Court wrongly proceeded on the assumption that the element 'ACTIVE' within the opposing mark fell to be disregarded completely when comparing the signs, it being necessary to compare only the terms 'AQUAMED' and 'Acumed'. The Court thereby neglected the fact that the terms 'AQUAMED' and 'ACTIVE' are closely connected, which precludes the term 'ACTIVE' from being completely disregarded. Had the Court compared the opposing mark 'AQUAMED ACTIVE' in its entirety to the mark applied for, it would have had to reject a similarity between the signs.

Even if — wrongly — only the terms 'AQUAMED' and 'Acumed' were to be compared, the Court in any case misjudged the likelihood of confusion from a legal point of view. In so doing, it disregarded a number of earlier decisions in which, in similar circumstances, a likelihood of confusion was ruled out. In addition, the Court failed to take into account that, given the limited protection to be given to the opposing mark, already limited differences between the signs would suffice to rule out a likelihood of confusion. Had the Court taken that into account, it would have come to the conclusion that the mark applied for in any case remained sufficiently different from the opposing mark on the ground of figurative, phonetic and conceptual differences.

Appeal brought on 19 November 2010 by MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor against the judgment of the General Court (Second Chamber) delivered on 10 September 2010 in Case T-233/08 MPDV Mikrolab GmbH, Mikroprozessordatenverarbeitung und Mikroprozessorlabor v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-536/10 P)

(2011/C 30/40)

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)

Form of order sought

— Set aside the judgment appealed against, insofar as it dismissed the action in accordance with the forms of order sought before the General Court;

— Annul the decision of the Fourth Board of Appeal of 15 April 2008 (No R 1525/2006-4); and

— Order the defendant to pay the costs of the appeal and of the action.

Pleas in law and main arguments

1. By its appeal, the appellant applies for the judgment of the General Court to be set aside, in so far as it dismissed the action because it decided that the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) did not infringe Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark ('Community trade mark regulation') or Article 7(1)(c) of the Community trade mark regulation when it rejected the registration of the word mark 'ROI ANALYZER' for goods in Class 9 (Computer software) and for services in Classes 35 and 42 (Management consultancy and development etc of data-processing programmes).

2. The Court thereby assumed on an incorrect factual basis that what was at issue were specifically goods and services intended exclusively for experts with knowledge and interests in the field of management science. In so doing,

the fact that the goods 'computer software' in Class 9 were to be used only 'in particular' to obtain and process business data was disregarded. Software with other uses could therefore also be the subject of the mark applied for. In addition, engineers and other persons who had no knowledge of specialist management science-related terminology also worked with the applicant's software. The Court's assessment was therefore based on incorrect factual assumptions.

Furthermore, the Court was of the opinion, again proceeding on an incorrect factual basis, that, while the element 'ROI' admittedly had different meanings in different languages, consumers would in connection with the word 'ANALYZER', always interpret the element 'ROI' to mean 'Return on Investment'. The Court was wrong to find that the consumers targeted would then without further consideration understand the mark applied for as describing 'an instrument for analysing the rate of return on investments'.

The Court also misinterpreted the underlying goods and services when assuming the existence of obstacles to the protection of computer hardware. Following division of the application, the sign was already registered with final legal effect with regard to those goods and services belonging to Classes 35 and 42.

Finally, the argument based on earlier registrations in the EU, namely as Community trade marks, was rejected on the basis that national marks could not be taken into account. In that instance also an incorrect factual basis was used.

Action brought on 17 November 2010 — European Commission v Republic of Poland

(Case C-542/10)

(2011/C 30/41)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: Ł. Habiak and S. La Pergola, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply fully with Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, ([1]) and in any event by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 94(1) of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2007/64 expired on 1 November 2009.

([1]) OJ L 319, 5.12.2007, p. 1.

Appeal brought on 23 November 2010 by Hans-Peter Wilfer against the judgment of the General Court (Fourth Chamber) delivered on 8 September 2010 in Case T-458/08 Wilfer v Office for Harmonization in the Internal Market (Trade marks and Designs)

(Case C-546/10 P)

(2011/C 30/42)

Language of the case: German

Parties

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

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

Forms of order sought

The appellant claims that the Court should:

— set aside in full the judgment of the General Court of 8 September 2010 in Case T-458/08;

— order OHIM to pay the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment of the General Court, by which that court dismissed the appellant's action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 25 July 2008 rejecting its application for registration of the figurative mark representing the head of a guitar using the colours silver, grey and brown.

The appellant raises four pleas in support of the appeal.

The Court did not take documents into consideration, which had first been submitted with the application. The appellant considers that they should have been taken into consideration as they were merely additional to the existing application.

The appellant alleges that the Court breached Article 7(1)(b) of Regulation (EC) No 40/94 in failing to take account of the fact that, in the case of three-dimensional product form marks, a distinction must be made between, on the one hand, mass products and, on the other hand, special products. Special products are characterised by the fact that the relevant public generally considers that they contain parts which serve the purpose of indicating origin. Accordingly, the demonstration of distinctiveness is not subject to special requirements. In this context, with regard to such product parts, a minimum degree of distinctive character is sufficient. Furthermore, the issue of distinctiveness was not addressed taking account of the knowledge of the relevant public (professional or hobby musicians), who are aware of that it is common practice that string musical instruments, including violins, such as a Stradivari, are labelled by a particular form of headstock. The Court also did not take account of the fact that a minimum degree of distinctive character is sufficient in the case of a figurative mark, which only reproduces a part of the goods, which is commonly used to label the goods, such as the headstock of a guitar.

The Court breached the principle of examination of the facts by OHIM of its own motion under Article 74(1) of Regulation No 40/94, in misinterpreting the general rule/exception relationship, in relation to the question as to the extent to which the headstock can indicate the origin of a guitar.

Finally, the Court also breached the principle of equal treatment by not taking account of the fact that other Community and national trade marks also exist, which likewise reproduce only the headstock of a guitar.

Appeal brought on 23 November 2010 by Schweizerische Eidgenossenschaft against the judgment delivered on 9 September 2010 in Case T-319/05 Schweizerische Eidgenossenschaft v European Commission, other parties to the proceedings: European Commission, Federal Republic of Germany, Landkreis Waldshut

(Case C-547/10 P)

(2011/C 30/43)

Language of the case: German

Parties

Appellant: Schweizerische Eidgenossenschaft (represented by: S. Hirsbrunner, Rechtsanwalt)

Other parties to the proceedings: European Commission, Federal Republic of Germany, Landkreis Waldshut

Forms of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 9 September 2010 in Case T-319/05, in accordance with Article 61 of the Statute of the Court of Justice;

— should the Court decide that the state of the proceedings permits a decision by the Court, annul Commission Decision 2004/12/EC of 5 December 2003, and order the European Commission to pay the costs of the whole proceedings, including the costs of the proceedings at first instance, pursuant to the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice;

— should the Court decide that the state of the proceedings does not permit a decision by the Court, remit the case to the General Court for a decision on the basis of its legal assessment and reserve the issue of the costs of the appeal for a decision by that court.

Pleas in law and main arguments

The appeal is against the judgment of the General Court of 9 September 2010 in Case T-319/05 ('the judgment under appeal'). In the judgment under appeal, the General Court dismissed the action for annulment brought by the appellant against Commission Decision 2004/12/EC of 5 December 2003 ('the contested decision') the 213th regulation for the implementation of German air traffic regulations establishing procedures for instrument-guided landings and take-offs at Zurich airport ('the 213th Regulation'), as amended by the first amending regulation 1 April 2003 ('the disputed German measure').

The appellant raises the following pleas:

1. The Court made an error of law in its interpretation and application of Article 9(1) of Regulation No 2408/92, in so far as the Court took the view that its scope only included prohibitions on the exercise of traffic rights. Furthermore, the Court failed to have regard to the fact that such an interpretation of Article 9(1) of Regulation No 2408/92, even if possible in the EU context, cannot be relied on against the applicant under Article 1(2) of the Agreement.

2. The Court misinterpreted and misapplied the obligation to state reasons within the meaning of Article 296 of the TFEU (formerly Article 253 EC), by not objecting to the Commission excluding without explanation the applicability of Article 9(1) of Regulation No 2408/92. Furthermore, the Court erred in considering that, when the Commission replaced the reasoning in the contested decision with a completely new 'explanation', that it was not a substitution of reasoning in the court proceedings.

3. The Court erred in law in its interpretation and application of Article 8(3) of Regulation No 2408/92, by failing to take account of the rights of the airport operator and the people living around the airport.

4. The Court misinterpreted and misapplied the principle of non-discrimination. It erred in law by excluding the rights of the airport operator and the Swiss people living around the airport from its analysis. Contrary to the forms of order sought by the applicant, the Court refused to consider whether the measures were necessary. It did not apply in a sufficiently strict manner the requirement of a justification on objective grounds. The interest in promoting a tourist area does not warrant protection, since economic interests cannot constitute objective justifications.

5. The proportionality test applied by the Court is marked by serious errors of law. The Court distorted the evidence. The Court failed to establish the facts in an adequate manner. In disregard of its own right of review, it substituted the Commission's establishment of the facts for its own. In disregard of the right to be heard, it based its reasoning on facts on which the appellant had not presented its comments.

6. Having regard to the assessment of less onerous restrictions, the Court failed to observe the rules on the apportionment of the burden of proof and other principles.

7. Having regard to the alternative of establishing a noise quota scheme, the Court put forward contradictory arguments.

Action brought on 23 November 2010 — European Commission v Republic of Austria

(Case C-548/10)

(2011/C 30/44)

Language of the case: German

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and C. Egerer, acting as Agents)

Defendants: Republic of Austria

Form of order sought

The Commission requests the Court:

— to declare that, by failing to notify in full the laws, regulations and administrative provisions necessary to comply with Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), or by failing fully to inform the Commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive;

— to order the Republic of Austria pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 15 may 2009.

Action brought on 26 November 2010 — European Commission v Republic of Austria

(Case C-555/10)

(2011/C 30/45)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Braun and H. Støvlbæk, Agents)

Defendant: Republic of Austria

Form of order sought

— Hold that the Republic of Austria, when implementing the first railway package, failed to comply with its obligations under Article 6(3) of and Annex II to Directive 91/440/EEC in its amended version and Article 4(2) and Article 14(2) of Directive 2001/14/EC;

— Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that the required independence of the operator of railway infrastructure in Austria has not been properly implemented in national law.

Admittedly the organisation in a common holding of an undertaking which is to carry out essential functions in relation to the operation of railway infrastructure and an undertaking which provides rail transport services, as it exists in Austria, is in principle permissible. It must however be ensured that the undertakings are ascertainably economically independent of each other.

The parent company may in particular not exercise any control over the subsidiary which carries out essential railway infrastructure functions. That is not guaranteed in Austria. The independence of the infrastructure operator is not supervised by any independent agency and there is no effective means of redress for competitors where a particular undertaking receives advantages.

There are also insufficient legislative or contractual rules governing the relationship between the holding company and its subsidiary which carries out essential railway infrastructure functions.

According to the Commission, the manifold entanglements of staff between parent and subsidiary undertakings, for example dual roles in the respective company boards, give rise to doubts as to economic independence. Management personnel of one undertaking should be precluded for several years from taking up management positions in the other undertaking. Moreover, appointments of managers to the body entrusted with essential functions should be made only subject to supervision by an independent agency.

In addition, there should be a physical and personal separation of respective computer systems, in order to ensure the required independence of the undertaking entrusted with essential functions of railway infrastructure operations.

Action brought on 2 December 2010 — European Commission v Italian Republic

(Case C-565/10)

(2011/C 30/46)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic has failed to fulfil its obligations under Articles 3(1) and (2) of Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment, [1] under Article 4(1) and (3) of that directive, read in conjunction with Annex IB thereto, and under Article 10 of that directive, by failing to take the measures necessary in order to ensure that:

  — the following agglomerations with a population equivalent of more than 15 000, which discharge into receiving waters that are not regarded as 'sensitive areas' within the meaning of Article 5 of Directive 91/271/EEC, are provided with collecting systems in accordance with the first indent of Article 3(1) of that directive:

    — Chieti and Gissi (Abruzzo),

    — Acri, Siderno, Bagnara Calabra, Bianco, Cassano allo Ionio, Castrovillari Crotone, Santa Maria del Cedro, Gioia Tauro, Lamezia Terme, Melito di Porto Salvo, Mesoraca, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria, Rende, Rossano, Scalea, Sellia Marina, Soverato and Strongoli (Calabria),

    — Afragola, Nola, Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Mercato Sanseverino, Torre del Greco, Aversa, Ischia, Casamicciola Terme, Forio, Napoli Est, Napoli Nord, Napoli Ovest, Vico Equense, Salerno and Montesarchio (Campania),

    — Cervignano del Friuli and Monfalcone (Friuli-Venezia Giulia),

    — Frascati and Zagarolo (Lazio),

    — Camisano, Genova, La Spezia, Riva Ligure, Sanremo and Ventimiglia (Liguria),

    — Tolentino (Marche),

— Campobasso 1 and Isernia (Molise),

— Manduria, Porto Cesareo, Supersano and Traviano (Apulia),

— Follonica and Piombino (Tuscany),

— Misterbianco + others, Paternò, Aci Catena, Adrano, Catania + others, Giarre-Mascali-Riposto + others, Caltagirone, Aci Castello, Acireale + others, Belpasso, Biancavilla, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Caltanissetta-San Cataldo, Macchitella, Niscemi, Agrigento and outskirts, Favara, Palma di Montechiaro, Porto Empedocle, Sciacca, Cefalù, Carini + ASI Palermo, Monreale, Palermo + peripheral districts, Santa Flavia, Augusta, Avola, Priolo Gargallo, Carlentini, Ragusa, Marina di Ragusa, Santa Croce Camerina, Vittoria, Scoglitti, Favignana, Marsala, Partanna l (Villa Ruggero), Capo d'Orlando, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Messina l, Messina and Messina 6 (Sicily);

— in the following agglomerations with a population equivalent of more than 15 000, which discharge into receiving waters that are not regarded as 'sensitive areas' within the meaning of Article 5 of Directive 91/271/EEC, the urban waste water entering collecting systems undergoes treatment as laid down in Article 4(1) and (3) of that directive:

