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### Information and Notices

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## IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND  
AGENCIES

## COURT OF JUSTICE OF THE EUROPEAN UNION

*(2010/C 301/01)***Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union***

OJ C 288, 23.10.2010

**Past publications**

OJ C 274, 9.10.2010

OJ C 260, 25.9.2010

OJ C 246, 11.9.2010

OJ C 234, 28.8.2010

OJ C 221, 14.8.2010

OJ C 209, 31.7.2010

These texts are available on:  
EUR-Lex: <http://eur-lex.europa.eu>

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## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Grand Chamber) of 14 September 2010 — Akzo Nobel Chemicals Ltd, Akcros Chemicals Ltd v European Commission, Council of the Bars and Law Societies of the European Union, Algemene Raad van de Nederlandse Orde van Advocaten, Association européenne des juristes d'entreprise (AEJE), American Corporate Counsel Association (ACCA) — European Chapter, International Bar Association**

(Case C-550/07 P P) <sup>(1)</sup>

*(Appeal — Competition — Measures of inquiry — Commission's powers of investigation — Legal professional privilege — Employment relationship between a lawyer and an undertaking — Exchanges of e-mails)*

(2010/C 301/02)

Language of the case: English

**Parties**

*Appellants:* Akzo Nobel Chemicals Ltd, Akcros Chemicals Ltd (represented by: M. Mollica, M. van der Woude and C. Swaak, advocaat)

*Other parties to the proceedings:* European Commission (represented by: F. Castillo de la Torre and X. Lewis, Agents), Council of the Bars and Law Societies of the European Union (represented by: J. Flynn QC), Algemene Raad van de Nederlandse Orde van Advocaten (represented by: O. Brouwer and C. Schillemans, advocaten), European Company Lawyers Association (AEJE) (represented by: M. Dolmans and K. Nordlander, avocats, J. Temple Lang, solicitor), American Corporate Counsel Association (ACCA) — European Chapter (G. Berrisch, Rechtsanwalt, D. Hull, solicitor), International Bar Association (represented by: J. Buhart and I. Michou, avocats)

*Intervener in support of the applicant:* United Kingdom of Great Britain and Northern Ireland (represented by: V. Jackson and E. Jenkinson, Agents, and M. Hoskins, Barrister), Ireland (represented by: D. O'Hagan, Agent, D. O'Donnell, SC and R. Casey, BL), Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries and M. de Grave, Agents)

**Re:**

Appeal against the judgment of the Court of First Instance (First Chamber, extended composition) of 17 September 2007 in Case T-253/03 *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, by which the Court dismissed an action seeking annulment of Decision C(2003) 1533 final of 8 May 2003 rejecting a request for legal professional privilege for certain documents seized in the course of an investigation ordered in accordance with Article 14(3) of Regulation No 17 (Case COMP/E-1/38.589)

**Operative part of the judgment***The Court:*

1. Dismisses the appeal;
2. Orders the United Kingdom of Great Britain and Northern Ireland, Ireland and the Kingdom of the Netherlands to bear their own costs;
3. Orders the Conseil des barreaux européens, the Algemene Raad van de Nederlandse Orde van Advocaten, the European Company Lawyers Association, the American Corporate Counsel Association (ACCA) — European Chapter and the International Bar Association to bear their own costs;
4. Orders the remainder of the costs of the proceedings to be born jointly and severally by Akzo Nobel Chemicals Ltd and Akcros Chemicals Ltd.

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<sup>(1)</sup> OJ C 37, 9.2.2008.

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**Judgment of the Court (Grand Chamber) of 14 September 2010 — Lego Juris A/S v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Mega Brands Inc.**

(Case C-48/09 P) <sup>(1)</sup>

*(Appeal — Regulation (EC) No 40/94 — Community trade mark — Suitability of a shape of goods for registration as a trade mark — Registration of a three-dimensional sign consisting of the upper surface and two sides of a Lego brick — Declaration of invalidity of that registration on application by an undertaking marketing toy bricks having the same shape and dimensions — Article 7(1)(e)(ii) of that regulation — Sign which consists exclusively of the shape of goods which is necessary to obtain a technical result)*

(2010/C 301/03)

Language of the case: English

#### Parties

*Appellant:* Lego Juris A/S (represented by: V. von Bomhard and T. Dolde, Rechtsanwälte)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, Agent), Mega Brands Inc. (represented by: P. Cappuyns and C. De Meyer, advocaten).

#### Re:

Appeal against the judgment of the Court of First Instance (Eighth Chamber) of 12 November 2008 in Case T-270/06 *Lego Juris A/S v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, in which that Court dismissed an action brought by the proprietor of the Community three-dimensional trade mark in the shape of a Lego brick for goods in Classes 9 and 28 against Decision R 856/2004-G of the Grand Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 10 July 2006 which had dismissed the appeal brought against the Cancellation Division's decision declaring that mark partially invalid in the context of the application for a declaration of invalidity brought by Mega Brands — Interpretation of Article 7(1)(e)(ii) of Regulation (EC) No 40/94

#### Operative part of the judgment

*The Court:*

1. Dismisses the appeal;
2. Orders Lego Juris A/S to pay the costs.

<sup>(1)</sup> OJ C 82, 4.4.2009.

**Judgment of the Court (First Chamber) of 16 September 2010 (reference for a preliminary ruling from the Diikitiko Efetio Thessalonikis — Greece) — Zoi Chatzi v Ipourgos Ikonomikon**

(Case C-149/10) <sup>(1)</sup>

*(Social policy — Directive 96/34/EC — Framework agreement on parental leave — Interpretation of clause 2.1 of the framework agreement — Person granted the right to parental leave — Parental leave in the event of the birth of twins — Meaning of 'birth' — Taking account of the number of children born — Principle of equal treatment)*

(2010/C 301/04)

Language of the case: Greek

#### Referring court

Diikitiko Efetio Thessalonikis

#### Parties to the main proceedings

*Applicant:* Zoi Chatzi

*Defendant:* Ipourgos Ikonomikon

#### Re:

Reference for a preliminary ruling — Diikitiko Efetio Thessalonikis — Interpretation of clause 2.1 of the framework agreement on parental leave annexed to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4), in conjunction with Article 24 of the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389) — Parental leave granted in the event of the birth of twins — Grant of a single period of parental leave in the event of the birth of twins — Infringement of Article 21 of the Charter of Fundamental Rights on the grounds of discrimination on the basis of birth and a restriction on the right of twins that is not permitted by the principle of proportionality?

#### Operative part of the judgment

1. Clause 2.1 of the framework agreement on parental leave concluded on 14 December 1995, which is set out in the annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC as amended by Council Directive 97/75/EC of 15 December 1997, cannot be interpreted as conferring an individual right to parental leave on the child.
2. Clause 2.1 of the framework agreement is not to be interpreted as requiring the birth of twins to confer entitlement to a number of periods of parental leave equal to the number of children born. However, read in the light of the principle of equal treatment, this clause obliges the national legislature to establish a parental leave regime which, according to the situation obtaining in the Member State concerned, ensures that the parents of twins receive treatment

that takes due account of their particular needs. It is incumbent upon national courts to determine whether the national rules meet that requirement and, if necessary, to interpret those national rules, so far as possible, in conformity with European Union law.

(<sup>1</sup>) OJ C 148, 5.6.2010.

**Reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 7 July 2010 — Georg Neidel v Stadt Frankfurt am Main**

(Case C-337/10)

(2010/C 301/05)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Frankfurt am Main

**Parties to the main proceedings**

*Claimant:* Georg Neidel

*Defendant:* Stadt Frankfurt am Main

**Questions referred**

- Does Article 7 of Directive 2003/88/EC (<sup>1</sup>) also apply to the employment relationships of public servants?
- Does Article 7(1) of Directive 2003/88/EC also cover entitlements to annual leave where national law provides for such an entitlement of more than four weeks?
- Does Article 7(1) of Directive 2003/88/EC also apply to entitlements to leave of absence granted under national law in addition to annual leave in compensation for work performed on public holidays owing to the irregular distribution of working time?
- Can a public servant who has retired base an entitlement to payment in lieu of annual leave directly on Article 7(2) of Directive 2003/88/EC if he has been prevented from working by sickness and has not therefore been able to take leave in the form of leave of absence from work?

5. Can such an entitlement to payment in lieu be at least partly precluded by the premature forfeiture of entitlement to leave prescribed in national law?

6. Does the scale of the entitlement to payment in lieu based on Article 7(2) of Directive 2003/88/EC extend only to the minimum leave of four weeks guaranteed by Article 7(1) of Directive 2003/88/EC, or does the entitlement to a payment in lieu also extend to the additional leave entitlements for which national law provides? Do those extended leave entitlements also include entitlements to leave of absence arising solely from a particular distribution of working time?

(<sup>1</sup>) 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)

**Action brought on 20 July 2010 — European Commission v Republic of Poland**

(Case C-362/10)

(2010/C 301/06)

*Language of the case: Polish*

**Parties**

*Applicant:* European Commission (represented by: S. La Pergola and K. Herrmann, acting as Agents)

*Defendant:* Republic of Poland

**Form of order sought**

— declare that, by failing to adopt all the laws and regulations necessary for the proper transposition of Articles 2, 3, 4, 6, 7, 8, 10 and 11 of Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, (<sup>1</sup>) the Republic of Poland has failed to fulfil its obligations under those provisions of the directive;

— order the Republic of Poland to pay the costs.

### Pleas in law and main arguments

In the applicant's submission, the Republic of Poland has hitherto not adopted national measures correctly transposing Directive 2003/98 into national law. The Ustawa z 6 września 2001 r. o dostępie do informacji publicznej (Law of 6 September 2001 on access to public information), which was notified to the Commission, does not relate to the re-use of public sector information, because it does not even contain a definition of 're-use'. For that reason alone, the rights and obligations resulting from that Law cannot constitute a correct transposition of Directive 2003/98.

<sup>(1)</sup> OJ 2003 L 345, p. 90.

### Action brought on 8 July 2010 — Republic of Hungary v Slovak Republic

(Case C-364/10)

(2010/C 301/07)

*Language of the case: Slovak*

#### Parties

*Applicant:* Republic of Hungary (represented by: M. Fehér and E. Orgován, acting as Agents)

*Defendant:* Slovak Republic

#### Form of order sought

- declare that, by failing to comply with the provisions 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 <sup>(1)</sup> ('Directive 2004/38'), in that on 21 August 2009, relying on that directive, it did not allow the President of the Republic of Hungary, László Sólyom, to enter the territory of the Slovak Republic, the Slovak Republic has failed to fulfil its obligations under Directive 2004/38 and Article 18(1) EC;
- further declare that the position of the Slovak Republic, which it still maintained at the time of bringing the action, namely that it is entitled under Directive 2004/38 to prohibit the entry to the territory of the Slovak Republic of the representative of the Republic of Hungary, that is, its President, thereby confirming that such an infringement

may recur, conflicts with the law of the European Union, in particular Article 3(2) TEU and Article 21(1) TFEU;

- declare that the Slovak Republic applied European Union law incorrectly in that the State authorities on the basis of Directive 2004/38 did not allow the President of the Republic, László Sólyom, access to the territory of the Slovak Republic;
- in the event that the Court of Justice should find, contrary to the view taken by Hungary which forms the basis of the claims set out above, that a specific provision of international law may limit the personal scope of Directive 2004/38, a position with which the Republic of Hungary does not agree, define in the event of such derogations the extent and scope of such derogations;
- order the Slovak Republic to pay the costs.

#### Pleas in law and main arguments

On 21 August 2009 the Minister for Foreign Affairs of the Slovak Republic informed the Minister for Foreign Affairs of the Republic of Hungary by a verbal note, in connection with the visit which the President of the Republic of Hungary, László Sólyom, was making on that date, that the competent authorities of the Slovak Republic had decided to forbid the President of the Republic of Hungary entry to the territory of the Slovak Republic.

The Hungarian Government submits that, by refusing President László Sólyom entry, the Slovak Republic breached Article 18 of the EC Treaty as well as Directive 2004/38. The Republic of Hungary takes the view that the personal conduct of the President of the Republic, László Sólyom, whether in general or in connection with the specific visit, did not represent a real, direct and sufficiently serious risk threatening a fundamental interest of society which could be a ground for adopting any restrictive measure. The Hungarian Government considers that, even if such a ground justifying restrictive measures existed, which it does not accept, the measure whereby in the particular case the entry of the President of the Republic was prohibited does not comply with the requirement of proportionality and goes beyond the aim pursued, which could equally have been attained by other less restrictive measures on the part of the Slovak Republic.

The Slovak Republic likewise failed to comply with the procedural rules of Directive 2004/38, since the prohibition of the entry of President László Sólyom was not adopted on the basis of a decision in accordance with the directive and was not served on him; the verbal note communicated the decision to refuse entry but did not contain adequate reasoning, and did not state from which administrative or judicial body a remedy could be sought, or the time limit for seeking it.



According to the Hungarian Government, there is a risk that the Slovak Republic will repeat the infringement, since it still maintains that the prohibition of the entry of President László Sólyom to its territory was lawful.

The Hungarian Government submits that not only is the application of the law by the Slovak authorities in itself an infringement of Directive 2004/38, the very reliance on the directive was also unlawful, since the Slovak authorities did not pursue the aims of the directive, but intended by relying on the directive to pursue only purely political aims. On the basis of the statements of the Slovak Government, it may be concluded that the prohibition of the entry of President László Sólyom to the territory of the Slovak Republic was not justified by the Slovak Government on grounds of public safety or public order in accordance with European Union law, namely Directive 2004/38, but on purely political grounds, primarily of foreign policy.

According to the Hungarian Government, the European Commission incorrectly stated in the proceedings that the provisions of national law, not European Union law, should apply to official visits of heads of state of the Member States. The Hungarian Government considers that any group of persons and any kind of visit, whether official or private, definitely calls for the application of Directive 2004/38. That directive generally and in relation to all inhabitants of the European Union recognises the fundamental right of entry to the territory of any Member State which, for a citizen of the Union personally, derives from primary law. Directive 2004/38 also generally and exhaustively lists the cases in which it is possible to restrict the freedom of movement of a Union citizen. The directive does not mention a derogation from the basic principle under which it is possible to exclude heads of state, or another category of citizens of the Member States, from its scope. If the Council and the European Parliament had wished to make the exercise of freedom of movement conditional on a rule of international law, including customary international law, they would certainly have done so when adopting the directive.

The Hungarian Government submits that neither in codified international law nor in customary international law can there be found a valid legal provision which could apply in the present case. Even if such rules of international law existed, the Member States by acceding to the Union recognised its power to lay down rules on the freedom of movement of persons and agreed that the powers which were left to them in that field would be exercised in compliance with the legal acts of the Union and the law of the Union. If in the case of the entry of a citizen of a Member State to another Member State a provision of international law could restrict the personal scope of Directive 2004/38, it would be necessary for the Court of Justice to define the extent of that restriction plainly, in view of the fact that Directive 2004/38 does not contain such an exception or derogation.

## Action brought on 29 July 2010 — Commission v Italian Republic

(Case C-379/10)

(2010/C 301/08)

*Language of the case: Italian*

### Parties

*Applicant:* European Commission (represented by: L. Pignatoro and M. Nolin, Agents)

*Defendant:* Italian Republic

### Form of order sought

— Declare that, by excluding any liability on the part of the Italian State for damage caused to individuals by an infringement of European Union law attributable to a national court adjudicating at last instance where such an infringement results from interpretation of provisions of law or assessment of facts or evidence carried out by that court and limiting such liability to cases of intentional fault and serious misconduct, pursuant to Article 2(1) and (2) of Law No 117 of 13 April 1988, the Italian Republic has failed to fulfil its obligations in connection with the general principle of the liability of Member States, laid down by the Court in its case-law, for breach of European Union law by one of its courts adjudicating at last instance, which is a principle established by the Court of Justice of the European Union.

— order the Italian Republic to pay the costs.

### Pleas in law and main arguments

Law No 117 of 13 April 1988 on compensation for damage caused in the exercise of judicial functions and the civil liability of judges excludes any liability on the part of the Italian State for damage caused to individuals by an infringement of European Union law attributable to a national court adjudicating at last instance where such an infringement results from interpretation of provisions of law or assessment of facts or evidence carried out by that court. Moreover, that law restricts liability to cases of intentional fault and serious misconduct.

<sup>(1)</sup> OJ 2004 L 158, p. 77.

In its judgment in Case C-173/03 *Traghtetti del Mediterraneo v Italy*, <sup>(1)</sup> the Court ruled as follows:

'Community law precludes national legislation which excludes State liability, in a general manner, for damage caused to individuals by an infringement of Community law attributable to a court adjudicating at last instance by reason of the fact that the infringement in question results from an interpretation of provisions of law or an assessment of facts or evidence carried out by that court.

Community law also precludes national legislation which limits such liability solely to cases of intentional fault and serious misconduct on the part of the court, if such a limitation were to lead to exclusion of the liability of the Member State concerned in other cases where a manifest infringement of the applicable law was committed, as set out in paragraphs 53 to 56 of [Case C-224/01 *Köbler v Austria*].<sup>(2)</sup>

The Court therefore found that Law No 117 is incompatible with its case-law. That case-law remains in force and is applied. The case-law of the Court has therefore been infringed.

<sup>(1)</sup> (2006) ECR I-5177.

<sup>(2)</sup> [2003] ECR I-10239.

**Appeal brought on 2 August 2010 by Félix Muñoz Arraiza against the judgment delivered on 9 June 2010 by the General Court (Fifth Chamber) in Case T-138/09 Félix Muñoz Arraiza v OHIM and Consejo Regulador de la Denominación de Origen Calificada Rioja**

(Case C-388/10 P)

(2010/C 301/09)

*Language of the case: Spanish*

**Parties**

*Appellant:* Félix Muñoz Arraiza (represented by: J. Grimau Muñoz and J. Villamor Muguerra, abogados)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Consejo Regulador de la Denominación de Origen Calificada Rioja

**Form of order sought**

— set aside the judgment of the General Court of the European Union (Fifth Chamber) of 9 June 2010 in Case T-138/09 on the ground that the opposing trade marks are wholly compatible with the Community trade mark application No 4 121 621, 'Riojavina';

— order the defendants to pay the costs.

**Pleas in law and main arguments**

A. The first plea in law alleges infringement of Article 8(1)(b) of Regulation No 207/2009<sup>(1)</sup> on the Community trade mark. The plea concerning infringement of that provision is further subdivided into two parts:

— Distortion of the clear sense of the facts and of the list of goods and services actually designated in the trade mark application and misinterpretation of the judgment of the Court of Justice in *Canon*<sup>(2)</sup>, paragraph 23, in conjunction with the judgments of the Court of Justice of 9 December 1981 in Case 193/80 and of 15 October 1985 in Case 281/83.

This part of the plea alleges that the General Court restricted the list of goods actually designated in the Community trade mark application, limiting the general category 'vinegars' to 'wine vinegar', taking as its basis two arguments: the first entailing taking into account a national legislative definition of 'vinegar', which is indirect and in the nature of a reference, namely the Disposición Adicional Primera de la Ley española 24/2003 de la Viña y el Vino (First Additional Provision to the Law concerning grapevines and wine), instead of a direct normative definition based on Community law and confirmed by the judgments of the Court of Justice of 9 December 1981 in Case 193/80 and of 15 October 1985 in Case 281/83. In those judgments it is clearly stated that Community law interprets vinegar as a generic term and wholly dissociates it from any meaning requiring it to be derived from wine. The second argument used by the General Court to equate the category 'vinegar' with 'wine vinegar' consists in stating that wine producers usually also produce wine vinegar, which amounts to begging the question since such a statement is in turn based on the equation of the category 'vinegar' with 'wine vinegar'. Furthermore, for the purpose of drawing a comparison in the context of the analysis of the likelihood of confusion, the judgments in Case 193/80 and Case 281/83 establish a connection between the generic character of vinegar and the relevant territory. The General Court, however, distorted the relevant territory when it stated that the type of vinegar most commonly produced and consumed 'in the world' is wine vinegar, since the territory to be considered is that of the European Union.

— Failure to observe the procedural rules relating to the appraisal of evidence and to the burden of proof in accordance with the judgments of the Court of Justice in Case C-375/97<sup>(3)</sup> and Joined Cases C-108/97 and C-109/97<sup>(4)</sup>.

This part of the plea also complains that the General Court carried out its comparison of the signs on the basis (not substantiated in the proceedings) of the reputation and/or high degree of distinctive character of the trade mark 'Rioja'.

B. The second plea in law alleges infringement, by analogy, of Article 43 of Regulation No 40/94<sup>(2)</sup>, now Article 42 of Regulation No 207/2009.

— This complaint alleges that the General Court restricted the list of goods and services actually designated because of the declaration of the future use of the trade mark applied for, something which is possible only for trade marks which have been registered for at least five years and subject to proof of use requested by the proprietor of the mark at issue pursuant to Article 42(2) of Regulation No 207/2009.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 (OJ 2009 L 78, p. 1).

<sup>(2)</sup> Case C-39/97 *Canon* [1998] ECR I-5507.

<sup>(3)</sup> *General Motors* [1999] ECR I-542.

<sup>(4)</sup> *Windsurfing Chiemeise* [1999] ECR I-2779.

<sup>(5)</sup> OJ 1994 L 11, p. 1.

## Action brought on 4 August 2010 — European Commission v Kingdom of Belgium

(Case C-397/10)

(2010/C 301/10)

*Language of the case: French*

### Parties

*Applicant:* European Commission (represented by: J.-P. Keppenne and I.V. Rogalski, Agents)

*Defendant:* Kingdom of Belgium

### Form of order sought

— declare that, by imposing the following requirements in respect of the activities of temporary work agencies — the business of providing labour must be the undertaking's sole object (in the territory of the Brussels-Capital region), the agency must take a specific legal form (in the territory of the Brussels-Capital region) and must hold minimum share capital of EUR 30 987 (in the Flemish Region) — the Kingdom of Belgium failed to comply with its obligations under Article 56 TFEU;

— order the Kingdom of Belgium to pay the costs.

### Pleas in law and main arguments

In support of its action, the Commission puts forward three complaints alleging infringement of Article 56 of the Treaty on the Functioning of the European Union.

In its first complaint, the applicant claims that the requirement that the business of providing labour must be the undertaking's sole object constitutes a significant barrier for undertakings established in other Member States which are authorised to engage in businesses of a different nature there. That measure obliges such undertakings to amend their statutes in order to provide services, even on a temporary basis, in the Brussels-Capital region.

In its second complaint, the Commission states that the requirement that an undertaking established in another Member State must possess a specific legal form or legal status constitutes a significant restriction on the freedom to provide services. The objective of protecting workers, relied upon by the defendant by way of justification, could be attained by less restrictive measures, such as a requirement that an undertaking must show that it has appropriate insurance.

In its third complaint, the applicant criticises the requirement imposed by the Flemish Region that an undertaking must hold minimum share capital of EUR 30 987, since such a requirement means that some undertakings established in other Member States might have to alter their share capital in order to provide services, even on a temporary basis, in Belgium. Less restrictive measures, such as depositing a guarantee or taking out insurance, would allow the defendant to attain its objective of protecting workers.

## Appeal brought on 6 August 2010 by Mediaset SpA against the judgment of the General Court (Second Chamber) delivered on 15 June 2010 in Case T-177/07: Mediaset SpA v European Commission, supported by Sky Italia Srl

(Case C-403/10 P)

(2010/C 301/11)

*Language of the case: English*

### Parties

*Appellant:* Mediaset SpA (represented by: K. Adamantopoulos, Dikigoros and G. Rossi, avvocato)

*Other parties to the proceedings:* European Commission, Sky Italia Srl

### Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of 15 June 2010 in Case T-177/07;

- Give final judgment on the dispute by annulling the European Commission Decision that was contested at first instance; or, in the alternative, remit the case to the General Court; and
- Order that the costs of the proceedings be borne by the defendant and the intervener at first instance.

