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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 63/01)

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

OJ C 55, 19.2.2011

Past publications

OJ C 46, 12.2.2011

OJ C 38, 5.2.2011

OJ C 30, 29.1.2011

OJ C 13, 15.1.2011

OJ C 346, 18.12.2010

OJ C 328, 4.12.2010

These texts are available on:

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V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Bavaria NV v Bayerischer Brauerbund eV

(Case C-120/08) [1]

(Reference for a preliminary ruling — Regulations (EEC) No 2081/92 and (EC) No 510/2006 — Temporal application — Article 14 — Registration in accordance with the simplified procedure — Relations between trade marks and protected geographical indications)

(2011/C 63/02)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bavaria NV

Defendant: Bayerischer Brauerbund eV

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 13(1)(b) and Article 14(1) and (2) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), and of Article 17 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1) — Validity of Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 2001 L 182, p. 3) — Conflict between a protected geographical indication, registered in accordance with the simplified procedure under Article 17 of Regulation (EC) No 2081/92 (here, 'Bayerisches Bier') and an international trade mark (here, a mark including the word 'Bavaria')

Operative part of the judgment

Article 14(1) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs is applicable for resolving the conflict between a name validly registered as a protected geographical indication in accordance with the simplified procedure under Article 17 of that regulation and a trade mark corresponding to one of the situations referred to in Article 13 of that regulation relating to the same type of product, the application for registration of which was submitted both before the registration of that name and before the entry into force of Council Regulation (EC) No 692/2003 of 8 April 2003 amending Regulation No 2081/92. The date of the entry into force of the registration of that name constitutes the reference date for the purposes of Article 14(1) of Regulation No 2081/92.

[1] OJ C 197, 2.8.2008.

Judgment of the Court (Fourth Chamber) of 22 December 2010 — European Commission v Slovak Republic

(Case C-507/08) [1]

(Failure of a Member State to fulfil obligations — State aid — Partial write-off of a company's tax liability as part of an arrangement with creditors — Commission decision declaring that aid incompatible with the common market and ordering its recovery — Failure to execute)

(2011/C 63/03)

Language of the case: Slovak

Parties

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

Defendant: Slovak Republic (represented by: B Ricziová, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Commission Decision 2007/254/EC of 7 June 2006 [notified under number C(2006) 2082], which found that aid granted by the Slovak Republic in favour of Frucona Košice in the form of a write-off of a tax debt by the tax office under an arrangement with creditors was incompatible with the common market and ordered its recovery (State Aid No C-25/2005 (ex NN 21/2005) (OJ 2007 L 112, p. 14).

Operative part of the judgment

The Court:

1. *Declares that, by failing to take within the prescribed period all the measures necessary to recover from the beneficiary the aid referred to in Commission Decision 2007/254/EC of 7 June 2006 on State aid C 25/2005 (ex NN 21/2005) implemented by the Slovak Republic for Frucona Košice a.s., the Slovak Republic has failed to fulfil its obligations under the fourth paragraph of Article 249 EC and Article 2 of that decision;*

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

([1]) OJ C 102, 01.05.2009.

Judgment of the Court (Second Chamber) of 22 December 2010 (reference for a preliminary ruling from the Tribunale amministrativo regionale del Lazio (Italy)) — Gowan Comércio Internacional e Serviços Lda v Ministero della Salute

(Case C-77/09) ([1])

(Plant protection products — Directive 2006/134/EC — Validity — Restrictions on the use of fenarimol as an active substance)

(2011/C 63/04)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale del Lazio

Parties to the main proceedings

Applicant: Gowan Comércio Internacional e Serviços Lda

Defendant: Ministero della Salute

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Validity, as regards the limitations on the use of fenarimol as an active substance, of Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1)

Operative part of the judgment

Consideration of the question referred for a preliminary ruling has disclosed nothing to affect the validity of Commission Directive 2006/134/EC of 11 December 2006 amending Council Directive 91/414/EEC to include fenarimol as active substance.

([1]) OJ C 102, 1.5.2009.

Judgment of the Court (Fourth Chamber) of 22 December 2010 (reference for a preliminary ruling from the Oberste Berufungs- und Disziplinarkommission — Austria) — proceedings brought by Robert Koller

(Case C-118/09) ([1])

('Court or tribunal' within the meaning of Article 234 EC — Recognition of diplomas — Directive 89/48/EEC — Lawyer — Entry on the professional roll of a Member State other than that in which the diploma was recognised as equivalent)

(2011/C 63/05)

Language of the case: German

Referring court

Oberste Berufungs- und Disziplinarkommission

Party to the main proceedings

Robert Koller

Re:

Preliminary ruling — Oberste Berufungs- und Disziplinarkommission — Interpretation of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Applicability of the directive in the case of an Austrian national who, on the basis of the confirmation of his Austrian degree as equivalent and of additional study at a Spanish university for less than three years, was registered with a chamber of lawyers in Spain and, after exercising his profession in Spain for three weeks, applies to be admitted to the aptitude test in order to qualify as a lawyer in Austria on the basis of the authorisation to exercise his profession in Spain

Operative part of the judgment

1. *With a view to gaining access, subject to passing an aptitude test, to the regulated profession of lawyer in a Member State, the provisions of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, as amended by Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 may be relied upon by a person who holds a degree issued in that Member State on completion of a cycle of post-secondary studies lasting more than three years, and who also holds an equivalent degree issued in another Member State after additional training of less than three years and enabling him, in that latter State, to have access to the regulated profession of lawyer, which he was actually practising in the latter State on the date on which he applied for admission to the aptitude test;*

2. *Directive 89/48, as amended by Directive 2001/19, must be interpreted as precluding the competent authorities of the host Member State from denying to a person in a situation such as that of the applicant in the main proceedings authorisation to take the aptitude test for the profession of lawyer without proof of completion of the period of practical experience required by the legislation of that Member State.*

([1]) OJ C 141, 20.6.2009.

Judgment of the Court (Second Chamber) of 22 December 2010 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Ilonka Sayn-Wittgenstein v Landeshauptmann von Wien

(Case C-208/09) ([1])

(European citizenship — Freedom to move and reside in the Member States — Law of a Member State with constitutional status abolishing the nobility in that State — Surname of an adult, a national of that State, obtained by adoption in another Member State, in which that adult resides — Title of nobility and nobiliary particle forming part of the surname — Registration by the authorities of the first Member State in the register of civil status — Correction of the entry by the authorities on their own initiative — Removal of the title of nobility and nobiliary particle)

(2011/C 63/06)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Ilonka Sayn-Wittgenstein

Defendant: Landeshauptmann von Wien

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Art. 18 EC — Constitutional law of a Member State aimed at abolishing the nobility in that State and prohibiting its nationals from bearing foreign noble titles — Refusal of the authorities of that Member State to enter in the register of births a noble title and a noble particle forming part of a surname which an adult person, being a national of that State, acquired in another Member State, in which she resides, following her adoption by a national of that latter State

Operative part of the judgment

Article 21 TFEU must be interpreted as not precluding the authorities of a Member State, in circumstances such as those in the main proceedings, from refusing to recognise all the elements of the surname of a national of that State, as determined in another Member State — in which that national resides — at the time of his or her adoption as an adult by a national of that other Member State, where that surname includes a title of nobility which is not permitted in the first Member State under its constitutional law, provided that the measures adopted by those authorities in that context are justified on public policy grounds, that is to say, they are necessary for the protection of the interests which they are intended to secure and are proportionate to the legitimate aim pursued.

([1]) OJ C 193, 15.08.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Markkinaoikeus — Finland) — Mehiläinen Oy, Terveystalo Healthcare Oy, formerly Suomen Terveystalo Oyj v Oulun kaupunki

(Case C-215/09) ([1])

(Public service contracts — Directive 2004/18/EC — Mixed contract — Contract concluded between a contracting authority and a private company independent of it — Establishment, on an equal basis, of a joint venture to provide health care services — Undertaking by the partners to purchase health care services for their staff from the joint venture for a transitional period of four years)

(2011/C 63/07)

Language of the case: Finnish

Referring court

Markkinaoikeus

Parties to the main proceedings

Applicants: Mehiläinen Oy, Terveystalo Healthcare Oy, formerly Suomen Terveystalo Oyj

Defendant: Oulun kaupunki

Re:

Reference for a preliminary ruling — Markkinaoikeus — Interpretation of Article 1(2)(a) and (d) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Agreement between a municipality and an independent private company for the establishment of a joint undertaking, belonging to them in equal shares, to which their respective occupational health and wellbeing activities are transferred — Agreement by which the municipality and the private company commit themselves to acquiring from the new joint undertaking, during a transitional period, occupational health and wellbeing services for their own employees

Operative part of the judgment

Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that, where a contracting authority concludes with a private company independent of it a contract establishing a joint venture in the form of a share company, the purpose of which is to provide occupational health care and welfare services, the award by the contracting authority of the contract relating to the services for its own staff, the value of which exceeds the threshold laid down by that directive, and which is severable from the contract establishing that company, must be made in accordance with the provisions of that directive applicable to the services in Annex II B thereof.

([1]) OJ C 193, 15.08.2009.

Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium)) — Omalet NV v Rijksdienst voor Sociale Zekerheid

(Case C-245/09) ([1])

(Freedom to provide services — Article 49 EC — Contractor established in a Member State — Recourse to contracting partners established in the same Member State — Purely internal situation — Inadmissibility of the reference for a preliminary ruling)

(2011/C 63/08)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Omalet NV

Defendant: Rijksdienst voor Sociale Zekerheid

Re:

Reference for a preliminary ruling — Arbeidshof te Brussel — Interpretation of Article 49 EC — Social legislation — Undertaking established in Belgium and having recourse to subcontractors which are also established in that Member State but are not registered with the national authorities — Whether or not Article 49 EC is applicable

Operative part of the judgment

The reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium), made by decision of 25 June 2009, is inadmissible.

([1]) OJ C 220, 12.9.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands)) — Premis Medical BV v Inspecteur van de Belastingdienst/Douane Rotterdam, Kantoor Laan op Zuid

(Case C-273/09) ([1])

(Regulation (EC) No 729/2004 — Classification of the product 'walker-rollator' in the Combined Nomenclature — Heading 9021 — Heading 8716 — Corrigendum — Validity)

(2011/C 63/09)

Language of the case: Dutch

Referring court

Rechtbank Haarlem

Parties to the main proceedings

Applicant: Premis Medical BV

Defendant: Inspecteur van de Belastingdienst/Douane Rotterdam, Kantoor Laan op Zuid

Re:

Reference for a preliminary ruling — Rechtbank Haarlem (Netherlands) — Interpretation of Commission Regulation (EC) No 729/2004 of 15 April 2004 concerning the classification of certain goods in the Combined Nomenclature (OJ 2004 L 113, p. 5) — Orthopaedic appliances or appliances designed to compensate for a defect or disability within the meaning of Heading 9021 of the Combined Nomenclature — Mobile walking aids designed to designed to assist those with limited mobility

Operative part of the judgment

Commission Regulation (EC) No 729/2004 of 15 April 2004 concerning the classification of certain goods in the Combined Nomenclature, in the version resulting from a corrigendum published on 7 May 2004, is invalid in so far as, first, that corrigendum extended the

scope of application of the initial regulation to walker-rollators consisting of an aluminium frame on four wheels, two of which are front swivel wheels, handles and brakes, and designed to assist persons who have difficulties in walking and, secondly, it classifies those walker-rollators under subheading 8716 80 00 of the Combined Nomenclature.

