The applicant claims that there is no prima facie selectivity within the meaning of Article 107(1) TFEU. It argues that the Commission's determination of the reference system is incorrect and that the relevant system of reference, that is the continuation of unused losses by the company, despite an acquisition of shares, is a fundamental rule of national tax law. In addition, it is claimed that the fiscal carry-forward of losses constitutes an exception to that exception which leads back to the system of reference and therefore itself complies with the system.

2. Second plea in law: carry-forward of losses as a general measure

Under this point, the applicant claims that the carry-forward of losses constitutes a general measure and not, therefore, State aid within the meaning of Article 107(1) TFEU. It is submitted that carrying forward losses is available to all companies which are liable to tax in Germany and that they are neither openly nor covertly linked to features based on territory, size or production sector.

3. Third plea in law: justification on the basis of the nature and the internal logic of the taxation system

The applicant claims in the course of the third plea in law that the carrying-forward of losses is justified by the nature and the internal logic of the German taxation system, as it is a system — consistent exception to the exception of a forfeiture of losses pursuant to Paragraph 8c(1) of the German Law on corporation tax (Körperschaftsteuergesetz; 'KStG') which leads back to the reference system complies with it.

4. Fourth plea in law: no burden on public finances

The applicant claims that the carrying-forward of losses ('Sanierungsklausel) could not lead to a burden on public finances relevant to aid and for that reason alone it is not State aid within the meaning of Article 107(1) TFEU. The applicant argues that in a case of corporate restructuring other than the insolvency of the affected company, the only alternative to avoid insolvency is by means of restructuring, and that by the carrying-forward of losses which may enable the company to be saved, the possibility of future tax revenue from the affected company is maintained.

5. Fifth plea in law: infringement of the principle of EU law of the protection of legitimate expectations

In the fifth plea in law, the applicant claims that the Commission, through its practice and failure to object to the previous rules of Paragraph 8c KStg as well as comparable rules of other Member States, gave rise to legitimate expectations on the part of the applicant, which should also have been protected on the basis of the binding information and lack of predictability of relevance to State aid of the carrying-forward of losses.

Action brought on 14 November 2011 — S & S Szlegiel Szlegiel i Wiśniewski v OHIM — Scotch & Soda (SODA)

(Case T-590/11)

(2012/C 25/117)

Language in which the application was lodged: English

Parties

Applicant: S & S Piotr Szlegiel Jacek Szlegiel i Robert Wiśniewski sp. j. (Gorzów Wielkopolski, Republic of Poland) (represented by: R. Sikorski, adwokat)

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

Other party to the proceedings before the Board of Appeal: Scotch & Soda BV (Hoofddorp, Netherlands)

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 25 August 2011 in case R 1570/2010-2;

— Reject in its entirety the opposition No B1438250;

— Order the defendant to register the trade mark applied for; and

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SODA', for goods in class 25 — Community trade mark application No 6970875

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

Mark or sign cited in opposition: Community trade mark registration No 3593498 of the word mark 'SCOTCH & SODA', for goods in class 25

Decision of the Opposition Division: Rejected the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to appreciate that there were sufficient visual, aural and conceptual differences between the marks, particularly with respect to its analysis of the conceptual meanings of the marks; (ii) to properly circumscribe and analyse the dominant element of the contested signs; and (iii) to properly take into consideration the level of attention of the average consumer of the category of goods concerned.

Action brought on 22 November 2011 — Anbouba v Council

(Case T-592/11)

(2012/C 25/118)

Language of the case: French

Parties

Applicant: Issam Anbouba (Homs, Syria) (represented by: M.-A. Bastin and J.-M. Salva, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare this application admissible in all its elements;

— Declare it well founded in all its pleas in law;

— Grant the joinder of the present application with the application in Case T-563/11;

— State that the contested acts may be annulled in part since the part of the acts which is to be annulled can be separated from the act as a whole;

— Accordingly

  — Annul in part Council Decision 2011/684/CFSP of 13 October 2011, and Regulation (EU) No 1011/2011 of 13 October 2011 by deleting the listing of Mr Issam Anbouba and references to him as supporting the current regime in Syria;

  — Failing that, annul Council Decision 2011/684/CFSP of 13 October 2011 and Regulation (EU) No 1011/2011 of 13 October 2011 concerning restrictive measures in view of the situation in Syria;

— Failing that, declare those decisions and the regulation inapplicable as regards Issam Anbouba and order the removal of his name and references from the list of persons who are the object of sanctions by the European Union;

— Order the Council provisionally to pay one euro in damages as compensation for the non-pecuniary and pecuniary harm suffered by reason of the designation of Mr Issam Anbouba as a supporter of the current regime in Syria;

— Order the Council to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant raises two pleas in law which are in essence identical or similar to those raised in Case T-563/11 *Anbouba* v *Council*.

Action brought on 28 November 2011 — Al-Chihabi v Council

(Case T-593/11)

(2012/C 25/119)

Language of the case: English

Parties

Applicant: Fares Al-Chihabi (Aleppo, Syria) (represented by: L. Ruessmann and W. Berg, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 878/2011 of 2 September 2011 [1] and Council Regulation (EU) No 1011/2011 of 13 October 2011 [2], as well as Council Decision 2011/522/CFSP of 2 September 2011 [3] and Council Decision 2011/684/CFSP of 13 October 2011 [4], and any later legislation to the extent they perpetuate and/or replace the restrictive measures, in so far as they relate to the applicant; and

— Order the defendant to pay the costs of the 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 infringement of the right to good administration, in particular the obligation to state reasons, provided for in Article 41 of the Charter of Fundamental Rights of the European Union, Article 216 TFEU and Article 14 (2) of Council Regulation (EU) No 442/2011 [5].

2. Second plea in law, alleging violation of the applicant's rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights.