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# COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 637/01)

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**Past publications**

OJ C 103, 2.4.2011

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EUR-Lex: http://eur-lex.europa.eu

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*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

## Order of the Court of 17 December 2010 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte, Italy) — Maurizio Polisseni v Azienda Sanitaria Locale N.14 V.C.O., Antonio Giuliano

**(Case C-217/09)** [1]

***(Article 104(3), first subparagraph, of the Rules of Procedure — Article 49 TFEU — Freedom of establishment — Public health — Pharmacies — Proximity — Supply of the population with medicines — Authorisation to operate — Territorial distribution of pharmacies — Establishment of limits based on a criterion of demographic density — Minimum distance between pharmacies)***

(2011/C 120/02)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per il Piemonte

**Parties to the main proceedings**

*Applicant:* Maurizio Polisseni.

*Defendants:* Azienda Sanitaria Locale N.14 V.C.O., Antonio Giuliano

**Re:**

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per il Piemonte — Interpretation of Arts 43, 152 and 153 EC — Opening of new pharmacies — National legislation making authorisation for the moving of a pharmacy subject to the keeping of a minimum distance between one pharmacy and another

**Operative part of the order**

1. *Article 49 TFEU must be interpreted in principle as not precluding national legislation, such as that at issue in the main proceedings, which places limits on the sitting of pharmacies by providing that:*

   — *in each pharmaceutical area, only one pharmacy may be created, in principle, per 4 000 or 5 000 inhabitants; and*

   — *each pharmacy must keep a minimum distance from existing pharmacies, that distance being, as a general rule, 200 metres.*

2. *However, Article 49 TFEU precludes such national legislation in so far as the basic rules of 4 000 or 5 000 inhabitants and 200 metres prevent the creation, in any geographical area with particular demographic characteristics, of a sufficient number of pharmacies capable of providing an appropriate pharmaceutical service, which it is for the national court to verify.*

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[1] OJ C 205, 29.8.2009.

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## Order of the Court of 15 December 2010 (reference for a preliminary ruling from the Commissione tributaria provinciale di Taranto — Italy) — Soc Agricola Esposito srl v Agenzia delle Entrate — Ufficio di Taranto 2

**(Case C-492/09)** [1]

***(Articles 92(1), 103(1) and 104(3), second subparagraph, of the Rules of Procedure — Electronic networks and communication services — Directives 2002/20/EC, 2002/21/EC and 2002/77/EC — Government authorisation tax — Partial inadmissiblity — Questions the answer to which leaves no room for reasonable doubt)***

(2011/C 120/03)

*Language of the case: Italian*

**Referring court**

Commissione tributaria provinciale di Taranto

**Parties to the main proceedings**

*Applicant:* Soc Agricola Esposito srl

*Defendant:* Agenzia delle Entrate — Ufficio di Taranto 2

**Re:**

Reference for a preliminary ruling — Commissione tributaria provinciale di Taranto — Interpretation of Article 9(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ 2002 L 108, p. 33) and Articles 12 and 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21) — Imposition of a government authorisation tax in the case of a telephone subscription contract — Tax not applied in the case of a prepaid telephone card — Admissibility

**Operative part of the order**

1. *The part of the fourth question concerning Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, and the sixth question are inadmissible.*

2. *Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation directive) and Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework directive) do not preclude a tax such as the government concession tax.*

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([1]) OJ C 24, 30.1.2010.

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**Order of the Court (Fifth Chamber) of 12 January 2011 — Heinz Helmuth Eriksen (C-205/10 P), Bent Hansen (C-217/10 P), Brigit Lind (C-222/10 P) v European Commission**

**(Joined Cases C-205/10 P, C-217/10 P and C-222/10 P)** ([1])

***(Appeal — Actions for damages — Public health implications of the nuclear accident that occurred near Thule (Greenland, Denmark) — Directive 96/29/Euratom — Commission's failure to adopt measures against a Member State)***

(2011/C 120/04)

*Language of the case: English*

**Parties**

*Appellants:* Heinz Helmuth Eriksen (C-205/10 P), Bent Hansen (C-217/10 P), Brigit Lind (C-222/10 P) (represented by: I. Anderson, Advocate)

*Other party to the proceedings:* European Commission (represented by: M. Patakia and E. White, Agents)

**Re:**

Appeals brought against the orders of the General Court (Fourth Chamber) of 24 March 2010 in Case T-516/08 *Erikson* v *Commission*, Case T-6/09 *Hansen* v *Commission* and Case T-5/09 *Lind* v *Commission* whereby the General Court dismissed as manifestly lacking any foundation in law actions for damages seeking compensation for harm allegedly suffered by the applicants following a failure by the Commission to take the measures necessary to oblige Denmark to comply with Directive 96/29 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1) and to apply those provisions to workers involved in the nuclear accident at Thule (Greenland), disregarding the resolution of the European Parliament of 10 May 2007 on the consequences of that accident on public health (Petition 720/2002, 2006/2012 (INI))

**Operative part of the order**

1. *The appeals are dismissed.*

2. *Mr Eriksen, Mr Hansen and Ms Lind shall pay the costs.*

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([1]) OJ C 195, 17.7.2010.