### Pleas in law and main arguments

1. The Appellant submits that: the General Court ('the GC') committed a twofold error in law in considering the Appellant's references to the scope of Article 4 (1) of Italian Law no. 350/2003, as well as the Appellant's plea on the difference between the concepts of (i) selectivity pursuant to Article 107 (1) TFEU and (ii) discrimination, which is distinct from technological neutrality, as being inadmissible. As a result, the GC committed a manifest error in law by legally characterising the Italian Law as not technologically neutral.
2. The GC erred in law when applying Article 107 (1) TFEU by assuming that the alleged 'not technologically neutral' nature of the Italian Law necessarily conferred a selective economic advantage upon the Appellant. In addition, the GC committed an error in law by holding that the Defendant was right to find the existence of an economic benefit to Mediaset, when it failed (like the Defendant) to legally categorize an abstract — and solely assumed — 'enlarged audience' and 'low cost market penetration' as a specific economic advantage to Mediaset. The GC also provided an inadequate statement of reasons contrary to Article 36 of the Statute and manifestly distorted the facts and erred in law by proceeding with a false and distortive reading of the Contested Decision in recitals 62 to 68 and 74 to 79 of the Judgement. Indeed, the GC erred in law because it substituted its own reasoning for that set out in the Contested Decision regarding the alleged advantage to Mediaset and interpreted evidence adduced in a manner that is at odds with the wording and analysis set out in recitals 82 to 95 of the Contested Decision and distorted the evidence. The GC also erred in law regarding the notion of 'indirect beneficiary' and its application and legal categorization in the present case.
3. Moreover, the GC committed an error in law by completely failing to assess the distinct pleas set out in paragraphs 93 to 96, on the one hand, and 121 to 129, on the other, of the Application in relation to the compatibility assessment of the Italian Law pursuant to Article 107 (3) (c) TFEU. In this respect, the GC also failed to provide an adequate statement of reasons. Furthermore, the GC erred in law when applying Article 107 (3) (c) TFEU, by declaring the Italian Law incompatible with the Common Market, as a result, and merely because of an alleged non-respect of

the principle of technological neutrality arising from the alleged exclusion of satellite decoders from its benefits, *quod non*; and by approving the Defendant's failure to legally assess the distortive effects of the measure on the Pay TV market, through performing a proper legal, economic and balancing test of: a) the specific distortions of competition on the Pay-TV market; and b) the claimed efficiencies of the economic advantage. The latter was merely assumed in the first place and held incompatible with the Common Market because allegedly it is not technologically neutral. In addition, the GC erred in law and proceeded with an incorrect statement of reasons when dismissing the Third Plea of the Application. Not only did the GC incorrectly present and misread the relevant plea and arguments on the contradictory reasoning of the Contested Decision, but it also failed to examine such arguments and, therefore, erroneously dismissed them as unfounded.

4. Finally, the GC erred in law when applying Article 14 of Regulation 659/1999 <sup>(1)</sup> by failing to consider that the flaws of the Contested Decision regarding the economic advantage allegedly conferred upon the Appellant made it effectively impossible for the alleged State aid to be recovered, in breach of the principle of legal certainty. The Contested Decision was thus left without an efficient and transparent remedy and without a sound recovery methodology. In addition, the GC misread the pleas of the Appellant in this respect and erred in law when considering that the Contested Decision allowed the previous situation to be restored.

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty

OJ L 83, p. 1

**Reference for a preliminary ruling from High Court of Justice (Queen's Bench Division) (United Kingdom) made on 18 August 2010 — Deo Antoine Homawoo v GMF Assurances SA**

(Case C-412/10)

(2010/C 301/12)

*Language of the case: English*

**Referring court**

High Court of Justice (Queen's Bench Division)



**Parties to the main proceedings**

*Applicant:* Deo Antoine Homawoo

*Defendant:* GMF Assurances SA

**Questions referred**

1. Are Articles 31 and 32 of Regulation (BC) No 864/2007 <sup>(1)</sup> of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), in conjunction with Article 297 of the Treaty on the Functioning of the European Union, to be interpreted to require a national court to apply Rome II, and in particular Article 15(c) thereof, in a case where the event giving rise to the damage occurred on 29th August 2007?
2. Is the answer to question 1 affected by either of the following facts:
  - (i) that the proceedings seeking compensation for damage were commenced on 8<sup>th</sup> January 2009;
  - (ii) that the national court had not made any determination of the applicable law before 11 January 2009?

<sup>(1)</sup> OJ L 199, p. 40

**Reference for a preliminary ruling from the Conseil d'État (France) lodged on 19 August 2010 — Société Veclair v Ministre du budget, des comptes publics et de la réforme de l'État**

(Case C-414/10)

(2010/C 301/13)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Applicant:* Société Veclair

*Defendant:* Ministre du budget, des comptes publics et de la réforme de l'État

**Question referred**

Does Article 17(2)(b) of the Sixth Directive <sup>(1)</sup> permit a Member State to make the right to deduct value added tax on importation conditional, regard being had in particular to the

risk of tax evasion, upon the actual payment of that tax by the taxable person, where the taxable person for the purposes of value added tax on importation and the holder of the corresponding right to deduction are, as in France, the same person?

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

**Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 20 August 2010 — Galina Meister v Speech Design Carrier Systems GmbH**

(Case C-415/10)

(2010/C 301/14)

*Language of the case: German*

**Referring court**

Bundesarbeitsgericht

**Parties to the main proceedings**

*Applicant:* Galina Meister

*Defendant:* Speech Design Carrier Systems GmbH

**Questions referred**

1. Are Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) <sup>(1)</sup> and Article 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <sup>(2)</sup> and Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation <sup>(3)</sup> to be interpreted as meaning that, where a worker shows that he meets the requirements for a post advertised by an employer, he has a right vis-à-vis that employer, if he does not obtain the post, to information as to whether the employer has engaged another applicant and, if so, as to the criteria on the basis of which that appointment has been made?
2. If the answer to the first question is affirmative:

Where the employer does not disclose the requested information, does that fact give rise to a presumption that the discrimination alleged by the worker exists?

<sup>(1)</sup> OJ L 204, p. 23.

<sup>(2)</sup> OJ L 180, p. 22.

<sup>(3)</sup> OJ L 303, p. 16.

**Reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovak Republic) lodged on 23 August 2010 — Jozef Križan and Others v Slovenská inšpekcia životného prostredia**

(Case C-416/10)

(2010/C 301/15)

*Language of the case: Slovenian*

**Referring court**

Najvyšší súd Slovenskej republiky

**Parties to the main proceedings**

*Applicants:* Jozef Križan, Katarína Aksamitová, Gabriela Kokošková, Jozef Kokoška, Martina Strezenická, Jozef Strezenický, Peter Šidlo, Lenka Šidlová, Drahoslava Šidlová, Milan Šimovič, Elena Šimovičová, Stanislav Aksamit, Tomáš Pitoňák, Petra Pitoňáková, Mária Križanová, Vladimír Mizerák, Lubomír Pevný, Darina Brunovská, Mária Fišerová, Lenka Fišerová, Peter Zvolenský, Katarína Zvolenská, Kamila Mizeráková, Anna Konfráterová, Milan Konfráter, Michaela Konfráterová, Tomáš Pavlovič, Jozef Krivošík, Ema Krivošíková, Eva Pavlovičová, Jaroslav Pavlovič, Pavol Šipoš, Martina Šipošová, Jozefína Šipošová, Zuzana Šipošová, Ivan Čaputa, Zuzana Čaputová, Štefan Strapák, Katarína Strapáková, František Slezák, Agnesa Slezáková, Vincent Zimka, Elena Zimková, Marián Šipoš, mesto Pezinok

*Defendant:* Slovenská inšpekcia životného prostredia

**Questions referred**

1. Does Community law (specifically Article 267 of the Treaty on the Functioning of the European Union) require or enable the supreme court of a Member State 'ex officio' to refer a question to the Court of Justice of the European Union for a preliminary ruling even at a stage of

proceedings where the constitutional court has annulled a judgment of the supreme court based in particular on the application of the Community framework on environmental protection and imposed the obligation to abide by the constitutional court's legal opinions based on breaches of the procedural and substantive constitutional rights of a person involved in judicial proceedings, irrespective of the Community dimension of the case concerned, that is, where in those proceedings the constitutional court, as the court of last instance, has not concluded that there is a need to refer a question to the Court of Justice of the European Union for a preliminary ruling and has provisionally excluded the application of the right to an acceptable environment and the protection thereof in the case concerned?

2. Is it possible to fulfil the basic objective of integrated prevention as defined, in particular, in recitals 8, 9 and 23 in the preamble to and Articles 1 and 15 of Council Directive 96/61/EC <sup>(1)</sup> concerning integrated pollution prevention and control and, in general, in the Community framework on the environment, that is, pollution prevention and control involving the public in order to achieve a high level of environmental protection as a whole, by means of a procedure where, on commencement of an integrated prevention procedure, the public concerned is not guaranteed access to all relevant documents (Article 6 in conjunction with Article 15 of Directive 96/61/EC), especially the decision on the location of a structure (landfill site), and where, subsequently, at first instance, the missing document is submitted by the applicant on condition that it is not disclosed to other parties to the proceedings in view of the fact that it constitutes trade secrets: can it reasonably be assumed that the location decision (in particular its statement of reasons) will significantly affect the submission of suggestions, observations or other comments?
3. Are the objectives of Council Directive 85/337/EEC <sup>(2)</sup> on the assessment of the effects of certain public and private projects on the environment met, especially in terms of the Community framework on the environment, specifically the condition referred to in Article 2 that, before consent is given, certain projects will be assessed in the light of their environmental impact, if the original position of the Ministerstvo životného prostredia (Ministry of the Environment) issued in 1999 and terminating a past environmental impact assessment (EIA) procedure is prolonged several years later by a simple decision without a repeat EIA procedure; in other words, can it be said that a decision under Council Directive 85/337/EEC, once issued, is valid indefinitely?
4. Does the requirement arising generally under Directive 96/61/EC (in particular the preamble and Articles 1 and 15a) for Member States to engage in the prevention and control of pollution by providing the public with fair, equitable and timely administrative or judicial proceedings in conjunction with Article 10a of Directive 85/337/EEC and Articles 6 and 9(2) and (4) of the Aarhus Convention apply to the possibility for the public to seek the imposition

of an administrative or judicial measure which is preliminary in nature in accordance with national law (for example, an order for the judicial suspension of enforcement of an integrated decision) and allows for the temporary suspension, until a final decision in the case, of the construction of an installation for which a permit has been requested?

5. Is it possible, by means of a judicial decision meeting the requirement of Directive 96/61/EC or Directive 85/337/EEC or Article 9(2) and (4) of the Aarhus Convention, in the application of the public right contained therein to fair judicial protection within the meaning of Article 191(1) and (2) of the Treaty on the Functioning of the European Union, concerning European Union policy on the environment, to interfere unlawfully with an operator's right of property in an installation as guaranteed, for example, in Article 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, for example by revoking an applicant's valid integrated permit for a new installation in judicial proceedings?

<sup>(1)</sup> Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26).

<sup>(2)</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

**Reference for a preliminary ruling from the Bayerischen Verwaltungsgerichtshof (Germany) lodged on 23 August 2010 — Wolfgang Hofmann v Freistaat Bayern**

(Case C-419/10)

(2010/C 301/16)

*Language of the case: German*

**Referring court**

Bayerischer Verwaltungsgerichtshof

**Parties to the main proceedings**

*Applicant:* Wolfgang Hofmann

*Defendant:* Freistaat Bayern

**Question referred**

Are Article 2(1) and Article 11(4), second sentence, of Directive 2006/126/EC <sup>(1)</sup> to be interpreted as meaning that a Member State must refuse to recognise the validity of a driving licence issued by another Member State to a person outside a period during which that person was prohibited from applying for a new licence, in the case where that person's driving licence had

been withdrawn in the national territory of the first Member State and that person's normal place of residence at the time of the issue of the driving licence was in the national territory of the issuing Member State?

<sup>(1)</sup> OJ 2006 L 403, p. 18.

**Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 27 August 2010 — Georgetown University, University of Rochester, Loyola University of Chicago v Comptroller-General of Patents, Designs and Trade Marks**

(Case C-422/10)

(2010/C 301/17)

*Language of the case: English*

**Referring court**

High Court of Justice (Chancery Division)

**Parties to the main proceedings**

*Applicants:* Georgetown University, University of Rochester, Loyola University of Chicago

*Defendant:* Comptroller-General of Patents, Designs and Trade Marks

**Question referred**

1. Does the SPC Regulation and, in particular, Article 3(b), permit the grant of a Supplementary Protection Certificate for a single active ingredient or combination of active ingredients where:

- (a) a basic patent in force protects the single active ingredient or combination of active ingredients within the meaning of Article 3(a) of the SPC Regulation; and
- (b) a medicinal product containing the single active ingredient or combination of active ingredients together with one or more other active ingredients is the subject of a valid authorisation granted in accordance with Directive 2001/83/EC <sup>(1)</sup> or 2001/82/EC <sup>(2)</sup> which is the first marketing authorization that places the single active ingredient or combination of active ingredients on the market?

<sup>(1)</sup> 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 L 311, p. 67

<sup>(2)</sup> Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products  
OJ L 311, p. 1



**Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 31 August 2010 — Tomasz Ziolkowski v Land Berlin**

(Case C-424/10)

(2010/C 301/18)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicant:* Tomasz Ziolkowski

*Defendant:* Land Berlin

**Questions referred**

1. Is the first sentence of Article 16(1) of Directive 2004/38/EC<sup>(1)</sup> to be interpreted as conferring on Union citizens who have resided legally for more than five years on the basis only of national law in the territory of a Member State, but who did not during that period fulfil the conditions laid down in Article 7(1) of Directive 2004/38/EC, a right of permanent residence in that Member State?
2. Are periods of residence of Union citizens in the host Member State which took place before the accession of their Member State of origin to the European Union also to be counted towards the period of lawful residence under Article 16(1) of Directive 2004/38/EC?

<sup>(1)</sup> OJ 2004 L 158, p 77.

**Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 31 August 2010 — Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja v Land Berlin**

(Case C-425/10)

(2010/C 301/19)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicants:* Barbara Szeja, Maria-Magdalena Szeja, Marlon Szeja

*Defendant:* Land Berlin

**Questions referred**

1. Is the first sentence of Article 16(1) of Directive 2004/38/EC<sup>(1)</sup> to be interpreted as conferring on Union citizens who have resided legally for more than five years on the basis only of national law in the territory of a Member State, but who did not during that period fulfil the conditions laid down in Article 7(1) of Directive 2004/38/EC, a right of permanent residence in that Member State?
2. Are periods of residence of Union citizens in the host Member State which took place before the accession of their Member State of origin to the European Union also to be counted towards the period of lawful residence under Article 16(1) of Directive 2004/38/EC?

<sup>(1)</sup> OJ 2004 L 158, p. 77.

**Appeal brought on 2 September 2010 by X Technology Swiss GmbH against the judgment of the General Court (Second Chamber) delivered on 15 June 2010 in Case T-547/08 X Technology Swiss GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case C-429/10 P)

(2010/C 301/20)

*Language of the case: German*

**Parties**

*Appellant:* X Technology Swiss GmbH (represented by: A. Herbertz and R. Jung, Rechtsanwälte)

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

**Form of order sought**

— Set aside the judgment of the General Court of [15] June 2010 in Case T-547/08 and annul the decision of the Fourth Board of Appeal of OHIM of 6 October 2008 — R 846/2008-4;

— Order the respondent to pay the costs.

**Pleas in law and main arguments**

The present case seeks the setting aside of the judgment of the General Court by which the appellant's claim seeking annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 6 October 2008 concerning the rejection of its application for registration of a position mark consisting of the orange colouration of the toe area of a sock.

The appellant submits that the General Court has wrongly and inappropriately interpreted the absolute ground for refusal of registration of trade marks in Article 7(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. In the contested decision unlawfully raised conditions are placed on the requirement for distinctiveness.

On an assessment of distinctiveness, it is not merely a question of the individual features of the mark, but also materially one of the overall impression of the mark in relation to the goods which it covers. That means that the distinctiveness of the trade mark applied for must be examined first as regards its different components, such as shape, position or colour, and second — which the General Court failed to do — as regards its overall impression in the light of the required distinctiveness. Within the framework of such an examination, regard must also fundamentally be had to the fact that a certain amount of distinctiveness is sufficient to enable a trade mark to be registered.

The General Court unlawfully exaggerated the requirements for distinctiveness of the trade mark applied for, citing case-law on three-dimensional trade marks, which consist of the appearance of the goods themselves, and figurative marks, which consist of a two-dimensional presentation of the goods. That case-law is not applicable to the trade mark applied for, since the appellant's trade mark is not a three-dimensional mark and there is no basis for comparison on which the case-law relating to the other marks can be applied to the mark applied for. Unlike the marks to which the cited case-law refers, the appellant's trade mark concerns only a small part of the goods to be covered. A sign precisely delimited and clearly defined as to colour, which is small in relation to the goods to be covered, is not comparable to a mark which consists of the entire appearance of the goods themselves.

Even if it is assumed that the case-law on three-dimensional trade marks is applicable to the trade mark applied for, the decision of the General Court remains erroneous in law. The appellant's trade mark meets the conditions laid down in the case-law on three-dimensional marks. It departs significantly from the norm and from the customs of the sector and fulfils the essential function of indicating origin. The findings of the General Court on the degree of attention of the relevant public are not comprehensible: in the case of items which cannot be tried on before purchase, the consumer is particularly attentive and possesses particular brand awareness. Further, the General Court did not in any way sufficiently address the arguments advanced by the appellant regarding the use of a precisely defined hue. In so far as the General Court considers the identification of sports socks as widespread, it is not clear on what ground a colouration, which is always found in the same position and in the same hue with signal effect, is not an identification which is capable of registration.

**Reference for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 2 September 2010 — Hristo Gaydarov v Direktor na Glavna direksia'Ohranitelna politsia' pri Ministerstvo na vatreshnite raboti**

(Case C-430/10)

(2010/C 301/21)

*Language of the case: Bulgarian*

**Referring court**

Administrativen sad Sofia-grad (Bulgaria)

**Parties to the main proceedings**

*Applicant:* Hristo Gaydarov

*Defendant:* Direktor na Glavna direksia'Ohranitelna politsia' pri Ministerstvo na vatreshnite raboti

**Questions referred**

1. Is Article 27(1) and (2) 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<sup>(1)</sup> to be interpreted, under the circumstances of the main proceedings, as being applicable where a national of a Member State is prohibited from leaving the territory of his own State because he has committed a criminal offence involving narcotic drugs in a third country, in so far as the following circumstances also exist:
  - 1.1. the abovementioned provisions of the directive were not expressly transposed in respect of the Member State's own nationals;
  - 1.2. the grounds given by the national legislature for the adoption of the legitimate aims for a restriction on the freedom of movement of Bulgarian nationals are based on Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code),<sup>(2)</sup> and
  - 1.3. the administrative measures are applied in connection with Article 71 of the Convention implementing the Schengen Agreement of 14 June 1985 and having regard to Recitals 5 and 20 in the preamble to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)?
2. Does it follow from the limitations and conditions governing the exercise of the freedom of movement of

European Union citizens and from the measures adopted to give them effect under European Union law, including Article 71(1), (2) and (5) of the Convention implementing the Schengen Agreement in conjunction with Recitals 5 and 20 in the preamble to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), under the circumstances of the main proceedings, that national legislation is lawful under which a Member State imposes on one of its nationals who has committed a criminal offence involving narcotic drugs the coercive administrative measure: 'not to leave the country', if that national was convicted of that offence by a court in a third country?

3. Are the limitations and conditions governing the exercise of the freedom of movement of citizens of the European Union and the measures adopted to give them effect under European Union law, including Article 71(1), (2) and (5) of the Convention implementing the Schengen Agreement in conjunction with Recitals 5 and 20 in the preamble to Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), under the circumstances of the main proceedings, to be interpreted as meaning that the conviction of a national of a Member State by a court in a third country for acts concerned with narcotic drugs which, under the law of that Member State, are classified as a serious intentional criminal offence, is sufficient ground for holding, on grounds of general and specific prevention, including guaranteeing a higher level of protection of the health of others in accordance with the precautionary principle, that the personal conduct of that national represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society for a future period of time, which is precisely defined by law and is not connected with the term served for the sentence imposed, but falls within the rehabilitation period?

<sup>(1)</sup> OJ 1993 L 317, p. 59

<sup>(2)</sup> OJ 2006 L 105, p. 1

**Action brought on 1 September 2010 — European Commission v Ireland**

**(Case C-431/10)**

(2010/C 301/22)

*Language of the case: English*

**Parties**

*Applicant:* European Commission (represented by: M. Condou-Durande, A.-A. Gilly, Agents)

*Defendant:* Ireland

**The applicant claims that the Court should:**

- declare that by failing to fully adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/85/EC <sup>(1)</sup> of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, or in any event by failing to notify measures for the full transposition of those provisions into national law, Ireland has failed to fulfil its obligations under the Directive;
- order Ireland to pay the costs.

**Pleas in law and main arguments**

The period within which the directive had to be transposed expired on 1 December 2007. The period within which article 15 of the directive had to be transposed expired on 1 December 2008.

<sup>(1)</sup> OJ L 326, p. 13

**Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 26 August 2010 — Ministerie van Financiën and Openbaar Ministerie v Aboukacem Chihabi and Others**

**(Case C-432/10)**

(2010/C 301/23)

*Language of the case: Dutch*

**Referring court**

Rechtbank van eerste aanleg te Antwerpen

**Parties to the main proceedings**

*Applicants:* Ministerie van Financiën, Openbaar Ministerie

*Defendants:* Aboukacem Chihabi and Others

**Questions referred**

- (a) In relation to Article 221 of the Community Customs Code

1. Are Article 221(1) and Article 221(3) of the Community Customs Code established by Council Regulation (EEC) No 2913/92 of 12 October 1992, <sup>(1)</sup> as applicable prior to amendment by Article 1(17) of Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, <sup>(2)</sup> to be interpreted as meaning that a document which communicates the amount of duty and which is notified to the debtor by the customs authorities may be regarded as the communication of the amount of duty to the debtor referred to in Article 221(1) and Article 221(3) of the Customs Code only if the amount of duty has been entered in the accounts by the customs authorities (that is to say, has been recorded in the accounts or any other medium performing the same function) prior to notification to the debtor by means of the aforementioned document?
  2. Does an infringement of Article 221(1) of the Community Customs Code (Regulation No 2913/92), which provides that the entry of a customs debt in the accounts must precede communication of that debt — in the sense that it is clear that communication of the customs debt (2 July 2004) occurred before the debt was entered in the accounts (second quarter of 2005) — lead to the lapse of the right to post-clearance recovery on the part of the Administration?
  3. Is Article 221(1) of the Community Customs Code to be interpreted as meaning that there can be no legally valid communication of a customs debt to a putative debtor if no evidence can be produced of prior entry of the customs debt in the accounts?
  4. Is any communication of a customs debt to the debtor as referred to in Article 221(1) of Regulation No 2913/92 that is not preceded by the prior entry of the customs debt in the accounts to be regarded as an invalid or non-existent communication precluding recovery of the customs debt by the customs authorities unless, following the entry of the customs debt in the accounts, there is a new communication within the period prescribed for that purpose?
- (b) In relation to Article 202 of the Community Customs Code
1. Is Article 202(1)(a) of the Community Customs Code to be interpreted as meaning that the introduction into the customs territory of the Community of goods liable to import duties is unlawful solely because those goods are incorrectly designated in the summary declaration provided for in Article 43 of the Customs Code, notwithstanding the fact that:
 

the second subparagraph of Article 202(1) of the Customs Code refers only to Articles 38 to 41 and the second indent of Article 177 of the Customs Code, and not to Article 43 thereof;

the responsibility for the accuracy of the information given in the declaration that is provided for in Article 199(1) of implementing Regulation No 2454/93 relates only to the customs declaration and not to the summary declaration;

it is impossible, both in practical and in legal terms, for the person who has to make the summary declaration to verify which goods are in the containers?
  2. If the answer to question 1 is in the affirmative, is Article 202(3) of the Customs Code to be interpreted as meaning that a person (the shipping agent) who lodges a summary declaration in the name of and on behalf of his principal (the shipowner) is regarded as a 'person who introduced such goods unlawfully' within the meaning of the first indent of that provision merely on account of the fact that the summary declaration contains an incorrect designation?
  3. If the answer to question 2 is in the negative, is Article 202(3) of the Customs Code to be interpreted as meaning that that provision precludes a national provision, such as Article 24.2 of the Belgian General Law on Customs and Excise Duty ('A.W.D.A.'), <sup>(3)</sup> according to which a person who has lodged a summary declaration in the name of and on behalf of another is automatically deemed to be the debtor of the customs debt and is not given the opportunity to show that he did not participate in the unlawful introduction of the goods and did not know or could not reasonably have known that they were being introduced unlawfully?
  4. Is Article 5 of the Customs Code to be interpreted as meaning that that provision precludes a national provision, such as Article 24.2 A.W.D.A., which prevents the use of direct representation, that is to say, representation by a person acting in the name of and on behalf of the principal, because that person is automatically deemed to be responsible for the customs debt in the event that a summary declaration contains an incorrect designation?
  5. Where a summary declaration is lodged in which the goods being introduced are designated incorrectly, giving rise to a customs debt under Article 202(1) of Regulation No 2913/92, must the person who drew up and signed the summary declaration, whether as the direct or indirect representative of the person who introduced the goods into the customs territory of the Community, be regarded as having caused the unlawful introduction of the goods and thus be deemed to be the debtor within the meaning of the first indent of Article 202(3) of Regulation No 2913/92 where that person has, for the purposes of lodging the summary declaration, relied exclusively on the information provided to him by the captain of the ship by which the goods were introduced into the Community and it was, in practice, impossible — in view of the large quantity of containers on board to be unloaded in the port of entry — for him to check whether the contents of the containers presented to the customs authorities were actually consistent with the documents provided and on the basis of which the summary declaration was drawn up?



