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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 139/01)

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

OJ C 130, 30.4.2011

Past publications

OJ C 120, 16.4.2011

OJ C 113, 9.4.2011

OJ C 103, 2.4.2011

OJ C 95, 26.3.2011

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OJ C 80, 12.3.2011

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 10 March 2011 (reference for a preliminary ruling from the Bundesarbeitsgericht (Germany)) — Deutsche Lufthansa AG v Gertraud Kumpan

(Case C-109/09) [1]

(Fixed-term employment contract — Directive 1999/70/EC — Equal treatment in employment and occupation — Role of the national court)

(2011/C 139/02)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Deutsche Lufthansa AG

Defendant: Gertraud Kumpan

Re:

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation, first, of Articles 1, 2(1) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and, second, of Clause 5(1) 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) — Prohibition on age discrimination — National legislation allowing fixed-term employment contracts on the sole condition that the worker has reached the age of 58 — Compatibility of that legislation with the above-cited provisions — Legal consequences of any incompatibility

Operative part of the judgment

Clause 5(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999 and 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 meaning that the concept of 'a close objective connection with a previous employment contract of indefinite duration concluded with the same employer', provided for in Paragraph 14(3) of the Law on part-time employment and fixed-term employment contracts (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge) of 21 December 2000, must be applied to situations in which a fixed-term contract has not been immediately preceded by a contract of indefinite duration concluded with the same employer and an interval of several years separates those contracts, where, for that entire period, the initial employment relationship continued for the same activity, with the same employer, by means of an uninterrupted succession of fixed-term contracts. It is for the national court, to the fullest extent possible, to interpret the relevant provisions of national law in such a way as to comply with Clause 5(1) of the Framework Agreement.

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[1] OJ C 141, 20.6.2009.

Judgment of the Court (Second Chamber) of 17 March 2011 (reference for a preliminary ruling from the Prim'Awla tal-Qorti Ċivili — Republic of Malta) — AJD Tuna Ltd v Direttur tal-Agrikoltura u s-Sajd, Avukat Generali

(Case C-221/09) [1]

(Regulation (EC) No 530/2008 — Validity — Common fisheries policy — Conservation of resources — Recovery of bluefin tuna stocks in the Eastern Atlantic and the Mediterranean)

(2011/C 139/03)

Language of the case: Maltese

Referring court

Prim'Awla tal-Qorti Ċivili

Parties to the main proceedings

Applicant: AJD Tuna Ltd

Defendants: Direttur tal-Agrikoltura u s-Sajd, Avukat Generali

Re:

Reference for a preliminary ruling — Prim'Awla tal-Qorti Ċivili — Validity of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea (OJ L 155, p. 9)

Operative part of the judgment

1. *Examination of the questions referred has disclosed no factor of such a kind as to affect the validity of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45°W, and in the Mediterranean Sea or of Article 7(2) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy as regards the adversarial principle and the principle of effective judicial protection;*

2. *Examination of the questions referred has disclosed no factor of such a kind as to affect the validity of Regulation No 530/2008 as regards the requirement to state reasons laid down in Article 296(2) TFEU, the principle of the protection of legitimate expectations and the principle of proportionality;*

3. *Regulation No 530/2008 is invalid in so far as, having been adopted on the basis of Article 7(1) of Regulation No 2371/2002, the prohibitions it contains took effect from 23 June 2008 for purse seiners flying the flag of or registered in Spain and Community operators who had concluded contracts with them, whereas those prohibitions took effect from 16 June 2008 for purse seiners flying the flag of or registered in Malta, Greece, France, Italy and Cyprus and Community operators who had concluded contracts with them, without such difference in treatment being objectively justified.*

([1]) OJ C 205, 29.8.2009.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Oberlandesgericht München (Germany)) — Privater Rettungsdienst und Krankentransport Stadler v Zweckverband für Rettungsdienst und Feuerwehralarmierung Passau

(Case C-274/09) ([1])

(Public procurement — Directive 2004/18/EC — Public service concession — Rescue service — Distinction between 'public service contract' and 'service concession')

(2011/C 139/04)