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**Order of the Court (Sixth Chamber) of 18 January 2011 (reference for a preliminary ruling from the Diikitiko Efetio Thessalonikis — Greece) — Souzana Verkizi-Nikolakaki v Anotato Simvoulio Epilogis Prosopikou (A.S.E.P.), Aristotelio Panepistimio Thessalonikis**

**(Case C-272/10)** ([1])

***(Article 104(3) of the Rules of Procedure — Social policy — Article 155(2) TFEU — Directive 1999/70/EC — Clause 8 of the framework agreement on fixed-term work — Fixed-term employment contracts in the public sector — Successive contracts — Abuse — Penalties — Conversion into an employment contract of indefinite duration — Detailed procedural rules — Time-limit — Principles of equivalence and effectiveness — Reduction in the general level of protection afforded to workers)***

(2011/C 120/05)

*Language of the case: Greek*

**Referring court**

Diikitiko Efetio Thessalonikis

**Parties to the main proceedings**

*Applicant:* Souzana Verkizi-Nikolakaki

*Defendants:* Anotato Simvoulio Epilogis Prosopikou (A.S.E.P.), Aristotelio Panepistimio Thessalonikis

**Re:**

Reference for a preliminary ruling — Diikitiko Efetio Thessalonikis — Interpretation of clause 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) — National legislation introducing a time-limit for converting fixed-term employment contracts into employment contracts of indefinite duration

**Operative part of the order**

1. *Article 155(2) TFEU and 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 Article 11(2) of Presidential Decree No 164/2004 laying down provisions concerning workers employed under fixed-term contracts in the public sector, which provides that an application by a worker to convert a succession of fixed-term employment contracts liable to be considered to constitute an abuse into an employment contract of indefinite duration must be made to the competent authority within a time-limit of two months from the date of entry into force of that decree, provided that — a matter which it is for the referring court to determine — that time-limit is not less favourable than that governing similar domestic actions regarding employment law and does not render impossible or excessively difficult the exercise of rights conferred by European Union law.*

2. *Clause 8(3) of the Framework Agreement on fixed-term work must be interpreted as not precluding national legislation, such as Article 11(2) of Presidential Decree No 164/2004, which provides that an application by a worker to convert a succession of fixed-term employment contracts liable to be considered to constitute an abuse into an employment contract of indefinite duration must be made to the competent authority within a time-limit of two months from the date of entry into force of that decree, whereas the corresponding time-limits laid down by similar national legislative measures which preceded that date were extended, in so far as that legislation does not affect the general level of protection afforded to fixed-term workers.*

(1) OJ C 221, 14.8.2010.

**Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 10 January 2011 — WEGO Landwirtschaftliche Schlachtstellen GmbH v Hauptzollamt Hamburg-Jonas**

**(Case C-10/11)**

(2011/C 120/06)

*Language of the case: German*

**Referring court**

Finanzgericht Hamburg

**Parties to the main proceedings**

*Applicant:* WEGO Landwirtschaftliche Schlachtstellen GmbH

*Defendant:* Hauptzollamt Hamburg-Jonas

**Question referred**

Is the Hauptzollamt (Principal Customs Office) responsible for paying a refund bound by the subsequent amendment made by the customs office of export to the information entered in box 2 of the export declaration or in the T5 control copy? (1)

(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p.1).

**Reference for a preliminary ruling from Supreme Court of the United Kingdom made on 7 February 2011 — JPMorgan Chase Bank N.A., Frankfurt Branch, J.P. Morgan Securities Limited v Berliner Verkehrsbetriebe (BVG) Anstalt des öffentlichen Rechts**

**(Case C-54/11)**

(2011/C 120/07)

*Language of the case: English*

**Referring court**

Supreme Court of the United Kingdom

**Parties to the main proceedings**

*Applicants:* JPMorgan Chase Bank N.A., Frankfurt Branch, J.P. Morgan Securities Limited

*Defendant:* Berliner Verkehrsbetriebe (BVG) Anstalt des öffentlichen Rechts

**Questions referred**

1. When identifying, for the purposes of Articles 22(2) and 25 of the Council Regulation (EC) No 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [1] (the 'Brussels I Regulation') what proceedings have as their object and with what they are principally concerned, should the national court only have regard to the claims made by the claimant(s) or should it also have regard to any defences or arguments raised by the defendants?

2. If a party raises an issue in proceedings which falls within the subject matter of Article 22(2) of the Brussels I Regulation, such as an issue as to the validity of the decision of an organ of a company or other legal person, does it necessarily follow that that issue forms the object of the proceedings and that the proceedings are principally concerned with that issue if that issue may be potentially dispositive of the proceedings, irrespective of the nature and number of other issues raised in the proceedings and of whether all or some of those issues are also potentially dispositive?

3. If the answer to question (2) above is negative, is the national court required, in order to identify the object of the proceedings and the issue with which the proceedings are principally concerned, to consider the proceedings overall and form an overall judgment of their object and what they are principally concerned with; and if not, what test should the national court apply to identify these matters?

[1] OJ L 12, p. 1

**Reference for a preliminary ruling from the Cour d'Appel de Nancy (France) lodged on 9 February 2011 — Association Kokopelli v Graines Baumaux SAS**

**(Case C-59/11)**

(2011/C 120/08)

*Language of the case: French*

**Referring court**

Cour d'Appel de Nancy

**Parties to the main proceedings**

*Applicant:* Association Kokopelli

*Defendant:* Graines Baumaux SAS

**Question referred**

Are Council Directives 98/95/EC [1], 2002/53/EC [2] and 2002/55/EC [3] and Commission Directive 2009/145 [4] valid in the light of the following fundamental rights and principles of the European Union, namely, freedom to pursue an economic activity, proportionality, equal treatment or non-discrimination and the free movement of goods, and also in the light of the commitments arising from the International Treaty on Plant Genetic Resources for Food and Agriculture, particularly in so far as they impose restrictions on the production and marketing of old seed and plants?