6. Are the captain of the ship and the shipping company which he represents to be regarded as having caused the unlawful introduction of goods into the Community and, consequently, as the customs debtor within the meaning of the first indent of Article 202(3) of Regulation No 2913/92 where, on the basis of the information provided by the captain, a summary declaration is lodged by his representative in which the goods introduced are designated incorrectly, giving rise to a customs debt under Article 202(1) of Regulation No 2913/92 on account of the unlawful introduction of goods into the Community?
7. In the event that the answer(s) to questions 5 and/or 6 is/are in the negative, can the persons referred to in questions 5 and/or 6 be regarded, in the circumstances, as customs debtors within the meaning of the second indent of Article 202(3) of Regulation No 2913/92?

- (<sup>1</sup>) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).  
 (<sup>2</sup>) Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 2000 L 311, p. 17).  
 (<sup>3</sup>) Algemene Wet inzake Douane en Accijnzen

**Appeal brought on 3 September 2010 by Volker Mauerhofer against the order of the General Court (Third Chamber) delivered on 29 June 2010 in Case T-515/08: Volker Mauerhofer v European Commission**

(Case C-433/10 P)

(2010/C 301/24)

*Language of the case: English*

**Parties**

*Appellant:* Volker Mauerhofer (represented by: J. Schartmüller, Rechtsanwalt)

*Other party to the proceedings:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- set aside the order under appeal;
- rule definitively on the substance and annul the contested measure or, in the alternative, refer the case back to the General Court to rule again on the case and;
- exercise its unlimited jurisdiction and award him the sum of EUR 5 500 by way of compensation for the financial loss resulting from the unlawful conduct in adopting the contested measure and from the lack of appropriate instructions to the team leader (expert 1);

- order that the Framework Contract Support Team should produce the Contractor Assessment Form submitted concerning the project subject of the dispute;
- order the Defendant to pay the costs incurred in the proceedings at first instance and the appeal.

**Pleas in law and main arguments**

The applicant submits that the contested order should be set aside on the following grounds:

- Distortion of facts concerning the linguistic review of the appellant's contribution;
- Inadequate analysis of the grounds of the Order under appeal concerning the linguistic review;
- Inadequate analysis of the issue concerning the defendant's performance;
- Unlawful assumption that the contested decision does not affect the position of the Appellant as a third party;
- Unlawful assumption that the contested measure brought about no distinct change in the Appellant's legal position;
- Unlawful assumption that the contested measure has not been adopted by the Defendant in the exercise of its powers as a public authority;
- Unlawful assumption that the contested measure was formalised in a timely and correct manner;
- Unlawful breach of the interests of the Appellant by not following prescribed procedures;
- Breach of the general community law principle of equal treatment and breach of the fundamental rights of the Appellant;
- Unlawful assumption of a non-substantial change in the distribution of days among experts;
- Breach of the general community rights to a fair hearing.

**Action brought on 15 September 2010 — European Commission v Federal Republic of Germany**

(Case C-445/10)

(2010/C 301/25)

*Language of the case: German*

**Parties**

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

*Defendant:* Federal Republic of Germany

### Form of order sought

- Declare that, by failing to adopt the laws, regulations and administrative provisions necessary fully to implement 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), <sup>(1)</sup> or by failing fully to inform the Commission thereof, the Federal Republic of Germany has failed to fulfil its obligations under that directive;
- order the Federal Republic of Germany to pay the costs.

### Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 14 May 2009.

<sup>(1)</sup> OJ 2007 L 108, p. 1.

**Appeal brought on 15 September 2010 by Grain Millers, Inc. against the judgment of the General Court (Seventh Chamber) delivered on 9 July 2010 in Case T-430/08: Grain Millers, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Grain Millers GmbH & Co. KG,**

**(Case C-447/10 P)**

(2010/C 301/26)

*Language of the case: English*

### Parties

*Appellant:* Grain Millers, Inc. (represented by: L.-E. Ström, K. Martinsson, advokater)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Grain Millers GmbH & Co. KG

### Form of order sought

The appellant claims that the Court should:

- Grain Millers, Inc. requests that the decision of the General Court of the European Union (Seventh Chamber), case no. T-430/08, dated 9 July 2010 confirming the decision of the Second Board of Appeal of OHIM of 23 July 2008 (case R 478/2007-2) concerning opposition proceedings between Grain Millers GmbH & Co. KG and Grain Millers, Inc be set aside in its entirety and that the OHIM be ordered to pay the costs of the proceedings before the European Court of Justice and the General Court and that the defendants are ordered to pay the costs incurred before the OHIM Board of Appeal and the OHIM Opposition division.

### Pleas in law and main arguments

The case concerns the issue of whether Grain Millers GmbH & KG has provided sufficient evidence of use of the sign GRAIN MILLERS to fulfil the conditions in Article 8 (4) of the Regulation <sup>(1)</sup> so that said sign constitutes a bar to the Appellant's CTM application no. 003650256 GRAIN MILLERS.

The General Court has previously, in the case Alberto Jorge Moreira da Fonseca OHIM — General Optica, T-318/06 to T-321/06, paragraphs 33-35, 24 March 2009 addressed the interpretation of the purpose of the condition 'of more than mere local significance' found in Article 8(4) of the Regulation, namely to restrict the possibilities of conflict to those which may exist with signs which are truly significant and that this should be assessed not only from geographical dimension but also from an economical dimension of the sign's significance, which is assessed in the light of the length of time for which it has fulfilled its function in the course of trade and the degree to which it has been used. However, in the appealed decision the General Court has not adopted this approach, and there is nothing that suggests the General Court even was aware of the principles laid down in that case.

The applicant submits that the General Court has erroneously held that Article 8(4) does not require proof of genuine use of the sign in support of the opposition as is required by Article 43(2) of the Regulation.

The General Court has erroneously set aside previous case law regarding assessment of evidence and the requisite standard of proof.

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

**Appeal brought on 16 September 2010 by AstraZeneca AB, AstraZeneca plc against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 1 July 2010 in Case T-321/05: AstraZeneca AB, AstraZeneca plc v European Commission**

**(Case C-457/10 P)**

(2010/C 301/27)

*Language of the case: English*

### Parties

*Appellants:* AstraZeneca AB, AstraZeneca plc (represented by: M. Brealey QC, M. Hoskins QC, D. Jowell, Barristers, F. Murphy, Solicitor)

*Other parties to the proceedings:* European Federation of Pharmaceutical Industries and Associations (EFPIA), European Commission

### Form of order sought

The appellant claims that the Court should:

- set aside the Judgment of the General Court of 1 July 2010 in Case T-321/05;
- annul Commission Decision (2005) 1757 final of 15 June 2005 (Case COMP A.37.507/F3 — AstraZeneca);
- in the alternative, reduce, at the Court's discretion, the fine imposed on the Appellants in Article 2 of the contested Commission Decision;
- order the Commission to pay the costs.

### Pleas in law and main arguments

The Appellants rely upon several errors of law in the Judgment. The errors are summarised under the separate headings that follow:

**Definition of the relevant product market.** The General Court has erred in law by upholding the Commission's findings in the Decision on the relevant product market, that for the period 1993-2000 proton pump inhibitors (PPIs) were in a market of their own. There are two grounds of appeal.

The first ground of appeal has two principal parts. First, that the General Court has erred by failing to conduct a temporal analysis of the evidence thereby making a finding as to the relevant product market in 1993 on the basis of the state of competition between PPIs and H2 blockers in 2000. Second, that the General Court erred by ignoring the fact that the increase in use of PPIs was gradual on the basis that the practices of prescribing doctors, characterised by 'inertia' was irrelevant to the exercise of market definition.

The second ground of appeal is that the question of the overall cost of treatment by H2 blockers as opposed to PPIs is fundamental to any purported reliance on price differentials in the exercise of market definition and the General Court erred by failing to take the overall cost of treatment into account.

**The first abuse of a dominant position, relating to supplementary protection certificates.** The grounds of appeal on the first abuse fall into two principal parts. First, the General Court has erred in law in its assessment of what constitutes competition on the merits. The General Court was wrong in assessing whether the Appellant's representations to patent offices were objectively misleading to have dismissed as irrelevant the reasonableness and bona fides of the Appellant's understanding of its legal rights to a SPC. Lack of transparency is insufficient for a finding of regulatory abuse, there should be a requirement for deliberate fraud or deceit. Second, the General

Court has erred in law in its assessment of what constitutes conduct tending to restrict competition. The General Court was wrong to find that the mere act of applying for an intellectual property right that may come into force some 5-6 years later was conduct that could be said to tend to restrict competition regardless of whether the right is ultimately granted and/or enforced. This is because the conduct is too disconnected or remote from the market said to be affected.

**The second abuse of a dominant position: the withdrawal of marketing authorisations.** The grounds of appeal on the second abuse fall into two principal parts. First, the General Court has erred in law in its assessment of what constitutes competition on the merits. The General Court was wrong to decide that the exercise of an unfettered right under Community law is a failure to compete on the merits.

Second, the General Court has erred in law in its assessment of what constitutes conduct tending to restrict competition. The General Court was wrong to find that the simple exercise of a legal right under Community law tends to restrict competition. Alternatively, if the Court of Justice considers that the exercise of a right afforded by Community law could in principle amount to an abuse, then there must be something more for there to be a finding of abuse than a mere tendency to distort competition. The Appellants submit that the Commission should be required to prove that the exercise of the validly held right tended to eliminate any effective competition. This would be similar to the conditions in cases concerning compulsory licensing, which effectively the second abuse is concerned with.

**Fines.** The General Court wrongly applied Article 15(2) of Regulation 17<sup>(1)</sup> when it failed to object to the Commission's calculation of the fine and failed to take proper account of the novelty of the alleged abuses, of the absence of any material effects on competition, and other mitigating circumstances.

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<sup>(1)</sup> EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty OJ English special edition: Series I Chapter 1959-1962 p. 87

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### Order of the President of the Court of 3 September 2010 — European Commission v Italian Republic

(Case C-366/09) <sup>(1)</sup>

(2010/C 301/28)

*Language of the case: Italian*

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

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<sup>(1)</sup> OJ C 256, 24.10.2009.



## GENERAL COURT

**Judgment of the General Court (Sixth Chamber) of 13 September 2010 — Éditions Jacob v Commission**

(Case T-279/04) <sup>(1)</sup>

*(Competition — Concentrations — French-language publishing — Decision declaring the concentration compatible with the common market subject to sale of assets — Action for annulment brought by an unsuccessful prospective purchaser — Obligation to state reasons — Fraud — Error of law — Manifest error of assessment — Regulation (EEC) No 4064/89)*

(2010/C 301/29)

Language of the case: French

#### Parties

*Applicant:* Éditions Odile Jacob SAS (Paris, France) (represented by: O. Fréget, W. van Weert, I. de Seze, M. Struys, M. Potel and L. Eskenazi, lawyers)

*Defendant:* European Commission (represented by: initially A. Whelan, O. Beynet, A. Bouquet and F. Arbault, then A. Bouquet and O. Beynet, acting as Agents)

*Intervener in support of the defendant:* Lagardère SCA (Paris) (represented by: initially A. Winckler and I. Girgenson, then A. Winckler, F. de Bure and J.-B. Pinçon, lawyers)

#### Re:

Application for the annulment of Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP) (OJ 2004 L 125, p. 54).

#### Operative part of the judgment

*The General Court:*

1. *dismisses the action;*
2. *orders Éditions Odile Jacob SAS to bear its own costs and to pay the costs of the European Commission and Lagardère SCA.*

<sup>(1)</sup> OJ C 262, of 23.10.2004.

**Judgment of the General Court (Sixth Chamber) of 13 September 2010 — Éditions Jacob v Commission**

(Case T-452/04) <sup>(1)</sup>

*(Competition — Concentrations — French-language publishing — Decision declaring the concentration compatible with the common market subject to sale of assets — Decision to approve the purchaser of the assets sold — Action for annulment brought by an unsuccessful prospective purchaser — Trustee's independence — Regulation (EEC) No 4064/89)*

(2010/C 301/30)

Language of the case: French

#### Parties

*Applicant:* Éditions Odile Jacob SAS (Paris, France) (represented by: W. van Weert, O. Fréget, M. Struys, M. Potel and L. Eskenazi, lawyers)

*Defendant:* European Commission (represented by: initially A. Whelan, O. Beynet, A. Bouquet and F. Arbault, then A. Bouquet and O. Beynet, acting as Agents)

*Interveners in support of the defendant:* Wendel Investissement SA (Paris) (represented by: initially C. Couadou and M. Trabucchi, then M. Trabucchi and F. Gordon, lawyers); and Lagardère SCA (Paris) (represented by: initially A. Winckler, I. Girgenson and S. Sorinas Jimeno, then A. Winckler, F. de Bure and J.-B. Pinçon, lawyers)

#### Re:

Application for the annulment of Commission Decision (2004) D/203365 of 30 July 2004 relating to the approval of Wendel Investissement as purchaser of the assets sold in accordance with Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP) (OJ 2004 L 125, p. 54).

#### Operative part of the judgment

*The General Court:*

1. *annuls Commission Decision (2004)D/203365 of 30 July 2004 on the approval of Wendel Investissement SA as purchaser of the assets sold in accordance with Commission Decision 2004/422/EEC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2978 — Lagardère/Natexis/VUP);*
2. *orders the European Commission and Lagardère SCA to bear their own costs and to pay the costs incurred by Éditions Odile Jacob SAS;*

3. orders *Wendel Investissement* to bear its own costs.

(<sup>1</sup>) OJ C 45, of 19.2.2005.

**Judgment of the General Court of 13 September 2010 —  
Greece and Others v Commission**

**(Joined Cases T-415/05, T-416/05 and T-423/05) (<sup>1</sup>)**

**(State aid — Aviation Sector — Aid linked to the restructuring and privatisation of the Greek national airline — Decision declaring the aid incompatible with the common market and requiring its recovery — Financial continuity between two companies — Identification of the effective recipient of aid for the purposes of its recovery — Criterion of the private operator — Compatibility of the aid with the common market — Obligation to state reasons for the decision)**

(2010/C 301/31)

Language of the case: Greek

**Parties**

*Applicants:* Hellenic Republic (represented by: A. Samoni-Rantou and P. Mylonopoulos, Agents) (Case T-415/05); Olympiakes Aerogrammes AE (Kallithéa, Greece) (represented by: V. Christianos, lawyer) (Case T-416/05); and Olympiaki Aeroporia Ypiresies AE (Athens, Greece) (represented by: P. Anestis, S. Mavroghenis, lawyers, S. Jordan and T. Soames, Solicitors, and D. Geradin, lawyer) (Case T-423/05)

*Defendant:* European Commission (represented by: D. Triantafyllou and T. Scharf, Agents)

*Intervener in support of the defendant:* Aeroporia Aigaiou Aeroporiki AE (Athens) (represented by: N. Keramidas and, in Case T-416/05, also by N. Korogiannakis, I. Dryllerakis and E. Dryllerakis, lawyers) (Cases T-416/05 and T-423/05)

**Re:**

Application for annulment of Commission Decision C(2005) 2706 final of 14 September 2005 on State aid for Olympiaki Aeroporia Ypiresies AE (C 11/2004 (ex NN 4/2003) — Olympic Airways — Restructuring and Privatisation)

**Operative part of the judgment**

*The Court:*

1. Annuls Article 1(1) of Commission Decision C(2005) 2706 final of 14 September 2005 on State aid for Olympiaki Aeroporia Ypiresies AE (C 11/2004 (ex NN 4/2003) — Olympic Airways — Restructuring and Privatisation);

2. Annuls, in part, Article 1(2) of Decision C(2005) 2706 final insofar as it relates to the amount corresponding to the value of all the intangible assets entered in the conversion balance-sheet of Olympiaki Aeroporia Ypiresies as goodwill, to the value of the aircraft transferred to Olympiakes Aerogrammes AE and to the revenue expected from the sale of two aircraft still entered in the balance-sheet of Olympiaki Aeroporia Ypiresies;

3. Annuls Article 2 of Decision C(2005) 2706 final insofar as it relates to the measures in question in Article 1(1) and (2), to the extent that those provisions are annulled;

4. Dismisses the remainder of the actions;

5. Orders each of the parties to bear its own costs, including those incurred in connection with the proceedings for interim relief.

(<sup>1</sup>) OJ C 22, 28.1.2006.

**Judgment of the General Court of 13 September 2010 —  
Trioplast Wittenheim v Commission**

**(Case T-26/06) (<sup>1</sup>)**

**(Competition — Agreements, decisions and concerted practices — Market for industrial plastic sacks — Decision finding an infringement of Article 81 EC — Duration of the infringement — Fines — Seriousness of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality)**

(2010/C 301/32)

Language of the case: Swedish

**Parties**

*Applicant:* Trioplast Wittenheim SA (Wittenheim, France) (represented by: T. Petersson and O. Larsson, lawyers)

*Defendant:* European Commission (represented by: initially F. Castillo de la Torre, P. Hellström and V. Bottka, subsequently F. Castillo de la Torre, L. Parpala and V. Bottka, acting as Agents)

**Re:**

Application for partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a procedure under Article 81 [EC] (Case COMP/F/38.354 — Industrial sacks) concerning an agreement in the market for plastic industrial sacks and, in the alternative, an application for reduction of the amount of the fine imposed on the applicant.

**Operative part of the judgment**

The Court:

1. dismisses the action;
2. orders Trioplast Witteheim SA to pay the costs.

(<sup>1</sup>) OJ C 96, 22.4.2006.

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**Judgment of the General Court of 13 September 2010 —  
Trioplast Industrier v Commission**

(Case T-40/06) (<sup>1</sup>)

*(Competition — Agreements, decisions and concerted practices — Market for industrial plastic sacks — Decision finding an infringement of Article 81 EC — Duration of the infringement — Fines — Seriousness of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Joint and several liability — Principal of legal certainty)*

(2010/C 301/33)

Language of the case: Swedish

**Parties**

*Applicant:* Trioplast Industrier AB (Smålandsstenar, Sweden) (represented by: T. Pettersson and O. Larsson, lawyers)

*Defendant:* European Commission (represented by: F. Castillo de la Torre, P. Hellström and V. Bottka, subsequently F. Castillo de la Torre, L. Parpala and V. Bottka, acting as Agents)

**Re:**

Application for partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a procedure under Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial sacks) concerning an agreement in the market for industrial plastic sacks and, in the alternative, an application for reduction of the fine imposed on the applicant.

**Operative part of the judgment**

The Court:

1. Annuls the first paragraph of Article 2(f) of Commission Decision C(2005) 4634 of 30 November 2005 relating to a procedure under Article 81 of the EC Treaty (Case COMP/F/38.354 — Industrial sacks) in so far as it relates to Trioplast Industrier AB;
2. Fixes at EUR 2.73 million the amount ascribed to Trioplast Industrier, on the basis of which its share of the successive

parent companies' joint and several liability is to be established for payment of the fine imposed on Trioplast Wittenheim SA;

3. Dismisses the remainder of the action;
4. Orders Trioplast Industrier to bear half of its own costs and to pay half of the costs incurred by the Commission;
5. Orders the Commission to bear half of its own costs and to pay half of the costs incurred by Trioplast Industrier.

(<sup>1</sup>) OJ C 96, 22.4.2006.

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**Judgment of the General Court of 13 September 2010 —  
TF1 v European Commission**

(Case T-193/06) (<sup>1</sup>)

*(State aid — Aid schemes for cinematographic and audiovisual production — Decision not to raise objections — Actions for annulment — Absence of any significant effect on the competitive position — Inadmissibility)*

(2010/C 301/34)

Language of the case: French

**Parties**

*Applicant:* Télévision française 1 SA (TF1) (Boulogne-Billancourt, France) (represented by: J. P. Hordies and C. Smits, lawyers)

*Defendant:* European Commission (represented by: C. Giolito, T. Scharf and B. Stromsky, acting as Agents)

*Intervener in support of the defendant:* French Republic (represented by: G. de Bergues and L. Butel, acting as Agents)

**Re:**

APPLICATION for annulment of Commission Decision C(2006) 832 Final of 22 March 2006 relating to support measures for the cinema and audiovisual industry in France (State aid NN 84/2004 and N 95/2004 — France, Aid schemes for the film and audiovisual industry)

**Operative part of the judgment**

The Court:

1. Dismisses the action as inadmissible;
2. Orders Télévision française 1 SA (TF1) to bear its own costs and to pay the costs incurred by the European Commission;

3. Orders the French Republic to bear its own costs.

(<sup>1</sup>) OJ C 224, 16.9.2006.

**Judgment of the General Court of 13 September 2010 —  
Whirlpool Europe v Council**

(Case T-314/06) (<sup>1</sup>)

*(Dumping — Imports of certain combined refrigerator-freezers originating in South Korea — Definition of the product concerned — Rights of the defence — Advisory Committee — Duty to state reasons — Choice of the method used to define the product concerned — Article 15(2) and Article 20(5) of Regulation (EC) No 384/96 (now Article 15(2) and Article 20(5) of Regulation (EC) No 1225/2009))*

(2010/C 301/35)

Language of the case: English

**Parties**

*Applicant:* Whirlpool Europe Srl (Comerio, Italy) (represented by: M. Bronckers and F. Louis, lawyers)

*Defendant:* Council of the European Union (represented by: J.-P. Hix, Agent, and G. Berrisch, lawyer)

*Interveners in support of the applicant:* Italian Republic (represented by: G. Albenzio, lawyer), and European Committee of Domestic Equipment Manufacturers (CECED), (Brussels, Belgium) (represented by: Y. Desmedt and A. Verheyden, lawyers)

*Interveners in support of the defendant:* European Commission (represented by: H. van Vliet and T. Scharf, Agents) and LG Electronics, Inc. (Seoul, South Korea) (represented initially by: L. Ruessmann and P. Hecker, and subsequently by L. Ruessmann and A. Willems, lawyers)

**Re:**

Application for the annulment in part of Council Regulation (EC) No 1289/2006 of 25 August 2006 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain side-by-side refrigerators originating in the Republic of Korea (OJ 2006 L 236, p. 11)

**Operative part of the judgment**

The Court:

1. Dismisses the action;

2. Orders Whirlpool Europe Srl to bear its own costs and to pay those incurred by the Council of the European Union and LG Electronics, Inc.;

3. Orders the Italian Republic, the European Commission and the European Committee of Domestic Equipment Manufacturers (CECED) to bear their own costs.

(<sup>1</sup>) OJ C 326, 30.12.2006.

**Judgment of the General Court of 13 September 2010 —  
Mohr & Sohn v Commission**

(Case T-131/07) (<sup>1</sup>)

*(Inland waterway transport — Community-fleet capacity — Conditions for putting new vessels into service ('old for new' rule) — Commission decision not to grant the specialised vessels exemption — Article 4(6) of Regulation (EC) No 718/1999)*

(2010/C 301/36)

Language of the case: German

**Parties**

*Applicant:* Paul Mohr & Sohn, Baggerei und Schiffahrt (Niederwalluf, Germany) (represented by: F. von Waldstein, lawyer)

*Defendant:* European Commission (represented by: G. Braun and K. Simonsson, Agents)

**Re:**

Application for annulment of Commission Decision SG (2007) D/200972 of 28 February 2007 not to grant to the vessel 'Niclas' the specialised vessels exemption, pursuant to Article 4(6) of Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ 1999 L 90, p. 1)

**Operative part of the judgment**

1. The application is dismissed;

2. Paul Mohr & Sohn, Baggerei und Schiffahrt is ordered to bear its own costs and pay those incurred by the European Commission.

(<sup>1</sup>) OJ C 155, 7.7.2007.

**Judgment of the General Court of 13 September 2010 —  
Spain v Commission**

(Joined Cases T-156/07 and 232/07) <sup>(1)</sup>

*(Rules on the use of languages — Notice of open competitions for the recruitment of administrators — Publication in all the official languages — Amendments — Regulation No 1 — Articles 27, 28 and Article 29(1) of the Staff Regulations — Article 1(1) and (2) of Annex III to the Staff Regulations — Obligation to state reasons — Principle of non-discrimination)*

(2010/C 301/37)

Language of the case: Spanish

**Parties**

*Applicant:* Kingdom of Spain (represented by: Case T-156/07, F. Díez Moreno and, Case T 232/07, F. Díez Moreno and N. Díaz Abad, abogados del Estado)

*Defendant:* European Commission (represented initially by: J. Currall, L. Escobar Guerrero and H. Krämer, and subsequently by J. Currall, H. Krämer and J. Baquero Cruz, Agents, assisted by A. Dal Ferro, lawyer)

*Interveners in support of the applicant:* Republic of Lithuania (represented by: D. Kriauciūnas, Agent) (Cases T-156/07 and T-232/07); and Hellenic Republic (represented by: S. Vodina and M. Michelogiannaki, Agents) (Case T-156/07)

**Re:**

Application for annulment, first, of the Notice of Open Competition EPSO/AD/94/07 to constitute a reserve pool of Administrators (AD 5) in the field of information, communication and media (OJ 2007 C 45 A, p. 3) and, second, of the Notice of Open Competition EPSO/AD/95/07 to constitute a reserve pool of Administrators (AD 5) in the field of information science (library/documentation) (OJ 2007 C 103 A, p. 7).