— Gissi and Lanciano-Castel Frentano (Abruzzo),

— Acri, Siderno, Bagnara Calabra, Cassano allo Ionio, Castrovillari, Crotone, Melito di Porto Salvo, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria and Rossano (Calabria),

— Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Aversa, Ischia, Casamicciola Terme, Forio, Massa Lubrense, Napoli Est, Napoli Nord and Vico Equense (Campania),

— Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia),

— Zagarolo (Lazio),

— Albenga, Borghetto Santo Spirito, Finale Ligure, Genova, Imperia, La Spezia, Margherita Ligure, Quinto, Rapallo, Recco and Riva Ligure (Liguria),

— Campobasso l and Isernia (Molise),

— Casamassima, Casarano, Manduria, Monte Sant'Angelo, Porto Cesareo, Salice Salentino, San Giovanni Rotondo, San Vito dei Normanni, Squinzano, Supersano and Vernole (Apulia),

— Vicenza (Veneto),

— Misterbianco + others, Scordia-Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascali-Riposto + others, Caltagirone, Aci Castello, Bronte, Acireale + others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù, Carini + ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Rosolini, Pozzallo, Ragusa, Modica, Scicli, Scoglitti, Campobello di Mazara, Castelvetrano l, Triscina Marinella, Trapani-Erice (Casa santa), Favignana, Marsala, Mazara del Vallo, Partanna l (Villa Ruggero), Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina l, Messina 6, Milazzo, Patti and Rometta (Sicily); and

— the urban waste water treatment plants built to comply with the requirements laid down in Articles 4 to 7 of Directive 91/271/EEC are designed, constructed, operated and maintained in such a way as to ensure 'sufficient performance' under all normal local climatic conditions and that the design of those treatment plants takes account of the seasonal variations of the load in the agglomerations of:

— Gissi and Lanciano-Castel Frentano (Abruzzo),

— Acri, Siderno, Bagnara Calabra, Cassano allo Ionio, Castrovillari, Crotone, Melito di Porto Salvo, Montebello Ionico, Montepaone, Motta San Giovanni, Reggio Calabria and Rossano (Calabria),

— Ariano Irpino, Avellino, Battipaglia, Benevento, Capaccio, Capri, Caserta, Aversa, Ischia, Casamicciola Terme, Forio, Massa Lubrense, Napoli Est, Napoli Nord and Vico Equense (Campania),

— Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia),

— Zagarolo (Lazio),

— Albenga, Borghetto Santo Spirito, Finale Ligure, Genova, Imperia, La Spezia, Margherita Ligure, Quinto, Rapallo, Recco and Riva Ligure (Liguria),

— Casamassima, Casarano, Manduria, Monte Sant'Angelo, Porto Cesareo, Salice Salentino, San Giovanni Rotondo, San Vito dei Normanni, Squinzano, Supersano and Vernole (Apulia),

— Vicenza (Veneto),

— Misterbianco + others, Scordia — Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascali-Riposto + others, Caltagirone, Aci Castello, Bronte, Acireale + others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù, Carini + ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Rosolini, Pozzallo, Ragusa, Modica, Scicli, Scoglitti, Campobello di Mazara, Castevetrano l, Triscina Marinella, Trapani-Erice (Casa santa), Favignana, Marsala, Mazara del Vallo, Partanna l (Villa Ruggero), Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina l, Messina 6, Milazzo, Patti and Rometta (Sicily); and

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission complains that, in parts of its territory, Italy has not correctly implemented Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.

First and foremost, the Commission finds that there have been various infringements of the first indent of Article 3(1) and of Article 3(2) of Directive 91/271/EEC, under which the Member States were to ensure that, by 31 December 2000 at the latest, all agglomerations with a population equivalent of more than 15 000 were provided with collecting systems for urban waste water in accordance with the requirements laid down in Annex IA to that directive. That obligation was not correctly fulfilled in a number of the agglomerations falling within the scope of the provision in question in the Regions of Abruzzo, Calabria, Campania, Friuli-Venezia Giulia, Lazio, Liguria, Molise, Apulia, Tuscany and Sicily.

Moreover, under Article 4(1) and (3) of Directive 91/271/EEC, the Member States were to have ensured, by 31 December 2000 at the latest, that for all discharges from agglomerations with a population equivalent of more than 15 000 urban waste water entering collecting systems was to have undergone, before discharge, secondary treatment or an equivalent treatment in accordance with the requirements laid down in Annex IB to the directive. The Commission found that the provision in question had been infringed in a number of agglomerations in the Regions of Abruzzo, Calabria, Campania, Friuli-Venezia Giulia, Lazio, Liguria, Molise, Apulia, Veneto and Sicily. In most cases, the infringement of Article 4 of Directive 91/271/EEC also involves infringement of Article 10 of that directive, which provides that the urban waste water treatment plants were to be designed, constructed, operated and maintained in such a way as to ensure 'sufficient performance' under all normal local climatic conditions.

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

Action brought on 13 December 2010 — European Commission v Republic of Austria

(Case C-582/10)

(2011/C 30/47)

Language of the case: German

Parties

Applicant: European Commission (represented by: N. Yerrell and B. Schöfer, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing fully to adopt the laws, regulations and administrative provisions necessary to transpose Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods ([1]) or fully to communicate such measures to the Commission, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The time-limit for the transposition of Directive 2008/68/EC expired on 30 June 2009.

([1]) OJ 2008 L 260, p. 13.

Order of the President of the Third Chamber of the Court of 16 November 2010 — European Commission v Italian Republic

(Case C-383/08) ([1])

(2011/C 30/48)

Language of the case: Italian

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

([1]) OJ C 301, 22.11.2008.

Order of the President of the Third Chamber of the Court of 16 November 2010 — European Commission v Federal Republic of Germany

(Case C-244/09) ([1])

(2011/C 30/49)

Language of the case: German

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

([1]) OJ C 233, 26.9.2009.

Order of the President of the Fifth Chamber of the Court of 25 October 2010 — European Commission v Republic of Estonia

(Case C-528/09) ([1])

(2011/C 30/50)

Language of the case: Estonian

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

([1]) OJ C 63, 13.03.2010.

Order of the President of the Court of 8 November 2010 — European Commission v Portuguese Republic

(Case C-44/10) ([1])

(2011/C 30/51)

Language of the case: Portuguese

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

([1]) OJ C 100, 17.04.2010.

Order of the President of the Court of 9 November 2010 — European Commission v Portuguese Republic

(Case C-103/10) ([1])

(2011/C 30/52)

Language of the case: Portuguese

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

([1]) OJ C 113, 01.05.2010.

Order of the President of the Court of 16 November 2010 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel — Belgium) — Belpolis Benelux SA v Belgian State

(Case C-114/10) ([1])

(2011/C 30/53)

Language of the case: Dutch

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

([1]) OJ C 134, 22.05.2010.

Order of the President of the Court of 11 November 2010 — European Commission v Republic of Austria

(Case C-146/10) ([1])

(2011/C 30/54)

Language of the case: German

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

([1]) OJ C 148, 5.6.2010.

Order of the President of the Court of 8 November 2010 — European Commission v Republic of Estonia

(Case C-195/10) [1]

(2011/C 30/55)

Language of the case: Estonian

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

[1] OJ C 179, 3.7.2010.

Order of the President of the Court of 26 October 2010 — European Commission v Republic of Estonia

(Case C-231/10) [1]

(2011/C 30/56)

Language of the case: Estonian

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

[1] OJ C 179, 3.7.2010.

GENERAL COURT

Judgment of the General Court of 7 December 2010 — Frucona Košice v Commission

(Case T-11/07) [1]

(State aid — Partial remission of a tax debt in the context of an arrangement — Decision declaring the aid to be incompatible with the common market and ordering its recovery — Test of a private creditor in a market economy)

(2011/C 30/57)

Language of the case: English

Parties

Applicant: Frucona Košice a.s. (Košice, Slovakia) (represented by: B. Hartnett, Barrister, and O.H. Geiss and A. Barger, lawyers)

Defendant: European Commission (represented by: B. Martenczuk and K. Walkerová, Agents)

Intervener in support of the defendant: St. Nicolaus-trade a.s. (Bratislava, Slovakia) (represented by N. Smaho, lawyer)

Re:

ACTION for annulment of Commission Decision 2007/254/EC of 7 June 2006 on State aid C 25/05 (ex NN 21/05) implemented by the Slovak Republic for Frucona Košice a.s. (OJ 2007 L 112, p. 14).

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Frucona Košice a.s. to pay the costs.*

[1] OJ C 56, 10.3.2007.

Judgment of the General Court of 7 December 2010 — Fahas v Council

(Case T-49/07) [1]

(Common foreign and security policy — Restrictive measures with a view to combating terrorism — Freezing of funds — Action for annulment — Right to a fair hearing — Right to effective judicial protection — Statement of reasons — Action for damages)

(2011/C 30/58)

Language of the case: German

Parties

Applicant: Sofiane Fahas (Mielkendorf, Germany) (represented by: F. Zillmer, lawyer)

Defendant: Council of the European Union (represented initially by: M. Bishop, E. Finnegan and S. Marquardt, and subsequently by M. Bishop, J.-P. Hix and E. Finnegan, Agents)

Intervener in support of the defendant: Italian Republic (represented by: I. Bruni, acting as Agent, and G. Albenzio, avvocato dello Stato)

Re:

Application for annulment in part, most recently, of Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC (OJ 2008 L 188, p. 21), in so far it concerns the applicant, and an order that the Council no longer refer to the applicant's name in its future decisions, in the absence of any final judicial decision, and also a claim for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Mr Sofiane Fahas, in addition to bearing his own costs, to pay those incurred by the Council of the European Union.*

3. *Orders the Italian Republic to bear its own costs.*

[1] OJ C 95, 28.4.2007.

Judgment of the General Court of 7 December 2010 — Nute Partecipazioni and La Perla v OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)

(Case T-59/08) ([1])

(Community trade mark — Invalidity proceedings — Community word mark NIMEI LA PERLA MODERN CLASSIC — Earlier national figurative marks la PERLA — Relative ground for refusal — Injury to reputation — Article 8(5) and Article 52(1)(a) of Regulation (EC) No 40/94 (now Article 8(5) and Article 53(1)(a) of Regulation (EC) No 207/2009))

(2011/C 30/59)

Language of the case: Italian

Parties

Applicants: Nute Partecipazioni SpA, formerly Gruppo La Perla SpA (Bologna, Italy); and La Perla Srl (Bologna) (represented by: R. Morresi and A. Dal Ferro, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: L. Rampini, and subsequently by O. Montalto, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Worldgem Brands Srl, formerly Worldgem Brands — Gestão e Investimentos L^{da} (Creazzo, Italy) (represented by: V. Bilardo, M. Mazzitelli and C. Bacchini, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 November 2007 (Case R 537/2004-2) concerning invalidity proceedings between Nute Partecipazioni SpA and Worldgem Brands Srl.

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 19 November 2007 (Case R 537/2004-2) in so far as it dismissed the application for a declaration of invalidity and ordered Nute Partecipazioni SpA to bear its own costs;*

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

3. *Orders OHIM to bear its own costs together with 90 % of the costs of Nute Partecipazioni and of La Perla Srl before the Court and all the costs of Nute Partecipazioni before the Board of Appeal;*

4. *Orders Nute Partecipazioni and La Perla to bear 10 % of their own costs before the Court;*

5. *Orders Worldgem Brands Srl to bear its own costs.*

([1]) OJ C 92, 12.4.2008.

Judgment of the General Court of 9 December 2010 — Poland v Commission

(Case T-69/08) ([1])

(Approximation of laws — Directive 2001/18/EC — National provisions derogating from a harmonisation measure — Commission decision rejecting those provisions — Not notified within the six-month period laid down in the first subparagraph of Article 95(6) EC)

(2011/C 30/60)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: initially M. Dowgielewicz, subsequently by M. Dowgielewicz, B. Majczyna and M. Jarosz, and finally by M. Szpunar, Agents)

Defendant: Commission (represented by: M. Patakia, C. Zadra and K. Herrmann, Agents)

Interveners in support of the applicant: Czech Republic (represented by M. Smolek, Agent); Hellenic Republic (represented by A. Samoni-Rantou and M. Tassopoulou, acting as Agents); and Republic of Austria (represented initially by E. Riedl, and subsequently by E. Riedl and C. Pesendorfer, and finally by E. Riedl, C. Pesendorfer, G. Hesse and M. Fruhmann, acting as Agents),

Re:

Action for annulment of Commission Decision 2008/62/EC of 12 October 2007 relating to Articles 111 and 172 of the Polish Draft Act on Genetically Modified Organisms, notified by the Republic of Poland pursuant to Article 95(5) of the EC Treaty as derogations from the provisions of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms (OJ 2008 L 16, p. 17),

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2008/62/EC of 12 October 2007 relating to Articles 111 and 172 of the Polish Draft Act on Genetically Modified Organisms, notified by the Republic of Poland pursuant to Article 95(5) of the EC Treaty as derogations from the provisions of Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by the Republic of Poland;*

3. *Orders the Czech Republic, the Hellenic Republic and the Republic of Austria to bear their own costs.*

([1]) OJ C 92, 12.4.2008.

Judgment of the General Court of 7 December 2010 — Commission v Commune de Valbonne

(Case T-238/08) ([1])

(Arbitration clause — Research and training contract relating to a mutual education project between the city of Valbonne (France) and the province of Ascoli Piceno (Italy) — Application for reimbursement of advance payments)

(2011/C 30/61)

Language of the case: French

Parties

Applicant: European Commission (represented by: initially, L. Escobar Guerrero, and subsequently, F. Dintilhac and A. Sauka, agents, and E. Bouttier, lawyer)

Defendant: Commune de Valbonne (France) (represented by: B. Rapp-Jung, lawyer)

Re:

Action based on an arbitration clause in accordance with Article 238 EC seeking an order that the Commune de Valbonne reimburse advance payments made by the European Commission, together with late-payment interest, in connection with Contract Valaspi MM 1027 of 29 December 1997.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 223, 30.8.2008.