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Court of Session (Scotland), Edinburgh — United Kingdom) — The Commissioners for Her Majesty's Revenue and Customs v RBS Deutschland Holdings GmbH

(Case C-277/09) ([1])

(Sixth VAT Directive — Right to deduction — Purchase of vehicles and use for leasing transactions — Differences between the tax regimes of two Member States — Prohibition of abusive practices)

(2011/C 63/10)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicant: The Commissioners for Her Majesty's Revenue and Customs

Defendant: RBS Deutschland Holdings GmbH

Re:

Reference for a preliminary ruling — Court of Session (Scotland), Edinburgh — Interpretation of Article 17(3)(a) of Directive 77/388/EEC: Sixth Council Directive 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) — Transactions carried out with the sole aim of obtaining a tax advantage — Provision of vehicle leasing services in the United Kingdom by the German subsidiary of a bank established in the United Kingdom

Operative part of the judgment

1. *In circumstances such as those of the main proceedings, Article 17(3)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that a Member State cannot refuse to allow a taxable person to deduct input value added tax paid on the acquisition of goods in that Member State, where those goods have been used for the purposes of leasing transactions carried out in another Member State, solely on the ground that the output transactions have not given rise to the payment of value added tax in the second Member State.*

2. *The principle of prohibiting abusive practices does not preclude the right to deduct value added tax, recognised in Article 17(3)(a) of Directive 77/388, in circumstances such as those of the main proceedings, in which a company established in one Member State elects to have its subsidiary, established in another Member State, carry out transactions for the leasing of goods to a third company established in the first Member State, in order to avoid a situation in which value added tax is payable on the sums paid as consideration for those transactions, the transactions having been categorised in the first Member State as supplies of rental services carried out in the second Member State, and in that second Member State as supplies of goods carried out in the first Member State.*

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 22 December 2010 — European Commission v Italian Republic

(Case C-304/09) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid for newly listed companies — Recovery)

(2011/C 63/11)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Flynn, E. Righini and V. Di Bucci, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the period prescribed, the measures necessary to comply with Articles 2, 3 and 4 of Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (notified under document No C(2005) 591) (OJ 2006 L 94, p. 42).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the time-limits laid down, all the measures necessary to abolish the aid scheme which was declared unlawful and incompatible with the common market by Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision.*

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

(1) OJ C 256, 24.10.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Wien — Austria) — Yellow Cab Verkehrsbetriebs GmbH v Landeshauptmann von Wien

(Case C-338/09) (1)

(Freedom to provide services — Freedom of establishment — Competition rules — Cabotage transport operations — National transportation of persons by bus service — Application to operate a service — Licence — Authorisation — Conditions — Requirement of a seat or permanent establishment in the national territory — Reduction of income compromising the profitability of a service already licensed)

(2011/C 63/12)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat Wien

Parties to the main proceedings

Applicant: Yellow Cab Verkehrsbetriebs GmbH

Defendant: Landeshauptmann von Wien

Re:

Reference for a preliminary ruling — Unabhängiger Verwaltungssenat Wien — Interpretation of Articles 49 et seq. EC and Article 81 et seq. EC — Legislation of a Member State subjecting the grant of a licence to operate a public transport service to the double condition that the applicant for that licence be established in that Member State and that the new service does not undermine the profitability of a similar existing transport service

Operative part of the judgment

1. *Article 49 TFEU must be interpreted as opposing the legislation of a Member State, such as that at issue in the main proceedings, which, for the purposes of the grant of authorisation to operate a public urban bus service, where fixed stopping points are called at regularly in accordance with a timetable, requires applicant economic operators established in another Member State to hold a seat or another establishment in the territory of the host Member State even before being authorised to operate that service. By contrast, Article 49 TFEU must be interpreted as not precluding national legislation which provides for an establishment requirement where such a requirement does not apply until after that authorisation has been granted and before the applicant commences operation of that service.*

2. *Article 49 TFEU must be interpreted as opposing national legislation which provides for the refusal of the grant of authorisation to operate a tourist bus service as a result of the reduced profitability of a competing undertaking which has been authorised to operate a service which is partially or entirely identical to the one applied for, on the sole basis of the statements of that competing undertaking.*

(1) OJ C 282, 21.11.2009.

Judgment of the Court (First Chamber) of 22 December 2010 — European Commission v Republic of Malta

(Case C-351/09) (1)

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Articles 8 and 15 — Status of inland surface water — Establishment and making operational of monitoring programmes — Failure — Submission of summary reports on those monitoring programmes — Failure)

(2011/C 63/13)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and K. Xuereb, acting as Agents)

Defendant: Republic of Malta (represented by: S. Camilleri, D. Mangion, P. Grech and Y. Rizzo, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 8 and 15 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — Obligation to establish and make operational programmes for the monitoring of the status of surface waters — Obligation to submit summary reports regarding the programmes for the monitoring of surface waters

Operative part of the judgment

The Court:

1. *Declares that, in failing, firstly, to establish monitoring programmes on the status of inland surface water and make them operational in accordance with Article 8(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, and, secondly, to submit summary reports on the monitoring programmes on the status of inland surface water in accordance with Article 15(2) of that directive, the Republic of Malta has failed to fulfil its obligations under Articles 8 and 15 of that directive;*

2. *Orders the Republic of Malta to pay the costs.*

(1) OJ C 267, 07.11.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Bezpečnostní softwarová asociace — Svaz softwarové ochrany v Ministerstvo kultury

(Case C-393/09) (1)

(Intellectual property — Directive 91/250/EEC — Legal protection of computer programs — Notion of 'expression in any form of a computer program' — Inclusion or non-inclusion of a program's graphic user interface — Copyright — Directive 2001/29/EC — Copyrights and related rights in the information society — Television broadcasting of a graphic user interface — Communication of a work to the public)

(2011/C 63/14)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Bezpečnostní softwarová asociace — Svaz softwarové ochrany

Defendant: Ministerstvo kultury

Re:

Reference for a preliminary ruling — Nejvyšší správní soud — Interpretation of Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42) and Article 3(1), of European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Whether or not the graphic user interface included in the expression 'the expression in any form of a computer program' contained in Article 1(2) of Directive 91/250

Operative part of the judgment

1. *A graphic user interface is not a form of expression of a computer program within the meaning of Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs and cannot be protected by copyright as a computer program under that directive. Nevertheless, such an interface can be protected by copyright as a work by Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society if that interface is its author's own intellectual creation.*

2. *Television broadcasting of a graphic user interface does not constitute communication to the public of a work protected by copyright within the meaning of Article 3(1) of Directive 2001/29.*

(1) OJ C 11, 16.1.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Bogusław Juliusz Dankowski v Dyrektor Izby Skarbowej w Łodzi

(Case C-438/09) (1)

(Sixth VAT Directive — Right to deduct input VAT — Services provided — Taxable person not registered for VAT — Details required on the VAT invoice — National tax legislation — Exclusion of right to deduct under Article 17(6) of the Sixth VAT Directive)

(2011/C 63/15)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Bogusław Juliusz Dankowski

Defendant: Dyrektor Izby Skarbowej w Łodzi

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 17(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Compatibility with this provision of national legislation excluding the right to deduct input tax paid for supply of a service on the basis of an invoice issued, in breach of national law, by a person not on the register of taxable persons for the purposes of VAT

Operative part of the judgment

1. *Articles 18(1)(a) and 22(3)(b) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 2006/18/EC of 14 February 2006, must be interpreted as meaning that a taxable person has the right to deduct value added tax paid in respect of*

services supplied by another taxable person who is not registered for that tax, where the relevant invoices contain all the information required by Article 22(3)(b), in particular the information needed to identify the person who drew up those invoices and to ascertain the nature of the services provided;

2. *Article 17(6) of the Sixth Directive 77/388 as amended by Directive 2006/18 must be interpreted as precluding national legislation which excludes the right to deduct value added tax paid by a taxable person to another taxable person, who has provided services, where the latter has not registered for the purposes of that tax.*

([1]) OJ C 37, 13.02.2010.

Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación de Transporte Internacional por Carretera (ASTIC) v Administración General del Estado

(Case C-488/09) ([1])

(TIR Convention — Community Customs Code — Transport carried out under cover of a TIR carnet — Guaranteeing association — Irregular unloading — Determination of the place of the offence — Recovery of import duties)

(2011/C 63/16)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación de Transporte Internacional por Carretera (ASTIC)

Defendant: Administración General del Estado

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 221(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Arts 454(3) and 455 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Transport carried out under cover of a TIR carnet — Offences or irregularities — Place — Procedure — Post-clearance recovery of import or export duties

Operative part of the judgment

1. *Articles 454 and 455 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code are to be interpreted as meaning that, where the presumption that competence to recover a customs debt lies with the Member State on whose territory an offence committed in the course of a TIR transport operation was detected is rebutted following a judgment establishing that that offence was committed on the territory of another Member State, the customs authorities of the latter Member State become competent to recover that debt, provided that the facts giving rise to the offence became the subject of legal proceedings within two years of the date on which the guaranteeing association for the territory on which the offence was detected was notified thereof;*

2. *Article 455(1) of Regulation No 2454/93, read in conjunction with Article 11(1) of the Customs Convention on the international transport of goods under cover of TIR carnets, signed at Geneva on 14 November 1975, is to be interpreted as meaning that, in circumstances such as those of the case before the referring court, a guaranteeing association cannot rely on the limitation period provided for in those provisions where the customs authorities of the Member State for whose territory it is responsible notify it, within a period of one year from the date on which those authorities were informed of an enforceable judgment identifying them as competent, of the facts which gave rise to the customs debt for which it is liable up to the amount that it guarantees.*

([1]) OJ C 63, 13.03.2010.

Judgment of the Court (Sixth Chamber) of 22 December 2010 (reference for a preliminary ruling from the Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel (Belgium)) — in proceedings concerning RTL Belgium SA, formerly TViSA

(Case C-517/09) ([1])

(Directive 89/552/EEC — Television broadcasting services — Licensing and Control Authority of the Broadcasting Authority — Court or tribunal of a Member State for the purposes of Article 267 TFEU — Lack of jurisdiction of the Court)

(2011/C 63/17)

Language of the case: French

Referring court

Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel (Belgium)

Party to the main proceedings

RTL Belgium SA, formerly TViSA

Re:

Reference for a preliminary ruling — Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel (Belgium) — Interpretation of Article 1(c) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23) — Freedom to provide services — Television broadcasting services — Concept of 'supplier' of audiovisual services and of 'effective control both over the selection of the programmes and over their organisation' — Concept of national court or tribunal for the purposes of Article 267 TFEU

Operative part of the judgment

The Court of Justice does not have jurisdiction to answer the question referred by the Collège d'autorisation et de contrôle du Conseil supérieur de l'audiovisuel in its decision of 3 December 2009.

([1]) OJ C 51, 27.2.2010.

Judgment of the Court (Fourth Chamber) of 22 December 2010 (reference for a preliminary ruling from the Tribunal administratif de Paris — France) — Ville de Lyon v Caisse des dépôts et consignations

(Case C-524/09) ([1])

(Preliminary rulings — Aarhus Convention — Directive 2003/4/EC — Public access to information in environmental matters — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Regulation (EC) No 2216/2004 — Standardised, secured system of registries — Access to data on greenhouse gas emission allowance trading — Refusal to report — Central administrator — Administrators of national registries — Confidential nature of the data held in the registries — Exceptions)

(2011/C 63/18)

Language of the case: French

Referring court

Tribunal administratif de Paris

Parties to the main proceedings

Applicant: Ville de Lyon

Defendant: Caisse des dépôts et consignations

Re:

Reference for a preliminary ruling — Tribunal administratif de Paris — Interpretation of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ 2003 L 41, p. 26) and Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ 2003 L 275, p. 32), and also Articles 9 and 10 of Annex XVI to Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87 and Decision No 280/2004/EC of the European Parliament and of the Council (OJ 2004 L 386, p. 1) — Access to information relating to greenhouse gas emission allowance trading — Refusal to communicate that information — Respective jurisdiction of the central administrator and the administrators of national registries — Confidential nature of the information held in the registries and possible exceptions

Operative part of the judgment

1. *A request for the reporting of trading data such as that requested in the main proceedings, relating to the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, comes exclusively under the specific rules governing public reporting and confidentiality contained in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, in the version resulting from Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, and in Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87 and Decision No 280/2004/EC of the European Parliament and of the Council;*

2. *Trading data such as that requested in the main proceedings by a public authority wishing to renegotiate an agreement on public service delegation is confidential data within the meaning of Regulation No 2216/2004 and, under Articles 9 and 10 of that regulation, read in conjunction with paragraphs 11 and 12 of Annex XVI to that regulation, such data, in the absence of the prior consent of the relevant account holders, may be freely consulted by the general public only in the public area of the Community independent transaction log's website from 15 January onwards of the fifth year (X+5) following the year (X) of completion of the transactions relating to transfers of emission allowances;*

3. *Although, for the purposes of implementation of Regulation No 2216/2004, it is the Central Administrator who has sole competence to report to the general public the data referred to in paragraph 12 of Annex XVI to that regulation, the administrator of the national registry who has received a request for reporting of such trading data must independently reject that request since, in the absence of the prior consent of the relevant account holders, that administrator is required to guarantee the confidentiality of that data until it has become legally reportable to the general public by the Central Administrator.*

([1]) OJ C 37, 13.02.2010.