**Operative part of the judgment**

*The Court:*

1. Dismisses the application;
2. Orders the Kingdom of Spain to bear its own costs and to pay those of the European Commission;
3. Orders the Republic of Lithuania and the Hellenic Republic to bear their own costs.

<sup>(1)</sup> OJ C 140, 23.6.2007.

**Judgment of the General Court of 13 September 2010 —  
Italy v Commission**

(Joined Cases T-166/07 and T-285/07) <sup>(1)</sup>

*(Rules on the use of languages — Notice of open competitions for the recruitment of administrators and assistants — Publication in three official languages — Amendments — Publication in all the official languages — Choice of the second language from three languages — Regulation No 1 — Articles 27, 28 and 29(1) of the Staff Regulations — Article 1(1) and (2) of Annex III to the Staff Regulations — Obligation to state reasons — Principle of non-discrimination — Misuse of power)*

(2010/C 301/38)

Language of the case: Italian

**Parties**

*Applicant:* Italian Republic (in Case T-166/07 represented by P. Gentili, avvocato dello Stato, and in Case T-285/07, represented initially by P. Gentili and I. Braguglia, Agent, and subsequently by P. Gentili and R. Adam, Agent, and finally by P. Gentili and I. Bruni, Agent)

*Defendant:* European Commission (in Case T-166/07, represented initially by J. Currall, H. Krämer and M. Velardo, Agents, and subsequently by J. Currall and I. Baquero Cruz, Agent, assisted by A. Dal Ferro, lawyer, and in Case T-285/07, represented initially by J. Currall and A. Aresu, Agent, and subsequently by J. Currall and I. Baquero Cruz, assisted by A. Dal Ferro)

*Interveners in support of the applicant:* Republic of Lithuania (in Case T-166/07 represented by D. Kriauciūnas, Agent), and Hellenic Republic (in Case T-285/07 represented by S. Vodina and M. Michelogiannaki, Agents)

**Re:**

Application for the annulment of Notice of Open Competition EPSO/AD/94/07 for the drawing up of a reserve list for the recruitment of Administrators (AD 5) in the field of information, communication and the media (OJ 2007 C 45 A, p. 3) and Notice of Open Competition EPSO/AST/37/07 for the drawing up of a reserve list for the recruitment of Assistants (AST 3) in the field of communication and information (OJ 2007 C 45 A, p. 15), and Notice of Open Competition EPSO/AD/95/07 for the drawing up of a reserve list for the recruitment of Administrators (AD 5) in the field of information science (library/documentation) (OJ 2007 C 103 A, p. 7).

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders the Italian Republic to bear its own costs and to pay those of the European Commission;
3. Orders the Republic of Lithuania and the Hellenic Republic to bear their own costs.

<sup>(1)</sup> OJ C 155, 7.7.2007.



**Judgment of the General Court of 13 September 2010 — Procter & Gamble v OHIM — Prestige Cosmetics (P&G PRESTIGE BEAUTE)**

(Case T-366/07) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark P&G PRESTIGE BEAUTE — Earlier national figurative marks Prestige — Partial refusal to register — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))*

(2010/C 301/39)

Language of the case: English

**Parties**

*Applicant:* The Procter & Gamble Company (Cincinnati, Ohio, United States) (represented by: K. Sandberg and B. Klingberg, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Laporta Insa, acting as Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* Prestige Cosmetics SpA (Anzola Emilia, Italy) (represented by: A. Mugnoz, M. Andreolini and A. Parini, lawyers)

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of 19 July 2007 (Case R 681/2006-2) relating to opposition proceedings between Prestige Cosmetics Srl and The Procter & Gamble Company

**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 July 2007 (Case R 681/2006-2);
2. Orders OHIM to pay, in addition to its own costs, the costs incurred by The Procter & Gamble Company in the proceedings before the Court;
3. Orders Prestige Cosmetics SpA to pay, in addition to its own costs, the costs incurred by The Procter & Gamble Company in the proceedings before the Board of Appeal;
4. Dismisses the action as to the remainder.

<sup>(1)</sup> OJ C 283, 24.11.2007.

**Judgment of the General Court of 13 September 2010 — Travel Service v OHIM — Eurowings Luftverkehrs (smartWings)**

(Case T-72/08) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for the Community figurative mark smartWings — Earlier national and international word and figurative marks EUROWINGS and EuroWings — 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) — Obligation to state the reasons on which the decision is based — Article 73 of Regulation No 40/94 (now Article 75 of Regulation No 207/2009) — Article 79 of Regulation No 40/94 (now Article 83 of Regulation No 207/2009))*

(2010/C 301/40)

Language of the case: English

**Parties**

*Applicant:* Travel Service a.s. (Prague, Czech Republic) (represented by: S. Hejdová and R. Charvát, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Eurowings Luftverkehrs AG (Nuremberg, Germany) (represented by: J. Schmidt, lawyer)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 21 November 2007 (Case R 1515/2006-2), relating to opposition proceedings between Eurowings Luftverkehrs AG and Travel Service a.s.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Travel Service a.s. to pay, in addition to its own costs, the costs of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Eurowings Luftverkehrs AG.

<sup>(1)</sup> OJ C 107, 26.4.2008.

**Judgment of the General Court of 13 September 2010 —  
KUKA Roboter v OHIM (Shade of orange)**

(Case T-97/08) <sup>(1)</sup>

*(Community trade mark — Application for a Community trade mark consisting of a shade of orange — Absolute ground 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))*

(2010/C 301/41)

Language of the case: German

**Parties**

*Applicant:* KUKA Roboter GmbH (Augsburg, Germany) (represented by: A. Kohn and B. Hannemann, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke, acting as Agent)

**Re:**

ACTION brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 December 2007 (Case R 1572/2007-4), concerning an application for registration of a shade of orange as a Community trade mark.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders KUKA Roboter GmbH to pay the costs.

<sup>(1)</sup> OJ C 107, 26.4.2008.

**Judgment of the General Court of 13 September 2010 —  
Schniga v CPVO — Elaris and Brookfield New Zealand  
(Gala Schnitzer)**

(Case T-135/08) <sup>(1)</sup>

*(Plant varieties — Application for a Community plant variety right for the Gala Schnitzer apple variety — Technical examination — Discretion of the CPVO — Objections — Article 55(4) of Regulation (EC) No 2100/94)*

(2010/C 301/42)

Language of the case: English

**Parties**

*Applicant:* Schniga GmbH (Bolzano, Italy) (represented by: G. Würtenberger and R. Kunze, lawyers)

*Defendant:* Community Plant Variety Office (CPVO) (represented by: B. Kiewiet and M. Ekvad, Agents)

*Other parties to the proceedings before the Board of Appeal of the CPVO, interveners before the General Court:* Elaris SNC (Angers, France), and Brookfield New Zealand Ltd (Havelock North, New Zealand) (represented by: M. Eller, lawyer)

**Re:**

ACTION against the decision of the Board of Appeal of the CPVO of 21 November 2007 (Cases A 003/2007 and A 004/2007), concerning the grant of a Community plant variety right for the Gala Schnitzer plant variety.

**Operative part of the judgment**

*The Court*

1. Annuls the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 21 November 2007 (Cases A 003/2007 and A 004/2007);
2. Orders the CPVO to bear its own costs and to pay those incurred by Schniga GmbH;
3. Orders Elaris SNC and Brookfield New Zealand Ltd to bear their own costs.

<sup>(1)</sup> OJ C 142, 7.6.2008.

**Order of the General Court of 13 September 2010 —  
Abbott Laboratories v OHIM — aRigen (Sorvir)**

(Case T-149/08) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark Sorvir — Earlier Community word mark NORVIR — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))*

(2010/C 301/43)

Language of the case: English

**Parties**

*Applicant:* Abbott Laboratories (Abbott Park, Illinois, United States) (represented by: S. Schäffler, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo and A. Folliard-Monguiral, Agents)



Other party to the proceedings before the Board of Appeal of OHIM: aRigen, Inc. (Tokyo, Japan)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 6 February 2008 (Case R 809/2007-2) relating to opposition proceedings between Abbott Laboratories and aRigen, Inc.

**Operative part of the order**

The General 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 6 February 2008 (Case R 809/2007-2);
2. Orders OHIM to bear its own costs and to pay those of Abbott Laboratories.

<sup>(1)</sup> OJ C 142, 7.6.2008.

**Judgment of the General Court of 13 September 2010 — Inditex v OHIM — Marín Díaz de Cerio (OFTEN)**

(Case T-292/08) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for the Community word mark OFTEN — Earlier national word mark OLTEN — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Proof of genuine use of the earlier mark — Article 43(2) and (3) of Regulation No 40/94 (now Article 42(2) and (3) of Regulation No 207/2009) — Subject-matter of the dispute before the Board of Appeal — Articles 61 and 62 of Regulation No 40/94 (now Articles 63 and 64 of Regulation No 207/2009))*

(2010/C 301/44)

Language of the case: Spanish

**Parties**

*Applicant:* Industria de Diseño Textil (Inditex), SA (Arteixo, Spain) (represented by: E. Armijo Chávarri and A. Castán Pérez-Gómez, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Roberto Fernando Marín Díaz de Cerio (Logroño, Spain)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 24 April 2008 (Case R 484/2007-2) in opposition proceedings between Roberto Fernando Marín Díaz de Cerio and Industria de Diseño Textil (Inditex), SA.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Industria de Diseño Textil (Inditex), SA to pay the costs.

<sup>(1)</sup> OJ C 236, 13.9.2008.

**Judgment of the General Court of 13 September 2010 — Enercon v OHIM — BP (ENERCON)**

(Case T-400/08) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for the Community word mark ENERCON — Earlier Community word mark ENERGOL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Partial refusal to register)*

(2010/C 301/45)

Language of the case: English

**Parties**

*Applicant:* Enercon GmbH (Aurich, Germany) (represented by: R. Böhm, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, Agent)

Other party to the proceedings before the Board of Appeal of OHIM: BP plc (London, United Kingdom)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2008 (Case R 957/2006-4), relating to opposition proceedings between BP plc and Enercon GmbH.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Enercon GmbH to pay the costs.

(<sup>1</sup>) OJ C 301, 22.11.2008.

**Judgment of the General Court of 21 September 2010 —  
Villa Almè v OHIM — Marqués de Murrieta (i GAI)**

(Case T-546/08) (<sup>1</sup>)

*(Community trade mark — Opposition proceedings — Application for Community figurative mark iGAI — National word mark YGAY and Community figurative and word marks MARQUÉS DE MURRIETA YGAY — Relative grounds for refusal — Genuine use of the earlier mark — Article 43(2) and (3) of Regulation (EC) No 40/94 (now Article 42(2) and (3) of Regulation (EC) No 207/2009) — Likelihood of confusion — Article 8(1)(b) of Regulation No 40/94 (now Article 8(1)(b) of Regulation No 207/2009))*

(2010/C 301/46)

Language of the case: Italian

**Parties**

*Applicant:* Villa Almè Azienda vitivinicola di Vizzotto Giuseppe (Mansuè, Italy) (represented by: G. Massa and P. Massa, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Montalto and A. Sempio, Agents)

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Marqués de Murrieta, SA (Logroño, Spain) (represented by P. López Ronda and G. Macias Bonilla, lawyers)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 24 September 2008 (Case R 1695/2007-1), relating to opposition proceedings between Bodegas Marqués de Murrieta, SA and Villa Almè Azienda vitivinicola di Vizzotto Giuseppe.

**Operative part of the judgment**

The Court:

1. Dismisses the action;
2. Orders Villa Almè Azienda vitivinicola di Vizzotto Giuseppe to pay the costs.

(<sup>1</sup>) OJ C 44, 21.2.2009.

**Order of the General Court of 6 September 2010 —  
Portuguese Republic v Transnática and Commission**

(Case T-385/05 TO) (<sup>1</sup>)

*(Third-party proceedings — Opportunity for the third party to take part in the original case — No prejudicial effects on the rights of the third party — Inadmissibility)*

(2010/C 301/47)

Language of the case: English

**Parties**

*Third Party:* Portuguese Republic (represented by: L. Inez Fernandes, A.C. Santos, J. Gomes and P. Rocha, Agents)

*Other parties to proceedings:* Transnática — Transportes e Navegação, SA, (Matosinhos, Portugal) (represented by C. Fernández Vicién, D. Ortigão Ramos, P. Carmona Botana, M.T. López Garrido and P. Vidal Matos, lawyers); and European Commission (represented by: R. Lyal and L. Bouyon, lawyers)

**Re:**

Application initiating third-party proceedings to contest the judgment of 23 September 2009 in Case T-385/05 *Transnática v Commission*, not published in the ECR

**Operative part of the order**

1. The application initiating third-party proceedings is dismissed as inadmissible.
2. The Portuguese Republic shall bear its own costs and pay those incurred by Transnática — Transportes e Navegação, SA, including those relating to the interim proceedings.

3. *The European Commission shall bear its own costs.*

(<sup>1</sup>) OJ C 330, 24.12.2005.

**Order of the General Court of 2 September 2010 — Spitzer v OHIM — Homeland Housewares (Magic Butler)**

(Case T-123/08) (<sup>1</sup>)

*(Action for annulment — Applicant's failure to act — No need to adjudicate)*

(2010/C 301/48)

*Language of the case: German*

#### Parties

*Applicant:* Harald Spitzer (Hörsching, Austria) (represented by: T. H. Schmitz, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Schäffner, Agent)

*Other party to the proceedings before the Board of Appeal of OHIM:* Homeland Housewares LLC (Los Angeles, California, United States)

#### Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 January 2008 (Case R 1508/2006-1), concerning opposition proceedings between Homeland Housewares LLC and Harald Spitzer.

#### Operative part of the order

1. *There is no need to adjudicate on this action;*
2. *Mr Harald Spitzer is ordered to pay the costs.*

(<sup>1</sup>) OJ C 116, 9.5.2008.

**Order of the General Court of 7 September 2010 — Norilsk Nickel Harjavalta and Umicore v Commission**

(Case T-532/08) (<sup>1</sup>)

*(Actions for annulment — Environment and protection of human health — Classification, packaging and labelling of certain nickel carbonate compounds as dangerous substances — Directive 2008/58/EC — Directive 67/548/EEC — Regulation (EC) No 790/2009 — Regulation (EC) No 1272/2008 — Amendment of form of order sought — Temporal application of the fourth paragraph of Article 263 TFEU — No individual concern — Inadmissibility)*

(2010/C 301/49)

*Language of the case: English*

#### Parties

*Applicants:* Norilsk Nickel Harjavalta Oy (Espoo, Finland) and Umicore SA/NV (Brussels, Belgium) (represented by: K. Nordlander, lawyer)

*Defendant:* European Commission (represented by: P. Oliver and D. Kukovec, Agents)

*Intervener in support of the applicants:* Nickel Institute (Toronto, Canada) (represented by: K. Nordlander, lawyer, D. Anderson QC, S. Kinsella and H. Pearson, Solicitors)

*Intervener in support of the defendant:* Kingdom of Denmark (represented by: B. Weis Fogh, Agent)

#### Re:

Application for the partial annulment of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30<sup>th</sup> time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1) and of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1), in so far as they amend the classification of certain nickel carbonate compounds

#### Operative part of the order

1. *The application is dismissed as inadmissible.*
2. *Norilsk Nickel Harjavalta Oy and Umicore SA/NV are to bear their own costs and to pay the costs of the European Commission.*

3. *The Kingdom of Denmark and the Nickel Institute are to bear their own costs.*

(<sup>1</sup>) OJ C 44, 21.2.2009.

**Order of the General Court of 7 September 2010 —  
Etimine and Etiproducts v Commission**

(Case T-539/08) (<sup>1</sup>)

*(Actions for annulment — Environment and protection of human health — Classification, packaging and labelling of certain borates as dangerous substances — Directive 2008/58/EC — Directive 67/548/EEC — Regulation (EC) No 790/2009 — Regulation (EC) No 1272/2008 — Amendment of form of order sought — Temporal application of the fourth paragraph of Article 263 TFEU — No individual concern — Inadmissibility)*

(2010/C 301/50)

Language of the case: English

**Parties**

*Applicants:* Etimine SA (Bettembourg, Luxembourg), and Ab Etiproducts Oy, (Espoo, Finland) (represented by: C. Mereu and K. Van Maldegem, lawyers)

*Defendant:* European Commission (represented by: P. Oliver and D. Kukovec, Agents)

*Intervener in support of the applicants:* Borax Europe Ltd (London, United Kingdom) (represented by: K. Nordlander, lawyer, and S. Kinsella, Solicitor)

*Intervener in support of the defendant:* Kingdom of Denmark (represented by B. Weis Fogh, Agent)

**Re:**

Application for the partial annulment of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1) and of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1), in so far as they amend the classification of certain borates

**Operative part of the order**

1. *The application is dismissed as inadmissible.*
2. *Etimine SA and Ab Etiproducts Oy are to bear their own costs and to pay the costs of the European Commission.*
3. *The Kingdom of Denmark and Borax Europe Ltd are to bear their own costs.*

(<sup>1</sup>) OJ C 44, 21.2.2009.

**Order of the General Court of 9 September 2010 —  
Phoenix-Reisen and DRV v Commission**

(Case T-120/09) (<sup>1</sup>)

*(State aid — Subsidy provided for by German law for insolvent companies — Complaint for alleged breach of Community law — Rejection of the complaint — Adoption of a later decision — No need to adjudicate)*

(2010/C 301/51)

Language of the case: German

**Parties**

*Applicants:* Phoenix-Reisen GmbH (Bonn, Germany) and Deutscher Reiseverband eV (DRV) (Berlin, Germany) (represented by: R. Gerharz and A. Funke, lawyers)

*Defendant:* European Commission (represented by: L. Flynn and B. Martenczuk, Agents)

*Intervener in support of the defendant:* Federal Republic of Germany (represented by J. Möller and B. Klein, Agents)

**Re:**

Application for annulment of the Commission's letter of 13 February 2009 in which it states its intention not to take action against the Federal Republic of Germany for alleged State aid paid by means of insolvency benefit payments.

**Operative part of the order**

1. *There is no longer any need to adjudicate on the action.*
2. *There is no longer any need to adjudicate on the application for joinder of the present case with case T-58/10 lodged by the applicants.*
3. *Each party is to bear its own costs.*

(<sup>1</sup>) OJ C 297, 5.12.2009.

**Order of the General Court of 15 September 2010 —  
Marcuccio v Commission**

(Case T-157/09 P) <sup>(1)</sup>

*(Appeal — Civil Service — Officials — Reasonable time for  
the submission of a claim for compensation — Lateness —  
Appeal in part manifestly inadmissible and in part manifestly  
unfounded)*

(2010/C 301/52)

*Language of the case: Italian*

**Parties**

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

*Other party to the proceedings:* European Commission (represented by: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

**Re:**

Appeal lodged against the order of the European Union Civil Service Tribunal (First Chamber) of 18 February 2009 in Case F-42/08 Marcuccio v Commission ECR-SC 0000, seeking the annulment of that order.

**Operative part of the order**

1. *The appeal is dismissed.*
2. *Mr Luigi Marcuccio shall bear his own costs and pay those incurred by the European Commission in the present proceedings.*

<sup>(1)</sup> OJ C 141, 20.6.2009.

**Order of the President of the General Court of 31 August  
2010 — Babcock Noell v The European joint undertaking  
for ITER and the Development of Fusion Energy**

(Case T-299/10 R)

*(Application for interim measures — Public contracts —  
Tendering procedure — Rejection of a tender — Application  
for suspension of operation of a measure — Prima facie case  
— Urgency — Balance of interests)*

(2010/C 301/53)

*Language of the case: English*

**Parties**

*Applicant:* Babcock Noell GmbH (Würzburg, Germany) (represented by: M. Werner and C. Elbrecht, lawyers)

*Defendant:* The European joint undertaking for ITER and the Development of Fusion Energy (represented by: A. Verpont, Agent, assisted by C. Kennedy-Loest, K. Wilson and C. Thomas, Solicitors, and N. Pourbaix, lawyer)

**Re:**

Application for suspension of operation of decisions taken by the defendant, in the context of a tendering procedure, to reject the applicant's tenders and to award to another tenderer Lot D of the contract for the supply of ITER toroidal field coils winding packs

**Operative part of the order**

1. *The application for interim measures is dismissed.*
2. *Costs are reserved.*

**Action brought on 10 August 2010 — Viaguara v OHIM —  
Pfizer (VIAGUARA)**

(Case T-332/10)

(2010/C 301/54)

*Language in which the application was lodged: Polish*

**Parties**

*Applicant:* Viaguara S.A. (Warsaw, Poland) (represented by: R. Skubisz, legal adviser)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Pfizer Inc.

**Form of order sought**

— annul in its entirety the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 May 2010 in Case R 964/2009-1;

— order the defendant and Pfizer Inc. to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Viaguara.



*Community trade mark concerned:* Word mark 'VIAGUARA' for goods in Classes 32 and 33 — application No 4630562.

*Proprietor of the mark or sign cited in the opposition proceedings:* Pfizer Inc.

*Mark or sign cited in opposition:* Community word mark 'VIAGRA' for goods in Class 5.

*Decision of the Opposition Division:* Opposition dismissed.

*Decision of the Board of Appeal:* Decision of the Opposition Division annulled and trade mark application rejected in its entirety.

*Pleas in law:* Infringement of Article 8(5) of Regulation No 207/2009<sup>(1)</sup> on account of an incorrect methodology for assessment of the connection between the marks and flawed findings in relation to the risk of exploitation of the repute and image of the trade mark cited in opposition.

<sup>(1)</sup> Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) (OJ 2009 L 78, p. 1).

### **Action brought on 20 August 2010 — F91 Diddeléng and Others v Commission**

(Case T-341/10)

(2010/C 301/55)

*Language of the case:* French

#### **Parties**

*Applicants:* F91 Diddeléng (Dudelange, Luxembourg), Julien Bonnetaud (Yutz, France), Thomas Gruszczynski (Amnéville, France), Rainer Hauck (Maxdorf, Allemagne), Stéphane Martine (Esch-sur-Alzette, Luxembourg), Grégory Molnar (Moyeuvre-Grande, France) and Yann Thibout (Algrange, France) (represented by: L. Misson, C. Delrée and G. Ernes, lawyers)

*Defendants:* European Commission

#### **Form of order sought**

- Annul the contested decision of the European Commission, adopted on 3 June 2010;
- Annul the rules which are contrary to Articles 45 and 101 TFEU;
- Impose any appropriate sanction.

#### **Pleas in law and main arguments**

The applicants (Dudelange football club and the non-Luxembourg players employed by that club) seek annulment

of the Commission decision of 3 June 2010, communicated by letter of 21 June 2010, in which the Commission informed the applicants that it intended to take no action in regard to their complaint against the Fédération Luxembourgeoise de Football (FLF), based on Articles 45 and 101 TFEU, concerning the FLF rules preventing the applicants from taking part in certain football matches if the number of foreign players appearing on the match sheet is greater than a number laid down in the FLF rules;

In support of their action, the applicants put forward two pleas in law alleging:

— an infringement of Article 45 TFEU, inasmuch as the obligation currently laid down in the FLF rules to place, on the official match sheet, seven players who had obtained their first licence in Luxembourg and the prohibition on placing, on the same match sheet, more than four players transferred during the sporting year constitutes direct discrimination preventing a national of a Member State from exercising an economic activity in Luxembourg territory. The applicants also claim that, in so far as the FLF rules constitute, not direct discrimination, but indirect discrimination, the objectives invoked by the FLF, namely, that its purpose is to promote the game of football as an amateur sport, are unfounded and cannot therefore be regarded as legitimate objectives. The restrictions are therefore disproportionate compared to the objective invoked.

— an infringement of Article 101 TFEU, inasmuch as the FLF must be regarded as an association of undertakings infringing competition law, and more particularly, Article 101 TFEU, in so far as the restrictions on the number of foreign players have economic consequences for professional sportsmen and adversely affect competition between Luxembourg football clubs.