Judgment of the General Court of 9 December 2010 — Tresplain Investments v OHIM — Hoo Hing (Golden Elephant Brand)

(Case T-303/08) ([1])

(Community trade mark — Invalidity proceedings — Figurative Community trade mark Golden Elephant Brand — Non-registered national figurative mark GOLDEN ELEPHANT — Relative ground for refusal — Reference to the national law governing the earlier mark — Common-law action for passing-off — Article 74(1) of Regulation (EC) No 40/94 (now Article 76(1) of Regulation (EC) No 207/2009) — Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009) — Articles 8(4) and 52(1)(c) of Regulation No 40/94 (now Articles 8(4) and 53(1)(c) of Regulation No 207/2009) — New pleas in law — Article 48(2) of the Rules of Procedure)

(2011/C 30/62)

Language of the case: English

Parties

Applicant: Tresplain Investments Ltd (Tsing Yi, Hong Kong, China) (represented by: D. McFarland, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: Hoo Hing Holdings Ltd (Romford, Essex, United Kingdom) (represented by: M. Edenborough, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 May 2008 (Case R 889/2007-1), relating to invalidity proceedings between Hoo Hing Holdings Ltd and Tresplain Investments Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Rejects the form of order sought by Hoo Hing Holdings Ltd for partial annulment and alteration of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 May 2008 (Case R 889/2007-1), relating to invalidity proceedings between Hoo Hing Holdings and Tresplain Investments Ltd;*

3. *Orders Tresplain Investments to bear its own costs and to pay those incurred by OHIM and one half of those incurred by Hoo Hing Holdings, and orders Hoo Hing Holdings to bear half of its own costs.*

([1]) OJ C 260, 11.10.2008.

Judgment of the General Court of 10 December 2010 — Ryanair v Commission

(Cases T-494/08 to T-500/08 and T-509/08) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to procedures for reviewing State aid — Implied refusals of access — Express refusals of access — Exception concerning protection of the purpose of inspections, investigations and audits — Duty to carry out a concrete, individual examination)

(2011/C 30/63)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida and I.-G. Metaxas-Maragkidis, lawyers)

Defendant: European Commission (represented by: C. O'Reilly and P. Costa de Oliveira, Agents)

Re:

Applications for annulment of the Commission's implied decisions refusing to grant the applicant access to certain documents relating to procedures for reviewing State aid allegedly granted to the applicant by the operators of the airports of Aarhus (Denmark) (Case T-494/08), Alghero (Italy) (Case T-495/08), Berlin-Schönefeld (Germany) (Case T-496/08), Frankfurt-Hahn (Germany) (Case T-497/08), Lübeck-Blankensee (Germany) (Case T-498/08), Pau-Béarn (France) (Case T-499/08), Tampere-Pirkkala (Finland) (Case T-500/08) and Bratislava (Slovakia) (Case T-509/08), and, in the alternative, applications for annulment of the subsequent express decisions refusing access to those documents

Operative part of the judgment

The Court:

1. *Orders Cases T-494/08, T-495/08, T-496/08, T-497/08, T-498/08, T-499/08, T-500/08 and T-509/08 to be joined for the purposes of the present judgment;*

2. *Declares the actions inadmissible in so far as they have been brought against the implied decisions to refuse access in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08;*

3. *Declares that there is no longer any need to adjudicate on the actions in Cases T-496/08, T-497/08 and T-498/08 in so far as they have been brought against the implied decisions to refuse access;*

4. *Dismisses the remainder of the actions;*

5. *Orders Ryanair Ltd to pay the costs in Cases T-494/08, T-495/08, T-499/08, T-500/08 and T-509/08;*

6. *Orders the European Commission to bear its own costs in Cases T-496/08, T-497/08 and T-498/08 and to pay those incurred by Ryanair Ltd in those cases.*

[1] OJ C 32, 7.2.2009.

Judgment of the General Court of 9 December 2010 — Commission v Strack

(Case T-526/08 P) [1]

(Appeal — Cross-appeal — Civil Service — Officials — Recruitment — Vacancy notice — Rejection of candidature — Appointment to a post of head of unit — Action for annulment — Admissibility — Interest in bringing proceedings — Action for damages — Non-material damage)

(2011/C 30/64)

Language of the case: German

Parties

Appellant: European Commission (represented by: H. Kramer and B. Eggers, agents)

Other party to the proceedings: Guido Strack (Cologne, Germany) (represented by: H. Tettenborn, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 25 September 2008 in Case F-44/05 *Strack* v *Commission* (not published in the ECR) seeking to have that judgment set aside in part.

Operative part of the judgment

The Court:

1. *Annuls paragraphs 1, 2, 3, 5 and 6 of the operative part of the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 25 September 2008 in Case F-44/05 Strack v Commission.*

2. *Dismisses the cross-appeal as to the remainder.*

3. *Refers the case back to the Civil Service Tribunal for a ruling on the claims for annulment of the decision to appoint Mr A. to the post of head of the 'Calls for tenders and contracts' unit of the Office for Official Publications of the European Communities and the decision to reject Mr Guido Strack's candidature for that post, on the claims for compensation for the non-material damage purportedly suffered by Mr Strack in the sum of EUR 200, and on costs.*

4. *Costs reserved.*

[1] OJ C 44, 21.2.2009.

Judgment of the General Court of 25 November 2010 — Vidieffe v OHIM — Ellis International Group (GOTHA)

(Case T-169/09) [1]

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

(2011/C 30/65)

Language of the case: Italian

Parties

Applicant: Vidieffe Srl (Bologna, Italy) (represented by: M. Lamandini, D. De Pasquale and M. Pappalardo, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock)

Other party to the proceedings before the Board of Appeal of OHIM: Perry Ellis International Group Holdings, Ltd (Nassau, Bahamas)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 February 2009 (Case R 657/2008-1), relating to opposition proceedings between Perry Ellis International Group Holdings, Ltd and Vidieffe Srl.

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 12 February 2009 (Case R 657/2008-1), in so far as it annuls the decision of the Opposition Division, inasmuch as that decision rejected the opposition, first, in respect of '[leather and imitations of leather] goods (not included in other classes); trunks and travelling bags; umbrellas, parasols and walking sticks' in Class 18 and, second, in respect of all the goods in Class 25.*

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

3. *Orders OHIM to bear its own costs and pay those incurred by Vidieffe Srl.*

[1] OJ C 141, 20.6.2009.

Judgment of the General Court of 9 December 2010 — Wilo v OHIM (Faceted casing of an electric motor and representation of green facets)

(Joined Cases T-253/09 and T-254/09) [1]

(Community trade mark — Application for a three-dimensional Community trade mark — Faceted casing of an electric motor — Application for a Community trade mark representing green facets — Absolute grounds for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2011/C 30/66)

Language of the case: German

Parties

Applicant: Wilo SE (Dortmund, Germany) (represented by: G. Braun, lawyer)

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

Re:

Two actions brought against the decisions of the First Board of Appeal of OHIM of 30 March 2009 (Cases R 1184/2008-1 and R 1196/2008-1) concerning applications for registration of a three-dimensional sign consisting of the shape of faceted casing of an electric motor and a figurative sign representing green facets.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Wilo SE to pay the costs.*

[1] OJ C 205, 29.8.2009.

Judgment of the General Court of 9 December 2010 — Fédération internationale des logis v OHIM (Green convex square)

(Case T-282/09) [1]

(Community trade mark — Application for a Community figurative trade mark representing a green convex square — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 30/67)

Language of the case: French

Parties

Applicant: Fédération internationale des logis (Paris, France) (represented by: B. Brisset, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 April 2009 (Case R 1511/2008-1) concerning an application for registration a green convex square as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Fédération internationale des logis to pay the costs.*

([1]) OJ C 220, 12.9.2009.

Judgment of the General Court of 9 December 2010 — Earle Beauty v OHIM (NATURALLY ACTIVE)

(Case T-307/09) ([1])

(Community trade mark — Application for the Community word mark NATURALLY ACTIVE — Absolute ground for refusal — Lack of inherent distinctive character — Lack of distinctive character acquired by use — Article 7(1)(b) and (3) of Regulation (EC) No 207/2009)

(2011/C 30/68)

Language of the case: English

Parties

Applicant: Earle Beauty (Ryde, Isle of Wight, United Kingdom) (represented by: initially M. Cover, and subsequently K. O'Rourke, Solicitors)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 May 2009 (Case R 27/2009-2), concerning registration of the word sign NATURALLY ACTIVE as a Community trade mark.

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 11 May 2009 (Case R 27/2009-2) in so far as it refused registration as a Community trade mark of the word sign NATURALLY ACTIVE for wash bags, cosmetic bags and cases, beach bags, handbags, shoulder bags, draw string bags, purses, wallets, vanity cases, make-up bags, canvas bags, cases for mirrors in Class 18 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended;*

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

3. *Orders Liz Earle Beauty Co. Ltd to bear its own costs and to pay two thirds of OHIM's costs. OHIM is ordered to bear one third of its costs.*

([1]) OJ C 244, 10.10.2009.

Judgment of the General Court of 9 December 2010 — Fédération internationale des logis v OHIM (Shade of brown)

(Case T-329/09) ([1])

(Community trade mark — Application for a Community trade mark consisting of a shade of brown — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 30/69)

Language of the case: French

Parties

Applicant: Fédération internationale des logis (Paris, France) (represented by: initially, C. Champagner Katz, and subsequently B. Brisset, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 June 2009 (Case R 202/2009-1) concerning an application for registration of a shade of brown as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Fédération internationale des logis to pay the costs.*

([1]) OJ C 267, 7.11.2009.

Order of the President of the General Court of 25 November 2010 — United Phosphorus v Commission

(Case T-95/09 R III)

(Application for interim measures — Directive 91/414/EEC — Decision concerning the non-inclusion of napropamide in Annex I to Directive 91/414 — Extension of suspension of operation)

(2011/C 30/70)

Language of the case: English

Parties

Applicant: United Phosphorus Ltd (Warrington, Cheshire, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission (represented by: L. Parpala and F. Wilman, Agents)

Re:

Application for the extension of the suspension of operation of Commission Decision 2008/902/EC of 7 November 2008 concerning the non-inclusion of napropamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ 2008 L 326, p. 35)

Operative part of the order

1. *The suspension of operation granted in paragraph 1 of the operative part of the order of the President of the Court of 28 April 2009 in Case T-95/09 R United Phosphorus v Commission (not published in the ECR) is extended until 31 December 2011 or until the date of adoption of the decision in the main proceedings at the latest, if that decision is adopted earlier.*
2. *The costs shall be reserved.*

Order of the General Court of 24 November 2010 — Concord Power Nordal v Commission

(Case T-317/09) [1]

(Action for annulment — Internal market in natural gas — Article 22 of Directive 2003/55/EC — Letter from the Commission requesting a regulatory authority to amend its decision regarding the grant of an exemption — Act not open to challenge — Inadmissibility)

(2011/C 30/71)

Language of the case: German

Parties

Applicant: Concord Power Nordal GmbH (Hamburg, Germany) (represented by: C. von Hammerstein, C.S. Schweer and C. Wünschmann, lawyers)

Defendant: European Commission (represented by: G. Wilms, O. Beynet and B. Schima, agents)

Intervener in support of the defendant: OPAL NEL Transport GmbH (Kassel, Germany) (represented by: U. Quack and O. Fleishchmann, lawyers)

Re:

Action for annulment of the decision allegedly contained in the Commission's letter of 12 June 2009 addressed to the Bundesnetzagentur (German Regulatory Authority) on the basis of Article 22(4) of 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 (OJ 2003 L 176, p. 57).

Operative part of the order

1. *It is not necessary to rule on the requests for confidential treatment made by Concord Power Nordal GmbH.*
2. *The action is dismissed.*
3. *Concord Power Nordal shall bear its own costs and pay those incurred by the European Commission.*
4. *OPAL NEL Transport GmbH shall bear its own costs.*

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[1] OJ C 267, 7.11.2009.

Order of the General Court of 24 November 2010 — RWE Transgas v Commission

(Case T-381/09) [1]

(Action for annulment — Internal market in natural gas — Article 22 of Directive 2003/55/EC — Letter from the Commission requesting a regulatory authority to amend its decision regarding the grant of an exemption — Act not open to challenge — Inadmissibility)

(2011/C 30/72)

Language of the case: German

Parties

Applicant: RWE Transgas a.s. (Prague, Czech Republic) (represented: initially by W. Deselaers, D. Seeliger and S. Einhaus, then by W. Deselaers, D. Seeliger, S. Einhaus and T. Weck, lawyers)

Defendant: European Commission (represented by: G. Wilms, O. Beynet and B. Schima, agents)

Intervener in support of the applicant: Czech Republic (represented by: M. Smolek, agent)

Re:

Action for annulment of the decision allegedly contained in the Commission's letter of 12 June 2009 addressed to the Bundesnetzagentur (German Regulatory Authority) on the basis of Article 22(4) of Directive 2003/55/EC pf 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 (OJ 2003 L 176, p. 57).

Operative part of the order

1. *The action is dismissed.*

2. *RWE Transgas a.s. shall bear its own costs and pay those incurred by the European Commission.*

3. *The Czech Republic shall bear its own costs.*

([1]) OJ C 297, 5.12.2009.

Action brought on 8 October 2010 — Islamic Republic of Iran Shipping Lines and Others v Council

(Case T-489/10)

(2011/C 30/73)

Language of the case: English

Parties

Applicants: Islamic Republic of Iran Shipping Lines (Tehran, Iran), Bushehr Shipping Co. Ltd (Valetta, Malta), Cisco Shipping Company Limited (Seoul, South Korea), Hafize Darya Shipping Lines (HDSL) (Tehran, Iran), Irano Misr Shipping Co. (Tehran, Iran), Irinvestship Ltd (London, United Kingdom), IRISL (Malta) Ltd (Sliema, Malta), IRISL Club (Tehran, Iran), IRISL Europe GmbH (Hamburg) (Hamburg, Germany), IRISL Marine Services and Engineering Co. (Tehran, Iran), IRISL Multimodal Transport Company (Tehran, Iran), ISI Maritime Ltd (Malta) (Valletta, Malta), Khazer Shipping Lines (Bandar Anzali) (Gilan, Iran), Leadmarine (Singapore), Marble Shipping Ltd (Malta) (Sliema, Malta), Safiran Payam Darya Shipping Lines (SAPID) (Tehran, Iran), Shipping Computer Services Co. (SCSCOL) (Tehran, Iran), Soroush Saramin Asatir (SSA) (Tehran, Iran), South Way Shipping Agency Co. Ltd (Tehran, Iran), Valfajr 8th Shipping Line Co. (Tehran, Iran) (represented by: F. Randolph, M. Lester, Barristers, and M. Taher, Solicitor)

Defendant: Council of the European Union

Form of order sought

— annul Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran ([1]) and Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP ([2]) in so far as those measures relate to the applicants;

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

Pleas in law and main arguments

In the present case the applicants, shipping companies based in Iran, United Kingdom, Malta, Germany, Singapore and South Korea, seek the partial annulment of Council implementing Regulation No 668/2010 and of Council Decision 2010/413/CFSP in so far as they are included on the list of natural and legal persons, entities and bodies whose funds and economic resources are frozen in accordance with this provision.