Judgment of the Court (Seventh Chamber) of 22 December 2010 (reference for a preliminary ruling from the Finanzgericht Düsseldorf, Germany) — Lecson Elektromobile GmbH v Hauptzollamt Dortmund

(Case C-12/10) [1]

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Section XVII — Transport equipment — Chapter 87 — 'Vehicles other than railway or tramway rolling stock, and parts and accessories thereof' — Headings 8703 and 8713 — Three or four-wheeled electric vehicles designed for the transport of one person, reaching a maximum speed of 6 to 15 km/h and having a separate, adjustable steering column, known as 'electric mobility scooters')

(2011/C 63/19)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Lecson Elektromobile GmbH

Defendant: Hauptzollamt Dortmund

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004 (OJ 2004 L 327, p. 1) — Three or four-wheeled electric vehicles designed for the transport of one person and reaching a maximum speed of 6 to 15 km/h — Classification under heading 8713 or heading 8703 of the Combined Nomenclature?

Operative part of the judgment

Heading 8703 of the Combined Nomenclature in Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1810/2004 of 7 September 2004 must be interpreted as covering three or four-wheeled vehicles designed for the transport of one person who is not necessarily a disabled person, powered by a battery-operated electric motor, reaching a maximum speed of 6 to 15 km/h and equipped with a separate, adjustable steering column, known as electric 'mobility scooters', such as those at issue in the main proceedings.

[1] OJ C 80, 27.03.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg (Luxembourg)) — État du Grand-Duché de Luxembourg, Administration de l'enregistrement et des domaines v Pierre Feltgen (in his capacity as administrator in the bankruptcy of Bacino Charter Company SA), Bacino Charter Company SA

(Case C-116/10) [1]

(Sixth VAT Directive — Exemptions — Article 15(4)(a) and 15(5) — Exemption for the hiring of sea-going vessels — Scope)

(2011/C 63/20)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Appellants: État du Grand-Duché de Luxembourg, Administration de l'enregistrement et des domaines

Respondents: Pierre Feltgen (in his capacity as administrator in the bankruptcy of Bacino Charter Company SA), Bacino Charter Company SA

Re:

Reference for a preliminary ruling — Cour de cassation du Grand-Duché de Luxembourg — Interpretation of Article 15(4)(a) and 15(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemption for hire operations of sea-going vessels — Exemption subject to the condition that such vessels be assigned to navigation on the high seas and provide transport of travellers or the pursuit of commercial, industrial or fishing activities, for reward

Operative part of the judgment

Article 15(5) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as meaning that the exemption from value added tax provided for by that provision does not apply to services consisting of making a vessel available, for reward, with a crew, to natural persons for purposes of leisure travel on the high seas.

[1] OJ C 113, 1.5.2010.

Judgment of the Court (Eighth Chamber) of 22 December 2010 — European Commission v Czech Republic

(Case C-276/10) [1]

(Failure of a Member State to fulfil obligations — Environment — Directive 2006/118/EC — Protection of groundwater against pollution and deterioration — Failure to transpose within the prescribed period)

(2011/C 63/21)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and L. Jelinek, acting as Agents)

Defendant: Czech Republic (represented by: M. Smolek and J. Jirkalová, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, or to communicate within the prescribed period, the measures necessary to comply with Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ 2006 L 372, p. 19)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative measures necessary to comply with Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, the Czech Republic has failed to fulfil its obligations under Article 12 of that directive.*

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

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[1] OJ C 209, 31.07.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Tribunal administratif — Luxembourg) — Tankreederei I SA v Directeur de l'administration des contributions directes

(Case C-287/10) [1]

(Freedom to provide services — Free movement of capital — Tax credit for investments — Grant linked to the physical use of the investments on national territory — Use of inland navigation vessels used in other Member States)

(2011/C 63/22)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicant: Tankreederei I SA

Defendant: Directeur de l'administration des contributions directes

Re:

Reference for a preliminary ruling — Tribunal administratif de Luxembourg — Interpretation of Articles 49 EC and 56 EC — Tax credits for investments — Legislation under which such a credit is granted only if the investment is made in an establishment situated in national territory and physically used in that territory — Company engaged in international shipping activities which is established and taxable in Luxembourg but has made an investment consisting of the acquisition of an asset used primarily outside of the national territory — Obstacle to the freedom to provide services and the free movement of capital

Operative part of the judgment

Article 56 TFEU is to be interpreted as precluding a provision of a Member State pursuant to which the benefit of a tax credit for investments is denied to an undertaking which is established solely in that Member State on the sole ground that the capital goods, in respect of which that credit is claimed, are physically used in the territory of another Member State.

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[1] OJ C 221, 14.08.2010.

Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Oberlandesgericht Celle (Germany)) — Joseba Andoni Aguirre Zarraga v Simone Pelz

(Case C-491/10 PPU) [1]

(Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Parental responsibility — Rights of custody — Child abduction — Article 42 — Enforcement of a certified judgment ordering the return of a child handed down by a (Spanish) court with jurisdiction — Power of the requested (German) court to refuse enforcement of that judgment in a case of serious infringement of the child's rights)

(2011/C 63/23)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Joseba Andoni Aguirre Zarraga

Defendant: Simone Pelz

Re:

Reference for a preliminary ruling — Oberlandesgericht Celle — Interpretation of Article 42 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Abduction of a child — Enforcement of a decision ordering the return of a child taken by a (Spanish) court having jurisdiction — Power of the (German) court responsible for enforcement to refuse to enforce that decision where there has been a serious infringement of the rights of the child

Operative part of the judgment

In circumstances such as those of the main proceedings, the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.

([1]) OJ C 346, 18.12.2010.

Order of the Court (Third Chamber) of 14 October 2010 (reference for a preliminary ruling from the Landessozialgericht Berlin, Germany) — Christel Reinke v AOK Berlin

(Case C-336/08) ([1])

(Reference for a preliminary ruling — No need to adjudicate)

(2011/C 63/24)

Language of the case: German

Referring court

Landessozialgericht Berlin

Parties to the main proceedings

Appellant: Christel Reinke

Respondent: AOK Berlin

Re:

Reference for a preliminary ruling — Landessozialgericht Berlin-Brandenburg — Interpretation of Articles 18 EC, 49 EC and 50 EC and Article 34(4) and (5) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and to their families moving within the Community (OJ, English Special Edition 1972(I), p. 159) — Reimbursement of medical costs incurred in connection with emergency treatment of a national of a Member State in a private hospital of another Member State as a result of the refusal of the competent public hospital to provide that benefit on the ground of insufficient capacity — National legislation of the competent Member State excluding reimbursement of medical costs incurred for emergency treatment in a private hospital of another Member State but allowing reimbursement of those costs if charged by a private hospital situated in national territory

Operative part of the order

There is no need to reply to the reference for a preliminary ruling made by the Landessozialgericht Berlin-Brandenburg (Germany) by decision of 27 June 2008.

([1]) OJ C 260, 11.10.2008.

Order of the Court (Sixth Chamber) of 2 December 2010 (reference for a preliminary ruling from the Verwaltungsgericht Meiningen — Germany) — Frank Scheffler v Landkreis Wartburgkreis

(Case C-334/09) ([1])

(First subparagraph of Article 104(3) of the Rules of Procedure — Directive 91/439/EEC — Mutual recognition of driving licences — Surrender of the national driving licence after reaching the maximum number of points for various offences — Driving licence issued in another Member State — Negative medical psychological expert's report obtained in the Member State of residence after obtaining a new licence in another Member State — Withdrawal of the right to drive in the territory of the first Member State — Authority for the Member State of residence of the holder of the licence issued in another Member State to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the said licence — Conditions — Interpretation of the concept of 'conduct after obtaining the new driving licence')

(2011/C 63/25)

Language of the case: German

Referring court

Verwaltungsgericht Meiningen

Parties to the main proceedings

Applicant: Frank Scheffler

Defendant: Landkreis Wartburgkreis

Re:

Reference for a preliminary ruling — Verwaltungsgericht Meiningen — Interpretation of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) — Driving licence issued

by a Member State to a national of another Member State having given up his national licence and having his normal residence, at the time of the issue of the new licence, in the territory of the issuing Member State — Refusal by the authorities of the Member State of domicile to recognise that licence based on a medical-psychological expert's report drawn up in that Member State on the basis of a medical examination carried out after the issue of the new licence, but referring only to circumstances prior to its being obtained — Whether classification of that report as a circumstance subsequent to the obtaining of the new driving licence capable of justifying application of national provisions on the restriction, suspension, withdrawal or annulment of the right to drive.

Operative part of the order

Article 1(2) and Article 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences, as amended by Council Directive 2006/103/EC of 20 November 2006, must be interpreted as meaning that they preclude a Member State, when exercising its authority under Article 8(2) to apply its national provisions on the restriction, suspension, withdrawal or cancellation of the right to drive to the holder of a driving licence issued in another Member State, from refusing to recognise in its territory the right to drive, resulting from a valid driving licence issued in another Member State, on account of an expert's report on fitness to drive submitted by the holder of the driving licence in question if the report, although issued after the date of issue of the driving licence and based on an examination of the party concerned carried out after that date, has no connection, even partial, to conduct of the person concerned occurring after the issue of the driving licence and relates solely to circumstances that took place prior to that date.

([1]) OJ C 267, 7.11.2009.

Order of the Court (Sixth Chamber) of 11 November 2010 (reference for a preliminary ruling from the Tribunale di Trani — Italy) — Vino Cosimo Damiano v Poste Italiane SpA

(Case C-20/10) ([1])

(Article 104(3) of the Rules of Procedure — Social policy — Directive 1999/70/EC — Clauses 3 and 8 of the framework agreement on fixed-term work — Fixed-term employment contracts in the public sector — First or single use of a contract — Obligation to state the objective reasons — Elimination — Reduction in the general level of protection of employees — Principle of non-discrimination — Articles 82 EC and 86 EC)

(2011/C 63/26)

Language of the case: Italian

Referring court

Tribunale di Trani

Parties to the main proceedings

Applicant: Vino Cosimo Damiano

Defendant: Poste Italiane SpA

Re:

Reference for a preliminary ruling — Tribunale di Trani — Interpretation of Clauses 3 and 8(3) of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p.43) — Compatibility of an internal rule validating in the internal legal an 'acausal' case for the engagement of workers by Poste Italiane SpA on fixed-term contracts

Operative part of the order

1. *Clause 8(3) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation, such as that provided for by Article 2(1)(a) of Legislative Decree No 368 implementing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP of 6 September 2001 (decreto legislativo n. 368, attuazione della direttiva 1999/70/CE relativa all'accordo quadro sul lavoro a tempo determinato concluso dall'UNICE, dal CEEP e dal CES), which, unlike the national rules applicable before the entry into force of that decree, allows a company such as Poste Italiane SpA, to conclude, subject to certain conditions, a first or single use of a fixed-term contracts with a worker, such as Mr Vino, without having to state the objective reasons which justify the use of a contract concluded for such a duration, since that legislation is not connected to the implementation of the Framework Agreement. It is in that regard, in principle, irrelevant whether the objective pursued by that legislation provides protection at least equivalent to the protection of fixed-term workers referred to in the Framework Agreement.*

2. *The Court of Justice of the European Union manifestly lacks jurisdiction to reply to the fourth question referred for a preliminary ruling by the Tribunal di Trani (Italy).*

3. *The fifth question referred for a preliminary ruling by the Tribunal di Trani is manifestly inadmissible.*

([1]) OJ C 134, 22.5.2010.