### **Action brought on 25 August 2010 — Portuguese Republic v Commission**

(Case T-345/10)

(2010/C 301/56)

*Language of the case:* Portuguese

#### **Parties**

*Applicant:* Portuguese Republic (represented by: L. Inez Fernandes and J. Saraiva de Almeida, Agents, assisted by M. Figueiredo, lawyer)

*Defendant:* European Commission



**Form of order sought**

— Primarily:

annulment of Commission Decision C(2010) 4255 final of 29 June 2010 concerning the application of financial corrections to assistance from EAGGF Guidance to the operational programme CCI 1999.PT.06.1.PO.007 (Portugal — National Objective 1 programme) for the measure 'Investments in agricultural holdings', which reduced by EUR 16 411 829,46 the contribution of EAGGF Guidance to the expenditure awarded under Commission Decision C(2000) 2878 of 30 October 2000, under the operational programme CCI 1999.PT.06.1.PO.007 (Portugal — National Objective 1 programme); and

— In the alternative:

1. annulment of Commission Decision C(2010) 4255 final of 29 June 2010, in so far as it relates to Community financing of the expenditure incurred by the Portuguese Republic regarding applications approved between 28 October 2003 and November 2006, which amount to EUR 194 347 574,29;

2. annulment of Commission Decision C(2010) 4255 final of 29 June 2010, in so far as it relates to Community financing of the expenditure incurred by the Portuguese Republic regarding applications referring to 'investments in agricultural holdings' associated with the setting-up of young farmers, which amount to EUR 94 621 812,06.

— Order the European Commission to pay the costs.

**Pleas in law and main arguments**

The appellant invokes the following grounds of appeal:

- (a) infringement of Article 250 TFUE and lack of competence;
- (b) infringement of Article 39(3) of Council Regulation (EC) No 1260/99 of 21 June 1999, <sup>(1)</sup>
- (c) retroactive application of Article 5(2) of Council Regulation (EC) No 1257/99 of 17 May 1999, <sup>(2)</sup>
- (d) infringement of Article 4(2) of Commission Regulation (EC) No 445/2002 of 26 February 2002, <sup>(3)</sup>
- (e) infringement of Article 4 of Commission Regulation (EC) No 438/2001 of 2 March 2001, <sup>(4)</sup>
- (f) infringement of Article 5(2) of Regulation No 1257/99;
- (g) breach of the principle of equality;

(h) breach of the principle of equality and the principle of protection of legitimate expectations and error as to the financial consequences to be drawn from the infringement of the Community rules;

(i) breach of the principle of proportionality.

<sup>(1)</sup> Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

<sup>(2)</sup> Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80).

<sup>(3)</sup> Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ L 2002 74, p. 1).

<sup>(4)</sup> Commission Regulation (EC) No 438/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the management and control systems for assistance granted under the Structural Funds (OJ 2001 L 63, p. 21)

**Appeal brought on 25 August 2010 by the European Commission against the judgment of the Civil Service Tribunal delivered on 15 June 2010 in Case F-35/08 Pachtitis v Commission**

(Case T-361/10 P)

(2010/C 301/57)

*Language of the case: Greek*

**Parties**

*Appellant:* European Commission (represented by J. Currall and I. Khatzigiannis)

*Other party to the proceedings:* Dimitrios Pachtitis (Athens, Greece), supported by the European Data Protection Supervisor

**Form of order sought by the appellant**

The appellant claims that the General Court should:

— set aside the judgment of the Civil Service Tribunal of 15 June 2010 in Case F-35/08 *Pachtitis v Commission*;

— refer the case back to the Civil Service Tribunal for examination of the other pleas in support of annulment;

— order the respondent to pay the costs of the proceedings at first instance and on appeal.

### Pleas in law and main arguments

By the above appeal, the appellant asks the General Court to set aside the judgment of the Civil Service Tribunal of 15 June 2010 in Case F-35/08 *Pachtitis v Commission* annulling the decisions of the European Personnel Selection Office of 31 May 2007 and 6 December 2007 whereby Dimitrios Pachtitis was excluded from the list of the 110 candidates who obtained the highest marks in the pre-selection tests of the open competition EPSO/AD/77/06, and ordering the Commission to bear its own costs and to pay those of Mr Pachtitis.

In support of its appeal, the Commission relies on the following pleas in law:

- infringement of Articles 1, 5 and 7 of Annex III to the Staff Regulations of Officials of the European Communities;
- infringement of Community law, and in particular Article 2 of Decision 2002/620/EC<sup>(1)</sup> and Article 1 of Decision 2002/621/EC,<sup>(2)</sup> on the establishment of the European Personnel Selection Office;
- infringement of the obligation to state reasons for decisions.

<sup>(1)</sup> Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office — Declaration by the Bureau of the European Parliament, OJ 2002 L 197 p. 53

<sup>(2)</sup> Decision 2002/621/EC of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of the European Communities Personnel Selection Office, OJ 2002 L 197 p. 56

### Action brought on 3 September 2010 — Bloufin Touna Ellas Naftiki Etaireia e.a. v Commission

(Case T-367/10)

(2010/C 301/58)

*Language of the case: English*

#### Parties

*Applicants:* Bloufin Touna Ellas Naftiki Etaireia (Athens, Greece), Chrisderic (St Cyprien, France), André Sébastien Fortassier (Grau D'Agde, France) (represented by: V. Akritidis and E. Petritsi, lawyers)

*Defendant:* European Commission

### Form of order sought

- annul Commission Regulation (EU) No 498/2010 of 9 June 2010 prohibiting fishing activities for purse seiners flying the flag of France or Greece or registered in France or Greece, fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea<sup>(1)</sup>;
- order that all the costs occasioned by the applicants in the course of the present proceedings be borne by the Commission.

### Pleas in law and main arguments

In support of the application, the applicant puts forward three pleas in law.

First, it claims that the contested regulation was adopted in breach of the principles of equal treatment and non-discrimination laid down in Article 18 TFUE that prohibits discrimination on grounds of nationality and in Article 40(2) TFUE that prohibits discrimination between producers or consumers in the agricultural sector as well as in breach of the general principle of European Union law within the meaning of Article 21(2) of the Charter of Fundamental Rights of the European Union.

In this regard, the applicant states that the Commission has discriminated on two grounds. First, it has prohibited further fishing activities of Greece, France and Spain<sup>(2)</sup> prior to the end of the fishing period, whilst, however, the exhaustion of the Greek quota was way lower than that of Spain. Second, whilst the Commission had informed all three EU Member States that the fishing activities would be terminated, it published two different binding termination regulations, one for Greece and France and a second one for Spain, effectively allowing the Spanish fleet to continue fishing until the end of the fishing period. The applicant claims that to its knowledge there was no objective reason justifying such different treatment.

Second, the applicant submits that the Commission violated the general principle of proportionality laid down in Article 5(4) TFUE and Protocol No 2 annexed to the Treaty and recognised in a settled case law as a superior rule of law for the protection of the individual. In the applicant's view, the Commission could have adopted more proportionate measure to ensure the compliance by EU Member States with the regime of Regulation (EC) Nr 1224/2009<sup>(3)</sup> and prohibited fishing of live bluefin tuna when national quotas would have reached a more critical level, close to 100%. It could have also prohibited such activity on the same date for all EU Member States concerned.

Third, the applicant claims that the contested regulation was adopted in breach of the general principle of good and proper administration and/or duty of care as defined by established case law and foreseen in article 41 of the Charter of Fundamental Rights of the European Union.

(<sup>1</sup>) OJ 2010 L 142, p. 1

(<sup>2</sup>) Commission Regulation (EU) No 508/2010 of 14 June 2010 prohibiting fishing activities for purse seiners flying the flag of or registered in Spain, fishing for bluefin tuna in the Atlantic ocean, east of longitude of 45° W, and in the Mediterranean sea (OJ 2010 L 149, p. 7).

(<sup>3</sup>) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ 2009 L 343, p. 1

**Action brought on 2 September 2010 — Handicare v OHIM — Apple Corps (BEATLE)**

(Case T-369/10)

(2010/C 301/59)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Handicare Holding BV (Helmond, The Netherlands) (represented by: G. van Roeyen, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Apple Corps Ltd (London, United Kingdom)

**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 May 2010 in case R 1276/2009-2; 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 figurative mark 'BEATLE', for goods in class 12

*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:* United Kingdom trade mark registration No 1341242 of the figurative marks 'BEATLES' and 'THE BEATLES', for goods in class 9; Spanish trade mark registration No 1737191 of the figurative mark 'BEATLES', for goods in class 9; German trade mark registrations No 1148166 and No 2072741 of the figurative marks 'BEATLES', for goods in class 9; Portuguese trade mark registration No 312175 of the figurative mark 'BEATLES', for goods in class 9; French trade mark registration No 1584857 of the figurative mark 'BEATLES', for goods in class 9; Italian trade mark registration No 839105 of the figurative mark 'BEATLES', for goods in class 9; Community trade mark registration No 219048 of the word mark 'BEATLES', for goods in classes 6, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 34, and 41; Community trade mark registration No 219014 of the figurative mark 'BEATLES', for goods in classes 6, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 34, and 41

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Upheld the appeal and annulled the decision of the Opposition Division

*Pleas in law:* Infringement of Articles 8(1)(b) and 8(4) of Council Regulation No 207/2009, as the Board of Appeal failed to reject the opposition on these grounds notwithstanding that it established that there is not any real similarity between the concerned products; infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal erroneously concluded that the conditions for the application of this Article were fulfilled.

**Action brought on 3 September 2010 — Bolloré v Commission**

(Case T-372/10)

(2010/C 301/60)

*Language of the case: French*

**Parties**

*Applicant:* Bolloré (Ergué-Gabéric, France) (represented by: P. Gassenbach, C. Lemaire and O. de Juvigny, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul Articles 1 and 2 of Commission Decision C(2010) 4160 final of 23 June 2010 relating to a proceeding under Article 101 TFUE and Article 53 of the EEA Agreement (Case COMP/36.212 — Carbonless paper);

- In the alternative, reduce very substantially the amount of the fine imposed on Bolloré by Article 2 of the said decision;
- Order the European Commission to pay all the costs.

### Pleas in law and main arguments

In the present action, the applicant seeks principally annulment of Commission Decision C(2010) 4160 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/36.212 — Carbonless paper) adopted by the Commission following the judgment of the Court of Justice in Case C-327/07 P *Bolloré v Commission* in which the Court held that Bolloré's rights of defence had not been observed inasmuch as Bolloré had been sanctioned, not merely as the parent company of Copigraph, but also on account of its direct and personal involvement in the infringement, even though the statement of objections referred only to its liability as the parent company of Copigraph.

In support of its action, the applicant puts forward six pleas in law alleging:

- an infringement of Articles 6 and 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') and Articles 41, 47 and 49 of the Charter of fundamental rights of the European Union ('the Charter') inasmuch as the sanction imposed on Bolloré was adopted in breach of the principles of the legality of infringements and penalties, legal certainty, the personal nature of penalties and the right to a fair trial in so far as:
  - the fact that Bolloré was sanctioned as a parent company constitutes a breach of the principles of the legality of infringements and penalties and of legal certainty, referred to in Articles 6 and 7 of the ECHR and Articles 47 and 49 of the Charter, and of the principle of the personal nature of penalties;
  - Bolloré's hearing, in which no Member of the Commission took part, constitutes an infringement of the right to a fair trial laid down in Article 6 of the ECHR and Articles 41 and 47 of the Charter, since Bolloré was thus not heard by those who were to judge it.
  - the conditions under which the initial decision was 're-adopted' infringe, from several points of view, the impartiality which is part of the right to a fair trial laid down in Article 6 of the ECHR and Articles 41 and 47 of the Charter;
  - an infringement of Article 101 TFEU and Article 25 of Regulation No 1/2003 <sup>(1)</sup> in as much as the Commission sanctioned Bolloré for infringements which are now time barred;

- an infringement of the principle of equal treatment inasmuch as Bolloré was sanctioned in its capacity as parent company of Copigraph at the time of the facts;
- an infringement of Article 101 TFEU, Article 6 of the ECHR and Articles 41 and 47 of the Charter by the communication of a second statement of objections within an unreasonable period of time, thereby definitively preventing Bolloré from defending itself against the complaints relating, on the one hand, to its liability as the parent company of Copigraph and, on the other, to its personal involvement in the infringement;
- in the alternative, an infringement of the 1998 Guidelines on the setting of fines <sup>(2)</sup>, the principle of the individual nature of penalties, of proportionality in fixing the amount of the fine and of the obligation to state reasons, and
- in the alternative, an infringement of the 1996 notice on the non-imposition or reduction of fines <sup>(3)</sup> and of the principles of proportionality and equal treatment.

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- <sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003, L 1, p. 1).
  - <sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty (OJ 1998, C 9, p. 3).
  - <sup>(3)</sup> Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996, C 207, p. 4).

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### Action brought on 8 September 2010 — Villeroy & Boch Austria v Commission

(Case T-373/10)

(2010/C 301/61)

*Language of the case: German*

#### Parties

*Applicant:* Villeroy & Boch Austria GmbH (Mondsee, Austria) (represented by: A. Reidlinger and S. Dethof, lawyers)

*Defendant:* European Commission

#### Form of order sought

- annul the contested decision in so far as it concerns the applicant;
- in the alternative, reduce by an appropriate amount the fine imposed on the applicant in the contested decision;



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

### Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicant and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

The applicant puts forward seven pleas in support of its action.

By its first plea, the applicant alleges breach of Article 101 TFEU and Article 53 of the EEA Agreement on the ground of the finding of a single, continuous and complex infringement. By that unlawful overall assessment the defendant failed to comply with its duty to carry out a legal assessment of the individual conduct of each of the undertakings to which the decision is addressed and unlawfully attributes conduct of third parties which is incapable of being attributed.

By its second plea, the applicant alleges, in the alternative, breach of the duty to state reasons pursuant to Article 296(2) TFEU, on account of the lack of an individualised statement of reasons for the contested decision.

By its third plea, the applicant claims that the contested decision should be annulled because the applicant did not participate in the alleged infringements on the relevant product and geographic markets concerned by the decision and because it has not been established that it engaged in a cartel infringement.

By its fourth plea, the applicant asserts that a fine has been unlawfully imposed jointly and severally on the applicant and its parent company. Such joint and several imposition infringes the principle *nulla poena sine lege* laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) thereof, and infringes Article 23 of Regulation (EC) No 1/2003.<sup>(1)</sup>

By its fifth plea, the applicant claims that the amount of the fine was miscalculated. The applicant asserts in this respect that, in its calculation, the defendant included turnover of the applicant which from the outset could not be connected with the objections raised.

By its sixth plea, the applicant alleges that the excessive length of the procedure and the failure to take account thereof in the calculation of the fine amounts to a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

By its seventh plea, the applicant alleges errors of assessment when the fine was calculated in the evaluation of the applicant's alleged involvement in the infringement. In this respect, the applicant states that, even on the assumption that an infringement of Article 101 TFEU did occur, as the Commission contends, the fine would be excessive and disproportionate. In the applicant's submission, the Commission infringed the principle of the proportionality of the penalty to the offence codified in Article 49(3) in conjunction with Article 48(1) of the Charter of Fundamental Rights of the European Union.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

### Action brought on 8 September 2010 — Villeroy & Boch v Commission

(Case T-374/10)

(2010/C 301/62)

*Language of the case: German*

### Parties

*Applicant:* Villeroy & Boch AG (Mettlach, Germany) (represented by: M. Klusmann, Solicitor and Professor S. Thomas)

*Defendant:* European Commission

### Form of order sought

— annul the contested decision in so far as it concerns the applicant;

— in the alternative, reduce by an appropriate amount the fine imposed on the applicant in the contested decision;

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

### Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicant and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

The applicant puts forward seven pleas in support of its action.



By its first plea, the applicant alleges breach of Article 101 TFEU and Article 53 of the EEA Agreement on the ground of the finding of a single, continuous and complex infringement. By that unlawful overall assessment the defendant failed to comply with its duty to carry out a legal assessment of the individual conduct of each of the undertakings to which the decision is addressed and unlawfully attributes conduct of third parties which is incapable of being attributed, in breach of the principle *nulla poena sine lege*.

By its second plea, the applicant alleges, in the alternative, breach of the duty to state reasons pursuant to Article 296(2) TFEU, on account of the lack of an individualised statement of reasons for the contested decision.

By its third plea, the applicant claims that the contested decision should be annulled because the applicant did not participate in the alleged infringements on the relevant product and geographic markets concerned by the decision and because it has not been established that it engaged in a cartel infringement.

By its fourth plea, the applicant asserts that a fine has been unlawfully imposed jointly and severally on the applicant and its subsidiaries in France, Belgium and Austria. Such joint and several imposition infringes the principle *nulla poena sine lege* laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) thereof, and infringes Article 23 of Regulation (EC) No 1/2003.<sup>(1)</sup>

By its fifth plea, the applicant claims that the amount of the fine was miscalculated. The applicant asserts in this respect that, in its calculation, the defendant included turnover of the applicant which from the outset could not be connected with the objections raised.

By its sixth plea, the applicant alleges that the excessive length of the procedure and the failure to take account thereof in the calculation of the fine amounts to a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

By its seventh plea, the applicant alleges errors of assessment when the fine was calculated in the evaluation of the applicant's alleged involvement in the infringement. In this respect, the applicant states that, even on the assumption that an infringement of Article 101 TFEU did occur, as the Commission contends, the fine would be excessive and disproportionate. In the applicant's submission, the Commission infringed the principle of the proportionality of the penalty to the offence codified in Article 49(3) in conjunction with Article 48(1) of the Charter of Fundamental Rights of the European Union. Furthermore, the Commission was not entitled in the present case to impose the maximum fine of 10 % of the group's turnover.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (O) 2003 L 1, p. 1).

## Action brought on 8 September 2010 — Hansa Metallwerke and Others v Commission

(Case T-375/10)

(2010/C 301/63)

Language of the case: German

### Parties

*Applicants:* Hansa Metallwerke AG (Stuttgart, Germany), Hansa Nederland BV (Nijkerk, Netherlands), Hansa Italiana Srl (Castelnuovo del Garda, Italy), Hansa Belgium Sprl (Asse, Belgium), Hansa Austria GmbH (Salzburg, Austria) (represented by: H.-J. Hellmann, lawyer)

*Defendant:* European Commission

### Form of order sought

- annul the Commission's decision of 23 June 2010, notified to the applicants on 30 June 2010, relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39092 — Bathroom fixtures and fittings) in so far as it concerns the applicants;
- in the alternative, reduce the applicants' fine;
- order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. In the contested decision, fines were imposed on the applicants and on other undertakings on account of infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant participated in a continuing agreement or concerted practice in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria.

In support of their action, the applicants claim, first, that the fine imposed on them unlawfully exceeds the maximum amount permitted under the second sentence of Article 23(2) of Regulation (EC) No 1/2003,<sup>(1)</sup> since the Commission incorrectly based its decision on Hansa Metallwerke AG's total worldwide turnover.

Second, the applicants allege breach of the principle of the protection of legitimate expectations. The applicants submit that the Commission committed serious procedural errors in the course of the administrative procedure and thereby placed the applicants at a disadvantage in relation to the other parties to the procedure. The Commission failed to take account of that circumstance in the contested decision, as it had promised to do during the procedure.

Third, the applicants claim that the Commission infringed Article 23(2) of Regulation No 1/2003 on account of miscalculation of the fine in the light of the Leniency Notice. <sup>(2)</sup> They complain that, although they cooperated, they were not granted a reduction in the fine imposed on them.

Fourth, the applicants claim that the application of the Guidelines on setting fines <sup>(3)</sup> to situations which ended long before publication of those guidelines infringes the principle of non-retroactivity.

The applicants also assert that the Commission's fine-setting practice is not covered by the enabling provision of Article 23(2) of Regulation No 1/2003. The applicants allege in this connection that the contested decision infringes the principle of equal treatment and the principle of proportionality. Furthermore, Article 23(2) of Regulation No 1/2003, as applied by the Commission in its fine-setting practice pursuant to the Guidelines on the method of setting fines, infringes the principle of the lawfulness of penalties, laid down in Article 7 ECHR and Article 49 of the Charter of Fundamental Rights of the European Union.

Lastly, the applicants complain that Article 23(2) of Regulation No 1/2003 and the Guidelines on setting fines have been misapplied on account of numerous errors of application and assessment to the applicants' detriment. They claim in particular that the adduction and assessment of the evidence by the Commission is incorrect in relation to the individual facts of the case as regards the applicants.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

<sup>(3)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

**Action brought on 6 September 2010 — Preparados Alimenticios v OHIM — Rila Feinkost-Importe (Jambo Afrika)**

(Case T-377/10)

(2010/C 301/64)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Preparados Alimenticios, SA (Barcelona, Spain) (represented by: D. Pellisé Urquiza, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Rila Feinkost-Importe GmbH & Co. KG (Stemwede-Levern, 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) of 9 June 2010 in case R 1144/2009-1;

— Declare the present action admissible and justified; and

— Declare that the contested Community trade mark application shall not be granted.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* The other party to the proceedings before the Board of Appeal

*Community trade mark concerned:* The word mark 'Jambo Afrika', for goods in classes 29, 30 and 33

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

*Mark or sign cited:* Spanish trade mark registrations No 2573221, No 2573219 and No 2573216 of the figurative mark 'JUMBO', for goods in classes 29 and 30; Community trade mark registration No 2217404 of the figurative mark 'JUMBO CUBE', for goods in class 29; Community trade mark registration No 2412823 of the figurative mark 'JUMBO MARINADE', for goods in classes 29 and 30; Community trade mark registration No 2413391 of the figurative mark 'JUMBO NOKKOS', for goods in classes 29 and 30; Community trade mark registrations No 2413581, No 2423275, No 2970754, No 3246139, No 3754462 and No 4088761 of the figurative mark 'JUMBO' for goods in classes 29 and 30

*Decision of the Opposition Division:* Upheld the opposition for part of the contested goods

*Decision of the Board of Appeal:* Rejected the opposition in its entirety

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly excluded likelihood of confusion.

**Action brought on 7 September 2010 — Masco and Others  
v Commission**

**(Case T-378/10)**

(2010/C 301/65)

*Language of the case: English*

**Parties**

*Applicants:* Masco Corp. (Taylor, United States of America), Hansgrohe AG (Schiltach, Germany), Hansgrohe Deutschland Vertriebs GmbH (Schiltach, Germany), Hansgrohe Handelsgesellschaft m.b.H. (Wiener Neudorf, Austria), Hansgrohe SA/NV (Anderlecht, Belgium), Hansgrohe B.V. (Westknollendam, the Netherlands), Hansgrohe SARL (Antony, France), Hansgrohe Srl (Villanova d'Asti, Italy), Hüppe GmbH (Bad Zwischenahn, Germany), Hüppe Gesellschaft m.b.H. (Laxenburg, Austria), Hüppe Belgium SA/NV (Zaventem, Belgium) and Hüppe B.V. (Alblasserdam, the Netherlands) (represented by: D. Schroeder, lawyer and J. Temple Lang, Solicitor)

*Defendant:* European Commission

**Form of order sought**

- annul Article 1 of the Commission decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, insofar as it finds that the applicants have participated in a continuing agreement or concerted practice 'in the bathroom fittings and fixtures sector', and
- order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter.

**Pleas in law and main arguments**

By means of their application, the applicants seek partial annulment of Article 1 of Commission decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, by which the Commission found that the applicants, together with other undertakings had infringed Article 101 TFEU and Article 53 EEA by participating in a continuing agreement or concerted practice 'in the bathroom fittings and fixtures sector', covering the territory of Germany, Austria, Italy, France, Belgium and the Netherlands.

The applicants put forward one plea in law in support of their application.

The applicants challenge the Commission's legal qualification of the conduct as a single complex infringement covering three different product groups, namely taps and fittings, shower enclosures and ceramic sanitary ware, instead of finding three separate infringements.

The applicants do not produce ceramic sanitary ware. The applicants submit that in finding that they participated in a single complex infringement across the three product groups, including ceramic sanitary ware, the Commission committed errors of assessment of the facts and errors of law. The Commission's finding of a single complex infringement in the decision is not in line with previous Commission cases (or the jurisprudence of the Courts). Thus, the Commission infringed the principles of transparency, legal certainty and equal treatment. In particular, the facts and evidence presented in the decision do not support the Commission's conclusion that there is a single complex infringement covering three different product groups.

**Action brought on 8 September 2010 — Keramag  
Keramische Werke a.o. v Commission**

**(Case T-379/10)**

(2010/C 301/66)

*Language of the case: English*

**Parties**

*Applicants:* Keramag Keramische Werke AG (Ratingen, Germany); Koralie Sanitärprodukte GmbH (Vlotho, Germany); Koninklijke Sphinx BV (Maastricht, Netherlands); Allia SAS (Avon, France); Produits Céramique de Touraine SA (PCT) (Selles sur Cher, France); and Pozzi Ginori SpA (Milan, Italy) (represented by: J. Killick, Barrister, P. Lindfelt, lawyer, I. Reynolds, Solicitor, and K. Struckmann, lawyer)

*Defendant:* European Commission

**Form of order sought**

- annul the contested decision in whole or in part;
- declare that the applicants bear no responsibility for anti-competitive activity in taps and, if necessary, annul the Decision to the extent it may find the applicants so responsible;
- further or in the alternative, reduce the level of the fine;
- order the Commission to pay the costs;
- make any other order as may be appropriate in the circumstances of the case.