The applicants put forward the four pleas in law in support of its claims.

First, the applicants argue that the contested measures were adopted in violation of the applicants' rights of defence and their right to effective judicial protection since they provide no procedure for communicating to the applicant the evidence on which the decision to freeze their assets was based, or for enabling them to comment meaningfully on that evidence. Furthermore, the applicants submit that the reasons contained in the regulation and in the decision contain general, unsupported, vague allegations of conduct relating to only two of the applicants. In respect of the other applicants, no evidence or information is given other that alleged an unspecified connection with the first applicant. In the applicants' view, the Council has not given sufficient information to enable them effectively to make known their views in response, which does not permit a Court to assess whether the Council's decision and assessment was well founded and based on compelling evidence.

Second, the applicants contend that the Council failed to provide sufficient reasons for their inclusion in the contested measures, in violation of its obligation to give a clear statement of actual and specific reasons justifying its decision, including the specific individual reasons that led it to consider that the applicants provided support for nuclear proliferation.

Third, the applicants claim that the contested measures constitute an unjustified and disproportionate restriction on the applicant's right to property and freedom to conduct their business. The assets freezing measures have a marked and long-lasting impact on their fundamental rights. The applicants submit that their inclusion is not rationally connected with the objective of the contested regulation and decision, since the allegations against the applicants do not relate to nuclear proliferation. In any event, the Council has not demonstrated that a total asset freeze is the least onerous mean of ensuring such an objective, nor that the very significant harm to the applicants is justified and proportionate.

Fourth, the applicants argue that the Council committed a manifest error of assessment in determining that the designation criteria in the contested regulation and the contested decision were satisfied in relation to the applicants. None of the allegations against any of the applicants relates to nuclear proliferation or weaponry. A simple assertion that some of the applicants are owned or controlled by or the agents of the first applicant is insufficient to meet criteria. Therefore, in the applicants' opinion the Council has failed to evaluate the factual position.

(1) OJ 2010 L 195, p. 25
(2) OJ 2010 L 195, p. 39

Action brought on 9 November 2010 — Confortel Gestión v OHIM — Homargrup (CONFORTEL AQUA 4)

(Case T-521/10)

(2011/C 30/74)

Language in which the application was lodged: Spanish

Parties

Applicant: Confortel Gestión, SA (Madrid, Spain) (represented by: I. Valdelomar Serrano)

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

Other party to the proceedings before the Board of Appeal of OHIM: Homargrup, SA (Santa Susana, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of 5 August 2010 in Case R 1359/2009-2, and consequently register Community trade mark No 5.276.951 'CONFORTEL Aqua 4' for all of the classes sought, and

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

Pleas in law and main arguments

Applicant for a Community trade mark: Confortel Gestión, SA.

Community trade mark concerned: Word mark 'CONFORTEL Aqua 4' for services in Classes 41, 43 and 44.

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

Mark or sign cited in opposition: Community word mark 'AQUA' and Community figurative mark 'A AQUA HOTEL' and Spanish word marks 'AQUAMARINA' and 'AQUATEL', and Spanish figurative mark 'AQUAMAR', for services in Class 42.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Plea in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, (1) since 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 12 November 2010 — Google v OHIM — Giersch Ventures (GMail)

(Case T-527/10)

(2011/C 30/75)

Language in which the application was lodged: English

Parties

Applicant: Google, Inc. (Wilmington, United States) (represented by: M. Kinkeldey and A. Bognár, lawyers)

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

Other party to the proceedings before the Board of Appeal: Giersch Ventures LLC (Los Angeles, United States)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 September 2010 in case R 342/2010-4; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark "GMail", for goods and services in classes 9, 38 and 42 — Community trade mark application No 5685136

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

Mark or sign cited: German trade mark registration No 30666860 of the word mark 'G-mail', registered for, among others, goods and services in classes 9, 38 and 42; German trade mark registration No 30025697 of the figurative mark 'G-mail … und die Post geht richtig ab', for services in classes 38, 39 and 42.

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred (i) in its visual comparison between the contested trade mark and the earlier opposed trade mark, (ii) in not taking into account the perception of the concerned consumer circles, (iii) in its assumption that the word elements of composite marks are always more coining than the visual elements, and disregarded case law in that respect, (iv) in its finding that the earlier word mark as a whole was not to be considered intrinsically weak, and (v) in its finding that the applicant's arguments as regards the significance of the visual comparison over the phonetic comparison of the marks were inconclusive.

Action brought on 15 November 2010 — Truvo Belgium v OHIM — AOL (TRUVO)

(Case T-528/10)

(2011/C 30/76)

Language in which the application was lodged: English

Parties

Applicant: Truvo Belgium (Antwerp, Belgium) (represented by: O. van Haperen, lawyer)

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

Other party to the proceedings before the Board of Appeal: AOL LLC (Dulles, United States)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 August 2010 in case R 893/2009-2; and

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

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'TRUVO', for goods and services in classes 16, 35, 38 and 41 — Community trade mark application No 5632948

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

Mark or sign cited: Community trade mark registration No 4756169 of the figurative mark 'TRUVEO' for services in class 42

Decision of the Opposition Division: Upheld the opposition and rejected the community trade mark application for all of class 38

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred (i) in its visual and aural comparison of the signs, (ii) in its comparison of the signs as it refused to attribute any meaning to the trademark of the opposing party, (iii) in its comparison of the services, and (iv) in its assessment of the relevant public.

Action brought on 15 November 2010 — Reber v OHIM — Klusmeier (Wolfgang Amadeus Mozart PREMIUM)

(Case T-530/10)

(2011/C 30/77)

Language in which the application was lodged: German

Parties

Applicant: Reber (Bad Reichenhall, Germany) (represented by: O. Spuhler and M. Geitz, laywers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Ms Anna Klusmeier (Bielefed, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 September 2010 in Case R 363/2008-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Predecessor in title of Ms Anna Klusmeier.

Community trade mark concerned: Word mark 'Wolfgang Amadeus Mozart PREMIUM' for goods in Classes 30 and 32.

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

Mark or sign cited in opposition: German figurative marks which contain the word element 'W. Amadeus Mozart' for the following goods and sservices: bakers' wares, confectionery, chocolate confectionery and sugar confectionery, catering in a café and teashop.

Decision of the Opposition Division: Rejection of the opposition.

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

Pleas in law: Infringement of Article 42(2)(1) in conjunction with Article 42(3) of Regulation (EC) No 207/2009, [1] since the evidence of use put forward by the applicant is a concrete indication of the form of use of the mark cited in opposition 'W. Amadeus Mozart', and of Article 15(1)(2)(a) of Regulation (EC) No 207/2009, since it was proven that the mark cited in opposition is clearly used as a trade mark.

[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 22 November 2010 — Häfele v OHIM (Vorfront)

(Case T-531/10)

(2011/C 30/78)

Language in which the application was lodged: German

Parties

Applicant: Häfele GmbH & Co. KG (Nagold, Germany) (represented by M. Eck and J. Dönch, lawyers)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 September 2010 in Case R 570/2010-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Vorfront' for goods in Classes 6, 7, 19 and 20.

Decision of the Examiner: refusal to register

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 [1], as the Community trade mark in question has distinctive character and is not purely descriptive

[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 13 November 2010 — Cosepuri v EFSA

(Case T-532/10)

(2011/C 30/79)

Language of the case: Italian

Parties

Applicant: Cosepuri Soc. coop. p.a. (Bologna, Italy) (represented by: F. Fiorenza, lawyer)

Defendant: European Food Safety Authority (EFSA)

Form of order sought

— Annul the refusal dated 15 September 2010 denying Cosepuri access to the documents;

— Order EFSA to produce the classified documents;

— Order EFSA to pay the costs.

Pleas in law and main arguments

The applicant in the present proceedings, also the applicant in Case T-339/10 *Cosepuri* v *EFSA*, ([1]) challenges the decision of the European Food Safety Authority (EFSA) of 15 September 2010 relating to tendering procedure CFT/EFSA/FIN/2010/01 (contract notice 2010/S 51-074689) for the award of a shuttle service contract in Italy and Europe, in which the contract was awarded to another company.

By the contested decision, EFSA refused access to certain documents in the tendering procedure and in particular to documents concerning the requirements for admission and the selection of the most economically advantageous tender.

In support of its claims, the applicant alleges infringement of the relevant provisions of Council Regulation (EC) No 1605/2002 of 25 June 2002 ([2]) and of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001, ([3]) as well as breach of the duty to state reasons, the principle of transparency and the right of access to documents. Lastly, the applicant alleges misuse of powers.

The applicant complains, in particular, that the defendant failed to state the actual damage that the successful tenderer would suffer if access were granted to the documents requested, and that adequate reasons were not given for the partial refusal of the request, since, in the context of the tendering procedure, the information in question was comparative, included in the documents made available by the tenderers for that procedure, and accordingly outside the scope of confidential business information. In addition, the applicant requests that the present proceedings be joined with Case T-339/10 currently pending before the General Court.

([1]) OJ 2010 C 288, p. 47.

([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

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

Action brought on 24 November 2010 — DTS Distribuidora de Televisión Digital v Commission

(Case T-533/10)

(2011/C 30/80)

Language of the case: Spanish

Parties

Applicant: DTS Distribuidora de Televisión Digital, SA (Tres Cantos, Madrid, Spain) (represented by: H. Brokelmann and M. Ganino, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 4925 final of 20 July 2010, and

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

Pleas in law and main arguments

The applicant in the present proceedings, a satellite pay TV operator, challenges Commission Decision C(2010) 4925 final of 20 July 2010 'on the State aid scheme No C 38/2009 (ex NN 58/2009) which Spain is planning to implement for Corporación de Radio y Televisión Española (RTVE)', which declared that that scheme, as amended by Law 8/2009 of 28 August 2009 on financing Corporación de Radio y Televisión Española, was compatible with the common market, without its being necessary to analyse the scheme's method of financing.

The applicant submits that the Commission was not entitled to authorise the aid scheme in question without analysing the method of financing introduced by the above-mentioned Law and, specifically, the 1,5% tax on the gross operating income of pay-TV broadcasters.

In support of its claims the applicant puts forward the following pleas in law:

— Error of law on the part of the Commission, by authorising the aid which is the subject-matter of the proceedings without analysing its method of financing. In that connection, it is submitted that it is settled case-law that aid cannot be considered separately from the effects of its method of financing if that method forms an integral part of the aid, and that, with regard to the present case, the 1.5 % tax on the gross operating income of pay-TV broadcasters forms an integral part of the aid scheme, which is why the Commission ought to have analysed the scheme and the aid together.

— Infringement of Article 106(2) TFEU, in that the Commission authorised an aid scheme which fails to observe the principle of proportionality, since the taxes financing the scheme involve a serious distortion of competition, in the content acquisitions market and in the downstream viewers' market, contrary to the common interest.

— Infringement of Articles 49 and 63 TFEU. In the applicant's submission, the Commission infringed those provisions, in so far as the method of financing the aid authorised restricts freedom of establishment and the free movement of capital, by making it less attractive for pay TV operators and other investors established in other Member States to exercise those freedoms.

Action brought on 22 November 2010 — Organismos Kypriakis Galaktokomikis Viomichanias v OHIM — Garmo (HELLIM)

(Case T-534/10)

(2011/C 30/81)

Language in which the application was lodged: German

Parties

Applicant: Organismos Kypriakis Galaktokomikis Viomichanias (Lefkosia, Cyprus) (represented by: C. Milbradt and H. Van Volxem, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Garmo AG (Stuttgart, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 September 2010 in Case R 794/2010-4;

— Order the defendant to pay the costs, including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Garmo AG

Community trade mark concerned: the word mark 'HELLIM' for goods in Class 29

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

Mark or sign cited in opposition: the collective word mark 'HALLOUMI' for goods in Class 29

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 [1], as the marks and goods at issue are similar and there is a likelihood of confusion between the marks, and infringement of Article 63(2) of Regulation No 207/2009 as the applicant should have been able to rely on having the opportunity to respond to the observations of the respondent in the appeal proceedings before OHIM

[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 22 November 2010 — Organismos Kypriakis Galaktokomikis Viomichanias v OHIM — Garmo (GAZI Hellim)

(Case T-535/10)

(2011/C 30/82)

Language in which the application was lodged: German

Parties

Applicant: Organismos Kypriakis Galaktokomikis Viomichanias (Lefkosia, Cyprus) (represented by: C. Milbradt and H. Van Volxem, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Garmo AG (Stuttgart, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 September 2010 in Case R 1497/2009-4;

— Order the defendant to pay the costs, including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Garmo AG

Community trade mark concerned: the figurative mark 'GAZI Hellim' for goods in Class 29

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

Mark or sign cited in opposition: the collective word mark 'HALLOUMI' for goods in Class 29

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: dismissal of the appeal

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

[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 23 November 2010 — Kessel v OHIM — Janssen-Cilag (Premeno)

(Case T-536/10)

(2011/C 30/83)

Language in which the application was lodged: German

Parties

Applicant: Kessel Marketing & Vertriebs GmbH (Mörfelden-Walldorf, Germany) (represented by: S. Bund, 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: Janssen-Cilag GmbH (Neuss, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2010 in Case R 708/2010-4;

— Order the defendant and the intervener, in accordance with Article 87(2) and (5) of the Rules of Procedure of the General Court, to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Premeno' for goods in Class 5

Proprietor of the mark or sign cited in the opposition proceedings: Janssen-Cilag GmbH

Mark or sign cited in opposition: the German word mark 'Pramino' for goods in Class 5

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: appeal dismissed

Pleas in law: Infringement of Article 42(2) and (3) of Regulation (EC) No 207/2009 [1], as there is insufficient proof of use of the opposing trade mark and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 as there is no likelihood of confusion of the marks at issue.