Order of the Court (Fifth Chamber) of 27 October 2010 — REWE-Zentral AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Aldi Einkauf GmbH & Co. OHG

(Case C-22/10 P) [1]

(Appeal — Community trade mark — Opposition proceedings — Application for the Community word mark Clina — Earlier Community word mark CLINAIR — Refusal of registration — Relative ground for refusal — Examination of the likelihood of confusion — Regulation (EC) No 40/94 — Article 8(1)(b))

(2011/C 63/27)

Language of the case: German

Parties

Appellant: REWE-Zentral AG (represented by: M. Kinkeldey and A. Bognár, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke, acting as Agent), Aldi Einkauf GmbH & Co. OHG (represented by: N. Lützenrath, Rechtsanwalt)

Re:

Appeal against the judgment of the Court of First Instance (Sixth Chamber) of 11 November 2009 in Case T-150/08 *REWE-Zentral* v *OHIM*, by which the Court dismissed the action for annulment brought against the decision of the Fourth Board of Appeal of OHIM of 15 February 2008 refusing the registration of the word sign 'Clina' as a Community trade mark for certain goods in Classes 3 and 21 by upholding the opposition brought by the proprietor of the earlier Community word mark 'CLINAIR' — Likelihood of confusion between two marks — Failure to carry out a global assessment of the relevant factors in examining the likelihood of confusion — Breach of Article 8(1)(b) of Regulation (EC) No 40/94

Operative part of the order

1. *The appeal is dismissed.*

2. *REWE-Zentral AG is ordered to pay the costs.*

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[1] OJ C 80, 27.03.2010.

Order of the Court (Eighth Chamber) of 28 October 2010 (reference for a preliminary ruling from the Judecătoria Focșani — Romania) — Frăsina Bejan v Tudorel Mușat

(Case C-102/10) [1]

(Rules of Procedure — Articles 92(1) and 103(1) and 104(3), first and second subparagraphs — Approximation of laws — Compulsory motor civil liability insurance system — Optional insurance contract — Inapplicability)

(2011/C 63/28)

Language of the case: Romanian

Referring court

Judecătoria Focșani

Parties to the main proceedings

Applicant: Frăsina Bejan

Defendant: Tudorel Mușat

Re:

Reference for a preliminary ruling — Judecătoria Focșani — Interpretation of Articles 49, 56, 57 and 59, first subparagraph, 169 TFEU and the Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1983 L 8, p. 17), Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ 1992 L 228, p. 1), Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), Directive 2005/14/EC of 11 May 2005 relating to insurance against civil liability in respect of the use of motor vehicles, (OJ 2005 L 149, p. 14) and Directive 2009/103/CE of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 263, p. 11) — Motor vehicle liability insurance — Damage caused by insured vehicles — National legislation laying down exclusionary clauses against the interests of consumers — Conditions for exclusion going beyond those provided for by the directives — Possibility for the national court to plead that the risk insurance exclusion clause contract is void

Operative part of the order

1. *The compulsory civil liability insurance system in respect of the use of motor vehicles established by*

— *Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and to the enforcement of the obligation to insure against such liability,*

— *the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles,*

— *the Third Council Directive (90/232/EEC) of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles,*

— *Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (Fourth Motor Insurance Directive); and*

— *Directive 2005/14/EEC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/ECC, 84/5/ECC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles.,*

does not preclude national legislation which provides that the insurer excludes from the cover of the optional insurance contract of a motor vehicle damage caused when that vehicle is driven by a person under the influence of alcohol.

2. *The compulsory insurance against civil liability in respect of the use of motor vehicles established by the Directives 72/166, 84/5, 90/232, 2000/26 and 2005/14 does not preclude national legislation which does not impose any obligation upon the insurer to compensate immediately, under an optional insurance contract of a motor vehicle, the person insured who suffered harm following an accident and to secure repayment of the amount of the compensation paid to that insured person from the person responsible for the accident, under circumstances in which the insurance does not cover the risk because of an exclusion clause.*

3. *National legislation which provides that the insurer excludes from the cover of an optional motor vehicle insurance contract the damage caused when that vehicle is driven by a person under the influence of alcohol constitutes both a restriction on the freedom of establishment and the freedom to provide services. It is for the national court to consider to what extent that restriction is nevertheless permissible under the exceptions expressly provided for by the Treaty on European Union or is justified, in accordance with the case-law of the Court, by overriding reasons relating to the public interest.*

([1]) OJ C 113, 1.5.2010.

Order of the Court (Eighth Chamber) of 9 December 2010 (reference for a preliminary ruling from the Finanzgericht Düsseldorf) — KMB Europe BV v Hauptzollamt Duisburg

(Case C-193/10) ([1])

(The first subparagraph of Article 104(3) of the Rules of Procedure — Common Customs Tariff — Combined Nomenclature — Tariff classification — MP3 Media Player — Heading 8521 — Video recording or reproducing apparatus)

(2011/C 63/29)

Language of the case: German

Referring court

Finanzgericht Dusseldorf

Parties to the main proceedings

Applicant: KMB Europe BV

Defendant: Hauptzollamt Duisburg

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and the statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) — MP3 Media Player — Apparatus with a limited capacity to reproduce still images and videos whose principal function is the reproduction of sound — Classification under heading 8519 ('Sound recording or sound reproducing apparatus') or under heading 8521 ('Video recording or reproducing apparatus') of the Combined Nomenclature.

Operative part of the order

Heading 8521 of the Combined Nomenclature in the version of Annex I to Council Regulation (EEC) No 2658/87 on the tariff and the statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 must be interpreted as meaning that MP3 media players, such as those at issue in the main proceedings, in relation to which the referring court finds that the principal function characterising all such apparatus is the recording and reproduction of sound, are excluded from that heading.

([1]) OJ C 209, 31.7.2010.

Order of the Court (Fifth Chamber) of 22 November 2010 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Sociedade Unipessoal SL v Fazenda Pública

(Case C-199/10) ([1])

(Article 104(3), first paragraph, of the Rules of Procedure — Articles 56 EC and 58 EC — Taxation of dividends — Deduction at source — National fiscal legislation which provides for an exemption of dividends paid to resident companies)

(2011/C 63/30)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Secilpar — Sociedade Unipessoal SL

Defendant: Fazenda Pública

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Compatibility with Articles 12 EC, 43 EC, 56 EC, 58(3) EC (now Articles 18, 49, 63 and 65(3) TFEU) and with Article 5(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) of national fiscal legislation on the taxation of dividends distributed by a resident company to a non-resident company which has a holding in the company paying the dividends of less than 25 % — Taxation by deduction at source at the rate of 15 % provided for by the double taxation agreement concluded between the two Member States at issue — Exemption of dividends paid to resident companies

Operative part of the order

Articles 56 EC and 58 EC must be interpreted as precluding a tax scheme under a double-taxation agreement concluded between two Member States, which provides for withholding tax of 15 % on the dividends distributed by a company established in one Member States to a company established in another Member State, where the national legislation of the first Member States exempts from that tax dividends paid to a resident company. It would be otherwise only if the tax withheld at source could be set off against the tax payable in the second Member State in the full amount of the difference in treatment. It is for the national court to determine whether such a neutralisation of the difference in treatment has been effected by the application of all the provisions of the convention for the avoidance of double taxation and prevention of the avoidance or evasion of taxes with respect to taxes on income, concluded on 26 October 1993 between the Portuguese republic and the Kingdom of Spain.

([1]) OJ C 195, 17.7.2010.

Order of the Court (Fifth Chamber) of 6 December 2010 (reference for a preliminary ruling from the Tribunalul Dolj — Romania) — Adrian Băilă v Administrația Finanțelor Publice a Municipiului Craiova, Administrația Fondului pentru Mediu

(Case C-377/10) ([1])

(Reference for a preliminary ruling — Lack of relationship with the reality or the subject-matter of the case in the main proceedings — Inadmissibility)

(2011/C 63/31)

Language of the case: Romanian

Referring court

Tribunalul Dolj

Parties to the main proceedings

Applicant: Adrian Băilă

Defendant: Administrația Finanțelor Publice a Municipiului Craiova, Administrația Fondului pentru Mediu

Re:

Reference for a preliminary ruling — Tribunal Dolj — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a given Member State — Compatibility of the national rules with Article 110 TFEU — Temporary exemption for vehicles with certain characteristics

Operative part of the order

The reference for a preliminary ruling made by the Tribunalul Dolj by decision of 9 June 2010 is manifestly inadmissible.

([1]) OJ C 274, 9.10.2010.

Order of the Court (Fifth Chamber) of 7 December 2010 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — SC DRA SPEED SRL v Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

(Case C-439/10) ([1])

(Reference for a preliminary ruling — Failure to provide a factual description — Inadmissibility)

(2011/C 63/32)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: SC DRA SPEED SRL

Defendant: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Re:

Reference for a preliminary ruling — Curtea de Apel Secția Bacău Secția Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a Member State — Compatibility of the national rules with Article 110 TFEU — Discrimination in relation to second-hand vehicles already registered in the territory of that Member State and not subject to that tax on a subsequent sale or new registration

Operative part of the order

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

([1]) OJ C 328, 4.12.2010.

Order of the Court (Fifth Chamber) of 7 December 2010 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — SC SEMTEX SRL v Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

(Case C-440/10) ([1])

(Reference for a preliminary ruling — Failure to provide a factual description — Inadmissibility)

(2011/C 63/33)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: SC SEMTEX SRL

Defendant: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Re:

Reference for a preliminary ruling — Curtea de Apel Secția Bacău Secția Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a Member State — Compatibility of the national rules with Article 110 TFEU — Discrimination in relation to second-hand vehicles already registered in the territory of that Member State and not subject to that tax on a subsequent sale or new registration

Operative part of the order

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

([1]) OJ C 328, 4.12.2010.

Order of the Court (Fifth Chamber) of 7 December 2010 (reference for a preliminary ruling from the Curtea de Apel Bacău — Romania) — Ioan Anghel v Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

(Case C-441/10) ([1])

(Reference for a preliminary ruling — Failure to provide a factual description — Inadmissibility)

(2011/C 63/34)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: Ioan Anghel

Defendant: Direcția Generală a Finanțelor Publice Bacău, Administrația Finanțelor Publice Bacău

Re:

Reference for a preliminary ruling — Curtea de Apel Secția Bacău Secția Comercială, Contencios Administrativ și Fiscal — Registration of second-hand vehicles previously registered in another Member State — Environmental tax on vehicles on their first registration in a Member State — Compatibility of the national rules with Article 110 TFEU — Discrimination in relation to second-hand vehicles already registered in the territory of that Member State and not subject to that tax on a subsequent sale or new registration

Operative part of the order

The reference for a preliminary ruling made by the Curtea de Apel Bacău by decision of 1 September 2010 is manifestly inadmissible.

([1]) OJ C 328, 4.12.2010.

Application for interpretation of judgment of 17 May 1990, Barber (C-262/88), lodged on 26 May 2010 by Manuel Enrique Peinado Guitart

(Case C-262/88 INT)

(2011/C 63/35)

Language of the case: Spanish

Parties

Applicant: Manuel Enrique Peinado Guitart

By order of 17 December 2010, the Court of Justice (Seventh Chamber) declared the application for interpretation inadmissible.

Appeal brought on 22 November 2010 by Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS against the judgment of the General Court (Fifth Chamber) delivered on 9 September 2010 in Case T-155/06: Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v European Commission

(Case C-549/10 P)

(2011/C 63/36)

Language of the case: English

Parties

Appellants: Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS (represented by: O. W. Brouwer, advocaat, A.J. Ryan, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— Set aside the judgment of the General Court, as requested in this appeal;

— Give final judgment and annul the decision or in any event reduce the fine, or, in the alternative, in case the Court of Justice does not itself decide the case, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice; and

— If the costs are not reserved, order the European Commission to pay the costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

The appeal is directed against the judgment of the General Court of 9 September 2010 in Case T-155/06 Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v. European Commission (the Judgment), dismissing the application brought by the Appellants against the decision of the European Commission declaring that the Appellants' conduct was capable of foreclosing the reverse vending machine market.