### Pleas in law and main arguments

The applicants seek the annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (Case COMP/39.092) insofar as it holds them liable for participation in a continuing agreement or concerted practice in bathroom fittings and fixtures sector covering the territory of Germany, Austria, Italy, France, Belgium and the Netherlands.

In support of the action, the applicants rely on seven pleas in law.

First, they submit that the Commission failed to assess or investigate the economic context and thereby failed to establish the anti-competitive object of the alleged infringements to the requisite legal standard. The applicants contend that the Commission was not legally entitled to presume (or equally to find) that discussions (i) between non-competitors and (ii) about a non-economic price which no market actor pays had anti-competitive object.

Second, they claim that the Commission would have been wrong to hold the applicants responsible for an infringement to taps given the first plea and the fact that the applicants do not produce taps.

Third, the applicants argue that the Commission failed to establish the existence of the alleged infringement to the requisite legal standard, notably because its analysis of the evidence was erroneous in France, Italy and in relation to Keramag Keramische Werke Aktiengesellschaft in Germany.

Fourth, they submit that the Commission has not established an interest in finding an infringement in the Netherlands that was time-barred.

Fifth, the applicants contend that the Commission failed

(i) to adequately set out the allegations in the Statement of Objections and

(ii) to retain and disclose relevant and potentially exculpatory evidence.

These procedural failings harmed, in the applicants' view, their rights of defence.

Sixth, the applicants claim that the investigation in this case was selective and arbitrary in nature given that many companies that are alleged to have participated in the supposedly illegal meetings or discussions were never prosecuted.

Seventh, they submit that the fine was unjustifiably and disproportionately high, in particular due to the absence of implementation or effects on the market. Therefore, the applicants invite the Court to exercise its unlimited jurisdiction under Article 261 TFEU to reduce the fine.

### Action brought on 8 September 2010 — Sanitec Europe v Commission

(Case T-381/10)

(2010/C 301/67)

*Language of the case: English*

#### Parties

*Applicants:* Sanitec Europe Oy (Helsinki, Finland), (represented by: J. Killick, Barrister, I. Reynolds, Solicitor, P. Lindfelt and K. Struckmann, lawyers)

*Defendant:* European Commission

#### Form of order sought

— Annul in whole or in part the Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures;

— Declare that the applicant bears no responsibility for anti-competitive activity in taps and, if necessary, annul the contested decision to the extent it may find the applicant (or its affiliates) so responsible;

— Further or in the alternative, reduce the level of the fine;

— Order the Commission to pay the costs; and

— Make any other order as may be appropriate in the circumstances of the case.

#### Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Decision No C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom Fittings and Fixtures, relating to an agreement between undertakings covering the Belgian, German, French, Italian, Dutch and Austrian markets of bathroom fittings and fixtures, concerning the sale prices and the exchange of sensitive commercial information, as well as, in the alternative, the reduction of the amount of the fine imposed on it.

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

Firstly, the Commission failed to assess or investigate the economic context and thereby failed to establish the anti-competitive object of the alleged infringements to the requisite legal standard. It was not legally entitled to presume (or equally to find) that discussions (i) between non-competitors and (ii) about a non-economic price which no market actor pays had anti-competitive object.



Secondly, the Commission would have been wrong to hold the applicant responsible for an infringement on taps given the first plea and the fact that neither the applicant nor its affiliates produce taps.

In addition, the Commission failed to establish the existence of the alleged infringement to the requisite legal standard, notably because its analysis of the evidence was erroneous in France, Italy and in relation to Keramag Keramische Werke AG in Germany, for which the applicant was held liable.

Fourthly, the Commission has not established an interest in finding an infringement in the Netherlands that was time-barred.

Furthermore, the Commission failed (i) to adequately set out the allegations in the Statement of Objections and (ii) to retain and disclose relevant and potentially exculpatory evidence. These procedural failings irretrievably harmed the applicant's rights of defence.

As an additional plea in law, the applicant could not be held directly and individually liable for a fine of EUR 9 873 060. The Applicant was not itself found guilty of any illegal conduct. It was only liable as a parent company and as such cannot be directly and individually liable for a fine. Moreover, the possibility of direct and individual liability was not set forth in the Statement of Objections, which is a procedural irregularity that warrants annulment.

Moreover, the applicant was wrongly held jointly liable for the actions of its affiliate Keramag Keramische Werke AG. The applicant did not own all the shares of Keramag Keramische Werke AG during the relevant period and was not in a position to, and did not, exercise decisive influence over it.

At the same time, the investigation in this case was selective and arbitrary in nature given that many companies that are alleged to have participated in the supposedly illegal meetings or discussions were never prosecuted.

Finally, the fine was unjustifiably and disproportionately high, in particular due to the absence of implementation or effects on the market. The Applicant invites the Court to exercise its unlimited jurisdiction under Article 261 TFEU to reduce the fine.

### **Action brought on 9 September 2010 — Villeroy & Boch v Commission**

(Case T-382/10)

(2010/C 301/68)

*Language of the case: French*

#### **Parties**

*Applicant:* Villeroy & Boch (Paris, France) (represented by: J. Philippe and K. Blau-Hansen, lawyers, and A. Villette, Solicitor)

*Defendant:* European Commission

#### **Form of order sought**

- declare the contested decision null and void in so far as it concerns the applicant;
- in the alternative, in consequence, reduce the fine imposed on the applicant by the contested decision;
- order the defendant to bear the costs of the proceedings.

#### **Pleas in law and main arguments**

The applicant seeks partial annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the Agreement on the European Economic Area ('EEA') (Case COMP/39092 — Bathroom fixtures and fittings) concerning a cartel on the Belgian, German, French, Italian, Netherlands and Austrian markets in bathroom fixtures and fittings for the coordination of sales prices and the exchange of sensitive business information.

The applicant puts forward seven pleas in law in support of its action:

- breach of Article 101 TFEU and Article 53 EEA as a result of classifying the infringement as a single, complex and continuous infringement, since the defendant thus failed to comply with its duty in law to assess the individual conduct of each of the undertakings to which the decision is addressed;
- breach of the duty to state reasons pursuant to the second paragraph of Article 296 TFEU, since the defendant failed to provide a sufficiently precise definition of the relevant markets in the contested decision;
- lack of sufficient evidence concerning the applicant's participation in infringements in France;
- breach of the principle *nulla poena sine lege* laid down in the first paragraph of Article 49 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the principle of the proportionality of the penalty to the offence, laid down in Article 49(3) of the Charter in conjunction with Article 48(1) of the Charter and Article 23 of Regulation No 1/2003,<sup>(1)</sup> since the defendant imposed a fine jointly and severally on the applicant and its parent company;
- mis-calculation of the fine, since the defendant included some of the applicant's turnover which had no connection with the objections raised when the fine was calculated;



- breach of Article 41 of the Charter, since the excessive length of the procedure was not taken into account when the fine was calculated;
- breach of the principle of the proportionality of penalties and errors of assessment when the fine was calculated, since the basic amount was set at 15 % and the absolute amount of the fine exceeded the limit of 10 % of the applicant's turnover.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

**Action brought on 7 September 2010 — Continental Bulldog Club Deutschland v OHIM**

(Case T-383/10)

(2010/C 301/69)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Continental Bulldog Club Deutschland eV (Berlin, Germany) (represented by S. Vollmer, lawyer)

*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 23 June 2010 in Case R 300/2010-1;
- In the alternative, annul the contested decision, in so far as it concerns goods and services in Class 44;
- Order the defendant to pay the costs of the proceedings, including those of the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* Word mark 'CONTINENTAL' for goods in Classes 31 and 44.

*Decision of the Examiner:* Registration was refused.

*Decision of the Board of Appeal:* The appeal was dismissed.

*Pleas in law:* Breach of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009, <sup>(1)</sup> since the Community trade mark in question is distinctive and is not descriptive.

<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 13 September 2010 — ArcelorMittal Wire France and Others v Commission**

(Case T-385/10)

(2010/C 301/70)

*Language of the case: French*

**Parties**

*Applicants:* ArcelorMittal Wire France (Bourg-en-Bresse, France), ArcelorMittal Fontaine (Fontaine-L'Évêque, Belgium), ArcelorMittal Verderio Srl (Verderio Inferiore, Italy) (represented by: H. Calvet, O. Billard and M. Pittie, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Principally, annul the Commission decision in Case COMP/38.344 — Pre-stressing steel in so far as (i) in Article 1 thereof, it finds that AMWF, AM Fontaine and AM Verderio took part in a single and continuous infringement and/or a concerted practice in the pre-stressing steel sector contrary to Article 101 TFEU and Article 53 of the EEA Agreement from 1 January 1984 to 19 September 2002, 20 December 1984 to 19 September 2002 and from 3 April 1995 to 19 September 2002 respectively; (ii) it, consequently, imposes on them, in Article 2 thereof, fines amounting to EUR 276,48 million as regards AMWF, of which EUR 268,8 million is imposed jointly and severally with AM Fontaine and EUR 72 million is imposed jointly and severally with AM Verderio; (iii) it orders them, in Article 3 thereof, to immediately bring the infringement to an end, if they have not already done so and to refrain from repeating any act or conduct of the kind described in (i) and any act or conduct having the same or similar object or effect and (iv) in Article 4 thereof, it addresses the decision to them.

- In the alternative, in the exercise of its unlimited jurisdiction, vary the decision by reducing very substantially the amounts of the fines imposed on each of the applicants, as those amounts appear in Article 2, and

- In any event, order the Commission to pay all the costs.

### Pleas in law and main arguments

The applicant seeks, principally, annulment of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the European Economic Area Agreement ('EEA') (Case COMP/38.344 — Pre-stressing steel) concerning a cartel in the European pre-stressing steel market relating to the fixing of prices, the sharing of the market and the exchange of sensitive commercial information.

In support of their action, the applicants put forward several pleas in law alleging:

- an infringement of the applicants' fundamental right to an impartial tribunal and an infringement of Article 47 of the Charter of fundamental rights of the European Union inasmuch as the Commission exercises the role of both prosecutor and judge;
- an infringement of Article 23(2) of Regulation No 1/2003<sup>(1)</sup> and of the principles of the personal nature of penalties, proportionality and equal treatment inasmuch as the Commission imposed fines on the applicants in an amount manifestly exceeding the legal ceiling of 10 % of their total turnover in the preceding business year;
- an insufficient amount of evidence showing the existence of an infringement of Article 101 TFEU and Article 53 EEA for the period between 1 January 1984 and November 1982 or, at very least, the lack of a statement of reasons;
- the lack of a statement of reasons and an infringement of the Guidelines on the method of setting fines<sup>(2)</sup> as well as an infringement of the principles of legitimate expectations and sound administration inasmuch as there are gaps in the decision making it impossible to understand the method applied by the Commission to calculate the fines;
- the lack of a statement of reasons and manifest errors of law and fact inasmuch as the fines imposed on AMWF and AM Fontaine were increased by 60 % on the basis that they had previously committed offences;
- an insufficient statement of reasons and an infringement of Article 23(2) of Regulation No 1/2003 as well as an infringement of the principles of equality and proportionality inasmuch as only the amount of the applicants' fines was increased by 20 % for dissuasive effect, although other parties to the cartel were in the same situation.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003, L 1, p. 1).

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

### Action brought on 8 September 2010 — Dornbracht v Commission

(Case T-386/10)

(2010/C 301/71)

*Language of the case: German*

#### Parties

*Applicant:* Aloys F. Dornbracht GmbH & Co KG (Iserlohn, Germany) (represented by: H. Janssen, T. Kapp and M. Franz, lawyers)

*Defendant:* European Commission

#### Form of order sought

- Annul the contested decision, in so far as it concerns the applicant;
- In the alternative, reduce the fine imposed on the applicant in the contested decision;
- Order the defendant to pay the costs.

#### Pleas in law and main arguments

The applicant contests Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39092 — Bathroom fittings and fixtures. The decision imposed fines on the applicant and other undertakings on account of the infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicant took part in a long-lasting agreement or concerted practices in the bathroom fittings and fixtures sector in Germany and Austria.

In support of its claim, the applicant relies on eight pleas in law.

First, the applicant claims that there has been an infringement of Article 23(2) of Regulation (EC) No 1/2003,<sup>(1)</sup> because the defendant did not take into account a number of mitigating circumstances in the applicant's favour.

Second, the applicant claims that there has been an infringement of Article 23(3) of Regulation No 1/2003, because the defendant, by interpreting the second sentence of Article 23(2) of that regulation as a cap, prevented itself from assessing the gravity of the infringement of which the applicant was accused.

Third, the applicant claims that the principle of equal treatment has not been observed because the defendant, by fixing general amounts, failed to take into account the applicant's individual contribution to the act.

Fourth, the applicant claims that when setting the level of the fine, the defendant failed to assess the infringement in proportion to infringements in other cases decided by it, and therefore failed to observe the principle of equal treatment.

Fifth, the applicant complains that the level of the fine is disproportionate because the defendant failed to take into account the applicant's limited capacity to participate.

Sixth, the applicant complains that, in so far as the defendant calculated the fines on the basis of its 2006 Guidelines on fines,<sup>(2)</sup> the contested decision failed to comply with the prohibition on retroactive effect.

Seventh, the applicant claims that Article 23(3) of Regulation No 1/2003 infringes the principle of legal certainty.

Finally, the applicant claims that the fixing of the fine was unlawful because the fine was calculated on the basis of guidelines on fines which give the defendant too much discretion.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210, p. 2).

**Action brought on 9 September 2010 — Goutier v OHIM — Eurodata (ARANTAX)**

**(Case T-387/10)**

(2010/C 301/72)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Klaus Goutier (Frankfurt am Main, Germany) (represented by: E.E. Happe, 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:* Eurodata GmbH & Co KG (Saarbrücken, 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 1 July 2010 in Case R 126/2009-4, to the extent that the Community trade mark application was, by setting aside the contested decision, rejected in respect of the following services:

Class 35 – Tax consultancy, tax preparation, accounting, auditing, professional business consultancy, business consultancy

Class 36 – Fiscal assessments, mergers and acquisitions, namely financial consultancy with regard to the purchase or sale of companies and company shares;

Class 42 – Provision of legal services, legal research;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Klaus Goutier.

*Community trade mark concerned:* Word mark 'ARANTAX' for services in Classes 35, 36 and 42.

*Proprietor of the mark or sign cited in the opposition proceedings:* Eurodata GmbH & Co KG.

*Mark or sign cited in opposition:* German word mark 'ANTAX' for services in Classes 35, 36, 41, 42 and 45.

*Decision of the Opposition Division:* Rejection of the opposition.

*Decision of the Board of Appeal:* Partial setting aside of the decision of the Opposition Division and partial rejection of the Community trade mark application.

*Pleas in law:* Infringement of Articles 15 and 43 of Regulation (EC) No 207/2009,<sup>(1)</sup> because proof of use had not been provided, and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, because there is no likelihood of confusion between the marks at issue.

<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 6 September 2010 — Productos Derivados de Acero v Commission**

(Case T-388/10)

(2010/C 301/73)

*Language of the case: Spanish*

**Parties**

*Applicant:* Productos Derivados de Acero, SA (Catarroja, Spain) (represented by: M.B. Escuder Tella, J. Viciano Pastor and F. Palau Ramirez, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annul the contested decision [C(2010) 4387 final] on the ground that the five-year limitation period prescribed in Article 25 of Regulation (EC) No 1/2003 in respect of the imposition of penalties has expired;
- in the alternative, in the event that the first claim does not succeed, annul the contested decision in so far as it finds that Productos Derivados de Acero, S.A (PRODERAC) participated in the restrictive agreements described in the contested decision and declare that that company did not participate in the collusive conduct as alleged;
- in the alternative, in the event that the second claim does not succeed either, annul the contested decision in so far as it reduces the fine imposed on Productos Derivados de Acero, S.A (PRODERAC) by only 25 % and declare PRODERAC exempt from the fine in application of the 2006 Guidelines on the method of setting fines on the ground that its inability to pay has been established;
- in the further alternative, in the event that the third claim also fails, annul the contested decision in so far as it reduces the fine imposed on Productos Derivados de Acero, S.A (PRODERAC) by only 25 % and declare the fine to be reduced by 75 %;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The contested decision in these proceedings is the same as in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

In support of its action, the applicant advances the following pleas in law:

1. Preliminary issue: limitation period for the imposition of penalties. It is maintained in this regard that the limitation period for the imposition of penalties in respect of anti-competitive conduct expires five years from the last action

taken for the purpose of the proceedings and that between the end date of the cartel, 19 September 2002, and the notification of the statement of objections, 30 September 2008, the limitation period was not interrupted.

2. Misapplication of Article 101 TFEU, Article 53 of the EEA Agreement and of the case-law of the Community Courts concerning those provisions, in so far as:
  - the applicant gave no express indication of its intention to participate in the agreements and concerted practices, nor can any such intention be implicitly inferred from any other circumstances;
  - the applicant clearly and publicly distanced itself from the collusive agreements inasmuch as its participation in meetings had no impact on its commercial conduct. In that regard, the failure to implement the collusive agreements is proof that the applicant's participation in meetings did not influence its market conduct.
3. Misapplication of point 35 of the 2006 Guidelines on the method of setting fines, by incorrectly applying by analogy the assessment of 'serious and irreparable harm' in relation to interim measures.

**Action brought on 13 September 2010 — SLM v Commission**

(Case T-389/10)

(2010/C 301/74)

*Language of the case: Italian*

**Parties**

*Applicant:* Siderurgica Latina Martin SpA (SLM) (Ceprano, Italy) (represented by: G. Belotti, lawyer, and F. Covone, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul Commission Decision C(2010) 4387 final, adopted on 30 June 2010 in Case COMP.38.344 — Pre-stressing steel;
- in the alternative, reduce the fine imposed.

**Pleas in law and main arguments**

The decision contested in the present proceedings is the same as that contested in Case T-385/10 *ArcelorMittal Wire France and Others v Commission*.

The applicant company submits:

In support of its claim that the decision should be annulled: the unusual and unjustifiable length of the administrative procedure, which seriously compromised the applicant's exercise of the rights of defence, especially in relation to the facts of the two-year period from 1997 to 1999, that is to say, facts pre-dating by 10 years the statement of objections of September 2008.

In support of its claim that the fine should be reduced:

Failure to state adequate reasons for the quantification of the penalty, in so far as it remains unclear on the basis of which calculation and which turnover the Commission penalised the applicant.

Breach of the upper limit of 10 % of turnover.

Failure to state adequate reasons for the increases applied.

Misapplication of the 2006 Guidelines on the setting of fines, and also the 1998 Guidelines, in force not only at the material time, but also during the first four years of the procedure.

Erroneous assessment of the duration of the applicant's participation in the cartel, not based on objective findings.

Failure on a number of occasions to take account of mitigating circumstances: the demonstrably secondary role played by the applicant in the events at issue; the applicant's limited market share; and the ineffectiveness of the cartel.

The Commission is now time-barred, since no measure was adopted to stop time from running during the five-year period following the surprise inspection.

**Appeal brought on 10 September 2010 by Paulette Füller-Tomlinson against the judgment of the Civil Service Tribunal delivered on 1 July 2010 in Case F-97/08, Füller-Tomlinson v Parliament**

(Case T-390/10 P)

(2010/C 301/75)

*Language of the case: French*

#### Parties

*Appellant:* Paulette Füller-Tomlinson (Brussels, Belgium) (represented by L. Levi, lawyer)

*Other party to the proceedings:* European Parliament

#### Form of order sought by the appellant

- Set aside the judgment of the Civil Service Tribunal of the European Union of 1 July 2010 in Case F-97/07;
- Consequently, grant the applicant the form of order sought at first instance and therefore
  - annul the decision of 9 April 2008 of the Head of the Pensions and Social Insurance Unit, setting, in Article 3, the proportion of partial permanent invalidity attributable to occupational disease at 20 %;
  - so far as necessary, annul the decision rejecting the complaint;
  - alternatively, order the defendant to pay the sum of EUR 12 000 as compensation for the non-material damage suffered by the applicant;
  - order the defendant to pay all the costs.

#### Pleas in law and main arguments

In the present appeal, the applicant is seeking to have set aside the judgment of the Civil Service Tribunal of 1 July 2010 in Case F-97/08, *Füller-Tomlinson v Parliament* which dismissed the action in which the applicant had sought annulment of the decision of the European Parliament setting, in regard to the applicant, the proportion of partial permanent invalidity attributable to occupational disease at 20 % pursuant to the European Guide for Assessment, for medical purposes, of Physical and Mental Impairments.

In support of her appeal, the applicant puts forward several pleas in law alleging:

- an infringement of the scope of the Tribunal's powers of judicial review of the lawfulness of the conditions laid down by the cover regulation adopted under Article 73 of the Staff Regulations of Officials of the European Union, inasmuch as the Tribunal limited its review to manifest errors of assessment and to the exceeding by the institutions of their powers of assessment, whereas the review should be complete, covering the lawfulness of the substance of the measure;



- an infringement of the review of manifest error of assessment, distortion of the file, infringement of the Tribunal's obligation to give reasons at first instance and an infringement of Article 73 of the Staff Regulations and the cover regulation;
- inasmuch as the Tribunal did not take account of the statements made at the hearing in furtherance of the complaints made in the initiating application;
- inasmuch as the Tribunal considered, in particular, that the doctor's freedom of assessment concerned only the pathological finding and not the fixing of the proportion of invalidity, thereby validating the binding character of the European Guide for Assessment of Physical and Mental Impairments, which limits the proportion of invalidity to 20 % in the present case, although the medical committee considered the applicant's proportion of invalidity to be 100 %;
- an infringement of the concept of a reasonable period of time and distortion of the file, inasmuch as the Tribunal refers, in its statement of the facts, to a medical examination which never took place and then concludes that the period of time within which the applicant's file was dealt with was not unreasonable.

**Action brought on 13 September 2010 — Nedri Spanstaal v Commission**

(Case T-391/10)

(2010/C 301/76)

*Language of the case: Dutch*

**Parties**

*Applicant:* Nedri Spanstaal BV (Venlo, Netherlands) (represented by: M. Slotboom and B. Haan, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Declare the action admissible;
- annul Article 1(9) of the Commission's decision with regard to the period of time in respect of which Hit Groep was found liable, and Article 2(9) of the decision with regard to the fine imposed on Nedri;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicant seeks annulment in part of the Commission's decision of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement in Case COMP/38.344 — Prestressing steel.

In support of its action, the applicant has submitted three pleas in law.

First, the applicant alleges infringement of Article 101 TFEU and Article 23(2) of Regulation No 1/2003<sup>(1)</sup> and of the obligation to state reasons. According to the applicant, the Commission committed errors of law and of fact by finding Hit Groep jointly and severally liable only for the period from 1 January 1998 to 17 January 2002. In the applicant's view, the Commission should have found Hit Groep liable for the period from 1 May 1987 to 17 January 2002 since Hit Groep had control of the applicant throughout the whole of that period.

Second, the applicant alleges infringement of Article 23(2) of Regulation No 1/2003, of the Guidelines on setting fines,<sup>(2)</sup> of the principle of proportionality and of the obligation to state reasons. According to the applicant, the Commission committed errors of law and of fact by applying the legal maximum of the amount of the fine, that is 10 % of turnover in the preceding business year, to the applicant's turnover in 2009. The legal maximum should have been applied to the applicant's turnover in 2002.

Third, the applicant alleges infringement of point 23 of the Leniency Notice<sup>(3)</sup> and of the obligation to state reasons. According to the applicant, the Commission committed errors of law and of fact by granting the applicant only a 25 % reduction of the fine, instead of 30 %.

<sup>(1)</sup> Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

<sup>(3)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

**Action brought on 6 September 2010 — Euro-Information v OHIM (EURO AUTOMATIC CASH)**

(Case T-392/10)

(2010/C 301/77)

*Language in which the application was lodged: French*

**Parties**

*Applicant:* Euro-Information — Européenne de traitement de l'information (Strasbourg, France) (represented by A. Grolée, lawyer)

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

### Form of order sought

- Annul the decision of 17 June 2010 of the Second Board of Appeal of OHIM in Case R 892/2010-2 in so far as it dismissed the application for trade mark No 004114864 in respect of goods and services in Classes 9, 35, 36, 37, 38 and 42;
- Order OHIM to pay the costs incurred by the applicant in the proceedings before OHIM and in the present action, pursuant to Article 87 of the Rules of Procedure.

