1. The General Court and Board of Appeal wrongly concluded that the existence of goodwill created a right of more than mere local significance. It does not do so unless the goodwill is of more than mere local significance;

2. The General Court and Board of Appeal wrongly concluded that the evidence of concurrent trading was evidence relevant only to the likelihood of a misrepresentation. Consideration should also have been given to the argument that the existence of concurrent goodwill would have rendered misrepresentation impossible.

3. The General Court and Board of Appeal erred in treating the evidence of use as indicating that the goodwill was associated with the earlier sign relied upon.

([1]) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark
OJ L 11, 14.1.1994, p. 1

Action brought on 22 February 2011 — Council of the European Union v European Parliament

(Case C-77/11)

(2011/C 120/12)

Language of the case: French

Parties

Applicant: Council of the European Union (represented by: G. Maganza and M. Vitsentzatos, acting as Agents)

Defendant: European Parliament

Form of order sought

— annul the act of the President of the Parliament of 14 December 2010 declaring the European Union budget for the financial year 2011 definitively adopted, in so far as that measure is combined with the act establishing the budget,

— alternatively, and in so far as it is a separate act from the above, annul the act of the President of the Parliament of that date purporting to adopt the European Union budget for 2011 and give it binding force as against the institutions and the Member States,

— in the alternative, annul the act of the President of the European Parliament declaring the European Union budget for 2011 definitively adopted, in so far as that declaration was made without the 2010 budget procedure (2011 budget) having been completed,

— consider the effects of the 2011 budget as definitive until the budget is established by a legislative act in accordance with the Treaties,

— order the European Parliament to pay the costs.

Pleas in law and main arguments

By this action the Council submits that, following the introduction of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, the annual budget of the European Union and any amending budgets must henceforth be established by a joint legislative act of the two institutions which produce them, namely the European Parliament and the Council. That act must be signed by the presidents of those two institutions in accordance with the second subparagraph of Article 297(1) TFEU.

The Council submits accordingly that the act establishing the 2011 annual budget — whether that act is combined with the declaration of the President of the European Parliament that the 2011 budget is definitively adopted or whether it is regarded as a separate act — is unlawful in so far as it consists in a non-typical and non-legislative act made and signed by the President of the European Parliament alone, in breach of Article 314 TFEU and Articles 288 and 289(2) and the first and third paragraphs of Article 296 of the Treaty and Article 13(2) of the Treaty on European Union. In the alternative, the Council submits that that act is unlawful on the ground of breach of essential procedural requirements and breach of Article 314(9) TFEU.

Finally, the Council asks the Court to maintain, if need be, the effects of the budget as published in the *Official Journal of the European Union* until the date on which that budget is established in accordance with those articles of the Treaty.

Reference for a preliminary ruling from the Tribunale Ordinario di Firenze (Italy), lodged on 22 February 2011 — Criminal proceedings against Maurizio Giovanardi and Others

(Case C-79/11)

(2011/C 120/13)

Language of the case: Italian

Referring court

Tribunale Ordinario di Firenze

Parties to the main proceedings

Accused: Maurizio Giovanardi, Andrea Lastini, Vito Pignionica, Massimiliano Pempori, Filippo Ricci, Gezim Lakja, Elettrifer Srl, Rete Ferroviaria Italiana SpA)

Other parties: Franca Giunti, Laura Marrai, Francesca Marrai, Stefania Marrai, Giovanni Marrai, Alfio Bardelli, Andrea Tomberli

Question referred

Are the provisions of Italian law on the administrative liability of legal bodies/persons set out in Legislative Decree No 231/2001, as subsequently amended, compatible with the provisions of Community law on the protection, in criminal proceedings, of victims of crime, in particular with Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [1] and with the provisions of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, [2] insofar as those national provisions do not 'expressly' provide that those legal bodies/persons may be held liable, in criminal proceedings, for the damage caused to the victims of crime?

[1] OJ 2001 L 82, p. 1.
[2] OJ 2004 L 261, p. 15.

Appeal brought on 25 February 2011 by LG Electronics, Inc. against the judgment delivered on 16 December 2010 in Case T-497/09 LG Electronics v OHIM (KOMPRESSOR PLUS)

(Case C-88/11 P)

(2011/C 120/14)

Language of the case: French

Parties

Appellant: LG Electronics, Inc. (represented by J. Blanchard, lawyer)

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

Form of order sought

— declare the appeal admissible;

— set aside the judgment of the Second Chamber of the General Court of 16 December 2010;

— set aside in part the decision of the First Board of Appeal of OHIM of 23 September 2009 in so far as it dismissed in part the appeal brought by LG Electronics against the decision of 5 February 2009 refusing the application for registration of Community trade mark No 007282924 in so far as it designated 'electric vacuum cleaners';

— order OHIM to pay the costs.

Pleas in law and main arguments

The appellant pleads an infringement of Article 7(1)(c) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. [1]

The appellant observes, first, that the General Court relied on new facts, communicated for the first time by OHIM before the Court, which had not been relied on before the Board of Appeal.

The appellant submits, second, that the General Court erred by distorting the facts and evidence submitted to it, leading to conclude wrongly that vacuum cleaners could be used as compressors.

Finally, it observes that, since vacuum cleaners do not in any event contain a compressor and cannot be used as compressors, the mark KOMPRESSOR PLUS cannot in any case be regarded as consisting exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the services, or other characteristics of the goods or service.

[1] OJ 2009 L 78, p. 1.

Order of the President of the Court of 24 January 2011 (reference for a preliminary ruling from the Rechtbank van Eerste Aanleg te Brussel — Belgium) Knubben Dak- en Leidekkersbedrijf BV v Belgische Staat

(Case C-13/10) [1]

(2011/C 120/15)

Language of the case: Dutch

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

[1] OJ C 80, 27.3.2010.

Order of the President of the Court of 27 January 2011 (reference for a preliminary ruling from the Amtsgericht Köln — Germany) — Hannelore Adams v Germanwings GmbH

(Case C-266/10) [1]

(2011/C 120/16)

Language of the case: German

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

[1] OJ C 209, 31.7.2010.