The applicant also submits that the restriction of the list of goods and services is admissible.

[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 26 November 2010 — Adamowski v OHIM — Fagumit (FAGUMIT)

(Case T-537/10)

(2011/C 30/84)

Language in which the application was lodged: German

Parties

Applicant: Ursula Adamowski (Hamburg, Germany) (represented by: D. von Schultz, 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: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o. (Wolbrom, Poland)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2010 in Case R 1002/2009-1;

— dismiss the application for a declaration of invalidity of Community trade mark No 3 005 980;

— order OHIM to pay the costs incurred in removing the mark from the register, in the proceedings before the Board of Appeal, and in the present proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'FAGUMIT' for goods in Classes 12 and 17.

Proprietor of the Community trade mark: Ursula Adamowski

Applicant for the declaration of invalidity: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o.

Trade mark right of applicant for the declaration: National figurative mark containing the word element 'FAGUMIT' for goods in Class 17.

Decision of the Cancellation Division: Dismissal of the application for annulment.

Decision of the Board of Appeal: Appeal upheld and the mark was declared invalid.

Pleas in law: Infringement of Article 53(1)(c) of Regulation (EC) No 207/2009, [1] in conjunction with Article 8(4) thereof, since the other party to the proceedings before the Board of Appeal failed to provide legally valid evidence that the company name 'FAGUMIT' is actually used; infringement of Article 53(1)(b) of Regulation (EC) No 207/2009, in conjunction with Article 8(3) thereof, since the other party to the proceedings before the Board of Appeal effectively agreed to the registration of the trade mark rights associated with the name 'FAGUMIT', and infringement of Article 52(1)(b) of Regulation (EC) No 207/2009, since the applicant cannot be accused of acting in bad faith at the time when she filed her application for the contested Community trade mark.

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

Action brought on 26 November 2010 — Adamowski v OHIM — Fagumit (Fagumit)

(Case T-538/10)

(2011/C 30/85)

Language in which the application was lodged: German

Parties

Applicant: Ursula Adamowski (Hamburg, Germany) (represented by: D. von Schultz, 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: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o. (Wolbrom, Poland)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2010 in Case R 1003/2009-1;

— dismiss the application for a declaration of invalidity of Community trade mark No 3 093 226;

— order OHIM to pay the costs incurred in removing the mark from the register, in the proceedings before the Board of Appeal, and in the present proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'Fagumit' for goods in Classes 12 and 17.

Proprietor of the Community trade mark: Ursula Adamowski

Applicant for the declaration of invalidity: Fabryka Węży Gumowych i Tworzyw Sztucznych Fagumit Sp. z o.o.

Trade mark right of applicant for the declaration: National figurative mark containing the word element 'FAGUMIT' for goods in Class 17.

Decision of the Cancellation Division: Dismissal of the application for annulment.

Decision of the Board of Appeal: Appeal upheld and the mark was declared invalid.

Pleas in law: Infringement of Article 53(1)(c) of Regulation (EC) No 207/2009, [1] in conjunction with Article 8(4) thereof, since the other party to the proceedings before the Board of Appeal failed to provide legally valid evidence that the company name 'FAGUMIT' is actually used; infringement of Article 53(1)(b) of Regulation (EC) No 207/2009, in conjunction with Article 8(3) thereof, since the other party to the proceedings before the Board of Appeal effectively agreed to the registration of the trade mark rights associated with the name 'FAGUMIT', and infringement of Article 52(1)(b) of Regulation (EC) No 207/2009, since the applicant cannot be accused of acting in bad faith at the time when she filed her application for the contested Community trade mark.

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

Action brought on 24 November 2010 — Acino Pharma GmbH v Commission

(Case T-539/10)

(2011/C 30/86)

Language of the case: German

Parties

Applicant: Acino Pharma GmbH (Miesbach, Germany) (represented by: R. Buchner, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission decisions C(2010) 2203, C(2010) 2204, C(2010) 2205, C(2010) 2206, C(2010) 2207, C(2010) 2208, C(2010) 2210, C(2010) 2218 of 29 March 2010 and C(2010) 6428, C(2010) 6429, C(2010) 6430, C(2010) 6432, C(2010) 6433, C(2010) 6434, C(2010) 6435, C(2010) 6436 of 16 September 2010;

— order the defendant to pay the costs.

Pleas in law and main arguments

First, the applicant challenges the Commission's decisions of 29 March 2010 by which it suspended the placing on the market of batches of the medicinal products 'Clopidogrel Acino — Clopidogrel', 'Clopidogrel Acino Pharma GmbH — Clopidogrel', 'Clopidogrel ratiopharm — Clopidogrel', 'Clopidogrel Sandoz — Clopidogrel', 'Clopidogrel 1A Pharma — Clopidogrel', 'Clopidogrel Acino Pharma — Clopidogrel', 'Clopidogrel Hexal — Clopidogrel', and 'Clopidogrel ratiopharm GmbH — Clopidogrel', and withdrew batches which were already on the European Union market. Second, the applicant seeks the annulment of those decisions of the Commission of 16 September 2010 by which it amended the authorisation of medicinal products which have already been authorised and ordered the prohibition of the placing on the market of certain batches of those medicinal products.

In support of its action the application raises five pleas in law.

By its first plea the applicant claims that the requirements under Article 20 of Regulation (EC) No 726/2004, ([1]) in conjunction with Articles 116 and 117 of Directive 2001/83/EC, ([2]) for a suspension, withdrawal or recall of, or amendment to, Community authorisations for the placing on the market of the medicinal products concerned were not satisfied. The applicant claims that it provided evidence during the procedure that the infringements found to exist did not compromise the quality of the medicinal products.

By its second plea the applicant claims that the Commission failed to satisfy the requirement of proof in finding that the requirements under Article 116 and 117 of Directive 2001/83/EC were satisfied.

By its third plea the applicant claims that the Commission infringed the general principle of proportionality in determining the level of protection to be applied.

By its fourth plea the applicant claims that essential procedural requirements were infringed since the opinion of the Committee for Medicinal Products for Human Use of the European Medicines Agency was unlawful. In the applicant's view, as a result of the decisive importance of that opinion, its unlawfulness calls into question that of the Commission's decisions. In addition, it is not apparent from the reasons given in the contested decision that the Commission made use of the discretion which it is granted.

Finally, the applicant submits, as its fifth plea, that the Commission failed to provide sufficient reasoning in the contested decision, since it failed to provide its own reasons, but rather relied wholesale on the scientific assessment of the Committee for Medicinal Products for Human Use of the European Medicines Agency.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1).

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

Action brought on 24 November 2010 — Spain v Commission

(Case T-540/10)

(2011/C 30/87)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 6154 of 13 December reducing the assistance granted from the Cohesion Fund to the following projects

'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo IX-A' (CCI No 2001.EC.16.C.P.T. 005)

'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo X-B (Avinyonet del Penedés-Sant Sadurní d'Anoia' (CCI No 2001.EC.16.C.P.T. 008)

'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo XI-A and XI-B (Sant Sadurní d'Anoia-Gelida)' (CCI NO 2001.ES.16.C.P.T.009) and

'Línea de Alta Velocidad Madrid- Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo IX-C' (CCI NO 2001.ES.16.C.P.T.0010)

— alternatively, partially annul the decision in so far as it refers to the corrections applied to the amendments arising from exceeding the noise thresholds (Subsection IX-A), the change of PGOU of the Ayuntamiento de Santa Oliva (Subsection IX-A) and the differences in the geotechnical conditions (Subsections X-B. IX-A, XI-B and IX-C), reducing the amount of the correction by EUR 2 348 201,96;

— in any event, order the defendant to pay the costs.

Pleas in law and main arguments

By the contested decision, the Commission reduced the aid from the Cohesion Fund initially granted to the phase of the projects mentioned above, because of alleged irregularities in the application of the law on public procurement.

The Kingdom of Spain takes the view the decision should be annulled on three different grounds:

(a) Infringement of Article H(2) of Annex II to Regulation No 1164/94 ([1]) as the Commission failed to take a decision within the period of three months from the date of the hearing.

(b) Infringement, by reason of incorrect application, of Article 20(2)(f) of Directive 93/38 ([2]) since contracting for additional services is a matter conceptually distinct from the amendment of a contract which is being executed laid down by Spanish public procurement law, so that that amendment does not fall within the scope of Directive 93/38.

(c) In the alternative, infringement of Article 20(2)(f) of Directive 93/38 on the ground that all the requirements were fulfilled in order for the Spanish authorities to adjudicate by way of the negotiation procedure without advertising the additional works carried out in the four phases of the project affected by the correction.

([1]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).

([2]) Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 82, p. 40).

Action brought on 22 November 2010 — ADEDI and Others v Council of the European Union

(Case T-541/10)

(2011/C 30/88)

Language of the case: Greek

Parties

Applicants: Anotati Diikisi Enoseon Dimosion Ipallilon (Supreme Administration of Public Servants' Unions; ADEDI) (Athens, Greece), S. Papaspiros (Athens, Greece) and I. Iliopoulos (Athens, Greece) (represented by: M. Tsipra, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the General Court should:

— annul the Council Decision of 7 September 2010 amending Decision 2010/320/EU addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit, published in the *Official Journal of the European Union* on 14 September 2010 (OJ 2010 L 241, p. 12) under No 2010/486/EU;

— annul the Council Decision of 8 June 2010 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit, published in the *Official Journal of the European Union* on 11 June 2010 (OJ 2010 L 145, p. 6) under No 2010/320/EU;

— order the Council to pay the costs.

Pleas in law and main arguments

By this action, the applicants seek the annulment of the decision of the Council of the European Union of 7 September 2010 amending Decision 2010/320/EU addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit, published in the *Official Journal of the European Union* on 14 September 2010 (OJ 2010 L 241, p. 12) under No 2010/486/EU, and the annulment of the decision of the Council of the European Union of 8 June 2010 addressed to Greece with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit, published in the *Official Journal of the European Union* on 11 June 2010 (OJ 2010 L 145, p. 6) under No 2010/320/EU.

The applicants advance the following grounds in support of their pleas.

First, the applicants submit that the powers of the European Commission and the Council conferred by the Treaties were exceeded in the adoption of the contested decisions. More specifically, Articles 4 and 5 of the Treaties introduce the principles of subsidiarity and proportionality. In addition, under Article 5(2) of the Treaties it is expressly provided that any competence not conferred by the Member States on the European Union remains with the Member States. Pursuant to Article 126 et seq. of the Treaties, the measures which may be decided upon by the Council under the excessive deficit procedure and included in its decisions cannot be prescribed specifically, explicitly and without room for deviation, since that competence is not conferred upon the Council by the Treaties.

Second, the applicants maintain that the powers conferred by the Treaties on the European Commission and the Council were exceeded in the adoption of the contested decisions and that those decisions are, in their content, contrary to the Treaties. More specifically, the legal basis relied upon for the adoption of the contested decisions is Articles 126(9) and 136 of the Treaty. However, they were adopted in a manner that exceeded the powers of the European Commission and the Council conferred by those articles, simply as a measure implementing a bilateral agreement between the 15 Member States of the Euro zone, which decided to grant the bilateral loans, and Greece. Such a competence for adoption of a measure on the part of the Council is neither recognised nor prescribed by the Treaties.

Third, the applicants maintain that, in introducing pay and pension reductions, the contested decisions affect acquired property rights of the applicants and were accordingly adopted in breach of Article 1 of the First Protocol to the European Convention for the Protection of Human Rights.

Action brought on 22 November 2010 — XXXLutz Marken v OHIM — Meyer Manufacturing (CIRCON)

(Case T-542/10)

(2011/C 30/89)

Language in which the application was lodged: German

Parties

Applicant: XXXLutz Marken GmbH (Wels, Austria) (represented by: H. Pannen, 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: Meyer Manufacturing Co. Ltd (Hong Kong, China)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2010 in Case R 40/2010-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'CIRCON' for goods in Classes 7, 11 and 21.

Proprietor of the mark or sign cited in the opposition proceedings: Meyer Manufacturing Company Limited.

Mark or sign cited in opposition: Word mark 'CIRCULON' for goods in Classes 11 and 21.

Decision of the Opposition Division: Refusal in part of registration.

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

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, [1] since there is no likelihood of confusion between the marks at issue, and infringement of Article 76(2)(2) of Regulation (EC) No 207/2009, since the Board of Appeal took into account in its decision facts which were not put forward by the other party to the proceedings before the Board of Appeal.

[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 29 November 2010 — Nordmilch v OHIM — Lactimilk (MILRAM)

(Case T-546/10)

(2011/C 30/90)

Language in which the application was lodged: German

Parties

Applicant: Nordmilch AG (Bremen, Germany) (represented by: R. Schneider, 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: Lactimilk, SA (Madrid, Spain)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 September 2010 in Joined Cases R 1041/2009-4 and R 1053/2009-4, in so far as it refuses Community trade mark application 002 851 384 for certain goods in Classes 5 and 29;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'MILRAM' for goods in Classes 5, 29, 30, 33, 33 and 43.

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

Mark or sign cited in opposition: National figurative mark containing the word element 'RAM' for goods in Classes 29, and various national word marks 'RAM' for goods in Classes 5, 29, 30 and 32.

Decision of the Opposition Division: Rejection in part of the opposition.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division, in so far as the opposition in respect of certain goods was rejected and refusal of registration for the goods in question.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, [1] since there is no likelihood of confusion between the marks at issue. The applicant also claims that the Board of Appeal did not take account, in respect of an opposing mark, that its protection had expired at the time of the decision of 15 September 2010.

[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 29 November 2010 — Omya v OHIM — Alpha Calcit (CALCIMATT)

(Case T-547/10)

(2011/C 30/91)

Language in which the application was lodged: German

Parties

Applicant: Omya AG (Oftringen, Switzerland) (represented by: F. Kuschmirek, 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: Alpha Calcit Füllstoffgesellschaft mbH (Cologne, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 September 2010 in Case R 1370/2009-1, and order the defendant to register Community trade mark application No 5 200 654 'CALCIMATT' for all the goods in respect of which application was sought;

— order the defendant to pay the costs;

— in the alternative, stay the proceedings until a final decision has been taken on whether OHIM is to remove the opposing mark EU 003513488 'CALCILAN' from the register.

Pleas in law and main arguments

Applicant for a Community trade mark: Omya AG.