The Appellants submit that the Court of Justice of the European Union should set aside the Judgment, as the General Court committed errors of law and procedure in finding that the Appellants' conduct was capable of foreclosing the reverse vending machine market. In this regard, the Appellants have forwarded the following pleas:

(i) error of law in the review applied by the General Court when assessing the European Commission's finding of an anti-competitive intent to foreclose the market: by merely requiring that the European Commission should not conceal documents, the General Court implicitly denied that it needs to carry out a comprehensive review of the Decision of the European Commission applying Article 82 EC Treaty (now Article 102 TFEU) and did also not fulfil the requirements of a marginal review to establish that the evidence relied on by the European Commission is accurate, reliable, consistent, complete and capable of substantiating the conclusions drawn from it;

(ii) error of law and failure to provide sufficient and adequate reasoning with regard to the portion of total demand the agreements had to cover to be abusive: the Judgment merely uses undefined and unsubstantiated terms to describe the share of demand foreclosed, whereas it should have required a clear demonstration that foreclosure of a certain level of demand was abusive and provided sufficient and adequate reasoning in that regard:

(iii) procedural error and error of law in the examination of retroactive rebates: the General Court misread and consequently failed to correctly take into consideration the Appellants' arguments on retroactive rebates. The General Court furthermore erred in law by not requiring the European Commission to establish that the retroactive rebates used by the Appellants led to pricing below cost;

(iv) error of law and failure to provide adequate reasoning when determining whether agreements in which the Appellants are named as preferred, main or primary supplier can be qualified as exclusive, by failing to consider and establish whether all the agreements at issue contained incentives to source exclusively from the Appellants, after having rejected the Appellants' argument that it should take into account in its assessment whether the agreements were binding exclusivity agreements under national law; and

(v) error of law in the review of the fine relating to the interpretation and application of the principle of equal treatment: the General Court failed to properly apply the principle of equal treatment when not considering whether the general level of fines had increased in deciding that the Appellants' fine was not discriminatory.

Action brought on 30 November 2010 — European Commission v Federal Republic of Germany

(Case C-562/10)

(2011/C 63/37)

Language of the case: German

Parties

Applicant: European Commission (represented by: F.W. Bulst and I. Rogalski)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should declare that:

— The Federal Republic of Germany has failed to fulfil its obligations under Article 56 TFEU by

1. limiting entitlement to care allowance, pursuant to the wording of Paragraph 34(1)(1) of SGB XI (Social Security Code), to a maximum of six weeks where a person reliant on care temporarily stays in another Member State;

2. not providing for, or by excluding through Paragraph 34(1)(1) SGB XI, reimbursement of care-related benefits in kind at the same rate as granted in Germany in respect of care services used by a person reliant on care staying temporarily in another Member State and supplied by a service provider established in another Member State;

3. not reimbursing costs relating to the hire of care equipment where a person reliant on care stays temporarily in another Member State, or by excluding reimbursement through Paragraph 34(1)(1) SGB XI, even where those costs would be reimbursed in Germany or the care equipment would be provided and the reimbursement would not lead to a twofold increase or other increase in the costs of the services granted in Germany.

— The Federal Republic of Germany must pay the costs of the proceedings.

Pleas in law and main arguments

The subject-matter of this action is the German care insurance scheme, according to which persons reliant on care who receive benefits from the statutory (social) care insurance scheme are not able to avail themselves of those benefits to the same extent when they stay temporarily in another Member State and (wish to) avail themselves of care services or care allowances in that Member State. In the event of a temporary stay in another Member State, the provisions at issue relating to care benefits in kind, care allowances and care equipment provide for significantly lower benefits than in the case of care received in Germany.

The Commission is of the view that the rules at issue are not compatible with Article 56 TFEU, because they make it significantly harder for individuals to avail themselves of care services in another Member State and that this is not justified by overriding reasons of public interest or necessary. Care services, as well as the hire of care equipment, are services which are supplied for consideration, and constitute in this respect a service within the meaning of Article 56 TFEU. Such services therefore fall within the scope of the provisions on the freedom to provide services. In its case-law on the reimbursement of medical treatment costs incurred in another Member State, the Court of Justice has held that in the course of the exercise of their powers to organise their social security systems, Member States must have regard to Community law. The fact that a rule falls within the sphere of social security does not therefore preclude the application of Article 56 TFEU.

With regard to the rules on care allowances, a (discriminatory) restriction exists in so far as where an insured person is staying abroad, his entitlement to a care allowance is limited to a maximum of only six weeks. This makes it more difficult for a person reliant on care to avail himself of care services abroad after that period.

With regard to the rules on care-related benefits in kind, a (discriminatory) restriction exists in so far as reimbursement of the costs of such benefits, which are received by a person reliant on care staying temporarily in another Member State and are supplied by a service provider established in another Member State, is not provided for or is excluded. The fact that in Germany there is no reimbursement of the costs of care-related benefits in kind provided by institutions with which the care fund has not concluded a service agreement, as the Federal Government pleads, does not alter that assessment. In Germany large numbers of suppliers have concluded service agreements. By contrast, the Commission is not aware of any such suppliers whatsoever in other Member States. In this respect, insured persons (or those reliant on care) are in principle excluded from availing themselves of care-related benefits in kind in another Member State under the social insurance scheme, whereas such persons can so avail themselves in Germany, albeit not with every supplier.

Lastly, with regard to the rules on the provision of care equipment, a (discriminatory) exists in so far as the costs of hire (and use) of such care equipment are not reimbursed in other Member States even if they would be reimbursed in the event of care provided in Germany.

According to the settled case-law of the Court of Justice, the freedom to provide services guaranteed by Article 56 TFEU requires not only the elimination of all discrimination of service providers on the basis of their nationality, but also the removal of all restrictions — even if they apply without distinction to domestic service providers and to those from other Member States — if they are liable to prohibit or further impede the activities of a provider of services established in another Member State where he lawfully provides similar services.

The grounds of justification put forward by the German Government — protection of public health and of the financial balance of the care insurance system — are not capable of justifying the present restriction on the freedom to provide services.

First, the restrictive rules clearly go beyond what might be necessary to protect the quality of the services in question or public health. Thus, reimbursement of costs incurred in another Member State is excluded on a general basis and independently of any quality assessment. Consequently, there is also no reimbursement of costs even if a sufficient quality of care is ensured and a risk to the health of the person reliant on care has been ruled out.

Secondly, the German rules, which exclude reimbursement of costs incurred abroad and which are in any event much lower than what is financed in Germany, are not necessary to prevent a significant risk to the financial balance of the social security system. Lastly, in order to prevent a restriction on the freedom to provide services, the costs arising from recourse to care services abroad must be reimbursed only to the same extent that they would be reimbursed for such services in Germany.

Appeal brought on 2 December 2010 by the Italian Republic against the judgment delivered by the General Court (Sixth Chamber) on 13 September 2010 in Joined Cases T-166/07 and T-285/07 Italian Republic v European Commission

(Case C-566/10 P)

(2011/C 63/38)

Language of the case: Italian

Parties

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

Other part to the proceedings: European Commission, Republic of Lithuania, Hellenic Republic

Form of order sought

— Annul, pursuant to Articles 56, 58 and 61 of the Statute of the Court of Justice of the European Union, the judgment delivered by the General Court of the European Union on 13 September 2010 in Joined Cases T-166/07 and T-258/07 in the actions brought by the Italian Republic for the annulment of:

1. Notice of Open Competition EPSO/AD/94/07 to constitute a reserve pool for 125 posts of Administrator (AD5) in the field of information, communication and the media;

2. Notice of Open Competition EPSO/AST/37/07 to constitute a reserve pool for 110 posts of Assistant (AST3) in the field of communication and information,

   both published in the English, French and German editions of the Official Journal of the European Communities of 28 February 2007, No C 45A;

3. Notice of Open Competition EPSO/AD/95/07 to constitute a reserve pool for 20 posts of Administrator (AD5) in the field of information science (library/documentation),

   published only in the English, French and German editions of the Official Journal of the European Communities of 8 May 2007, No C 103;

— itself rule on the action and annul the Notices of Competition referred to above;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appellant relies on seven grounds of appeal.

By the first ground of appeal, it is submitted that the judgment under appeal infringes the system of competences for determining the languages to be used deriving from Article 342 TFEU in conjunction with Article 6 of Council Regulation No 1 determining the languages to be used. [1] By Article 6 of Regulation No 1/58, the Council conferred competence on the institutions to stipulate in their rules of procedure which of the languages are to be used in specific cases. However, the General Court unlawfully found that the Commission can determine certain aspects of its rules on the use of languages even in connection with simple notices of competition.

The second ground of appeal is directed against the arguments with which the General Court rejected the plea alleging infringement of Articles 1, 4 and 5 of Regulation No 1/58. The appellant challenges, in several material respects, the argument that notices of competition do not constitute documents of general application within the meaning of Article 4 of the regulation and that they are therefore not covered by the general rules for determining the languages to be used laid down by the regulation. In its view, the argument of the General Court is also undermined indirectly by certain aspects of the Staff Regulations.

By the third ground of appeal, criticism is levelled at the part of the judgment under appeal in which the General Court, with reference to the full publication of the notices of competition in question in only three languages, did not accept that there had been infringement of the principle of non-discrimination established in Article 12 EC (now Article 18 TFEU) and the principle of multilingualism laid down in Article 22 of the Charter of Fundamental Rights of the European Union, Article 6(3) EU, Article 5 of Regulation No 1/58 and Article 1(2) and (3) of Annex III to the Staff Regulations. In the appellant's view, the subsequent publication in all languages of summary notices referring to the full publication of the notices in French, German and English was not capable of preventing discrimination to the detriment of candidates having languages other than those in question, contrary to the view taken by the General Court. By taking account of the subsequent publication of the notices, the General Court infringed primarily Article 263 TFEU, in that the legality of an act which it is required to review should be assessed by reference only to the wording of the act at the time at which it was adopted and subsequent factors cannot be taken into account.

The fourth ground of appeal relates to the unlawfulness of the choice of only three languages as 'second language' for the competition. The reasoning of the General Court in reaching the conclusion that there was no discrimination and that the choices made by the Commission were not inconsistent gives rise, inter alia, to infringement of a series of provisions (Articles 1 and 6 of Regulation No 1/58 and Article 1d(1) and (6), the second paragraph of Article 27 and Article 28(f) of the Staff Regulations) which establish the principle of multilingualism also within the institutions of the European Union. Contrary to the finding of the General Court, it was not for the appellant to demonstrate that no exceptions could be applied but for the Commission to give reasons for its choice in that regard.

By the fifth ground of appeal, it is alleged that the General Court erred in rejecting the claim that the principle of the protection of legitimate expectations was infringed by failing to accept that the Commission's well-established practice in competition matters may have given rise to a legitimate expectation on the part of potential candidates as regards certain rules governing competitions.

By the sixth ground of appeal, the appellant submits that, by finding that the administration was not required, in the contested notices of competition, to justify the choice of the three languages to be used, the General Court infringed the second paragraph of Article 296 TFEU, which provides that all legal acts are to state the reasons on which they are based.

Finally, the seventh ground of appeal alleges infringement of the substantive rules relating to the nature and purpose of notices of competition, in particular Article 1d(1) and (6), Article 28(f) and the second paragraph of Article 27 of the Staff Regulation. The General Court erred in law in finding that it is not for the selection board alone to assess the language skills of the candidates because the authority which issues the notice could as a preliminary matter make a prior selection of the persons concerned on the basis of purely linguistic criteria.

([1]) Council Regulation (EEC) No 1 determining the languages to be used by the European Economic Communities (OJ, English Special Edition Chapter 1952-1958, p. 59).