### Pleas in law and main arguments

*Community trade mark concerned:* The word mark 'EURO AUTOMATIC CASH' for goods and services in Classes 9, 35, 36, 37, 38 and 42 — application No 4 114 864.

*Decision of the Examiner:* Refusal of the application for registration.

*Decision of the Board of Appeal:* Partial annulment of the examiner's decision; partial refusal for registration of the trade mark applied for; decision taken subsequent to the General Court's judgment in Case T-15/09 *Euro-Information v OHIM* (EURO AUTOMATIC CASH), judgment of 9 March 2010, not published in the ECR.

*Pleas in law:* Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009, as the mark is not descriptive but, on the contrary, is distinctive for all of the goods and services in respect of which registration was refused.

### Action brought on 14 September 2010 — Westfälische Drahtindustrie and Others v Commission

(Case T-393/10)

(2010/C 301/78)

*Language of the case:* German

### Parties

*Applicants:* Westfälische Drahtindustrie GmbH (Hamm, Germany), Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG (Hamm), Pampus Industriebeteiligungen GmbH & Co. KG (Iserlohn, Germany) (represented by: C. Stadler, lawyer)

*Defendant:* European Commission

### Form of order sought

- Annul Article 1(8)(a) and (b) of the Commission's decision in so far as the first and second applicants are thereby found liable for infringement of Article 101 TFEU or Article 53 of the EEA Agreement before 12 May 1997;
- annul Article 2 of the decision in so far as it imposes a fine of EUR 15 485 000 on the first, second and third applicants, jointly and severally, a fine of EUR 30 115 000 on the first and second applicants, jointly and severally, and a fine of EUR 10 450 000 on the first applicant;
- in the alternative, reduce the fine imposed on the applicants under Article 2 of the decision to an appropriate amount;
- order the defendant to pay the costs.

### Pleas in law and main arguments

The applicants contest Commission Decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Prestressing steel. The contested decision imposed fines on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a continuing agreement and/or concerted action in the prestressing steel sector in the internal market and the EEA.

In support of their action, the applicants have submitted eight pleas in law.

By their first plea in law, the applicants allege infringement of Article 25(1)(b) of Regulation (EC) No 1/2003<sup>(1)</sup> as the assumption that the applicants participated in a single and continuing infringement is wrong.

In connection with the second plea in law the applicants allege, in the alternative, infringement of Article 23(3) of Regulation No 1/2003 in view of the failure to observe essential principles applicable to the calculation of fines with respect to the defendant's determination of the duration of the infringement to include the cartel's crisis period.

By their third plea in law, the applicants submit that the defendant infringed Article 23(3) of Regulation No 1/2003 in that, by using the information provided in the application for reduction of the fine against the applicants, the defendant infringed the principle of the protection of legitimate expectations and the principle that the administration is bound by its own acts.

In connection with the fourth plea in law, the applicants allege infringement of Article 23(3) of Regulation No 1/2003 in view of the defendant's many errors of assessment when assessing the gravity of the infringement.

By their fifth plea in law, the applicants complain of infringement of Article 23 of Regulation No 1/2003 and breach of the obligation to state reasons under the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union. They submit in that respect that the defendant arbitrarily departed from the calculation method laid down in the contested decision when determining the fine.

By their sixth plea in law, the applicants submit that the defendant infringed Article 23 of Regulation No 1/2003 by disregarding the limits of its discretionary power and infringing the principle of proportionality when calculating the fine.

In connection with the seventh plea in law, the applicants allege infringement of the second paragraph of Article 296 TFEU and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, since the defendant failed to give reasons for essential aspects of the contested decision.

Lastly, by their eighth plea in law the applicants complain that the defendant infringed the applicants' right to be heard in accordance with Article 27 of Regulation No 1/2003 and Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, as it did not give the applicants a hearing in respect of certain essential aspects.

(<sup>1</sup>) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

**Action brought on 13 September 2010 — Grebenshikova v OHIM — Volvo Trademark (SOLVO)**

(Case T-394/10)

(2010/C 301/79)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Elena Grebenshikova (St. Petersburg, Russian Federation) (represented by: M. Björkenfeldt, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Volvo Trademark Holding AB (Göteborg, Sweden)

**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 9 June 2010 in case R 861/2010-1; 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 'SOLVO', for goods in class 9

*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:* United Kingdom trade mark registrations No 747361 of the figurative mark 'VOLVO', for a wide range of goods and services; United Kingdom trade mark registrations No 1552528, No 1102971, No 1552529 and No 747362 of the word mark 'VOLVO', for a wide range of goods and services; Community trade mark registrations No 2361087 and No 2347193 of the word mark 'VOLVO', for inter alia goods and services in classes 9 and 12

*Decision of the Opposition Division:* Rejected the opposition in its entirety

*Decision of the Board of Appeal:* Annulled the decision of the Opposition Division and rejected the trade mark application

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly applied the provisions of this Article; violation by the Board of Appeal of a general principle of EU law regarding equal treatment and violation of Article 1 of the Agreement on the Trade-Related Aspects on Intellectual Property Rights (TRIPS), as well as violation of Article 2 of the Paris Convention for the Protection of Industrial Property.

**Action brought on 14 September 2010 — Stichting Corporate Europe Observatory v Commission**

(Case T-395/10)

(2010/C 301/80)

*Language of the case: English*

**Parties**

*Applicant:* Stichting Corporate Europe Observatory (Amsterdam, the Netherlands) (represented by: S. Crosby, Solicitor, and S. Santoro, lawyer)

*Defendant:* European Commission

#### Form of order sought

- annul the implied refusal of the applicant's confirmatory application;
- order the Commission to pay the applicant's costs.

#### Pleas in law and main arguments

By means of this application the applicant seeks annulment of the Commission implied decision rejecting the applicant's request, pursuant to Regulation No 1049/2001<sup>(1)</sup>, of the access to certain documents relating to the trade negotiations between the EU and India.

In support of its application the applicant puts forward three pleas in law.

First, it claims that the Commission infringed the Regulation No 1049/2001 by failing to reply to the confirmatory application within the prescribed time.

Second, the applicant contends that the Commission infringed the Regulation No 1049/2001 and the Treaty by constructively rejecting a confirmatory application without giving any reasons or without giving reasons to the standards required by the Treaty and by the Court.

Third, it submits that by failing to reply to the confirmatory application the Commission infringed an essential procedural requirement and/or committed an error of law.

<sup>(1)</sup> 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 8 September 2010 — Zucchetti  
Rubinetteria v Commission**

(Case T-396/10)

(2010/C 301/81)

*Language of the case: Italian*

#### Parties

*Applicant:* Zucchetti Rubinetteria SpA (Gozzano, Italy) (represented by: M. Condinanzi and P. Ziotti, lawyers)

*Defendant:* European Commission

#### Form of order sought

- Annul the contested decision.
- In the alternative, annul the fine imposed or reduce the amount of the fine.
- In the further alternative, reduce the amount of the fine by granting the request to take account of the attenuating circumstance referred to in Section 29 of the Guidelines on the method of calculating fines.
- In any event, order the Commission to pay the costs.

#### Pleas in law and main arguments

The decision contested in these proceedings is the same as that in Case T-368/10 *Rubinetteria Cisal v Commission*.

The pleas in law and main arguments are similar to those relied on in that case. In particular, the applicant submits that the products referred to in the decision belong to three separate markets, that Zucchetti is present only on the taps market and that the Commission's decision does not carry out a prior identification of the relevant market. The decision is also defective in terms of its assessment of the geographic extent of the market and the effects of the cartel on the operating conditions on the market.

The applicant adds that the reconstruction of the agreements and/or concerted practices which led the Commission to find that the applicant had participated in a single, complex and continuous infringement of Article 101 TFEU solely on account of its collusive behaviour in Italy is vitiated and does not state the reasons on which the finding is based, since it totally fails to show that the applicant was aware of the unlawful conduct engaged in by the other undertakings allegedly participating in the cartel.

**Action brought on 13 September 2010 — ara v OHIM —  
Allrounder (Representation of a sports shoe bearing the  
letter A on the side)**

(Case T-397/10)

(2010/C 301/82)

*Language in which the application was lodged: German*

#### Parties

*Applicant:* ara AG (Langenfeld, Germany) (represented by: M. Gail, 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:* Allrounder SARL (Saarburg, France)

*Defendant:* European Commission

### 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 23 June 2010 in Case R 1543/2009-1;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* Allrounder SARL.

*Community trade mark concerned:* Figurative mark representing a sports shoe with the letter 'A' on the side, for goods and services in classes 16, 18 and 25.

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

*Mark or sign cited in opposition:* National word mark 'A' for goods in classes 9, 18 and 25.

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal dismissed as inadmissible.

*Pleas in law:* Infringement of Article 81 of Regulation (EC) No 207/2009<sup>(1)</sup> in so far as the Board of Appeal incorrectly proceeded on the basis that the office arrangements as described by the appellant's representatives were not such as to prove that all due care required by the circumstances was taken, and accordingly rejected the application for re-establishment of the appellant's rights with respect to the time-limit for production of the statement of grounds 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 8 September 2010 — *Fapricela* — *Indústria de Trefilaria v Commission*.

(Case T-398/10)

(2010/C 301/83)

*Language of the case:* Portuguese

### Parties

*Applicant:* *Fapricela* — *Indústria de Trefilaria, SA* (Ançã, Portugal) (represented by: M. Gorjão-Henriques and S. Roux, lawyers)

### Form of order sought

- Annul Article 1 and Article 2 of the Commission Decision of 30 June 2010, relating to a proceeding pursuant to Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38344 — Prestressing steel), with respect to the applicant;
- Substantially reduce the fine;
- Order the Commission to pay the costs.

### Pleas in law and main arguments

The decision contested by the applicant is the same decision contested in the case T-385/10, *ArcelorMittal Wire France and Others v Commission*.

The applicant submits to the Court:

- (i) Defects of reasoning in the contested decision that affect the rights of defence of *Fapricela* and have led to a rectification of the decision. The applicant claims that this rectification must be deemed void, as the recognition of material errors by the Commission prejudices the full exercise by *Fapricela* of its rights of defence and undermines the purpose of the present action, furthermore giving the European Commission the additional option of issuing the new amending decision having regard to the submissions of law and fact of the companies in this action.
- (ii) The European Commission has not established that *Fapricela* was aware, or should reasonably have been aware, of the existence of non-Iberian cartels and therefore cannot hold *Fapricela* responsible for the single continuing infringement identified in the contested decision;

Alternatively,

- (iii) The Commission infringed the principle of proportionality and the principle of equal treatment by fixing the fine applied to this company in the way it did and the fine should be reduced accordingly;
- (iv) The Commission incorrectly calculated the duration of the involvement of *Fapricela* in the infringement and did not take into account a temporary period of distancing; and
- (v) The Commission committed errors of fact and infringed the principle of equal treatment by refusing to recognise *Fapricela's* inability to pay the fine.



**Action brought on 14 September 2010 — ArcelorMittal España v Commission**

(Case T-399/10)

(2010/C 301/84)

*Language of the case: English*

**Parties**

*Applicant:* ArcelorMittal España, SA (Gozón, Spain) (represented by: A. Creus Carreras and A. Valiente Martin, lawyers)

*Defendant:* European Commission

**Form of order sought**

- annul Articles 1, 2, 3 and 4 of the Decision insofar as they relate to ArcelorMittal España, S.A.;
- in the alternative, annul the fine imposed on ArcelorMittal España, S.A.;
- and, as a further alternative, decrease the amount of the fine imposed on ArcelorMittal España, S.A.

**Pleas in law and main arguments**

By means of its application, the applicant seeks the annulment of Article 1, 2, 3 and 4 of Commission decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Pre-stressing steel, by which the Commission found that the applicants, together with other undertakings had infringed Article 101 TFEU and Article 53 EEA by participating in a continuing agreement or concerted practice in the pre-stressing steel sector at the pan-European and/or national/regional levels. Furthermore, it seeks the annulment or reduction of the fine imposed on it.

In support of the action, the applicant relies on 6 pleas in law.

First, the applicant claims that the Commission has violated the fundamental right to an impartial tribunal provided for in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') and Article 47 of the Charter of Fundamental Rights insofar as the fine was imposed by an administrative authority which holds simultaneously powers of investigation and sanction.

Second, it submits that the Commission has committed the errors in the calculation of the fine, which led to a larger fine being imposed on the applicant.

Third, it contends that the Commission has erroneously found that the applicant exercised decisive influence on Emesa and Galycas' prior to December 1997.

Fourth, it argues that the Commission has illegally refused to grant the applicant a partial immunity under paragraph 23 of the 2002 Leniency Notice <sup>(1)</sup>, although it provided decisive evidence on the duration and gravity of the infringement and thus, fulfilled the requirements stated therein.

Finally, the applicant claims that the Commission has incorrectly applied the 'specific increase for deterrence' provided for in paragraph point 30 of the Commission 2006 Fining Guidelines <sup>(2)</sup>, resulting in an illegal 20 % increase of the fine imposed on the applicant.

<sup>(1)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases, OJ 2002 C 45, p. 3

<sup>(2)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003, OJ 2006 C 210, p. 2

**Action brought on 9 September 2010 — Villeroy & Boch — Belgium v Commission**

(Case T-402/10)

(2010/C 301/85)

*Language of the case: Dutch*

**Parties**

*Applicant:* Villeroy & Boch — Belgium (Brussels, Belgium) (represented by: O. Brouwer and J. Blockx, lawyers)

*Defendant:* European Commission

**Form of order sought**

- annul the contested decision in so far as it concerns Villeroy & Boch Belgium N.V./S.A.;
- in the alternative, reduce the fine imposed on the applicant; and also
- order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

The applicant seeks the partial annulment of Commission Decision C(2010) 4185 of 23 June 2010 in Case COMP/39092 — *Bathroom fixtures and fittings*, relating to an infringement of Article 101(1) TFEU on the market for taps, shower cabins and ceramic products.

The applicant puts forward seven pleas in support of its action:

- breach of Article 101 TFEU, Article 53 of the EEA Agreement and settled case-law in so far as the Commission incorrectly assumed that there had been a single and continuous infringement;
- breach of the duty to state reasons flowing from Article 296(2) TFEU on account of an inadequate and defective statement of reasons in relation to the finding of a single and continuous infringement;
- breach of the duty to state reasons in relation to the applicant's alleged participation in the infringement of which it stands accused on the Belgian market and absence of evidence that the applicant participated in that infringement on the Belgian market;
- the joint and several liability for the fine imposed on the applicant and its parent company infringes the principle *nulla poena sine lege* laid down in Article 49(1) of the Charter of Fundamental Rights of the European Union and the principle of the proportionality of the penalty to the offence pursuant to Article 49(3) in conjunction with Article 48(1) of the Charter, and infringement of Article 23 of Regulation (EC) No 1/2003;
- miscalculation of the amount of the fine, since that amount relates to certain turnover which has no connection with the infringement of which the applicant stands accused;
- breach of Article 41 of the Charter, since the disproportionate length of the procedure did not result in a reduction of the fine;
- breach of Article 23(3) of Regulation No 1/2003 on account of the incorrect setting of the fine in the light of the gravity of the infringement and incorrect setting of the 'deterrent factor', as well as the disproportionate amount of the fine in absolute terms.

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**Action brought on 10 September 2010 — Justice & Environment v Commission**

(Case T-405/10)

(2010/C 301/86)

*Language of the case: English*

**Parties**

*Applicant:* Justice & Environment (Amsterdam, Netherlands) (represented by: P. Černý, lawyer)

*Defendant:* European Commission

**Form of order sought**

- declare the contested measures (Commission Decisions 2010/135/EU and 2010/136/EU and the response of the Commission C(2010) 4632) null and void.

**Pleas in law and main arguments**

By means of the present application, the applicant seeks the annulment of Commission Decisions 2010/135/EU<sup>(1)</sup> and 2010/136/EU<sup>(2)</sup> concerning the placing on the market as food and feed of a genetically modified potato product as well as of Commission Decision C(2010) 4632 rejecting the request for internal review lodged by the applicant on the basis of Title IV of Regulation (EC) No 1367/2006<sup>(3)</sup>.

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

It claims that in adopting Decisions 2010/135/EU and 2010/136/EU the Commission infringed essential procedural requirements within the meaning of Article 263 TFEU and its obligations under Article 4 (2) of Directive 2001/18/EC<sup>(4)</sup>. In the applicant's opinion the contested Decisions violate certain general principles of EU law as: the risk assessment made by the Commission was contradictory, the Commission made incorrect interpretation of Article 4(2) of Directive 2001/18/EC, the Commission made incomplete consideration of evidence and ignored amended law. The applicant further contends that by allowing the placing on the market of a genetically modified potato product the Commission Decision 2010/136/EU also violates Regulation No 1829/2003/EC<sup>(5)</sup>.

Further, the applicant submits that the Commission Decision C(2010) 4632 is unlawful as it upholds the unlawfulness of the aforementioned two contested Commission Decisions by refusing the request for internal review lodged by the applicant. Furthermore, the applicant claims that the Commission failed to comply with the principle of good administration of justice and its obligation to properly consider evidence in the administrative decision-making process since it has failed to properly consider the arguments submitted by the applicant in its request for internal review.

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<sup>(1)</sup> Commission Decision of 2 March 2010 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of a potato product (*Solanum tuberosum* L. line EH92-527-1) genetically modified for enhanced content of the amylopectin component of starch (notified under document C(2010) 1193), OJ 2010 L 53, p. 11

<sup>(2)</sup> Commission Decision of 2 March 2010 authorising the placing on the market of feed produced from the genetically modified potato EH92-527-1 (BPS-25271-9) and the adventitious or technically unavoidable presence of the potato in food and other feed products under Regulation (EC) No 1829/2003 of the European Parliament and of the Council (notified under document C(2010) 1196), OJ 2010 L 53, p. 15

<sup>(3)</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ 2006 L 264, p. 13

<sup>(4)</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, OJ 2001 L 106, p. 1

<sup>(5)</sup> Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed, OJ 2003 L 268, p. 1

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**Action brought on 15 September 2010 — Emesa-Trefilería and Industrias Galyca v Commission**

(Case T-406/10)

(2010/C 301/87)

*Language of the case: English*

**Parties**

*Applicants:* Emesa-Trefilería, SA (Arteixo, Spain) and Industrias Galyca, SA (Vitoria, Spain) (represented by: A. Creus Carreras and A. Valiente Martin, lawyers)

*Defendant:* European Commission

**Form of order sought**

- annul the contested Decision insofar as it affects the applicants;
- in the alternative, cancel or reduce the fine imposed on the applicants;
- order the Commission to pay the costs of these proceedings.

**Pleas in law and main arguments**

By means of their application, the applicants seek partial annulment of Commission decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Pre-stressing steel, by which the Commission found that the applicants, together with other undertakings, had infringed Article 101 TFEU and Article 53 EEA by participating in a continuing agreement or concerted practice in the pre-stressing steel sector at the pan-European and/or national/regional levels. Furthermore, they seek the annulment or reduction of the fine imposed on them.

In support of the action, the applicants rely on three pleas in law.

First, they claim that the Commission has violated the fundamental right to an impartial tribunal provided for in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) and Article 47 of the Charter of Fundamental Rights in so far as the fine was imposed by an administrative authority which holds simultaneously powers of investigation and sanction.

Second, they submit that the Commission has illegally refused to grant the applicants a reduction of their fines under the 2002 Leniency Notice<sup>(1)</sup>, since the decision relies extensively on evidence originating from Emesa.

Finally, they contend that the Commission has illegally refused to grant the applicants a partial immunity under paragraph 23

of the 2002 Leniency Notice, although Emesa provided decisive evidence having a bearing on the duration and gravity of the infringement.

<sup>(1)</sup> Commission notice on immunity from fines and reduction of fines in cartel cases, OJ 2002 C 45, p. 3

**Action brought on 8 September 2010 — Roca Sanitario v Commission**

(Case T-408/10)

(2010/C 301/88)

*Language of the case: Spanish*

**Parties**

*Applicant:* Roca Sanitario SA (Barcelona, Spain) (represented by: J. Folguera Crespo and M. Merola, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annulment in part of Articles 1, 2 and 4 of European Commission Decision C(2010) 4185 of 23 June 2010 in so far as they relate to Roca Sanitario;
- in the alternative, reduction of the fine imposed on Roca Sanitario, as requested in the application, to the extent that the Court deems appropriate for the reasons set out or for such other reasons as the Court may determine;
- in the further alternative, if the Court should give judgment in other actions brought by Roca France or Laufen Austria, reducing the fine imposed in the European Commission Decision of 23 June 2010 for infringements by these companies for which Roca Sanitario is jointly and severally liable, a declaration that Roca Sanitario is entitled to an equivalent reduction in the amount of the fine for which it is jointly and severally liable;
- an order that the Commission should pay the costs incurred by Roca Sanitario.

**Pleas in law and main arguments**

The decision contested in these proceedings is the same as that contested in Case T-364/10 *Duravit and Others v Commission* and Case T-368/10 *Rubinetteria Cital v Commission*.

The pleas in law and main arguments are similar to those relied on in those cases.

The applicant submits, in particular, that the Commission made a manifest error of assessment in determining that the applicant was jointly and severally liable for the infringements allegedly committed by Roca France and Laufe Austria, substantially exceeding the maximum amount of the fine that may be fixed under Article 23(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. <sup>(1)</sup>

It is also submitted that the contested decision disregards, without giving reasons, the considerable amount of evidence adduced, which, for the purposes of the attribution of liability and calculation of the fine, rebuts the presumption that the applicant exercised decisive influence over Roca France and Laufen Austria.

The applicant submits that the contested decision is contrary to the rights of the defence, since it attributed liability to the applicant on the basis of facts and subjective assessments not contained in the statement of objections, and in respect of which the applicant was not afforded the opportunity to give its views.

<sup>(1)</sup> OJ 2003 L 1, p. 1.

**Action brought on 13 September 2010 — Bottega Veneta International v OHIM (Shape of a handbag)**

(Case T-409/10)

(2010/C 301/89)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Bottega Veneta International Sarl (Luxembourg, Luxembourg) (represented by P. Roncaglia, G. Lazzarotti, M. Boletto and E. Gavuzzi, 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 of 16 June 2010 in Case R 1247/2009-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the present proceedings and the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* Trade mark consisting of a distinctive three-dimensional sign known as the 'veneta' bag (application for registration No 6632608) for goods in Class 18 ('bags and handbags').

*Decision of the Examiner:* Refused the application for registration.

*Decision of the Board of Appeal:* Dismissed the appeal.

*Pleas in law:* Infringement of Rule 9(3)(a) of Regulation No 2868/95 and Article 7(1)(b) and (3) of Regulation No 207/2009.

**Action brought on 13 September 2010 — Bottega Veneta International v OHIM (Shape of a handbag)**

(Case T-410/10)

(2010/C 301/90)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Bottega Veneta International Sarl (Luxembourg, Luxembourg) (represented by P. Roncaglia, G. Lazzarotti, M. Boletto and E. Gavuzzi, 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 of 16 June 2010 in Case R 1539/2009-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs of the present proceedings and the proceedings before the Board of Appeal.

**Pleas in law and main arguments**

*Community trade mark concerned:* Trade mark consisting of a distinctive three-dimensional sign known as the 'Cabat' bag (application for registration No 6632566) for goods in Class 18 ('bags and handbags').

*Decision of the Examiner:* Refused the application for registration.

*Decision of the Board of Appeal:* Dismissed the appeal.

*Pleas in law:* Infringement of Rule 9(3)(a) of Regulation No 2868/95 and Article 7(1)(b) and (3) of Regulation No 207/2009.

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**Action brought on 8 September 2010 — Laufen Austria v Commission**

(Case T-411/10)

(2010/C 301/91)

*Language of the case:* Spanish

**Parties**

*Applicant:* Laufen Austria AG (Wilhelmsburg, Austria) (represented by: E. Navarro Varona, lawyer)

*Defendant:* European Commission

**Form of order sought**

- Annul in part Articles 1 and 2 of the Decision of the European Commission of 23 June 2010 with regard to the fine imposed on Laufen Austria (considered both individually and jointly and severally with Roca Sanitario) for the alleged infringement of Article 101 TFEU; and consequently
- reduce the fine imposed on Laufen Austria, considered individually and jointly and severally with Roca Sanitario, in accordance with the claim set out in the application, in so far as the Court deems it appropriate on the grounds stated or on other grounds which it may consider;
- order the Commission to pay the costs incurred by Laufen Austria.

**Pleas in law and main arguments**

The contested decision in these proceedings is the same as in Case T-408/10 *Roca Sanitario v Commission*.

The pleas in law and main arguments are similar to those put forward in that case.

It is maintained, in particular, that the decision at issue, in holding that the applicant did not operate independently on the market and declaring Roca Sanitario to be responsible for its conduct, is vitiated by a manifest error of assessment.