Community trade mark concerned: Word mark 'CALCIMATT' for goods in Classes 1 and 2.

Proprietor of the mark or sign cited in the opposition proceedings: Alpha Calcit Füllstoffgesellschaft mbH.

Mark or sign cited in opposition: Internationally registered word marks 'CALCIPLAST', 'CALCILIT' and 'CALCICELL' for goods in Classes 1 and 19, Community word marks 'Calcilit' and 'CALCILAN' for goods in Classes 1 and 19, and national word works 'CALCICELL' and 'CALCIPLAST' for goods in Class 1.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and refusal to register.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, [1] since there is no likelihood of confusion between opposing marks as regards the goods in respect of which application was sought.

[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 26 November 2010 — Fri-El Acerra v Commission

(Case T-551/10)

(2011/C 30/92)

Language of the case: Italian

Parties

Applicant: Fri-El Acerra Srl (Acerra, Naples, Italy) (represented by: M. Todino, lawyer, P. Fattori, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul in its entirety the European Commission's decision of 15 September 2010 concerning State aid No C 8/2009, by which the Commission found that the aid measure which the Italian Republic was planning to adopt in favour of Fri-El Acerra Srl was incompatible with the internal market;

— order the Commission to pay the costs.

Pleas in law and main arguments

In the present proceedings, the applicant challenges a decision of the Commission which found that aid granted to the applicant by the Italian authorities in relation to the construction of a biomass power plant at Acerra was incompatible with the common market.

1. First plea in law: Misapplication of Article 107(3) TFEU, misapplication of the Guidelines on national regional aid and misinterpretation of the case-law on the incentive effect.

   The applicant submits that the Commission misapplied the formal and chronological requirement laid down in point 38 of the Guidelines on national regional aid for 2007-2013, treating it as an absolute test of whether the aid has incentive effect and failing to consider the substantive nature of the aid. Thus the Commission interpreted that requirement in too formalistic a manner, contrary to the case-law on incentive effect, and failed to assess properly the documents submitted by the parties.

2. Second plea in law: Breach of the general principles of the Community legal order and, in particular, of the principle of *tempus regit actum* and the principle of the protection of legitimate expectations.

   The applicant submits that the Commission erred in finding that the formal requirement laid down in the 2007 guidelines, which were published in 2006, was applicable to events which occurred before that publication. Such an application of that requirement is contrary to the fundamental principles of the Community legal order, such as the principle of *tempus regit actum*, which requires that a rule of law must be non-retroactive, and the principle of the protection of legitimate expectations.

3. Third plea in law: Manifest error of assessment, in so far as the Commission distorted the facts by incorrectly assessing the requirement for an increase in employment and the energy contribution to the industrial zone of Acerra, and by mistakenly concluding that the project made only a minimal contribution to regional energy policy and development.

   This plea in law is based on the arguments that the defendant:

   — attributed, contrary to its own practice, artificial importance to the requirement of an increase in employment, viewing that requirement in isolation from the type of market and the economic context of the proposed aid;

   — failed also to assess correctly the direct contribution made to the industrial zone of Acerra by the electricity produced by Fri-El, by not taking into consideration the Italian energy legislation and the indirect incentive effect on the establishment of industry and on regional development;

   — failed to consider the contribution made by Fri-El Acerra to regional energy policy, one of the objectives of which is to obtain a specific volume of electricity from renewable sources by 2013.

4. Fourth plea in law: Manifest error of assessment, in so far as the Commission incorrectly assessed whether the aid was incompatible under the environmental guidelines.

   In the applicant's submission, the Commission erred in maintaining that the Italian authorities and Fri-El Acerra had failed to supply appropriate documentation. In addition, the Commission did not apply the incentive requirement in accordance with the guidelines, which provide for a substantive test rather than a purely formal one.

Action brought on 3 December 2010 — riha Richard Hartinger Getränke v OHIM — Lidl Stiftung (VITAL&FIT)

(Case T-552/10)

(2011/C 30/93)

Language in which the application was lodged: German

Parties

Applicant: riha Richard Hartinger Getränke GmbH & Co. Handels-KG (Rinteln, Germany) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Lidl Stiftung & Co. KG (Neckarsulm, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 5 October 2010 in Case R 1229/2009-4;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark containing the word element 'VITAL&FIT' for goods in Class 32

Proprietor of the mark or sign cited in the opposition proceedings: Lidl Stiftung & Co. KG

Mark or sign cited in opposition: five earlier rights, including the national word mark 'VITAFIT' for goods in Class 32

Decision of the Opposition Division: opposition upheld

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 the marks at issue are not so similar that there is a likelihood of confusion, and infringement of rules of procedure in that the Board of Appeal did not itself examine the supposed aural similarity of the marks, did not take account of decisions of OHIM and of the Court, to which the parties referred, did not have regard to those decisions and did not make it clear whether it did in fact take into account only German commercial circles and their views

[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 29 November 2010 — Biodes v OHIM — Manasul Internacional (FARMASUL)

(Case T-553/10)

(2011/C 30/94)

Language in which the application was lodged: Spanish

Parties

Applicant: Biodes S.L. (Madrid, Spain) (represented by: E. Manresa Medina, 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: Manasul Internacional S.L. (Ponferrada, Spain)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2010 in Case R 1034/2009-1, and

— order the defendant and any interveners to pay all the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark 'FARMASUL' for goods in Classes 5, 30 and 31.

Proprietor of the mark or sign cited in the opposition proceedings: Manasul Internacional S.L.

Mark or sign cited in opposition: National figurative marks 'MANASUL' and 'MANASUL ORO' for goods in Classes 5, 30 and 31.

Decision of the Opposition Division: Opposition rejected and mark applied for granted.

Decision of the Board of Appeal: Appeal upheld and mark applied for refused.

Pleas in law: Infringement of Article 8(1)(b) and (5) of Regulation (EC) No 207/2009 [1] since there is no similarity between the marks at issue, that the opponent has forgotten to examine the second licence agreement which amended the first licence agreement, and that the opposing mark's alleged reputation is nonexistent.

[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 26 November 2010 — Evropaïki Dynamiki v Frontex

(Case T-554/10)

(2011/C 30/95)

Language of the case: English

Parties

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

Defendant: European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

Form of order sought

— Annul the decision of FRONTEX to reject the bid of the applicant, filed in response to the open call for tenders Frontex/OP/98/2010 — EOROSUR Big Pilot Project (OJ 2010, S 90-134098), as well as all further related decisions of FRONTEX, including the one to award the respective contract to the successful contractor;

— Annul the decision of FRONTEX to reject the bid of the applicant, filed in response to Lot 1 and Lot 6 of the open call for tenders Frontex/OP/87/2010 — Framework Contract (OJ 2010, S 66-098323), as well as all further related decisions of FRONTEX, including the one to award the respective contracts to the successful contractors;

— Order FRONTEX to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of 9 358 915,00 EUR;

— Order FRONTEX to pay the applicant's damages suffered on account of loss of opportunity and damage to its reputation and credibility for an amount of 935 891,00 EUR; and

— Order FRONTEX to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the defendant's decisions of 16 September 2010 and 20 October 2010 to reject its bid in the context of the call for tenders Frontex/OP/98/2010 — EOROSUR Big Pilot Project (OJ 2010, S 90-134098) and Lot 1 and Lot 6 of the open call for tenders Frontex/OP/87/2010 — Framework Contract (OJ 2010, S 66-098323), as well as all further related decisions of FRONTEX, including the one to award the respective contracts to the successful contractors. The applicant further requests compensation for the alleged damages on account of the tender procedure.

In support of its claims, the applicant puts forward the following grounds.

Firstly, the applicant argues that the defendant has infringed Articles 100(2) of the financial regulation [1], the obligation to state reasons, as FRONTEX refused to provide sufficient justification or explanation to the applicant.

Furthermore, the applicant argues that the defendant committed various and serious errors of assessment, infringed the principle of non-discrimination and did not comply with the exclusion criteria, thereby infringing Articles 93(1)(f) and 94 of the financial regulation.

Finally, the applicant claims that the defendant violated the principle of good administration since it illegally mixed the selection and award criteria.

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[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Action brought on 3 December 2010 — JBF RAK v Council

(Case T-555/10)

(2011/C 30/96)

Language of the case: English

Parties

Applicant: JBF RAK LLC, Al Jazeerah Al Hamra, Ras Al Khaimah, United Arab Emirates (represented by: B. Servais, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates [1];

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council violated Article 15(1) of Council Regulation (EC) No 597/2009 ([2]) insofar as it disregarded the fact that imports of raw materials consigned from the Kingdom of Saudi Arabia were not subject to import duties and, thus, erred in calculating the subsidy margin. The applicant submits that, in the present case, the Council failed:

   — to correctly establish the amount of countervailable subsidy since it did not take into consideration the existence of a customs union between the Gulf Cooperation Council (GCC) members;

   — to take into consideration the impact of such customs union on the amount of countervailable subsidies.

   Accordingly, the applicant submits that the countervailing duty exceeds the amount of countervailable subsidy established in the investigation.

2. Second plea in law, alleging that the Council violated Article 30(5) of Council Regulation (EC) No 597/2009 insofar as it refused to take into account the representations timely made by the applicant on 5 August 2010.

3. Third plea in law, alleging that the Council violated Article 11(8) of Council Regulation (EC) No 597/2009 insofar as it failed to examine the accuracy of the information presented by the applicant on 5 August 2010.

4. Fourth plea in law, alleging that the Council violated the principle of sound administration insofar as it adopted the contested regulation without taking into consideration all the information that was available to it.

([1]) OJ 2010 L 254, p. 10

([2]) Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ 2009 L 188, p. 93

Action brought on 6 December 2010 — Novatex v Council

(Case T-556/10)

(2011/C 30/97)

Language of the case: English

Parties

Applicant: Novatex Ltd, Karachi, Pakistan, (represented by: B. Servais, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 857/2010 of 27 September 2010 imposing a definitive countervailing duty and collecting definitely the provisional duty imposed on imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates ([1]);

— order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

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

First plea in law, alleging that the Council violated Article 3 of Council Regulation (EC) No 597/2009 ([2]) by erroneously concluding that the Final Tax Regime (FTR) is a scheme which forgoes government revenue and, consequently, constitutes a financial contribution and that the FTR invariably confers benefit to the applicant. The applicant submits that:

— the Final Tax Regime cannot be considered to constitute a financial contribution on the basis of Article 3(1)(a)(ii) of Council Regulation (EC) No 597/2009, interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures and the interpretation given thereto by the WTO case law.

— the contested regulation violates Article 3(2) of Council Regulation (EC) No 597/2009, interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by concluding that the Final Tax Regime confers a benefit on the applicant.

Second plea in law, alleging that the Council violated:

— Articles 3(2) and 6(b) of the Council Regulation No 597/2009 interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by using the applicable commercial rate prevailing during the investigation period, as found on the State Bank of Pakistan website, rather that the commercial rate prevailing at the time the loan was contracted by the applicant;

— Article 7(2) of the Council Regulation No 597/2009 interpreted in accordance with the relevant provision of the WTO Agreement on Subsidies and Countervailing Measures by applying an inappropriate denominator, that is, the export turnover, while the appropriate denominator was the turnover.

(1) OJ 2010 L 254, p. 10
(2) Council Regulation (EC) No 597/2009 of 11 June 2009 on protection against subsidised imports from countries not members of the European Community, OJ 2009 L 188, p. 93

Action brought on 3 December 2010 — H. Eich v OHIM — Arav (H. Eich)

(Case T-557/10)

(2011/C 30/98)

Language in which the application was lodged: Italian

Parties

Applicant: H. Eich Srl (Signa, Italy) (represented by: D. Mainini, T. Rubin, A. Masetti Zannini de Concina, M. Bucarelli, G. Petrocchi, B. Passaretti, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Arav Holding Srl (Palma Campania, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of OHIM of 9 September 2010;

— Declare valid the mark H. EICH referred to in registration application No 6 256 242;

— Order OHIM to pay the costs of all proceedings, including before the two OHIM instances.

Pleas in law and main arguments

Applicant for a Community trade mark: H. Eich

Community trade mark concerned: Word mark 'H. Eich' (registration application No 6 256 242), for goods in Classes 18 and 25;

Proprietor of the mark or sign cited in the opposition proceedings: Arav Holding Srl

Mark or sign cited in opposition: Figurative mark containing the word element 'H-Silvian Heach' (Italian mark No 976 125, and mark No 880 562, pursuant to the Protocol to the Madrid Agreement, for Benelux, the Czech Republic, Germany, Greece, Spain, France, Hungary, Austria, Poland, Portugal, Romania, the United Kingdom), for goods in Classes 18 and 25.

Decision of the Opposition Division: Rejected the opposition.

Decision of the Board of Appeal: Annulled the contested decision and rejected the application for registration.

Pleas in law: Incorrect application and interpretation of Article 8(1)(b) of Regulation No 207/2009 on the Community trade mark (no likelihood of confusion).

Order of the General Court of 16 November 2010 — Regione autonoma della Sardegna and Others v Commission

(Joined Cases T-394/08, T-408/08, T-436/08, T-453/08 and T-454/08) (1)

(2011/C 30/99)

Language of the case: Italian

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

(1) OJ C 285, 8.11.2008.

Order of the General Court of 29 November 2010 — DVB Project v OHIM — Eurotel (DVB)

(Case T-578/08) (1)

(2011/C 30/100)

Language of the case: English

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

(1) OJ C 55, 7.3.2009.

Order of the General Court of 29 November 2010 — Eurotel v OHIM — DVB Project (DVB)

(Case T-21/09) [1]

(2011/C 30/101)

Language of the case: French

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

[1] OJ C 69, 21.3.2009.

Order of the General Court of 11 November 2010 — Easycamp v OHIM — Oase Outdoors (EASYCAMP)

(Case T-29/09) [1]

(2011/C 30/102)

Language of the case: English

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

[1] OJ C 69, 21.3.2009.

Order of the General Court (First Chamber) of 1 December 2010 — CEA v Commission

(Case T-412/09) [1]

(2011/C 30/103)

Language of the case: French

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

[1] OJ C 312, 19.12.2009.

Order of the General Court of 29 November 2010 — BASF v Commission

(Case T-105/10) [1]

(2011/C 30/104)

Language of the case: English

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

[1] OJ C 113, 1.5.2010.