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 3 December 2010 — Inter-Environnement Bruxelles ASBL, Pétitions-Patrimoine ASBL, Atelier de Recherche et d'Action Urbaines ASBL v Government of the Brussels-Capital Region

(Case C-567/10)

(2011/C 63/39)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Inter-Environnement Bruxelles ASBL, Pétitions-Patrimoine ASBL, Atelier de Recherche et d'Action Urbaines ASBL

Defendant: Government of the Brussels-Capital Region

Questions referred

1. Must the definition of 'plans and programmes' in Article 2(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ([1]) be interpreted as excluding from the scope of that directive a procedure for the total or partial repeal of a plan such as that applicable to a 'plan particulier d'affectation du sol' (specific land-use plan), provided for in Articles 58 to 63 of the Code bruxellois de l'Aménagement du Territoire (Brussels Town and Country Planning Code)?

2. Must the word 'required' in Article 2(a) of that directive be understood as excluding from the definition of 'plans and programmes' plans which are provided for by legislative provisions but the adoption of which is not compulsory, such as the specific land-use plans referred to in Article 40 of the Brussels Town and Country Planning Code?

([1]) OJ 2001 L 197, p. 30

Action brought on 6 December 2010 — European Commission v Ireland

(Case C-570/10)

(2011/C 63/40)

Language of the case: English

Parties

Applicant: European Commission (represented by: N. Yerrell, Agent, M. Mac Aodha, Agent)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 concerning the inland transport of dangerous goods ([1]), or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under Article 10 of that 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 30 June 2009.

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

Action brought on 17 December 2010 — European Commission v Hellenic Republic

(Case C-601/10)

(2011/C 63/41)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and D. Kukovec)

Defendant: Hellenic Republic

Form of order sought

— declare that, through the award of public contracts by the negotiated procedure without prior publication of a contract notice, relating to additional land-registry and town-planning services that were not included in the initial contract of the municipalities of Vasilika, Kassandra, Egnatia and Arethousa, the Hellenic Republic has failed to fulfil its obligations under Articles 8 and 11(3) of Directive 92/50/EEC ([1]) and Articles 20 and 31(4) of Directive 2004/18/EC; ([2])

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that, given that (i) the abovementioned municipalities, as local authorities, are contracting authorities within the meaning of Article 1(b) of Directive 92/50 and Article 1(9) of Directive 2004/18, (ii) contracts for pecuniary interest relating to urban planning services are involved (Article 8 of, in conjunction with category 12 of Annex I A to, Directive 92/50; and Article 20 of, in conjunction with category 12 of Annex II A to, Directive 2004/18) and (iii) the estimated value of each contract complained of exceeds the thresholds prescribed in Article 7 of Directive 92/50 and Article 7 of Directive 2004/18, the contracts in dispute fall within the scope of those directives.

(i) Infringement of Articles 8 and 11(3) of Directive 92/50

As regards the disputed contracts for additional services that were awarded by the Municipality of Kassandra, the Commission observes that the contracting authority elected for the direct-award procedure without prior publication of a contract notice whereas the conditions, laid down in Articles 8 and 11(3)(e) of Directive 92/50, that allow recourse to that exceptional procedure and are applicable to the contracts in question were not met. More specifically, the condition requiring that there be exceptional circumstances was not met for any of the disputed contracts for additional services.

In the alternative, the Commission states that even if the conditions for the exception under Article 11(3)(e) of Directive 92/50 were met, the amount of the contracts awarded for additional services exceeds the limit, laid down by the directive, of 50 % of the amount of the original contract.

(ii) Infringement of Articles 20 and 31(4) of Directive 2004/18

As regards the disputed contracts for additional services that were awarded by the Municipalities of Vasilika, Egnatia and Arethousa, the Commission observes that the contracting authorities elected for the direct-award procedure without prior publication of a contract notice whereas the conditions, laid down in Articles 20 and 31(4)(a) of Directive 2004/18, that allow recourse to that exceptional procedure and are applicable to the contracts in question were not met. More specifically, the condition requiring that there be exceptional circumstances was not met for any of the disputed contracts for additional services.

In the alternative, the Commission states that even if the conditions for the exception under Article 31(4)(a) of Directive 2004/18 were met, the amount of the contracts awarded for additional services exceeds the limit, laid down by the directive, of 50 % of the amount of the original contract.

As to the assertion of the Hellenic Republic that the procedure which was followed for the award of the contracts complained of was consistent with the national legal framework in force at the time, the Commission observes that the procedure which was followed was contrary to Directive 92/50 which had already been transposed into Greek law at the time when the foregoing contracts were entered into (and to Directive 2004/18, introduced subsequently). In any event, the Commission states that the procedure in question was not compatible with the national legal framework invoked either.

Given that the Member States may not plead internal circumstances in order to justify a failure to comply with obligations and time-limits resulting from Community law, the Commission considers that, by failing to ensure the adoption and effective application of the measures that are necessary to comply with the requirements of Community law, the Hellenic Republic has failed to fulfil its obligations under Articles 8 and 11(3) of Directive 92/50 and Articles 20 and 31(4) of Directive 2004/18.

([1]) OJ L 209, 24.7.1992, p. 1.
([2]) OJ L 134, 30.4.2004, p. 114.

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 5 January 2011 — Daiichi Sankyo Company v Comptroller-General of Patents

(Case C-6/11)

(2011/C 63/42)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Daiichi Sankyo Company

Defendant: Comptroller-General of Patents

Questions referred

1. Regulation 469/2009 (the Regulation) ([1]) recognises amongst the other purposes identified in the recitals, the need for the grant of an SPC by each of the Member States of the Community to holders of national or European patents to be under the same conditions, as indicated in recitals 7 and 8. In the absence of Community harmonisation of patent law, what is meant in Article 3(a) of the Regulation by 'the product is protected by a basic patent in force' and what are the criteria for deciding this?

2. In a case like the present one involving a medicinal product comprising more than one active ingredient, are there further or different criteria for determining whether or not 'the product is protected by a basic patent' according to Art 3(a) of the Regulation and, if so, what are those further or different criteria?

3. In order for a combination of active ingredients cited in an authorisation for placing a medicinal product on the market to be the subject of an SPC, and having regard to the wording to Article 4 of the Regulation, is the condition that the product be 'protected by a basic patent' within the meaning of Articles 1 and 3 of the Regulation satisfied if the product infringes the basic patent under national law?

4. In order for a combination of active ingredients cited in an authorisation for placing a medicinal product on the market to be the subject of an SPC, and having regard to the wording to Article 4 of the Regulation, does satisfaction of the condition that the product be 'protected by a basic patent' within the meaning of Articles 1 and 3 of the Regulation depend upon whether the basic patent contains one (or more) claims which specifically mention a combination of (1) a class of compounds which includes one of the active ingredients in the said product and (2) a class of further active ingredients which may be unspecified but which includes the other active ingredient in the said product; or is it sufficient that the basic patent contains one (or more) claims which (1) claim a class of compounds which includes one of the active ingredients in the said product and (2) use specific language which as a matter of national law extends the scope of protection to include the presence of further other unspecified active ingredients including the other active ingredient in the said product?

(1) OJ L 152, p. 1

Action brought on 11 January 2011 — European Commission v Republic of Estonia

(Case C-16/11)

(2011/C 63/43)

Language of the case: Estonian

Parties

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

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt all the necessary legal provisions to transpose 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, (1) or by failing to notify them to the Commission, the Republic of Estonia has failed to fulfil its obligations under the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive into national law expired on 15 May 2009.

(1) OJ 2007 L 108, p. 1.

Order of the President of the Court of 1 December 2010 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy)) — Lucio Rubano v Regione Campania, Comune di Cusano Mutri

(Case C-60/09) (1)

(2011/C 63/44)

Language of the case: Italian

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

(1) OJ C 90, 18.4.2009.

Order of the President of the Eighth Chamber of the Court of 7 December 2010 — (reference for a preliminary ruling from the Bezirksgericht Ried i.I. (Austria)) — Criminal proceedings against Antonio Formato, Lenka Rohackova, Torsten Kuntz, Gardel Jong Aten, Hubert Kanatschnig, Jarmila Szabova, Zdenka Powerova, Nousia Nettuno

(Case C-116/09) (1)

(2011/C 63/45)

Language of the case: German

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

(1) OJ C 129, 6.6.2009.

Order of the President of the Court of 30 November 2010 (reference for a preliminary ruling from the Juzgado Mercantil (Spain)) — Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) v Magnatrading SL

(Case C-387/09) (1)

(2011/C 63/46)

Language of the case: Spanish

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

(1) OJ C 312, 19.12.2009.

Order of the President of the Court of 8 December 2010 — European Commission v Kingdom of Denmark

(Case C-33/10) [1]

(2011/C 63/47)

Language of the case: Danish

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

[1] OJ C 113, 1.5.2010.

Order of the President of the Court of 23 November 2010 — European Commission v Portuguese Republic

(Case C-208/10) [1]

(2011/C 63/48)

Language of the case: Portuguese

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

[1] OJ C 179, 3.7.2010.

GENERAL COURT

Judgment of the General Court of 18 January 2011 — Advance Magazine Publishers v OHIM Capela & Irmãos (VOGUE)

(Case T-382/08) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark VOGUE — Earlier national word mark VOGUE Portugal — Absence of 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))

(2011/C 63/49)

Language of the case: English

Parties

Applicant: Advance Magazine Publishers Inc. (New York, United States) (represented by: M. Esteve Sanz, lawyer)

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: J. Capela & Irmãos, L[da] (Porto, Portugal)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 June 2008 (Case R 328/2003-2) relating to opposition proceedings between J. Capela & Irmãos, L[da] and Advance Magazine Publishers, Inc.

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 30 June 2008 (Case R 328/2003-2);*
2. *Dismisses the action as to the remainder;*
3. *Orders OHIM to bear its own costs and those incurred by Advance Magazine Publishers, Inc.*

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[1] OJ C 301, 22.11.2008.

Judgment of the General Court of 19 January 2011 — Häfele v OHIM — Topcom Europe (Topcom)

(Case T-336/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark Topcom — Earlier Community and Benelux word marks TOPCOM — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 63/50)

Language of the case: English

Parties

Applicant: Häfele GmbH & Co. KG (Nagold, Germany) (represented by: J. Dönch and M. Eck, 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, intervener before the General Court: Topcom Europe (Heverlee, Belgium) (represented by: P. Maeyaert, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 June 2009 (Case R 1500/2008-2), concerning opposition proceedings between Topcom Europe NV and Häfele GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Häfele GmbH & Co. KG to pay the costs, including the costs necessarily incurred by Topcom Europe NV for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

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[1] OJ C 256, 24.10.2009.

Order of the General Court of 12 January 2011 — Terezakis v Commission

(Case T-411/09) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Partial refusal of access — Contested act replaced in the course of the proceedings — Refusal to amend the claims — No need to adjudicate)

(2011/C 63/51)

Language of the case: English

Parties

Applicant: Ioannis Terezakis (Brussels, Belgium) (represented by: initially B. Lombart, then P. Synoikis, lawyers)

Defendant: European Commission (represented by: L. Flynn and C. ten Dam, Agents)

Re:

APPLICATION for annulment of the Commission's decision of 3 August 2009 refusing the applicant access to some parts of, and the annexes to, certain letters exchanged between the European Anti-Fraud Office (OLAF) and the Greek Ministry of Finance regarding tax irregularities in connection with the construction of Spata airport at Athens (Greece)

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *The parties shall bear their own costs.*

([1]) OJ C 312, 19.12.2009.

Appeal brought on 10 December 2010 by Patrizia De Luca against the judgment of the Civil Service Tribunal delivered on 30 September 2010 in Case F-20/06, De Luca v Commission

(Case T-563/10 P)

(2011/C 63/52)

Language of the case: French

Parties

Appellant: Patrizia De Luca (Brussels, Belgium) (represented by: S. Orlandi and J.-N. Louis, lawyers)

Other parties to the proceedings: European Commission and Council of the European Union

Forms of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal delivered on 30 September 2010 (Case F-20/06 De Luca v Commission) dismissing the appellant's application;

— giving judgment itself,

  — annul the decision of 23 February 2005 of the Commission of the European Communities appointing the applicant to a post as an administrator, in so far as it sets her classification at grade A*9 step 2;

  — order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of the appeal, the appellant puts forward two pleas in law.