[1] Council Directive 98/95/EC of 14 December 1998 amending, in respect of the consolidation of the internal market, genetically modified plant varieties and plant genetic resources, Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 66/403/EEC, 69/208/EEC, 70/457/EEC and 70/458/EEC on the marketing of beet seed, fodder plant seed, cereal seed, seed potatoes, seed of oil and fibre plants and vegetable seed and on the common catalogue of varieties of agricultural plant species (OJ 1999 L 25, p.1).

[2] Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1).

[3] Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed (OJ 2002 L 193, p. 33).

[4] Commission Directive 2009/145/EC of 26 November 2009 providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties (OJ 1999 L 312, p. 44).

**Reference for a preliminary ruling from the Tribunale di Rovereto (Italy) lodged on 11 February 2011 — Criminal proceedings against John Austine**

**(Case C-63/11)**

(2011/C 120/09)

*Language of the case: italian*

**Referring court**

Tribunale di Rovereto

**Party to the main proceedings**

John Austine

**Question referred**

In the light of the principles of sincere cooperation and the effectiveness of directives, are Articles 15 and 16 of Directive 2008/115/EC [1] to be interpreted as precluding a Member State from providing that an illegally staying third country national who fails to cooperate in the administrative return procedure is

to be subject to measures involving deprivation of liberty on the basis of measures, other than detention measures, as defined under national law, in the absence of the requirements and safeguards laid down in Articles 15 and 16, on grounds of failure to comply with a removal order issued by the competent administrative authorities in accordance with Article 8(3) of the directive?

(1) OJ 2008 L 348, p. 98.

## Action brought on 16 February 2011 — European Commission v Kingdom of Sweden

**(Case C-70/11)**

(2011/C 120/10)

*Language of the case: Swedish*

### Parties

*Applicant:* European Commission (represented by: J. Enegren and M. Owsiany-Hornung, acting as Agents)

*Defendant:* Kingdom of Sweden

### Form of order sought

— Declare that, by providing that a trader, if a consumer exercises his right of withdrawal, can require not only that the consumer pay for that part of the financial service which has already been supplied but can also require payment of reasonable costs for services relating to the time before the trader accepted the consumer's confirmation that he had withdrawn from the contract, the Kingdom of Sweden has failed to fulfil its obligations under Directive 2002/65/EC of the European Parliament and of the Council (1) of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, and

— order the Kingdom of Sweden to pay the costs.

### Pleas in law and main arguments

In accordance with recital 13 in the preamble to the directive, Member States should not be able to adopt provisions other than those laid down in this Directive in the fields it harmonises, unless otherwise specifically indicated in it.

It is apparent from Article 6(1) of the directive that the Member States are to ensure that the consumer has a period of 14 calendar days to withdraw from the contract without penalty and without giving any reason.

Under Article 7(1) of the directive, when the consumer exercises his right of withdrawal he may only be required to pay for the service actually provided by the supplier in accordance with the distance contract.

It follows from the second sentence of Chapter 3, Paragraph 11, of the Law on distance and doorstep selling (2005:59) (distans- och hemförsäljningslagen) that traders, in addition to payment for the service actually provided, can also require payment for reasonable costs.

In the legislation which implements the directive, Sweden has thus introduced provisions which go beyond what is laid down in Article 7(1) of the directive as regards the consumer's right of withdrawal.

In all the circumstances, Sweden does not appear to have transposed Article 7(1) of the directive with the clarity and precision laid down by the Court in order that the requirement for legal certainty be met.

(1) OJ L 271, p. 16.

## Appeal brought on 21 February 2011 by Tresplain Investments Ltd against the judgment of the General Court (Eighth Chamber) delivered on 9 December 2010 in Case T-303/08: Tresplain Investments Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Hoo Hing Holdings Ltd

**(Case C-76/11 P)**

(2011/C 120/11)

*Language of the case: English*

### Parties

*Appellant:* Tresplain Investments Ltd (represented by: B. Brandreth, Barrister, J. Stobbs, Attorney)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Hoo Hing Holdings Ltd

### Form of order sought

The appellant claims that the Court should:

— set aside the contested judgment of the General Court and the contested decision of the Board of Appeal of OHIM;

— order OHIM to pay the appellant's costs incurred before the General Court and the Court of Justice of the European Union

### Pleas in law and main arguments

The appellant submits that the General Court's Decision erred in law in its interpretation and application of Article 8(4) CTMR (1) in the following ways:

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

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

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

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

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

**(Case C-77/11)**

(2011/C 120/12)

*Language of the case: French*

### Parties

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

*Defendant:* European Parliament

### Form of order sought

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

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

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

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

— order the European Parliament to pay the costs.

### Pleas in law and main arguments

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

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

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

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

**(Case C-79/11)**

(2011/C 120/13)

*Language of the case: Italian*

### Referring court

Tribunale Ordinario di Firenze

### Parties to the main proceedings

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

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

**Question referred**

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

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

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

**(Case C-88/11 P)**

(2011/C 120/14)

*Language of the case: French*

**Parties**

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

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

**Form of order sought**

— declare the appeal admissible;

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

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

— order OHIM to pay the costs.

