

'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 <sup>(1)</sup> 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 <sup>(2)</sup> 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.

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

<sup>(2)</sup> 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,<sup>(1)</sup> 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.

---

<sup>(1)</sup> 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)