1. First plea in law alleging an error of law in that it was ruled that Article 12(3) of Annex XIII to the Staff Regulations of officials of the European Union applied whereas that provision applies only to 'recruitment' of officials and the applicant was already an official at the time of her appointment.

   — The appellant claims that by ruling that that provision was applicable, the CST misunderstood the material scope of Article 12(3) of Annex XIII to the Regulations, infringing the rule of interpretation according to which transitional legislative provisions must be interpreted strictly.

2. Second plea in law alleging an error of law in that the objection of illegality of Article 12(3) of Annex XIII to the Staff Regulations was rejected.

   — the appellant claims that the application of that provision results in an infringement of the fundamental principle of equal treatment of officials and the principle of entitlement to reasonable career prospects, inasmuch as the appellant was downgraded after passing a higher level competition whereas successful candidates in the internal competition of grade B*10 were treated more favourably in that their classification was set at grade A*10.

   — The appellant further claims that the CST erred in law in finding that an objection of illegality in respect of Articles 5(2) and 12(3) of Annex XIII to the Staff Regulations had not been raised implicitly on the basis of the plea in law alleging infringement of the principles of equal treatment, proportionality and the obligation to state reasons.

Action brought on 17 December 2010 — Environmental Manufacturing v OHIM — Wolf (Representation of the head of a wolf)

(Case T-570/10)

(2011/C 63/53)

Language in which the application was lodged: English

Parties

Applicant: Environmental Manufacturing LLP (Stowmarket, United Kingdom) (represented by: S. Malynicz, barrister, and M. Atkins, solicitor)

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

Other party to the proceedings before the Board of Appeal: Société Elmar Wolf, SAS (Wissembourg, France)

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 6 October 2010 in case R 425/2010-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark representing the head of a wolf, for goods in class 7 — Community trade mark application No 4971511

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

Mark or sign cited in opposition: French trade mark registration No 99786007 of the figurative mark 'WOLF Jardin' for goods in classes 1, 5, 7, 8, 12 and 31; French trade mark registration No 1480873 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 154431 of the figurative mark 'Outils WOLF' for goods in classes 7 and 8; International trade mark registration No 352868 of the figurative mark 'Outils WOLF' for goods in classes 7, 8, 12 and 21

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law: The applicant contends that the contested decision infringes Articles 42(2) and 42(3) of Council Regulation (EC) No 207/2009, as the Board of Appeal failed to identify within the class of products for which the earlier marks were registered a coherent sub-category capable of being viewed independently of the wider class, and therefore failed to conclude that there had only been proof that the mark has been put to genuine use in relation to part of the goods for which the marks were protected.

In addition, the applicant contends that the contested decision infringes Article 8(5) of Council Regulation (EC) No 207/2009, as the Board of Appeal misidentified the relevant consumer, wrongly concluded that there would be a relevant link and failed to apply the criterion of an effect on the economic behaviour of the relevant consumer and the criterion that in order to be considered unfair, the mark must transfer some image or confer some marketing boost to the junior users' goods, which was not the case. Further the Board of Appeal failed to realise that the proprietor of the earlier mark had not even correctly alleged the relevant harm under Article 8(5), still less proved that it was likely, and had therefore failed to discharge the burden upon it.

Action brought on 16 December 2010 — Fabryka Łożysk Tocznych-Kraśnik v OHIM — Impexmetal (FŁT-1)

(Case T-571/10)

(2011/C 63/54)

Language in which the application was lodged: Polish

Parties

Applicant: Fabryka Łożysk Tocznych-Kraśnik S.A. (Kraśnik, Poland) (represented by: J. Sieklucki, 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: Impexmetal S.A. (Warsaw, Poland)

Form of order sought

— annul in its entirety the decision of the First Board of Appeal of OHIM of 6 October 2010 in Case R 1387/2009-1;

— order OHIM and IMPEXMETAL S.A. to pay the costs of the proceedings, including the costs incurred by the applicant in its action before the Board of Appeal and the Opposition Division of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative trade mark 'FŁT-1' for goods in Class 7 — application no 5026372

Proprietor of the mark or sign cited in the opposition proceedings: IMPEXMETAL S.A.

Mark or sign cited in opposition: Community figurative trade marks 'FŁT' and national verbal and figurative trade marks 'FŁT' for goods in Class 7

Decision of the Opposition Division: opposition upheld in part and trade-mark application rejected in respect of several goods in Class 7

Decision of the Board of Appeal: appeal brought against the decision of the Opposition Division dismissed

Pleas in law: breach of Article 8(1)(b) of Regulation (EC) No 207/2009 [1] by reason of a misappraisal of the similarity of the opposing marks; failure to have regard for the fact that the trade mark applied for constitutes part of the name of the applicant company, which has been used long before the date of the application, and is a historically well-founded designation distinguishing the applicant; and failure to take account of the long-lasting and peaceful co-existence of the trade mark applied for and the trade marks cited in opposition.

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[1] 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 22 December 2010 — Wohlfahrt v OHIM — Ferrero (Kindertraum)

(Case T-580/10)

(2011/C 63/55)

Language in which the application was lodged: German

Parties

Applicant: Harald Wohlfahrt (Rothenburg o.d. Tauber, Germany) (represented by: N. Scholtz-Recht, 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: Ferrero SpA (Alba, Italy)

Form of order sought

— Annul the decision of the Opposition Division of 27 May 2009 (Opposition No B 668 600) and the decision of the Board of Appeal of 20 October 2010 in Case R 815/2009-4;

— Order that Community trade mark 'Kindertraum', application No 002773059, be registered also for all goods applied for in Classes 16 and 28;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'Kindertraum' for goods in Classes 15, 16, 20, 21 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: Ferrero SpA.

Mark or sign cited in opposition: A total of 32 older marks which, in part figuratively, in part as a component of a multi-word mark and in part as a single word, contain the word 'kinder', in particular the Italian word mark 'kinder' for goods and services in Classes 9, 16, 28, 30 and 42.

Decision of the Opposition Division: Upheld the opposition and refused registration.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Infringement of Article 42(2) of Regulation (EC) No 207/2009 ([1]) on the ground of missing evidence of use after expiry of the period of protected use during the opposition proceedings. Formal lack of grounds for the contested decision, since the Board of Appeal, in its decision, failed to examine the abusive trade mark application alleged in the grounds for the appeal and extensively supported by evidence. Further, an abusive trade mark application, since the sole aim of the proprietors of the opposing mark is to monopolise the term 'kinder' in the widest possible manner. Finally, infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, since there is no likelihood of confusion between the marks at issue.

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

Action brought on 23 December 2010 — X Technology Swiss v OHIM — Brawn (X-Undergear)

(Case T-581/10)

(2011/C 63/56)

Language in which the application was lodged: German

Parties

Applicant: X Technology Swiss GmbH (Wollerau, Switzerland) (represented by: A. Herbertz and R. Jung, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Brawn LLC (Weekhawken, United States of America)

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 6 October 2010 in Case R 1580/2009-1;

— Order the defendant to bear its own costs and pay those incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'X-Undergear' for goods and services in Classes 23 and 25.

Proprietor of the mark or sign cited in the opposition proceedings: Brawn LLC.

Mark or sign cited in opposition: National and Community word mark 'UNDERGEAR' for goods in Class 25.

Decision of the Opposition Division: Upheld the opposition.

Decision of the Board of Appeal: Dismissed the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, ([1]) since there is no likelihood of confusion between the two marks at issue.

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

Action brought on 17 December 2010 — Aitic Penteo v OHIM — Atos Worldline (PENTEO)

(Case T-585/10)

(2011/C 63/57)

Language in which the application was lodged: English

Parties

Applicant: Aitic Penteo, SA (Barcelona, Spain) (represented by: J. Carbonell, lawyer)

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

Other party to the proceedings before the Board of Appeal: Atos Worldline SA (Bruxelles, Belgium)

Form of order sought

— Modify the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 23 September 2010 in case R 774/2010-1 and grant the Community trade mark application No 5480561

— In the alternative, annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 September 2010 in case R 774/2010-1; and

— Order the defendant and the other party to the proceedings to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'PENTEO', for goods and services in classes 9, 38 and 42 — Community trade mark application No 5480561

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

Mark or sign cited in opposition: Benelux trade mark registration No 772120 of the word mark 'XENTEO' for goods and services in classes 9, 36, 37, 38 and 42; International trade mark registration No 863851 of the word mark 'XENTEO' for goods and services in classes 9, 36, 37, 38 and 42

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes: (i) Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits any discrimination, requiring an equal treatment accordingly with the law, (ii) Article 9 of Council Regulation (EC) No 207/2009, as the Board of Appeal disregarded the prior rights of the applicant, (iii) Articles 75 and 76 of Council Regulation (EC) No 207/2009, as the Board of Appeal disregarded facts and evidences submitted in due time by the applicant, and (iv) Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal erred in assessment of likelihood of confusion.

Action brought on 7 January 2011 — Bank Melli Iran v Council

(Case T-7/11)

(2011/C 63/58)

Language of the case: English

Parties

Applicant: Bank Melli Iran (Tehran, Iran) (represented by: L. Defalque and S. Woog, lawyers)

Defendant: Council of the European Union

Form of order sought

— annul paragraph 5, section B, of the annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP ([1]) and paragraph 5, section B, of the annex to VIII of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 ([2]) and annul the decision contained in the letter of the Council of 28 October 2010;

— declare Article 20(1)(b) of Council Decision of 26 July 2010 ([3]) and Article 16(2)(a) of Council Regulation (EC) (EU) No 961/2010 illegal and inapplicable to the applicant;

— order that the Council pays the applicant's costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging the violation of Article 215 (2) and (3) TFUE as well as Article 40 TEU what constitutes an infringement of an essential procedural requirement since:

   — the Council CFSP has adopted the restrictive measures without leaving any power of appraisal to the Council;

   — Decision 2010/413/CFSP on which Regulation No 961/2010 is based, is erroneously based on Article 29 TEU, since it does not define the approach of the Union to a particular matter or a geographical or thematic nature, as required by Article 29 TUE, but fixes precise obligations for the Member States and persons under their jurisdiction;

   — Regulation No 961/2010 does not contain the necessary provisions on legal safeguards in violation of Article 215 (3) TFEU.

2. Second plea in law, alleging an error of the European Union legislator in the choice of the legal basis for the challenged decision and regulation, since the sanctions were adopted against the applicant and its affiliates, being legal persons and not State entities not listed by the UNSC. In this regard, the applicant submits that:

   — although the basis of Article 29 TUE and 215 TFUE are justified when the Union institutions are enforcing the UN Resolution, they are not necessarily justified when administrative measures such as the freezing of funds of legal persons and non State entities are adopted;

   — the contested acts had to be adopted on the basis of Article 75 TFUE, thus involving the European Parliament in the framework of the co-decision procedure.

3. Third plea in law, alleging that the contested decision and regulation were adopted in violation of the principles of equality and non-discrimination, since the similar decisions were adopted on another legal basis such as Article 75 TFUE, and thus with a framework containing judicial guarantees adopted by the European Parliament and the Council, which was not the case for the contested acts concerning the applicant.

4. Fourth plea in law, alleging that the contested acts have been adopted in violation of the applicant's rights of defence and, in particular, its right to have a fair hearing since:

   — the applicant did not receive any evidence or documents to support the allegations of the Council, since additional allegation made in 2009 to the 2008 decision, and confirmed in 2010, were very vague, unclear, arguably impossible for the applicant to respond to;

   — the applicant was refused an access to the documentation and the right to be heard;

   — the sufficient reasoning was not provided in regard to the contested acts, what violates the applicant's right to effective judicial protection.

5. Fifth plea in law, alleging that the contested acts, for the same reasons as stated regarding the fourth plea in law, constitute the violation of the principles of sound administration and of legitimate expectations.

6. Sixth plea in law, alleging that the Council failed to communicate its decision including the grounds for listing, in violation of Article 36.3 infringing as well Article 36.4 of the regulation No 961/2010, which provides for the review of the decision when observations are submitted.