In that regard and in the alternative, the decision infringes Article 23 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty as well as the principle of individual responsibility for infringements and the principle of proportionality, in relation to the amount of the fine imposed individually on the applicant for the infringement allegedly committed prior to its acquisition by Roca Sanitario. That amount exceeds 10 % of its turnover in the year preceding adoption of the contested decision and has been incorrectly established.

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**Action brought on 9 September 2010 — Roca v Commission**

(Case T-412/10)

(2010/C 301/92)

*Language of the case:* Spanish

**Parties**

*Applicant:* Roca Sàrl (Saint Ouen L'Aumone, France) (represented by: P. Vidal Martínez, lawyer)

*Defendant:* European Commission

**Form of order sought**

- Annulment in part of Articles 1 and 2 of Commission Decision C(2010) 4185 of 23 June 2010 in so far as it imposes a disproportionate fine on Roca Sarl ('Roca France') for breach of Article 101 TFEU;
- accordingly, reduction of the fine imposed on Roca France, as requested in the present application, to the extent that the Court deems appropriate for the reasons set out or for such other reasons as the Court may determine, and
- an order that the Commission should pay the costs incurred by Roca France.

**Pleas in law and main arguments**

The decision contested in these proceedings is the same as that contested in Case T-408/10 *Roca Sanitario v Commission* and Case T-411/10 *Laufen Austria v Commission*.

The pleas in law and main arguments are similar to those relied on in those cases.

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**Action brought on 18 September 2010 — Nexans France v  
Joint Undertaking Fusion for Energy**

(Case T-415/10)

(2010/C 301/93)

*Language of the case: French*

**Parties**

*Applicant:* Nexans France SAS (Clichy, France) (represented by: J.-P. Tran Thiet and J.-F. Le Corre, lawyers)

*Defendant:* European Joint Undertaking for ITER and the Development of Fusion Energy

**Form of order sought**

- rule that the procurement contract was awarded following a procedure during which the principles of legal certainty, legitimate expectations, transparency, equal treatment and proper administration were infringed;
- rule that the defendant erred in law by leaving the applicant in doubt as to the defendant's decision to reject the applicant's tender without evaluating it, and by informing the applicant of that decision only by its letter of 16 July 2010;
- rule that the defendant erred in law by rejecting the applicant's tender on the basis of Article 120(4) of the rules for implementing its Financial Regulation;
- declare the decision of 16 July null and void;
- declare the decision of 8 July null and void;
- declare all the acts adopted by the defendant subsequent to the decisions of 8 and 16 July null and void;
- award the applicant appropriate compensation of EUR 175 453, plus interest from the date of delivery of judgment until full payment (subject to determination of the precise value of the procurement contract and final calculation of lawyers' fees, which cannot be given until the conclusion of these proceedings);
- in the alternative, if it appears at the time judgment is delivered that it is unlikely that a new call for tenders will be issued for the procurement contract, award the applicant appropriate compensation of EUR 50 175 453, plus interest from the date of delivery of judgment until full payment (subject to determination of the precise value of the procurement contract and final calculation of lawyers' fees, which cannot be given until the conclusion of these proceedings);
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant seeks annulment of the decisions of the European Joint Undertaking for ITER and the Development of Fusion Energy rejecting the tender submitted by the applicant in tendering procedure F4E-2009-OPE-18 (MS-MG) for the conclusion of contracts for the supply of electrical equipment (OJ 2009/S 149-218279) and awarding the procurement contract to another tenderer. The applicant also seeks compensation for the loss allegedly caused by the contested decisions.

In support of its action, the applicant puts forward a number of pleas, alleging:

- infringement of the principles of legal certainty and transparency, since the defendant did not inform the applicant that its tender would be rejected without being evaluated if it refused to sign the draft contract annexed to the procurement contract, thus preventing the applicant from ascertaining the extent of its obligations as a tenderer;
- infringement of the principle of legitimate expectations, since the defendant gave assurances to the applicant that it would not automatically reject its tender;
- infringement of the principles of equal treatment and equal opportunity for tenderers for a public procurement contract in that:
  - the tendering procedure was arranged in such a way as to favour the tender submitted by ICAS Consortium (the successful tenderer), since the time-limits imposed in respect of the procurement contract were clearly inadequate and disproportionate as they could not be met in practice by tenderers not having a special production line, possessed only by ICAS Consortium;
  - there was a conflict of interests which favoured the tender submitted by ICAS Consortium, since a person working for a member of ICAS Consortium took part in the tender selection procedure and another person working for a member of ICAS Consortium took part in the preparation of the call for tenders;
  - ICAS Consortium possessed information which placed it in an advantageous position, since a person employed by a member of ICAS Consortium visited, as an expert for ITER, the applicant's factories in Korea and cable factories in China and Japan;

- infringement of the principle of proper administration and Articles 84 and 94 of the Financial Regulation, since the evaluation procedure was proceeded with, even though only one tender remained and the defendant took no action when the applicant informed it of a conflict of interests that favoured ICAS Consortium;
- an error of law committed by the defendant in rejecting the applicant's tender on the basis of Article 120(4) of the Implementing Rules of the Financial Regulation, since that article does not allow a tender to be rejected automatically without being evaluated, unless it fails to meet an essential requirement or a specific requirement in the specification;
- the alleged infringements of the legal rules caused direct and certain loss to the applicant, for which it is justified in seeking compensation.

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**Action brought on 13 September 2010 — Cortés del Valle López v OHIM (HIJOPUTA)**

**(Case T-417/10)**

(2010/C 301/94)

*Language of the case: Spanish*

**Parties**

*Applicant:* Federico Cortés del Valle López (Maliaño, Spain) (represented by J. Calderón Chavero, lawyer)

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

**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) (OHIM) of 18 June 2010 in case R 175/2010-2;
- consequently, annul the OHIM examiner's decision of 24 November 2009;
- uphold the applicant's claims;
- order the defendant to pay the costs of the present proceedings should they be contested and reject its contentions.

**Pleas in law and main arguments**

*Community trade mark concerned:* Figurative mark containing the word element '¡Que bueno ye! HIJOPUTA' for goods and services in Classes 33, 35 and 39.

*Decision of the Examiner:* Application for a Community trade mark refused.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* No infringement of Article 7(1)(f) of Regulation No 207/2009,<sup>(1)</sup> as the mark applied for is not contrary to accepted principles of morality.

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

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**Action brought on 15 September 2010 — voestalpine and voestalpine Austria Draht v Commission**

**(Case T-418/10)**

(2010/C 301/95)

*Language of the case: German*

**Parties**

*Applicants:* voestalpine AG (Linz, Austria), voestalpine Austria Draht GmbH (Bruck an der Mur, Austria) (represented by: A. Ablasser-Neuhuber and G. Fussenegger, lawyers)

*Defendant:* European Commission

**Form of order sought**

- Annul Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement in Case COMP/38.344 — Prestressing steel, in so far as it relates to the applicants;
- in the alternative, reduce the fine imposed on the applicants under Article 2 of the Decision;
- order the Commission to pay the costs.

**Pleas in law and main arguments**

The applicants contest Commission Decision C(2010) 4387 final of 30 June 2010 in Case COMP/38.344 — Prestressing steel. The contested decision imposed fines on the applicants and other undertakings for infringement of Article 101 TFEU and Article 53 of the EEA Agreement. According to the Commission, the applicants participated in a continuing agreement and/or concerted action in the prestressing steel sector in the internal market and the EEA.

In support of their action, the applicants have submitted three pleas in law.

By the first plea in law, the applicants submit that they did not infringe Article 101 TFEU. They maintain that it is misconceived for them to be held liable for participation exclusively by virtue of a commercial agent in Italy, since that commercial agent did not represent the applicants at meetings of the 'Club Italia'; the conduct of a non-exclusive commercial agent cannot be imputed to the applicants in the absence of an economic unit; the defendant's automatic imputation of the conduct of a non-exclusive commercial agent is contrary to the case-law of the Court; and the applicants had no knowledge at all of the commercial agent's actions. In the alternative, it is submitted that the duration of the infringement was set incorrectly with respect to the applicants.

By the second plea in law, the applicants deny any participation in a single, complex and continuing infringement. They submit, inter alia, that the 'Club Italia' infringement is to be distinguished from other infringements referred to in the contested decision. Furthermore, they submit that they did not participate in a single, complex and continuing infringement since they had no knowledge of the overall plan, could not reasonably have foreseen it and would not have been prepared to accept the risks arising therefrom.

Lastly, by their third plea, the applicants complain of errors in the calculation of the fine. The applicants allege infringement of the principle of proportionality, since a disproportionately large fine was imposed in connection with new (unforeseeable) legal issues and the same fine was imposed in the case of mere knowledge of infringements by other undertakings. Furthermore, infringements are said to have occurred in respect of the principle of equal treatment, the Guidelines on setting fines <sup>(1)</sup> and the rights of the defence, as well as the right to a fair trial.

<sup>(1)</sup> Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

## Action brought on 14 September 2010 — Ori Martin v Commission

(Case T-419/10)

(2010/C 301/96)

*Language of the case: Italian*

### Parties

*Applicant:* Ori Martin SA (Luxembourg, Luxembourg) (represented by: P. Ziotti, lawyer)

*Defendant:* European Commission

### Form of order sought

— Annulment of the decision of the European Commission of 30 June 2010 C(2010) 4387 final on a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Prestressing steel), in so far as it attributes to the applicant liability for the conduct penalised;

— annulment or reduction of the fine imposed under Article 2 of that decision;

— an order that the Commission should pay the costs.

### Pleas in law and main arguments

The decision contested in this case is the same as that in Case T-385/10 *Arcelor/Mittal Wire France v Commission*.

The applicant maintains that the European Commission decision C(2010) 4387 final of 30 June 2010 is unlawful in that it makes the applicant liable solely because it (almost) wholly owns the company which is alleged to have committed the collusive acts penalised under Article 101 TFEU.

In particular, the applicant pleads:

— infringement of Article 25(1)(b) of Regulation (EC) No 1/23, in that the Commission's power to impose fines was time-barred in the circumstances of the case;

— infringement of Article 101 TFEU and breach of the principles of the personal nature of liability and penalties, of sound administration and non-discrimination, in that the Commission goes so far as to attribute to the applicant real and personal strict liability for the possibly unlawful acts committed by the company it controls, liability subject to an irrebuttable presumption which cannot in point of fact be challenged by evidence to the contrary. That liability on the basis of ownership is unexampled and contrary to the principles laid down by Community case-law in relation to the application of Article 101 TFEU when groups of companies are concerned;

— breach of the principle that capital companies enjoy limited liability by virtue of the company law common to the laws of the Member States and to the law of the European Union itself.

Ori Martin then seeks annulment or, at least, a considerable reduction of the fine imposed.

**Action brought on 17 September 2010 — Armani v OHIM  
— Annunziata del Prete (AJ AMICI JUNIOR)**

(Case T-420/10)

(2010/C 301/97)

*Language in which the application was lodged: Italian*

**Parties**

*Applicant:* Giorgio Armani SpA (Milan, Italy) (represented by: M. Rapisardi, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Annunziata del Prete (Naples, Italy)

**Form of order sought**

The applicant claims that the Court should:

- annul Decision R 1360/2009-2 of 8 July 2010 of the Second Board of Appeal for misapplication and infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 in failing to recognise that there is a risk of confusion between the marks at issue;
- uphold the applicant's arguments as put forward in the opposition proceedings and in accordance with the decision of the Opposition Division;
- reject in its entirety, pursuant to Article 8(1)(b) of Regulation (EC) No 207/2009, Community trade mark application No 6 314 462 in the name of Annunziata del Prete, in respect of the goods and services specified therein;
- order OHIM to comply with the decision and to refuse registration of the mark 'AJ AMICI JUNIOR';
- order OHIM, alone and/or together with Annunziata del Prete, to reimburse Giorgio Armani SpA all costs incurred throughout the procedure;
- decide, as a consequence of the annulment, that payment should be made to Giorgio Armani SpA of all the costs incurred in the course of the procedure, including the costs incurred in the appeal, in accordance with Article 91[(b)] of the Rules of Procedure of 2 May 1991.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Annunziata del Prete

*Community trade mark concerned:* Figurative mark containing the word element 'AJ Amici Junior' (registration application No 6 314 462), for goods and services in Classes 9, 25 and 35

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

*Mark or sign cited in opposition:* Italian figurative mark containing the word element 'AJ Armani Jeans' (No 912 114), for goods in Classes 9, 25 and 35, and the Italian word mark containing the word element 'ARMANI JUNIOR' (No 998 554), for goods in Classes 25 and 35

*Decision of the Opposition Division:* Opposition upheld

*Decision of the Board of Appeal:* Appeal upheld

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 with regard to the existence of a risk of confusion between the marks at issue and between the goods covered by those marks

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**Action brought on 20 September 2010 — Cooperativa Vitivinícola Arousana v OHIM — Constantina Sotelo Ares (ROSALIA DE CASTRO)**

(Case T-421/10)

(2010/C 301/98)

*Language in which the application was lodged: Spanish*

**Parties**

*Applicant:* Cooperativa Vitivinícola Arousana, S. Coop. Galega (Meaño, Spain) (represented by: E Sánchez-Quiñones González, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Doña Constantina Sotelo Ares (Cambados, Spain)

**Form of order sought**

- Annul the decision of the Fourth Board of Appeal of OHIM of 19 July 2010 in Case R 1804/2008-4;

— order that trade mark 5635867 ROSALIA DE CASTRO be granted in respect of Classes 32, 33 and 35;

— order the defendant to pay the costs, annulling the costs which the applicant was ordered to pay in the appeal.

### **Pleas in law and main arguments**

*Applicant for a Community trade mark:* Cooperativa Vitivinícola Arousana, S. Coop. Galega.

*Community trade mark concerned:* Word mark 'ROSALIA DE CASTRO' for goods and services in Classes 32, 33 and 35.

*Proprietor of the mark or sign cited in the opposition proceedings:* Doña Constantina Sotelo Ares.

*Mark or sign cited in opposition:* Spanish word mark 'ROSALIA' for goods and services in Class 33.

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal allowed and opposition upheld.

*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.

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<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 17 September 2010 — Global Steel Wire v Commission**

(Case T-429/10)

(2010/C 301/99)

*Language of the case:* Spanish

### **Parties**

*Applicant:* Global Steel Wire, SA (Cerdanyola del Vallés, Spain) (represented by: F. González Díaz and A. Tresandí Blanco, lawyers)

*Defendant:* European Commission

### **Form of order sought**

— Principally, annul, under Article 263 of the Treaty on the Functioning of the European Union (TFEU), Commission Decision C(2010) 4387 (final) of 30 June 2010 in Case COMP 38344 — Prestressing steel;

— in the alternative, annul or reduce, under Article 261 TFEU, the amount of the fine imposed by that decision;

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

### **Pleas in law and main arguments**

The contested decision in these proceedings is the same as in Case T-426/10 (*Moreda-Rivière Trefilerías v Commission*).

The pleas in law and main arguments are similar to those advanced in that case.

In particular, the applicant submits that the European Commission failed to meet the standard of proof required by Community case-law when it held GSW liable for the conduct of its subsidiaries. The European Commission did not prove that GSW was able to exercise a decisive influence over the conduct of the companies in which it held shares.



## EUROPEAN UNION CIVIL SERVICE TRIBUNAL

**Action brought on 24 July 2010 — AF v Commission**

*Defendant:* Council of the European Union

(Case F-61/10)

(2010/C 301/100)

*Language of the case:* French

### Parties

*Applicant:* AF (Luxembourg, Luxembourg) (represented by: F. Frabetti, lawyer)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the defendant's decision refusing the request for assistance relating to psychological harassment of which the applicant claims to have been a victim and claim for compensation for the non-material damage suffered.

### Form of order sought

— annul Decision No 24938 of 28 September 2009 by which the appointing authority of the Commission refused the request for assistance D/300/09 brought by the applicant pursuant to Article 24 of the Staff Regulations, concerning the psychological harassment suffered and/or experienced in his service in the period subject to all necessary reservations from April 2004 to April 2009;

— allocate to the applicant EUR 600 000 as compensation for the non-material damage suffered as a result of the harassment and the effect on his health;

— order the European Commission to pay the costs.

**Action brought on 3 September 2010 — Coedo Suárez v Council**

(Case F-73/10)

(2010/C 301/101)

*Language of the case:* French

### Parties

*Applicant:* Ángel Coedo Suárez (Brussels, Belgium) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

### Subject-matter and description of the proceedings

Annulment of the decision of the defendant rejecting the applicant's claim for compensation and his claim for compensation for material and non-material damage suffered.

### Form of order sought

— Annul the decision of the Appointing Authority rejecting the applicant's claim for compensation and, if necessary, the decision of the Appointing Authority rejecting the claim in full;

— with regard to compensation for material damage, order the defendant to pay the sum, fixed provisionally and ex aequo et bono, of EUR 450 000, together with late payment interest at the statutory rate from the date of the judgment;

— with regard to compensation for non-material damage, order the defendant, as the principal claim, properly to reinstate the applicant and to pay him a symbolic Euro or, in the alternative, to pay him the sum, fixed provisionally and ex aequo et bono, of EUR 300 000, together with late payment interest at the statutory rate from the date of the judgment;

— order the Council of the European Union to pay the costs.

**Action brought on 9 September 2010 — Kimman v Commission**

(Case F-74/10)

(2010/C 301/102)

*Language of the case:* French

### Parties

*Applicant:* Eugène Emile Kimman (Overijse, Belgium) (represented by: L. Levi, lawyer)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the applicant's appraisal report for 2008.

**Form of order sought**

- Annul the applicant's appraisal report for 2008;
- Order the European Commission to pay the costs.

**Action brought on 10 September 2010 — Scheefer v Parliament**

(Case F-75/10)

(2010/C 301/103)

*Language of the case: French***Parties**

*Applicant:* Séverine Scheefer (Luxembourg, Luxembourg) (represented by: C. L'Hote-Tissier, lawyer)

*Defendant:* European Parliament

**Subject-matter and description of the proceedings**

Annulment of the defendant's decisions refusing to issue a reasoned decision in relation to the applicant's legal status and in particular refusing to reclassify the applicant's temporary staff contract as engagement for an indefinite period in accordance with the first paragraph of Article 8 of the Conditions of Employment of Other Servants of the European Communities (CEOS) and compensation for the harm suffered by the applicant.

**Form of order sought**

The applicant claims that the Tribunal should:

- annul the legal classification of the initial contract and its expiry date set for 31 March 2009;
- consequently, reclassify the applicant's engagement as engagement for an indefinite period;
- award compensation for the harm suffered by the applicant because of the Parliament's conduct;
- alternatively, and in the improbable event that the Tribunal were to conclude that notwithstanding the creation of an engagement for an indefinite period, the employment relationship had ended — which is not accepted — award damages for the wrongful termination of the contractual relationship;
- further in the alternative, and in the improbable event that the Tribunal were to conclude that no reclassification was possible — which is not accepted — award damages for the harm suffered by the applicant because of the wrongful conduct of the European Parliament;
- reserve to the applicant all other rights, remedies, pleas and actions, and in particular an order that the European Parliament pay damages corresponding to the extent of the harm suffered;
- order the European Parliament to pay the costs.

**Action brought on 10 September 2010 — Colart and Others v Parliament**

(Case F-76/10)

(2010/C 301/104)

*Language of the case: French***Parties**

*Applicant:* Philippe Colart (Bastogne, Belgium) and Others (represented by: C. Mourato, lawyer)

*Defendant:* European Parliament

**Subject-matter and description of the proceedings**

Annulment of the applicants' correcting pay slips for the period from July to December 2009 and the pay slips issued after 1 January 2010 in the context of the annual adjustment of remuneration and pensions of officials and other servants on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

**Form of order sought**

— Annul the applicants' RG 2009 pay slips (adjustment arrears from July to December 2009), their pay slips of January 2010 and their subsequent pay slips, since those pay slips apply an adjustment rate of 1,85 % instead of 3,70 %, on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009, while preserving the effect of those pay slips until the adoption of fresh pay slips which apply correctly Articles 65 and 65a of the Staff Regulations and Articles 1 and 3 of Annex XI to the Staff Regulations (2010 version)

— Order the European Parliament to pay the costs.

**Action brought on 13 September 2010 — Arroyo Redondo v Commission**

(Case F-77/10)

(2010/C 301/105)

*Language of the case: French*

**Parties**

*Applicant:* Fernando Arroyo Redondo (Luxembourg, Luxembourg) (represented by: E. Boigelot and S. Woog, lawyers)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

Annulment of the defendant's decision not to include the applicant on the list of officials promoted to grade AD10 under the 2009 promotion exercise.

**Form of order sought**

— annul the Commission decision, published on 20 November 2009, not to include the applicant on the list of officials promoted from grade AD9 to AD10 under the 2009 promotion exercise;

— as a consequence of that annulment, undertake a further comparative examination of the merits of the applicant and those of the other candidates under the 2009 promotion exercise and promote the applicant to AD10 with retroactive effect from 1 March 2009 together with the payment of interest on the arrears of pay at the rate applied by the European Central Bank for its main refinancing operations, from 1 March 2009, increased by 2 points, without however challenging the promotion of the

other officials promoted whose names appear on the list published on 20 November 2009;

— order the European Commission to pay the costs.

**Action brought on 18 September 2010 — Antelo Sanchez and Others v Parliament**

(Case F-78/10)

(2010/C 301/106)

*Language of the case: French*

**Parties**

*Applicants:* Pilar Antelo Sanchez (Brussels, Belgium) and Others (represented by: M. Casado Garcia-Hirschfeld, lawyer)

*Defendant:* European Parliament

**Subject-matter and description of the proceedings**

Annulment of the defendant's decision, reproduced in the applicants' pay slips, to limit the adjustment of their monthly salaries from July 2009 to an increase of 1,85 %, as part of the annual adjustment of remunerations and pensions of officials and other servants on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

**Form of order sought**

— annul the contested decision in so far as it fixes the rate of adjustment of salaries at 1.85 % in accordance with 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;

— award the applicants default interest, calculated in accordance with the rate fixed by the European Central Bank, payable in respect of all sums corresponding to the difference between the salary mentioned in pay slips from January 2010 and those for pay adjustments for the period from July 2009 to December 2009 and the salary to which they would have been entitled until the date on which the belated settlement of those salaries took place;

— order the European Parliament to pay the costs.

**Action brought on 17 September 2010 — Dubus v Commission**

(Case F-79/10)

(2010/C 301/107)

*Language of the case: French***Parties**

*Applicant:* Charles Dubus (Tervuren, Belgium) (represented by: E. Boigelot and S. Woog, lawyers)

*Defendant:* European Commission

**Subject-matter and description of the proceedings**

Annulment of the defendant's decision not to include the applicant in the list of officials promoted to grade AST4/C under the 2009 promotion exercise and application for compensation for non-material damage suffered

**Form of order sought**

- annul the Commission's decision, published on 20 November 2009, not to include the applicant on the list of officials promoted from grade AST3/4 to grade AST4/C under the 2009 promotion exercise;
- as a consequence of that annulment, undertake a further comparative examination of the applicant's merits and those of the other candidates under the 2009 promotion exercise and promote the applicant to grade AST4C with retroactive effect from 1 January 2009 together with the payment of interest on the arrears of pay at the rate applied by the European Central Bank in its main refinancing operations, from 1 January 2009, increased by 2 points, without however challenging the promotion of the other officials promoted and whose names appear on the list published on 20 November 2009;
- order the Commission to pay the applicant EUR 3 500 compensation for non-material damage suffered as a result of the fact that he was not promoted on 1 January 2009, without prejudice to any increase during the proceedings;

- order the European Commission to pay the costs.

**Action brought on 24 September 2010 — Praskevicius v Parliament**

(Case F-81/10)

(2010/C 301/108)

*Language of the case: French***Parties**

*Applicant:* Vidas Praskevicius (Luxembourg, Luxembourg) (represented by: P. Nelissen Grade and G. Leblanc, lawyers)

*Defendant:* European Parliament

**Subject-matter and description of the proceedings**

Annulment of the defendant's decision not to include the applicant in the list of officials promoted to grade AD6 for 2009 and [rejection] of the claim for non-material damage.

**Form of order sought**

- Annul the decision of the Appointing Authority of 21 June 2010 rejecting the applicant's claim;
- annul the decision of the Appointing Authority of 24 November 2009, notified on 2 December 2009, not to include the applicant in the list of officials promoted to grade AD6 for 2009;
- inform the Appointing Authority of the effects of annulment of the contested decisions, in particular classification in grade AD6 and the retroactivity of promotion to grade AD6 from the date on which it should have become effective, that is to say, 1 January 2009;
- grant the applicant EUR 500 in respect of compensation for non-material damage;
- order the European Parliament to pay the costs.









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