**Pleas in law and main arguments**

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

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

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

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

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

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

**(Case C-13/10)** [1]

(2011/C 120/15)

*Language of the case: Dutch*

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

[1] OJ C 80, 27.3.2010.

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

**(Case C-266/10)** [1]

(2011/C 120/16)

*Language of the case: German*

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

[1] OJ C 209, 31.7.2010.

**Order of the President of the Court of 3 February 2011 (reference for a preliminary ruling from the Juzgado Contencioso-Administrativo de Almería — Spain) — Águeda María Sáenz Morales v Consejería para la Igualdad y Bienestar Social de la Junta de Andalucía**

**(Case C-230/10)** [1]

(2011/C 120/17)

*Language of the case: Spanish*

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

[1] OJ C 209, 31.7.2010.

**Order of the President of the Court of 18 January 2011 — European Commission v Republic of Poland**

**(Case C-232/10)** [1]

(2011/C 120/18)

*Language of the case: Polish*

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

[1] OJ C 209, 31.07.2010.

**Order of the President of the Court of 3 January 2011 — European Commission v Grand Duchy of Luxembourg**

**(Case C-246/10)** [1]

(2011/C 120/19)

*Language of the case: French*

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

[1] OJ C 195, 17.7.2010.

**Order of the President of the Court of 13 December 2010 — European Commission v Hellenic Republic**

**(Case C-248/10)** [1]

(2011/C 120/20)

*Language of the case: Greek*

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

[1] OJ C 209, 31.7.2010.

**Order of the President of the Court of 11 January 2011 — European Commission v Portuguese Republic**

**(Case C-286/10)** [1]

(2011/C 120/21)

*Language of the case: Portuguese*

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

[1] OJ C 221, 14.8.2010.

**Order of the President of the Court of 10 January 2011 — European Commission v Italian Republic**

**(Case C-291/10)** [1]

(2011/C 120/22)

*Language of the case: Italian*

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

[1] OJ C 221, 14.08.2010.

**Order of the President of the Court of 11 January 2011 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Administración General del Estado v Red Nacional de Ferrocarriles Españoles (RENFE)**

**(Case C-303/10)** [1]

(2011/C 120/23)

*Language of the case: Spanish*

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

[1] OJ C 246, 11.09.2010.

**Order of the President of the Court of 18 January 2011 — European Commission v Republic of Poland**

**(Case C-304/10)** [1]

(2011/C 120/24)

*Language of the case: Polish*

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

[1] OJ C 246, 11.09.2010.

**Order of the President of the Court of 3 January 2011 — European Commission v Grand Duchy of Luxembourg**

**(Case C-396/10)** [1]

(2011/C 120/25)

*Language of the case: French*

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

[1] OJ C 274, 9.10.2010.

**Order of the President of the Court of 10 January 2011 — European Commission v Hellenic Republic**

**(Case C-410/10)** [1]

(2011/C 120/26)

*Language of the case: Greek*

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

[1] OJ C 288, 23.10.2010.

# GENERAL COURT

## Judgment of the General Court (Fourth Chamber) of 8 March 2011 — World Wide Tobacco España v Commission

**(Case T-37/05)** [1]

***(Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Decision finding an infringement of Article 81 EC — Price-fixing and market-sharing — Fines — Deterrent effect — Equal treatment — Mitigating circumstances — Maximum limit of 10 % of turnover — Cooperation)***

(2011/C 120/27)

*Language of the case: Spanish*

### Parties

*Applicant:* World Wide Tobacco España SA (Madrid, Spain) (represented by: initially M. Odriozola Alén, M. Marañon Hermoso and A. Emch, then M. Odriozola Alén, M. Barrantes Diaz and A. João Vide, lawyers)

*Defendant:* European Commission (represented by: F. Castillo de la Torre and É. Gippini Fournier, agents)

### Re:

Application for a reduction of the fine imposed on the applicant in the Commission decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain.

### Operative part of the judgment

*The Court:*

1. *sets the amount of the fine imposed on World Wide Tobacco España SA in Article 3 of the Commission decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) at EUR 1 579 500;*

2. *dismisses the action as to the remainder;*

3. *orders World Wide Tobacco España to bear three quarters of its own costs and three quarters of the costs incurred by the Commission, and orders the Commission to bear one quarter of its own costs and one quarter of the costs incurred by World Wide Tobacco España.*

[1] OJ C 82, of 2.4.2005.

## Judgment of the General Court of 9 March 2011 — Longevity Health Products v OHIM — Performing Science (5 HTP)

**(Case T-190/09)** [1]

***(Community trade mark — Invalidity proceedings — Community word mark 5 HTP — Absolute ground of refusal — Signs or indications which have become customary — Article 7(1)(d) of Regulation (EC) No 207/2009 — Distinctive character acquired by use — Article 52(2) of Regulation No 207/2009)***

(2011/C 120/28)

*Language of the case: German*

### Parties

*Applicant:* Longevity Health Products Inc. (Nassau, Bahamas) (represented by: J.E. Korab, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Performing Science LLC (Las Vegas, Nevada, United States) (represented by: D. Plasser, lawyer)

### Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 April 2009 (Case R 595/2008-4) relating to invalidity proceedings between Performing Science LLC and Longevity Health Products Inc.

### Operative part of the judgment

*The Court:*

1. *The action is dismissed;*

2. *Longevity Health Products Inc. is ordered to pay the costs.*

[1] OJ C 167, 18.7.2009.