7. Seventh plea in law, alleging a manifest error of interpretation and a misuse of powers in the application of the Council Decision 2010/413/CFSP of 26 July 2010 to the applicant, since the Council gave a wrong interpretation to its Article 20(1)(b) when deciding that the applicant's activities, as described in the contested acts, fulfil the conditions to be considered as the activities that should be sanctioned.

8. Eighth plea in law, alleging the infringement of the principle of proportionality and of the right of property, since the Council has not taken into account the decision of the United Nations Security Council what should result in inapplicability of Article 20(1)(b) of Council Decision 2010/413/CFSP of 26 July 2010.

([1]) OJ L 281, p. 81
([2]) OJ L 281, p. 1
([3]) Council Decision 2010/413/CFSP: of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, OJ L 195, p. 39

Action brought on 7 January 2011 — Iran Insurance v Council

(Case T-12/11)

(2011/C 63/59)

Language of the case: English

Parties

Applicant: Iran Insurance Company (Tehran, Iran), (represented by: D. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 21, section B of the Annex to Council Decision 2010/644/CFSP ([1]) of 25 October 2010 and paragraph 21 of section B to the Annex VIII of Council Regulation (EU) No 961/2010 ([2]) of 25 October 2010 concerning restrictive measures against Iran and annul the decision contained in the letter of the Council received on 23 November 2010;

— Declare article 20(1)(b) of Council Decision 2010/413/CFSP ([3]) of 26 July 2010 and Articles 16(2) and 26 of Council Regulation No 961/2010 inapplicable to the applicant; and

— Order the Council to pay the applicant's costs for these proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, annulment of paragraph 21 of section B, of the Annex to Council Decision 2010/644/CFSP of 25 October and of paragraph 21 of section B to Annex VIII of Council Regulation (EU) No 961/2010 of 25 October 2010 concerning restrictive measures against Iran and for annulment of Articles 16(2) and 26 of Council Regulation No 961/2010 of 25 October 2010 insofar as they relate to the applicant and for annulment of the decision contained in the letter of the Council to the applicant of 28 October 2010.

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

Firstly, the applicant claims that the court has jurisdiction to review paragraph 21, section B of the Annex to Council Decision 2010/644/CFSP and paragraph 21, section B of Annex VIII to Council Regulation No 961/2010, as well as the decision of 28 October 2010 and their conformity with the general principles of European law.

In addition, the specific reasons for the listing of the applicant are wrong and the requirements of Article 20(1)(b) of Council Decision 2010/413/CFSP and of Article 16(2)(a)(b) of Council Regulation No 961/2010 are not met. Those provisions should be held inapplicable to the applicant. The Council made a manifest error in fact and erred in law. Therefore paragraph 21, section B, of the Annex to Council Decision 2010/644/CFSP of 25 October 2010 as well as paragraph 21, section B, of the Annex VIII to Council Regulation No 961/2010 of 25 October 2010 should be annulled.

In support of this application, it is also argued that the 2010 Regulation and the 2010 Decision violate the applicant's rights of defence and, in particular, its right to have a fair hearing since it did not receive any evidence or documents to support the allegations of the Council, and since the allegations made in 2010 Decision and Regulation are very vague, unclear and arguably impossible for the Iran Insurance Company to respond to. Moreover, the applicant was refused an access to the documentation and the right to be heard. This also constitutes a lack of motivation.

Furthermore, Article 24(3) of Council Decision 2010/413/CFSP requires the Council to communicate and notify its decision including the grounds for listing, and article 24(4) of Council Decision 2010/413/CFSP provides for the review of the decision when observations are submitted. The Council violated both provisions. Since Article 24(3) and 24(4) of Council Decision 2010/413/CFSP are also repeated in Article 36(3) and 36(4) of Council Regulation No 961/2010, a violation of the latter is also taking place.

It is also claimed that the Council, in its assessment of the applicant's situation, violated the principle of sound administration.

In addition, the Council, in its assessment of the applicant's situation, violated the principle of legitimate expectations.

The applicant also claims that the Council has violated the applicant's right of property and the principle of proportionality. Article 20(1)(b) of Council Decision 2010/413/CFSP and Article 16(2) of Council Regulation No 961/2010 should be declared inapplicable to the applicant. Furthermore, by indiscriminately prohibiting insurance or reinsurance contracts to all Iranian entities, Article 12 of Council Decision 2010/423/CFSP and Article 26 of Council Regulation No 961/2010 also violate the principle of proportionality. Therefore, these provisions should also be declared inapplicable to the applicant.

Moreover, the applicant claims that Council Regulation No 961/2010 violates Article 215(2) and (3) TFEU, as its legal basis, as well as Article 40 TEU.

Finally, the applicant contends that the 2010 Regulation and the 2010 Decision were adopted in violation of the principle of equality and non-discrimination.

([1]) Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81).

([2]) Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

([3]) Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

Action brought on 7 January 2011 — Post Bank v Council

(Case T-13/11)

(2011/C 63/60)

Language of the case: English

Parties

Applicant: Post Bank (Tehran, Iran), (represented by: D. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 34, section B of the Annex to Council Decision 2010/644/CFSP [1] of 25 October 2010 and paragraph 40 of section B to the Annex VIII of Council Regulation (EU) No 961/2010 [2] of 25 October 2010 concerning restrictive measures against Iran;

— Declare article 20(1)(b) of Council Decision 2010/413/CFSP [3] of 26 July 2010 and Article 16(2) of Council Regulation No 961/2010 inapplicable to the applicant; and

— Order the Council to pay the applicant's costs for these proceedings.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, annulment of paragraph 34 of section B, of the Annex to Council Decision 2010/644/CFSP of 25 October and of paragraph 40 of section B to Annex VIII of Council Regulation (EU) No 961/2010 of 25 October 2010 concerning restrictive measures against Iran and for annulment of Article 16(2) of Council Regulation No 961/2010 of 25 October 2010 insofar as they relate to the applicant.

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

Firstly, the applicant claims that the court has jurisdiction to review paragraph 34, section B of the Annex to Council Decision 2010/644/CFSP and paragraph 40, section B of Annex VIII to Council Regulation No 961/2010, as well as the decision of 28 October 2010 and their conformity with the general principles of European law.

In addition, the specific reasons for the listing of the applicant are wrong and the requirements of Article 20(1)(b) of Council Decision 2010/413/CFSP and of Articles 16(2)(a)(b) and 16(4) of Council Regulation No 961/2010 are not met. Those provisions should be held inapplicable to the applicant. The Council made a manifest error in fact and erred in law. Therefore paragraph 34, section B, of the Annex to Council Decision 2010/644/CFSP of 25 October 2010 as well as paragraph 40, section B, of the Annex VIII to Council Regulation No 961/2010 of 25 October 2010 should be annulled.

In support of this application, it is also argued that the 2010 Regulation and the 2010 Decision violate the applicant's rights of defence and, in particular, its right to have a fair hearing since it did not receive any evidence or documents to support the allegations of the Council, and since the allegations made in 2010 Decision and Regulation are very vague, unclear and arguably impossible for Post Bank to respond to.

Furthermore, Article 24(3) of Council Decision 2010/413/CFSP requires the Council to communicate and notify its decision including the grounds for listing, and article 24(4) of Council Decision 2010/413/CFSP provides for the review of the decision when observations are submitted. The Council violated both provisions. Since Article 24(3) and 24(4) of Council Decision 2010/413/CFSP are also repeated in Article 36(3) and 36(4) of Council Regulation No 961/2010, a violation of the latter is also taking place.

It is also claimed that the Council, in its assessment of the applicant's situation, violated the principle of sound administration.

In addition, the Council, in its assessment of the applicant's situation, violated the principle of legitimate expectations.

The applicant also claims that the Council has violated the applicant's right of property and the principle of proportionality. Article 20(1)(b) of Council Decision 2010/413/CFSP and Article 16(2) of Council Regulation No 961/2010 should be declared inapplicable to the applicant.

Moreover, the applicant claims that Council Regulation No 961/2010 violates Article 215(2) and (3) TFEU, as its legal basis, as well as Article 40 TEU.

Finally, the applicant contends that the 2010 Regulation and the 2010 Decision were adopted in violation of the principle of equality and non-discrimination.

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[1] Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81).

[2] Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

[3] Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39).

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 15 November 2010 — Psarras v ENISA

(Case F-118/10)

(2011/C 63/61)

Language of the case: French

Parties

Applicant: Aristidis Psarras (Heraklion, Greece) (represented by: E. Boigelot and S. Woog, lawyers)

Defendant: European Network and Information Security Agency (ENISA)

Subject-matter and description of the proceedings

First, annulment of the decision to dismiss the applicant from his duties as accountant for the Agency and to appoint another person to that post. Secondly, application for payment to the applicant of a sum by way of compensation for the loss suffered owing to the contested acts and the harassment of which he claims to have been a victim.

Form of order sought

— Annul the decision of ENISA's Management Board of 7 February 2010 to dismiss the applicant from his duties as accountant for the Agency with immediate effect and to appoint another person to the post of accountant for an indefinite period;

— As a preparatory measure, annul Annex 1 of the decision of 7 February 2010 mentioned above; that Annex 1 is the proposal of the Executive Director to the Management Board to permanently assign the accountant's tasks to another person and to dismiss the applicant from his duties as accountant;

— If necessary, annul the decision of 1 March 2010 consequently adopted by the Executive Director to reassign the applicant to a new post;

— As a result of those annulments, reinstate the applicant to the post of accountant for the Agency;

— Order ENISA to pay the applicant the sum of EUR 10 000 by way of compensation, firstly, for the loss suffered owing to the contested decisions, and, secondly, for the non-material damage suffered because of the psychological harassment of which he was a victim, subject to increase during the proceedings;

— order ENISA to pay the costs.

Action brought on 19 November 2010 — Cocchi and Falcione v Commission

(Case F-122/10)

(2011/C 63/62)

Language of the case: French

Parties

Applicants: Giorgio Cocchi (Wezembeek-Oppem, Belgium) and Nicola Falcione (Brussels, Belgium) (represented by S. Orlandi and J.-N. Louis, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to withdraw a proposal relating to transfer of the applicants' pension rights when already accepted by them.

Form of order sought

— Annul the decision of 12 February 2010 'annulling' the proposal of 16 September 2009, accepted by Mr Falcione on 9 October 2009, relating to the transfer, under Article 11(2) of Annex VIII to the Staff Regulations, of his pension rights;

— Annul the decision of 23 February 2010 'annulling' the proposal of 13 October 2009, accepted by Mr Cocchi on 10 November 2010, relating to the transfer, under Article 11(2) of Annex VIII to the Staff Regulations, of his pension rights;

— order the defendant to pay EUR 200 000 to Mr Falcione and EUR 50 000 to Mr Cocchi;

— order the European Commission to pay the costs.

Action brought on 26 November 2010 — Labiri v CESE

(Case F-124/10)

(2011/C 63/63)

Language of the case: French

Parties

Applicant: Vassiliki Labiri (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Economic and Social Committee

Subject-matter and description of the proceedings

Application for annulment of the decision to terminate without further action the administrative inquiry initiated as a result of the complaint of psychological harassment lodged by the applicant.

Form of order sought by the applicant

— Annul the decision of 18 January 2010 of the Secretary-General of the European Economic and Social Committee not to uphold any allegations against the applicant's head of unit and to terminate the administrative inquiry initiated jointly by the European Economic and Social Committee and the Committee of the Regions as a result of the complaint of psychological harassment without further action;

— order the European Economic and Social Committee to pay the costs.

Action brought on 30 December 2010 — Mora Carrasco and Others v Parliament

(Case F-128/10)

(2011/C 63/64)

Language of the case: French

Parties

Applicants: Aurora Mora Carrasco and Others (Luxembourg, Luxembourg) (represented by S. Orlandi, A. Coolen, J.-N. Louis, and E. Marchal, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decisions not to promote the applicants in the 2009 promotion exercise.

Form of order sought

— Annul the decisions not to promote the applicants in the 2009 promotion exercise;

— Order the European Parliament to pay the costs.

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