Order of the General Court of 18 November 2010 — Ferracci v Commission

(Case T-192/10) [1]

(2011/C 30/105)

Language of the case: Italian

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

[1] OJ C 179, 3.7.2010.

Order of the General Court of 18 November 2010 — Scuola Elementare Maria Montessori v Commission

(Case T-193/10) [1]

(2011/C 30/106)

Language of the case: Italian

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

[1] OJ C 179, 3.7.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (3rd Chamber) of 29 September 2010 — Brune v Commission

(Case F-5/08) [1]

(Civil service — General competition — Non-inclusion on the reserve list — Conduct of the oral test — Stability of the selection board)

(2011/C 30/107)

Language of the case: French

Parties

Applicant: Markus Brune (Brussels, Belgium) (represented by: H. Mannes, lawyer)

Defendant: European Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the Commission's decision not to place the applicant on the reserve list in Competition AD/26/05 because of the insufficiency of his oral test.

Operative part of the judgment

The Tribunal:

1. *Annuls the Commission's decision of 10 May 2007 not to place Mr Brune on the reserve list in Competition EPSO/AD/26/05;*

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

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[1] OJ C 64, 8.3.2008, p. 69.

Judgment of the Civil Service Tribunal (Third Chamber) of 29 September 2010 — Honnefelder v Commission

(Case F-41/08) [1]

(Civil Service — General competition — Non-inclusion on a reserve list — Conduct of the oral test — Stable nature of the composition of the selection board)

(2011/C 30/108)

Language of the case: German

Parties

Applicant: Stephanie Honnefelder (Brussels, Belgium) (represented by: C. Bode, lawyer)

Defendant: European Commission (represented by: Berardis-Kayser and B. Eggers, agents)

Re:

Action for annulment of the Commission decision not to include the applicant on the reserve list for competition AD/26/05 by reason of the inadequacy of her oral test.

Operative part of the judgment

The Tribunal:

1. *The decision of the European Commission of 10 May 2007 not to include Ms Honnefelder on the reserve list for competition EPSO/AD/26/05 is annulled;*

2. *The European Commission is ordered to pay all of the costs.*

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[1] OJ C 128, 24.5.2008, p. 38.

Judgment of the Civil Service Tribunal (First Chamber) of 23 November 2010 — Bartha v Commission

(Case F-50/08) [1]

(Civil service — Officials — Open competition — Failure to include the applicant on the reserve list — Balanced representation of women and men on competition selection boards)

(2011/C 30/109)

Language of the case: Hungarian

Parties

Applicant: Gábor Bartha (Brussels, Belgium) (represented by: P. Homoki, lawyer)

Defendant: Commission (represented by: J. Currall, V. Bottka and A. Sipos, Agents)

Re:

Annulment of EPSO's decision not to include the applicant on the reserve list for competition EPSO/AD/56/06.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision 23 January 2008, by which the selection board of competition EPSO/AD/56/06 dismissed Mr Bartha's application for reconsideration of the decision of that selection board rejecting the applicant's candidature;*

2. *Dismisses the remainder of the application;*

3. *Orders the European Commission to bear all of the costs.*

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[1] OJ C 209, 15.8.2008, p. 73.

Judgment of the Civil Service Tribunal (Second Chamber) of 9 December 2010 — Schuerings v European Training Foundation (ETF)

(Case F-87/08) [1]

(Civil service — Staff of the European Training Foundation — Temporary Agent — Contract of unlimited duration — Dismissal — Requirement to provide a valid reason — Abolition of a post — Duty of care — Reallocation)

(2011/C 30/110)

Language of the case: French

Parties

Applicant: Gisela Schuerings (Nice, France) (represented by: N. Lhoest and L. Delhaye, lawyers)

Defendant: European Training Foundation (ETF) (represented by: T. Ciccarone, Agent, assisted by L. Levi, lawyer)

Re:

Annul the defendant's decision to dismiss the applicant, and order the European Foundation to provide compensation for the pecuniary and non-pecuniary damage suffered by the applicant.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision to dismiss Ms Schuerings of 23 October 2007;*
2. *Dismisses the action as to the remainder;*
3. *Orders the European Training Foundation (ETF) to pay the costs.*

[1] OJ C 327, 20.12.2008, p. 43.

Judgment of the Civil Service Tribunal (Second Chamber) of 9 December 2010 — Vandeuren v European Training Foundation (ETF)

(Case F-88/08) [1]

(Civil service — Staff of the European Training Foundation — Temporary Agent — Contract of unlimited duration — Dismissal — Requirement to provide a valid reason — Abolition of a post — Duty of care — Reallocation)

(2011/C 30/111)

Language of the case: French

Parties

Applicant: Monique Vandeuren (Pino Torinese, Italy) (represented initially by N. Lhoest, lawyer, and subsequently by N. Lhoest and L. Delhaye, lawyers)

Defendant: European Training Foundation (ETF) (represented by: T. Ciccarone, Agent, and L. Levi, lawyer)

Re:

Civil service — Annul the defendant's decision to dismiss the applicant, and order the European Foundation to provide compensation for the pecuniary and non-pecuniary damage suffered by the applicant.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision to dismiss Ms Vandeuren of 23 October 2007;*
2. *Dismisses the action as to the remainder;*
3. *Orders the European Training Foundation (ETF) to pay the costs.*

[1] OJ C 327, 20.12.2008, p. 44.

Judgment of the Civil Service Tribunal (Third Chamber) of 28 October 2010 — Fares v Commission

(Case F-6/09) [1]

(Civil Service — Contractual agents — Classification in grade — Account taken of professional experience)

(2011/C 30/112)

Language of the case: French

Parties

Applicant: Soukaïna Fares (Brussels, Belgium) (represented by: L. Vogal, lawyer)

Defendant: European Commission (represented by: J. Currall and G. Berscheid, agents)

Re:

Action for annulment of the classification of the applicant at grade 8 of function group III.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission by which Ms Fares was classified at grade 8 of function group III for contractual agents, in so far as that decision follows from Ms Fares' contract of employment as a member of the contract staff of 28 March 2008;*
2. *Orders the Commission to pay all of the costs.*

[1] OJ C 69, 21.3.2009, p. 54.

Judgment of the Civil Service Tribunal (3rd Chamber) of 28 October 2010 — Cerafogli v European Central Bank (ECB)

(Case F-23/09) [1]

(Civil service — ECB staff — Appointment of a member of staff on an acting basis — Notice of vacancy — Act adversely affecting an official — Placed on leave on account of disability — Legal interest in bringing proceedings)

(2011/C 30/113)

Language of the case: French

Parties

Applicant: Maria Concetta Cerafogli (Frankfurt-on-Main, Germany) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank (ECB) (represented by: F. Feyerbacher and N.Urban, Agents, assisted by B. Wägenbaur, lawyer)

Re:

Application for annulment of the ECB's Board of Directors' decision appointing an acting adviser to the Oversight Division and of vacancy notice ECB/074/08, as well as all decisions adopted on the basis of that vacancy notice. In addition, an application to order the defendant to pay compensation for the material and non-material damage suffered by the applicant.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

[1] OJ C 129, 06.06.2009, p. 21.

Judgment of the Civil Service Tribunal (First Chamber) of 23 November 2010 — Marcuccio v Commission

(Case F-65/09) [1]

(Civil service — Officials — Social security — Sickness insurance — Serious illness — Objection of illegality concerning the criteria adopted by the medical council — Rejection of claims for reimbursement of medical expenses)

(2011/C 30/114)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of the decision refusing 100 % reimbursement of the applicant's medical expenses.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action.*

2. *Orders Mr Marcuccio to pay the costs in their entirety.*

[1] OJ C 220, 12.9.2009, p. 43.

Judgment of the Civil Service Tribunal (First Chamber) of 14 December 2010 — Gowitzke v Europol

(Case F-74/09) [1]

(Civil service — Europol staff — Article 27 of the Staff Regulations applicable to Europol employees — Article 4 of the policy for determining grades and steps of Europol staff — Reassessment of a post to the next grade — Classification by step)

(2011/C 30/115)

Language of the case: Dutch

Parties

Applicant: Werner Siegrfried Gowitzke (The Hague, the Netherlands) (represented by: D.C. Coppens, lawyer)

Defendant: European Police Office (Europol) (represented by: D. Neumann and D. El Khoury, agents, and B. Wägenbaur, lawyer)

Re:

Application for annulment of Europol's decision of 5 June 2009 rejecting the applicant's claim to have his classification changed to grade 5, step 1.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action.*

2. *Orders the applicant to pay the costs.*

[1] OJ C 267, 7.11.2009, p. 85.

Judgment of the Civil Service Tribunal (First Chamber) of 23 November 2010 — Wenig v Commission

(Case F-75/09) [1]

(Public service — Officials — Request for assistance — Damage to reputation and breach of the principle of the presumption of innocence)

(2011/C 30/116)

Language of the case: French

Parties

Applicant: Fritz Harald Wenig (Woluwé-Saint-Pierre, Belgium) (represented initially by: G.-A Dal and D. Voillemot, lawyers, then by G.-A Dal, D. Voillemot, T. Bontinck and S. Woog, lawyers)

Defendant: European Commission (represented by: J. Currall and D. Martin, Agents)

Re:

First, an application for annulment of the implied decision rejecting the applicant's request of 23 September 2008 for assistance from the European Commission and, second, an application for annulment of the European Commission's rejection decision of 14 November 2008.

Operative part of the judgment

The Tribunal:

1. *Dismisses Mr Wenig's action;*

2. *Orders Mr Wenig to pay all the costs.*

[1] OJ C 267, 7/11/2009, p. 85.

Judgment of the Civil Service Tribunal (First Chamber) of 14 December 2010 — Lenz v Commission

(Case F-80/09) [1]

(Civil service — Officials — Social security — Reimbursement of the costs of treatment provided by a 'Heilpraktiker' — Principle of non-discrimination)

(2011/C 30/117)

Language of the case: German

Parties

Applicant: Erika Lenz (Osnabrük, Germany) (represented by: initally, V. Lenz and J. Römer, lawyers, and subsequently, V. Lenz, J. Römer and P. Birden, lawyers)

Defendant: European Commission (represented by: J. Currall and B. Eggers, agents)

Re:

Application for annulment of the Commission's decision of 4 May 2009 not to reimburse the costs of medical treatment provided by a 'Heilpraktiker'.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action of Mrs Lenz.*

2. *Orders Mrs Lenz to pay the costs.*

[1] OJ C 282, 21.11.2009, p. 66.

Judgment of the Civil Service Tribunal (3rd Chamber) of 1 December 2010 — Nolin v European Commission

(Case F-82/09) [1]

(Civil service — Officials — Promotion — Withdrawal of merit and priority points)

(2011/C 30/118)

Language of the case: French

Parties

Applicant: Michel Nolin (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Commission (represented by: M.J. Baquero Cruz, Agent, assisted by D. Waelbroeck, lawyer)

Re:

Application for annulment of the decision of the appointing authority of 19 December 2008 concerning the withdrawal of the applicant's merit and priority points.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Nolin to pay all the costs.*

[1] OJ C 297, 5.12.2009, p. 37.

Judgment of the Civil Service Tribunal (3rd Chamber) of 1 December 2010 — Gagalis v Council

(Case F-89/09) [1]

(Civil service — Social security — Occupational accident — Partial permanent invalidity — Decision to take responsibility for 75 % of the costs of a thermal cure — Reimbursement for care under Article 72 of the Staff Regulations and additional reimbursement under Article 73 of the Staff Regulations — Exclusion of cover for subsistence expenses — Refusal of additional reimbursement — Interpretation of Article 73(3) of the Staff Regulations and of Article 9 of the Common rules on the insurance of officials against the risk of accident and occupational disease)

(2011/C 30/119)

Language of the case: French

Parties

Applicant: Spyridon Gagalis (Kraainem, Belgium) (represented by: N. Lhoëst, lawyer, then by N. Lhoëst and L. Delhaye, lawyers)

Defendant: Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, Agents)

Re:

Action for annulment of the defendant's decision refusing to reimburse the applicant, pursuant to Article 73 of the Staff Regulations, 75 % of all the costs relating to a thermal cure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Gagalis to pay all the costs.*

[1] OJ C 312, 19.12.2009, p. 45.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2010 — Taillard v Parliament

(Case F-97/09) [1]

(Civil service — Official — Successive sick leave — Arbitration — Finding that the applicant was able to work — Refusal of new duly issued medical certificate — No medical examination — Sick leave deducted from annual leave — Inadmissibility — Action for annulment and damages)

(2011/C 30/120)

Language of the case: French

Parties

Applicant: Christine Taillard (Thionville, France) (represented by: N. Cambonie and C. Lelièvre, lawyers)

Defendant: European Parliament (represented by: K. Zejdová and S. Seyr, Agents)

Re:

First, an action for annulment of the decision by which the European Parliament declares a medical certificate attesting to the applicant's incapacity to work inadmissible and the resultant decision to withdraw annual leave. Second, a claim for compensation for the damage suffered by the applicant

Operative part of the judgment

The Tribunal:

1. *Annuls the Decision of the European Parliament of 15 January 2009, by which the Parliament refused to accept the medical certificate of 5 January 2009 and the resultant decision to deduct Ms Taillard's absence of 6 to 9 January2009 from her annual leave;*

2. *Dismisses the remainder of the action;*

3. *Orders the Parliament to bear its own costs and pay those incurred by Ms Taillard.*

[1] OJ C 24, 30.1.2010, p. 81.

Judgment of the Civil Service Tribunal (Single Judge) of 14 December 2010 — Marcuccio v Commission

(Case F-1/10) [1]

(Civil service — Officials — Social security — Sickness insurance — Applications for reimbursement of medical expenses — No act adversely affecting an official — Inadmissibility — No proper statement of reasons)

(2011/C 30/121)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of the decision refusing 100 % reimbursement of the applicant's medical expenses.

Operative part of the judgment

The Tribunal:

1. *Annuls the implied decisions by which the European Commission rejected Mr Marcuccio's claims of 25 December 2008 seeking reimbursement at the normal rate of certain medical expenses.*
2. *Dismisses the remainder of the heads of claim.*
3. *Orders each party to bear its own costs.*

([1]) OJ C 63, 13.3.2010, p. 52.