## Judgment of the General Court of 9 March 2011 — Commission v Edificios Inteco

**(Case T-235/09)** ([1])

***(Arbitration clause — Programme concerning the promotion of energy technologies for Europe (Thermie) — Contract concerning the construction in Valladolid (Spain) of a commercial and business centre equipped with a solar powered air conditioning system — Non-performance of the contract — Reimbursement of sums advanced — Late payment interest — Procedure by default)***

(2011/C 120/29)

*Language of the case: Spanish*

### Parties

*Applicant:* European Commission (represented by: G. Valero Jordana)

*Defendant:* Edificios Inteco SL (Valladolid, Spain) (represented by: C. de la Red Mantilla, lawyer)

### Re:

Action brought by the Commission pursuant to Article 238 EC for reimbursement of the sum of EUR 157 238,07, paid by it to the defendant in relation to a construction project in Valladolid of a commercial and business centre equipped with a solar powered air conditioning system (contract BU/104/93) plus late payment interest.

### Operative part of the judgment

*The Court:*

1. *Orders Edificios Inteco SL to reimburse to the European Commission the sum of EUR 157 238,07, plus EUR 81 686,22 corresponding to interest due on 1 June 2009;*

2. *Orders Edificios Inteco to reimburse the Commission the sum of EUR 2 173 796 for each additional day's delay from 2 June 2009 to payment in full of the debt.*

3. *Orders Edificios Inteco to pay the costs.*

([1]) OJ C 220, 12.9.2009.

## Order of the President of the General Court of 9 March 2011 — Castiglioni v Commission

**(Case T-591/10 R)**

***(Interim proceedings — Public contracts — Public procurement procedure — Rejection of a bid — Application for stay of execution — Failure to have regard to the formal requirements — Inadmissibility)***

(2011/C 120/30)

*Language of the case: Italian*

### Parties

*Applicant:* Castiglioni Srl (Busto Arsizio, Italy) (represented by: G. Turri, lawyer)

*Defendant:* European Commission (represented by: S. Delaude and N. Bambara, acting as Agents, and by D. Gullo, lawyer)

### Re:

Application for interim measures made in the tendering procedure concerning a multiple framework agreement for works to construct, restructure and maintain buildings and infrastructure at the European Commission's Joint Research Centre's Ispra (Italy) site.

### Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

## Order of the President of the General Court of 2 March 2011 — Westfälisch-Lippischer Sparkassen -und Giroverband v Commission

**(Case T-22/11 R)**

***(Application for interim measures — Manifestly inadmissible)***

(2011/C 120/31)

*Language of the case: German*

### Parties

*Applicant:* Westfälisch-Lippischer Sparkassen -und Giroverband (Münster, Germany) (represented by: A.Rosenfeld and I. Liebach, lawyers)

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

**Re:**

Application for suspension of operation of the Commission's decision of 21 December 2010 C(2010) 9525 final State aid, MC 8/2009 and C 43/2009 — Germany — WestLB transfers, in so far as it follows that Westdeutsche Immobilien Bank AG's new operations after 15 February 2011 must be terminated.

**Operative part of the order**

1. *The application for suspension of operation is rejected.*

2. *There is no need to adjudicate on Westdeutsche Immobilien Bank AG's application for leave to intervene.*

3. *Costs are reserved.*

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## Order of the President of the General Court of 2 March 2011 — Rheinischer Sparkassen- und Giroverband v Commission

**(Case T-27/11 R)**

***(Interim proceedings — Application for interim measures — Manifest inadmissibility)***

(2011/C 120/32)

*Language of the case: German*

**Parties**

*Applicant:* Rheinischer Sparkassen- und Giroverband (Düsseldorf, Germany) (represented by: A. Rosenfeld and I. Liebach, lawyers)

*Defendant:* European Commission (represented by: L. Flynn, B. Martenczuk and T. Maxian Rusche, acting as Agents)

**Re:**

Application for a stay of execution of Commission Decision C(2010) 9525 final of 21 December 2010 concerning State aid No MC 8/2009 and C 43/2009 — Germany — WestLB transfers, in so far as it follows therefrom that there must be no new transactions involving Westdeutsche ImmobilienBank AG after 15 February 2011.

**Operative part of the order**

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

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## Action brought on 18 February 2011 — GRP Security v Court of Auditors

**(Case T-87/11)**

(2011/C 120/33)

*Language of the case: French*

**Parties**

*Applicant:* GRP Security (Bertrange, Luxembourg) (represented by: G. Osch, lawyer)

*Defendant:* Court of Auditors of the European Union

**Form of order sought**

The applicant claims that the General Court should:

— uphold the applicant's pleas in law set out in this application,

— reserve to the applicant the right to produce any further legal pleas, supporting facts and evidence,

— admit this action as procedurally valid,

— uphold this action as to the substance,

— and therefore on the above stated grounds annul the contested decisions,

— reserve to the applicant the right to seek compensation for damage suffered by reason of the unlawful conduct of the Court of Auditors,

— order the Court of Auditors to pay all the costs of the proceedings,

— reserve to the applicant all other rights, entitlements, pleas and actions.

**Pleas in law and main arguments**

The applicant seeks the annulment of the decisions of the Court of Auditors of the European Union concerning, first, the administrative penalty of exclusion of the applicant from contracts and subsidies financed by the budget of the European Union for a period of three months and, second, termination of the services framework contract No LOG/2026/10/2 titled 'Various security services'.

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

1. First plea in law: infringement of the principle of proportionality, the rights of the defence and the right to a fair hearing, since the applicant acted in good faith and was not responsible for the false statements and misrepresentations made by one of its employees and since the Court of Auditors could have requested the replacement of the employee concerned instead of terminating the contract.

2. Second plea in law: manifest error of assessment, since the Court of Auditors did not take into account all the material in the file.

3. Third plea in law: infringement of Articles 93, 94 and 96 of the Financial Regulation, since the applicant did not submit any incorrect information and was not guilty of any misrepresentation in the procurement procedure for the contract in question.

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**Action brought on 22 February 2011 — AU Optronics v Commission**

**(Case T-94/11)**

(2011/C 120/34)

*Language of the case: English*

**Parties**

*Applicant:* AU Optronics Corp. (Hsinchu, Taiwan) (represented by: B. Hartnett, Barrister and O. Geiss, lawyer)

*Defendant:* European Commission

**Form of order sought**

— annul Commission Decision C(2010) 8761 final of 8 December 2010 in Case COMP/39.309 — LCD — Liquid Crystal Displays, insofar as it relates to the applicant;

— in the alternative, reduce the fine imposed on the applicant; and

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

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the Commission failed to establish, to the requisite legal and evidential standard, that the Commission had jurisdiction to apply Article 101 TFEU and Article 53 EEA Agreement, as:

   — The Commission failed to establish territorial jurisdiction;

   — The Commission failed to establish that the alleged agreement had an immediate, substantive and foreseeable effect in the EEA.

2. Second plea in law, alleging that the Commission manifestly erred in law and in fact when applying Article 101 TFEU and Article 53 EEA Agreement.

3. Third plea in law, alleging that the Commission breached the applicant's right of defence.

4. Fourth plea in law, alleging that the Commission erred when determining the duration of the infringement.

5. Fifth plea in law, alleging that the Commission manifestly erred in determining the basic amount of the fine, in particular as:

   — The Commission manifestly erred in calculating the value of sales;

   — The Commission manifestly erred by failing to take into account the applicant's individual conduct when assessing the gravity of the infringement.

6. Sixth plea in law, alleging that the Commission failed to provide adequate reasoning when assessing the gravity of the infringement.

7. Seventh plea in law, alleging that the Commission misapplied the 2002 Leniency Notice [1], as:

   — The Commission manifestly erred by not finding that the applicant's cooperation represented very significant added value that merits a reduction at or near the top end of the 20 %-30 % range;

   — The Commission manifestly erred in law by basing its decision on criteria not provided for in the 2002 Leniency Note; and

   — As a consequence, the Commission infringed the applicant's rights of defence.

8. Eighth plea in law, alleging that the Commission breached the applicant's right to a fair trail and, as a result, breached Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention on Human Rights, as:

   — The applicant was denied the opportunity to examine or cross-examine witnesses;

   — The applicant was denied the opportunity to comment on the calculation of the fine imposed on it;

   — The fine as imposed following an oral hearing that was not public and which the decision-maker did not attend; and

   — The contested decision was adopted by an administrative body, and no judicial body has jurisdiction to review all aspects of it.

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[1] Commission notice on immunity from fines and reduction of fines in cartel cases (Text with EEA relevance) (OJ 2002 C 45, p. 3)

**Action brought on 18 February 2011 — Rovi Pharmaceuticals v OHIM — Laboratorios Farmaceuticos Rovi (ROVI Pharmaceuticals)**

**(Case T-97/11)**

(2011/C 120/35)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Rovi Pharmaceuticals GmbH (Schlüchtern, Germany) (represented by: M. Berghofer, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Laboratorios Farmaceuticos Rovi, SA (Madrid, Spain)

**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 7 December 2010 in case R 500/2010-2;

— Reject the opposition No B 1368580 in its entirety with costs;

— Order the defendant to register Community trade mark application No 6475107.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'ROVI Pharmaceuticals', for goods and services in classes 3, 5 and 44 — Community trade mark application No 6475107

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

*Mark or sign cited in opposition:* Community trade mark registration No 24810 of the figurative mark 'ROVI', for goods in classes 3 and 5; Community trade mark registration No 4953915 of the figurative mark 'ROVICM Rovi Contract Manufacturing', for goods and services in classes 5, 42 and 44; Spanish trade mark registration No 2509464 of the word mark 'ROVIFARMA', for goods and services in classes 5, 39 and 44; Spanish trade mark registration No 1324942 of the word mark 'ROVI', for goods in class 3; Spanish trade mark registration No 283403 of the word mark 'ROVI', for goods in classes 1 and 5; Spanish trade mark registration No 137853 of the figurative mark 'ROVI', for goods in class 3

*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 Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly found that there was likelihood of confusion as it has incorrectly appreciated the individual factors relevant to the global assessment, and (ii) omitted to perform the global assessment of the concerned marks.

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**Appeal brought on 17 February 2011 by AG against the judgment of the Civil Service Tribunal delivered on 16 December 2010 in Case F-25/10 AG v Parliament**

**(Case T-98/11 P)**

(2011/C 120/36)

*Language of the case: French*

**Parties**

*Appellant:* AG (Brussels, Belgium) (represented by S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

*Other party to the proceedings:* European Parliament

**Form of order sought by the appellant**

— Declare the present appeal admissible;

— Annul the order made by the Civil Service Tribunal on 16 December 2010 in Case F-25/10;

— Grant the forms of order sought as regards annulment and indemnity submitted by the appellant before the Civil Service Tribunal;

— Order the Parliament to pay the costs of both instances.