Judgment of the Civil Service Tribunal (First Chamber) of 23 November 2010 — Gheysens v Council

(Case F-8/10) ([1])

(Public service — Auxiliary contract staff — Nonrenewal of contract — Duty to state reasons)

(2011/C 30/122)

Language of the case: French

Parties

Applicant: Johan Gheysens (Malines, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N Louis and É. Marchal, lawyers)

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

Re:

Application for annulment of the Council's decision not to extend the applicant's contract and, consequently, to terminate his employment relationship with the Council.

Operative part of the judgment

The Tribunal:

1. *Dismisses Mr Gheysens' action;*
2. *Orders Mr Gheysens to pay all the costs.*

([1]) OJ C 100, 17.4.2010, p. 69.

Action brought on 5 October 2010 — Andrecs and Others v Commission

(Case F-96/10)

(2011/C 30/123)

Language of the case: French

Parties

Applicants: Stefan Robert Andrecs (Brussels, Belgium) and Others (represented by: L. Vogel, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision adjusting the applicants' remuneration, pensions and other allowances with effect from 1 July 2009, as set out in their salary slips, within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the decision by which the appointing authority fixed the new amount of the applicants' remuneration, pensions and other allowances under the Staff Regulations, as set out in particular in the applicants' salary slips R6/2009 and 01/2010, and annul the decision by which, on 24 June 2010, the appointing authority rejected the applicants' complaint of 29 March 2010 in so far as those decisions deny the applicants an increase in their remuneration, pensions and allowances under the Staff Regulations equivalent to 3.70 % of the original amount, and dismiss their application for interest to be awarded to them on the amounts still owed to them at the rate laid down by the European Central Bank for its main refinancing operations, increased by two percentage points, from the date on which the applicants became entitled to the sums at issue until full payment;

— Order the European Commission to pay the costs.

Action brought on 15 October 2010 — Massez and Others v Court of Justice

(Case F-101/10)

(2011/C 30/124)

Language of the case: French

Parties

Applicants: Lieven Massez (Luxembourg, Luxembourg) and Others (represented by: A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

Annulment of the applicants' salary adjustment slips for the period from July to December 2009 and the salary slips issued since 1 January 2010 within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the decision of the Complaints Committee of the Court of Justice of 29 June 2010 rejecting the applicants' complaints regarding their salary adjustment slips for the period from July to December 2009 and their salary slips issued since 1 January 2010;

— to the extent necessary, annul the decisions of the Court of Justice on the establishment of the applicants' salary adjustment slips for the period from July to December 2009 and salary slips since 1 January 2010;

— order the Court of Justice to pay the applicants the arrears of remuneration, plus default interest;

— order the Court of Justice to pay the costs.

Action brought on 18 October 2010 — Geradon v Council

(Case F-102/10)

(2011/C 30/125)

Language of the case: French

Parties

Applicant: Félix Geradon (Sint Pieters Leeuw, Belgium) (represented by: A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the applicant's salary adjustment slip for the period from July to December 2009 and the salary slips issued since 1 January 2010 within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the Council's decision of 5 July 2010 rejecting the applicant's complaint regarding the salary adjustment slip for the period from July to December 2009 and his salary slips issued since 1 January 2010;

— Annul, where necessary, the Council's decisions on the issue of salary adjustment slips for the period from July to December 2009 and of salary slips since 1 January 2010;

— Order the Council to pay the applicant arrears of remuneration plus default interest;

— Order the Council to pay the costs.

Action brought on 20 October 2010 — Stephan Jaeger v Eurofound

(Case F-103/10)

(2011/C 30/126)

Language of the case: French

Parties

Applicant: Stephan Jaeger (Dublin, Ireland) (represented by: A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Foundation for the Improvement of Living and Working Conditions (Eurofound)

Subject-matter and description of the proceedings

Annulment of the applicant's salary adjustment slip for the period from July to December 2009 and the salary slips issued since 1 January 2010 within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul, where necessary, the decisions of Eurofound on the establishment of the applicant's salary adjustment slips for the period from July to December 2009 and his salary slips issued since 1 January 2010;

— Order Eurofound to pay the applicant the arrears of remuneration, plus default interest;

— Order Eurofound to pay the costs.

Action brought on 22 October 2010 — Bömcke v EIB

(Case F-105/10)

(2011/C 30/127)

Language of the case: French

Parties

Applicant: Eberhard Bömcke (Athus, Belgium) (represented by: D. Lagasse, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment of the decision taken by the defendant's director of human resources confirming that the applicant's authority to represent staff has expired and damages.

Form of order sought

— Annul the decision of the director of human resources of the EIB, notified to the applicant by letter dated 12 October 2010 and received on 15 October 2010,

— order the EIB to make good the non-material damage caused to the applicant by the abovementioned decision and award him damages of EUR 25,000 to that end.

— order the EIB to pay the costs.

Action brought on 26 October 2010 — Filice and Others v Court of Justice

(Case F-108/10)

(2011/C 30/128)

Language of the case: French

Parties

Applicants: Stefania Filice (Luxembourg, Luxembourg) and Others (represented by: B. Cortese, C. Cortese and F. Spitaleri, lawyers)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

Annulment of the defendant's decisions, set out in the applicants' salary slips, to limit the adjustment of their salaries, from July 2009, to an increase of 1,85% within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the decisions of the Court of Justice of the European Union set out in their pay slips issued since January 2010 and in their salary adjustment slips for 2009, in so far as they apply an adjustment rate of 1,85% instead of a rate of 3,7%;

— Order the Court of Justice to refund the difference between the amounts of salary paid pursuant to Regulation No 1296/09 until the date on which the judgment is delivered in the present case and the amounts which should have been paid to them if the adjustment had been calculated correctly, plus interest at the rate set by the European Central Bank for principal refinancing operations applying during the periods concerned, plus three and a half points; that interest to be paid from the date on which the principal sums claimed fell due;

— Order the Court of Justice to pay the costs.

Action brought on 29 October 2010 — Bernaldo de Quirós v Commission

(Case F-111/10)

(2011/C 30/129)

Language of the case: French

Parties

Applicant: Belén Bernaldo de Quirós (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the implied decision rejecting the applicant's note in which she applied to the defendant for the protection provided under Article 22a (3) of the Staff Regulations, and damages.

Form of order sought

— Annulment of the implied decision rejecting the applicant's request of 1 October 2009 and, if required, of the IDOC letter/decision of 3 November 2009 and of the letter from the Director-General of the Human Resources Directorate General of the European Commission of 22 March 2010;

— annulment, as necessary, of the decision dated 3 August 2010 and notified on the following day, 4 August 2010, rejecting her complaint;

Consequently,

— That the measures sought in her request of 1 October 2009 be taken by the appointing authority;

— that, in particular, she be afforded the protection provided in Article 22(a) of the Staff Regulations;

— that the allegations made against the applicant be withdrawn from the notes of 6 May and 30 September 2008 and that the damage suffered by the applicant be compensated by the award of damages;

— order the Commission to pay the costs.

Action brought on 8 November 2010 — Jacques Biwer and Others v Commission

(Case F-115/10)

(2011/C 30/130)

Language of the case: French

Parties

Applicants: Jacques Biwer (Bascharage, Luxembourg) and Others (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission decision to consider certain financial assistance from a Member State to students in higher education to be an allowance of the same nature as family allowances and to deduct this financial assistance from the education allowance granted to officials who are parents of those students.

Form of order sought

— Annul the decision of the PMO of Luxembourg, not notified to the applicants, by which certain financial assistance from the Luxembourg State, granted by CEDIES to students in higher education in Luxembourg or abroad, is henceforth to be considered to be an allowance of the same nature as those paid under Articles l, 2 and 3 of Annex VII of the Staff Regulations and, under Article 67(2), is to be deducted from the education allowance granted to officials who are parents of those students;

— annul the applicants' monthly pay slips drawn up in accordance with the abovementioned decision from January 2010 and for the following months, drawing up new, amended pay slips as of January 2010.

— order the Commission to pay the costs.

Action brought on 12 November 2010 — Van Soest v Commission

(Case F-117/10)

(2011/C 30/131)

Language of the case: French

Parties

Applicant: Barry Van Soest (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision terminating the procedure to recruit the applicant, who was successful in a competition and was included on the reserve list, because he did not hold a secondary education diploma giving access to post-secondary education.

Form of order sought

— Annul decision HRB.2/TV/iu (2010) 6293;

— annul decision HRD.2/AL/db Ares(2010) 511204 rejecting the applicant's complaint against that decision;

— order the Commission to pay the costs.

Action brought on 15 November 2010 — Di Tullio v Commission

(Case F-119/10)

(2011/C 30/132)

Language of the case: French

Parties

Applicant: Roberto Di Tullio (Rovigo, Italy) (represented by: E. Boigelot and S. Woog, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of OLAF's decision refusing to assign the applicant leave for national service under Article 18 of the Conditions of Employment of other Servants.

Form of order sought

— Annul OLAF's decision of 21 April 2010 refusing to assign the applicant leave for national service, despite the reminder order from the Guardia di Finanza of 24 February 2010;

— annul the Commission's decision of 10 September 2010 rejecting the applicant's complaint in part on grounds other than those relied upon in the contested decision of 27 April 2010;

— as a result of those annulments, put the applicant in the position of being on leave for national service from 1 July 2010 until 30 June 2012 inclusive;

— order the European Commission to pay the costs.

Action brought on 19 November 2010 — Heath v ECB

(Case F-121/10)

(2011/C 30/133)

Language of the case: French

Parties

Applicant: Michael Heath (Southampton, United Kingdom) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the applicant's pension slips for the month of January 2010 and the following months, in so far as these apply a pension increase of 0,6 % following the pensions adjustment procedure for 2010, and damages for loss suffered by the applicant.

Form of order sought

— Annul the salary slip for January 2010 and the following months, in so far as these apply a pension increase of 0,6 %, in order to apply an increase of 2,1 % calculated in accordance with a lawful GSA [General Salary Adjustment];

— to the extent necessary, annul the decisions rejecting the requests for reconsideration and the complaints lodged by the applicant, decisions of 11 May 2010 and 9 September 2010 respectively;

— order the defendant to pay the difference between the pension increase of 0,6 % granted unlawfully to the applicant as from January 2010 and that of 2,1 % to which he should have been entitled, namely a salary increase of 1,5 % per month as from January 2010. Those amounts should have interest applied as from their respective due dates until the date of actual payment, calculated on the basis of the rate set by the European Central Bank for main refinancing operations, applicable during the relevant period, plus 2 points;

— order the defendant to pay EUR 5 000, to compensate for the applicant's material damage resulting from the loss in his purchasing power;

— order the defendant to pay EUR 5 000, assessed ex aequo et bono to compensate for his non-material damage;

— order the ECB to pay the costs.

Action brought on 22 November 2010 — Bancale and Buccheri v Commission

(Case F-123/10)

(2011/C 30/134)

Language of the case: French

Parties

Applicants: Giovanni Bancale (Waterloo, Belgium) and Roberto Buccheri (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the selection board decisions in the competitions COM/INT/OLAF/09/AD8 and COM/INT/OLAF/09/AD10 not to admit the applicants to the competition.

Form of order sought

— Declare unlawful section 4 of Title III of competition notice EPSO/COM/INT/OLAF09, in that it prohibits taking into account university level experience obtained prior to the obtaining of a university qualification;

— annul the decisions excluding the applicants from the competition EPSO/COM/INT/OLAF/09;

— order the Commission to pay the costs.

Action brought on 30 November 2010 — Schuerewegen v Parliament

(Case F-125/10)

(2011/C 30/135)

Language of the case: French

Parties

Applicant: Daniel Schuerewegen (Marienthal, Luxembourg) (represented by: P. Nelissen Grade and G. Leblanc, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the appointing authority's decision by which the applicant was removed from his place of work and his staff card removed, together with the measures taken as a result of that decision and damages.

Forms of order sought

— Annul the appointing authority's decision of 30 August 2010 rejecting the applicant's complaint;

— annul the appointing authority's decision of 25 March 2010 by which the applicant was forcibly removed, without justification or written or verbal notification and without notice, and by which his staff card was withdrawn together with the measures taken as a result of that decision;

— inform the defendant of the consequences entailed by the annulment of the contested decisions and, in particular, of the compensation for the damage suffered by the applicant;

— order the defendant to reimburse in full the medical costs incurred as a result of the health problems afflicting the applicant following these events;

— order the defendant to restore all the days of annual leave taken by the applicant since 25 March 2010, together with all days of sick leave;

— order the defendant to provide the applicant with written, public apologies in order to clear his good name;

— order the defendant to ensure that the applicant does not suffer from any vexatious or discriminatory treatment or measure as a result of the contested measure adversely affecting him;

— order the defendant to ensure that no trace of the measure adversely affecting him, its grounds or consequences remain in the individual file of the applicant;

— order the defendant to actively and promptly search for a position for the applicant that is sufficiently distant from his current post to allow him to resume work in humanly acceptable conditions;

— order the defendant to ensure that those who participated conceptually, actively or indirectly in the measure adversely affecting him receive adequate warnings and/or sanctions;

— order the defendant to pay to the applicant the sum of EUR 10,000 by way of damages for non-material loss together with the provisional sum of EUR 5,000 by way of damages for material loss, subject to increase;

— order the European Parliament to pay the costs.

Order of the Civil Service Tribunal of 28 September 2010 — De Roos-Le Large v Commission

(Cases F-39/10 and F-39/10 R)

(2011/C 30/136)

Language of the case: Dutch

The President of the Civil Service Tribunal of the European Union has ordered that the case be removed from the register.

Order of the Civil Service Tribunal of 24 November 2010 — Lebedef v Commission

(Case F-44/10) [1]

(2011/C 30/137)

Language of the case: French

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

[1] OJ C 209, 31.7.2010, p. 56.

Order of the Civil Service Tribunal of 3 September 2010 — Hecq v Commission

(Case F-53/10)

(2011/C 30/138)

Language of the case: French

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

Order of the Civil Service Tribunal of 8 December 2010 — Arroyo Redondo v Commission

(Case F-77/10) [1]

(2011/C 30/139)

Language of the case: French

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

[1] OJ C 301, 6.11.2010, p. 65.

Order of the Civil Service Tribunal of 8 December 2010 — Dubus v Commission

(Case F-79/10) [1]

(2011/C 30/140)

Language of the case: French

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

[1] OJ C 301, 6.11.2010, p. 66.

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