**Pleas in law and main arguments**

In support of the appeal, the appellant raises a single plea in law, alleging distortion of the evidence adduced before the Judge at first instance, breach of the principle of legal certainty and infringement of the right to an effective remedy, in that:

— there is no document in the file which enables the CST to take the view that the appellant lacked diligence in not having her post forwarded during her end-of-year holidays, during which period the post official came to her home to deliver to her the registered letter from the Parliament with its response to her claim;

— the CST did not make clear what was to be understood by 'extended' holidays;

— the CST took the view that the non-delivery notice which the appellant found in her letterbox on her return from holiday obviously related to the registered letter from the Parliament with its response to her claim.

## Action brought on 23 February 2011 — Mizuno v OHIM — Golfino (G)

**(Case T-101/11)**

(2011/C 120/37)

*Language in which the application was lodged: German*

### Parties

*Applicant:* Mizuno Corp. (Osaka, Japan) (represented by: T. Raab and H. Lauf, 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:* Golfino AG (Glinde, Germany)

### Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 December 2010 in Case R 821/2010-1 in its entirety;

— Order the defendant to pay the costs.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the figurative mark containing the letter 'G' together with other symbols, for goods in Class 25

*Proprietor of the mark or sign cited in the opposition proceedings:* Golfino AG

*Mark or sign cited in opposition:* the figurative mark containing the letter 'G' together with a plus sign, for goods and services in Classes 18, 25 and 35

*Decision of the Opposition Division:* the opposition was rejected

*Decision of the Board of Appeal:* the appeal was granted and the application was rejected

*Pleas in law:* Infringement of Article 8(1)(b) and indirectly of Article 7(1)(b) of Regulation (EC) No 207/2009 [1] as 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 21 February 2011 — EMA v Commission

**(Case T-116/11)**

(2011/C 120/38)

*Language of the case: Italian*

### Parties

*Applicant:* European Medical Association (EMA) (Brussels, Belgium) (represented by: A. Franchi, L. Picciano and N. di Castelnuovo, lawyers)

*Defendant:* European Commission

### Form of order sought

— Declare that the action is admissible and well founded as to the substance;

***Principally:***

— find and declare that the EMA correctly complied with its contractual obligations under contracts 507760 DICOEMS and 507126 COCOON and is therefore entitled to reimbursement of expenditure incurred in the performance of those contracts as set out in FORMs C which were sent to the Commission, including FORM C relating to period IV under the COCOON contract;

— find and declare that the Commission's decision to terminate those contracts, contained in the letter of 5 November 2010, is unlawful;

— accordingly, declare that there is no basis for the Commission's claim for reimbursement of the sum of EUR 164 080,10 and, consequently, annul, withdraw — including by the issue of a corresponding credit note — the debit note of 13 December 2010 by which the Commission sought repayment of the above sum or, in any event, declare that that claim was unlawful;

— order the Commission to pay the remaining sums due to EMA claimed in FORMs C forwarded to the Commission, amounting to EUR 250 999,16;

***In the alternative:***

— establish the liability of the Commission on the ground of unjust enrichment and wrongful act;

— as a consequence, order the Commission to pay compensation for the financial loss and non-material damage suffered by the applicant, to be quantified in the course of the proceedings;

***in any event***, order the Commission to pay the costs of the proceedings.

**Pleas in law and main arguments**

By the present action, brought under Article 272 TFEU and based on the arbitration clause in Article 13 of the DICOEMS and COCOON contracts, the applicant disputes the lawfulness of the Commission's decision of 5 November 2010 to terminate, following an audit carried out by the Commission's services, the two contracts concluded with the applicant as part of the Sixth Framework Programme for Research and Development. The applicant therefore disputes the lawfulness of the debit note issued by the Commission on 13 December 2010 in the light of the audit report seeking the recovery of sums paid by the Commission to the applicant for implementing two projects in which the applicant was involved.

The applicant relies on five pleas in support of its action.

1. First plea, relating to the enforceability of the debt claimed by the Commission and the eligibility of all the costs it declared to the Commission.

   — In particular, the applicant submits that the Commission infringed Articles 19, 20, 21 and 25 of the General Contractual Conditions regarding the definition of eligible costs, and infringed the principle of non-discrimination with regard to the interpretation of accounting rules for non-profit-making organisations to be applied in accounting verification procedures.

2. Second ground, alleging that the Commission was in breach of the duty of genuine cooperation and good faith in performance of the contract in that it failed to comply fully with its own contractual obligations.

   — In particular, the applicant maintains that the Commission was in breach of its duty to monitor the satisfactory implementation of the projects from the point of view of financial control as provided for in Article II(3)(4)(a) of the General Contractual Conditions.

3. Third ground, alleging that, in the overall light of the omissions on its part, the Commission infringed the principle of sound administration and the principle of proportionality, on account of the disproportionate nature of the measure it adopted — the termination of the contract — when considered in the light of the alleged failure to comply with certain accounting obligations which, even if they were to be proven to exist, would not give rise to a right to reimbursement of almost all of the advances agreed to.

4. Fourth ground, alleging that the Commission infringed the rights of the defence as a result of its conduct during the accounting verification procedure.

   — In particular, the applicant complains that it was not granted the right to be heard during the verification and audit stage and maintains the Commission failed to take account of a series of additional documents forwarded to it on 19 August 2009.

5. Fifth ground, put forward in the alternative, alleging non-contractual liability on the part of the Commission on the basis of Articles 268 and 340 TFEU.

   — The applicant alleges, first, unjust enrichment to the Commission's benefit, on the ground that the final results of the DICOEMS and COCOON projects were made available to it without it having to bear all of the costs of those projects.

   — Second, the applicant claims compensation for damage arising from a wrongful act on the part of the Commission, which circulated a letter that was defamatory in content and seriously prejudicial to the applicant's reputation.

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**Appeal brought on 3 March 2011 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 14 December 2010 in Case F-1/10, Marcuccio v Commission**

**(Case T-126/11 P)**

(2011/C 120/39)

*Language of the case: Italian*

**Parties**

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

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

— In any event, set aside the judgment under appeal, in so far as the court at first instance: (a) rejected as inadmissible some of the claims made by the appellant in the proceedings at first instance; (b) rejected certain other claims made at first instance on the ground that they were closely connected with those rejected as inadmissible: (c) ordered the appellant to bear his own costs in the proceedings at first instance.

— Declare that all the claims made at first instance were admissible in their entirety and without any exception.

— Allow in their entirety and without exception those claims made at first instance which were rejected as inadmissible or dismissed by the court at first instance, so that all the claims made at first instance, which, for all legal intents and purposes, are to be deemed to be reproduced in the present application, are allowed by the Court on the basis of the part of judgment under appeal that is favourable to the appellant in conjunction with the judgment to be delivered by this appeal court.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case under appeal back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision on the claims which were unlawfully rejected as inadmissible by the court at first instance and the claims unlawfully dismissed by that court.

**Pleas in law and main arguments**

The present appeal is brought against the judgment delivered by the Civil Service Tribunal on 14 December 2010. That judgment dismissed in part an action for annulment of the decision refusing reimbursement at the normal rate of various medical expenses and the decision refusing supplementary reimbursement, namely at the rate of 100 %, of those medical expenses, and an order that the Commission pay to the appellant a certain sum in respect of the medical expenses owing to him.

The appellant relies on three grounds of appeal.

1. First ground, alleging that the findings in the judgment under appeal concerning the object of the action and those relating to the Commission's plea of inadmissibility were unlawful.

2. Second ground, alleging incorrect and unreasonable interpretation and application of Articles 90 and 91 of the Staff Regulations of Officials of the European Union and illogical failure to have regard to the relevant case-law.

3. Third ground, alleging total failure to state reasons, by reason inter alia of failure to make preliminary inquiries, distortion of facts and of the claims made at first instance.

## Action brought on 15 March 2011 — Since Hardware (Guangzhou) Co., Ltd. v Council

**(Case T-156/11)**

(2011/C 120/40)

*Language of the case: French*

**Parties**

*Applicant:* Since Hardware (Guangzhou) Co., Ltd. (Guangzhou, People's Republic of China) (represented by: V. Akriditis and Y. Melin, lawyers)

*Defendant:* Council of the European Union

**Form of order sought**

— annul Council Implementing Regulation (EU) No 1243/2010 of 20 December 2010 imposing a definitive anti-dumping duty on imports of ironing boards originating in the People's Republic of China produced by Since Hardware (Guangzhou) Co., Ltd.; ([1])

— order the Council to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law: an initial investigation opened under Article 5 of the Basic Regulation ([2]) cannot be directed against one company in particular but must concern one or more countries and all the producers in those countries. The applicant submits in this respect that:

   — the contested regulation is contrary to Article 5 of the Basic Regulation, in particular Article 5(9), read in conjunction with Article 17 of that regulation and interpreted consistently with the law of the WTO, in that that article does not allow a new anti-dumping procedure to be opened against a single company;

   — the contested regulation infringes Article 9(4) to (6) of the Basic Regulation, read consistently with the law of the WTO, in that that article does not allow anti-dumping duties to be imposed on a single company but requires duties to be imposed on all the companies in one or more countries;

   — the contested regulation infringes Article 9(3) of the Basic Regulation, under which the zero duty of a company covered by an anti-dumping procedure may

be reconsidered only in accordance with a reinvestigation initiated under Article 11(3) of the Basic Regulation; in the alternative, the applicant submits that the Commission carried out a de facto reconsideration of its zero duty, in breach of Article 9(3) of the Basic Regulation, interpreted in accordance with a report of the WTO appellate body.

2. Second plea in law: infringement of Article 3, in particular Article 3(2), (3) and (5), of the Basic Regulation, in that the anti-dumping duties were imposed without it being established that the industry of the European Union had suffered injury during the investigation period.

3. Third plea in law: infringement of European Union law in that it was decided not to grant the applicant the status of a company operating in a market economy. The applicant submits in this respect that:

   — the decision not to grant it the status of a company operating in a market economy was taken in accordance with what the European Commission knew of the effect of such a refusal on the applicant's dumping margin, in breach of the last subparagraph of Article 2(7)(c) of the Basic Regulation, as interpreted in the case-law of the General Court;

   — the burden of proof imposed on the applicant by the Commission for it to show that it operates in a market economy is excessive and breaches the general principles of European Union law, in particular the principle of good administration.

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(1) OJ 2010 L 338, p. 22.

(2) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

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## Order of the General Court of 28 February 2011 — USFSPEI and Others v Council

**(Case T-122/10)** (1)

(2011/C 120/41)

*Language of the case: French*

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

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(1) OJ C 148, 5.6.2010.

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