Language of the case: German

Referring court

Oberlandesgericht München

Parties to the main proceedings

Applicant: Privater Rettungsdienst und Krankentransport Stadler

Defendant: Zweckverband für Rettungsdienst und Feuerwehralarmierung Passau

Interveners: Malteser Hilfdienst eV, Bayerisches Rotes Kreuz

Re:

Reference for a preliminary ruling — Oberlandesgericht München — Interpretation of Article 1(2)(a) and (d) and Article 1(4) 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) — Concepts of 'public service contract' and 'service concession' — Contract relating to the supply of emergency medical assistance services, concluded between the contracting authority and aid organisations, which provides that the payment for the services supplied depends on negotiations between those organisations and third parties such as social security institutions

Operative part of the judgment

Article 1(2)(d) and (4) 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 must be interpreted as meaning that, where the economic operator selected is fully remunerated by persons other than the contracting authority which awarded the contract concerning rescue services, where it runs an operating risk, albeit a very limited one, by reason inter alia of the fact that the amount of the usage fees in question depends on the result of annual negotiations with third parties, and where it is not assured full coverage of the costs incurred in managing its activities in compliance with the principles laid down by national law, that contract must be classified as a 'service concession' within the meaning of Article 1(4) of that directive.

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 17 March 2011 (Reference for a preliminary ruling from the Raad van State van België — Belgium) — Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest

(Case C-275/09) [1]

(Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Airports with a runway length of 2 100 metres or more — Concept of 'construction' — Renewal of operating permit)

(2011/C 139/05)

Language of the case: Dutch

Referring court

Raad van State van België

Parties to the main proceedings

Applicants: Brussels Hoofdstedelijk Gewest, P. De Donder, F. De Becker, K. Colenbie, Ph. Hutsenbaut, B. Kockaert, VZW Boreas, F. Petit, V.S. de Burbure de Wezembeek, L. Van Dessel

Defendant: Vlaamse Gewest

Re:

Reference for a preliminary ruling — Raad van State van België — Interpretation of Annex I, paragraph 7(a), to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Construction of airports with a runway length of 2 100 metres or more — Concept of 'construction'

Operative part of the judgment

The second indent of Article 1(2) of, and point 7 of Annex 1 to, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, are to be interpreted as meaning that:

— *the renewal of an existing permit to operate an airport cannot, in the absence of any works or interventions involving alterations to the physical aspect of the site, be classified as a 'project' or'construction', respectively, within the meaning of those provisions;*

— *however, it is for the national court to determine, on the basis of the national legislation applicable and taking account, where appropriate, of the cumulative effect of a number of works or interventions carried out since the entry into force of the directive, whether that permit forms part of a consent procedure carried out in several stages, the ultimate purpose of which is to enable activities which constitute a project within the meaning of the first indent of point 13 of Annex II, read in conjunction with point 7 of Annex I, to the directive to be carried out. If no assessment of the environmental effects of such works or interventions was carried out at the earlier stage in the consent procedure, it would be for the national court to ensure that the directive was effective by satisfying itself that such an assessment was carried out at the very least at the stage at which the operating permit was to be granted.*

[1] OJ C 267, 7.11.2009.

Judgment of the Court (Fifth Chamber) of 17 March 2011 — European Commission v Republic of Poland

(Case C-326/09) [1]

(Failure of a Member State to fulfil obligations — Directive 2004/113/EC — Social policy — Equal treatment between men and women — Access to and supply of goods and services — Failure to transpose within the prescribed period)

(2011/C 139/06)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: M. van Beek and M. Kaduczak, acting as Agents)

Defendant: Republic of Poland (represented by: M. Dowgielewicz, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt or communicate, within the prescribed period, the provisions necessary to comply with Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L 373, p. 37)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, the Republic of Poland failed to fulfil its obligations under that directive;*

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

[1] OJ C 312, 19.12.2009.

Judgment of the Court (Fourth Chamber) of 17 March 2011 (reference for a preliminary ruling from the Cour de cassation — France) — proceedings brought by Josep Peñarroja Fa

(Joined Cases C-372/09 and C-373/09) ([1])

(Article 43 EC — Freedom of establishment — Article 49 EC — Freedom to provide services — Restrictions — Court experts who are professional translators — Exercise of official authority — National legislation reserving appointment as a court expert for persons enrolled in registers established by the national judicial authorities — Justification — Proportionality — Directive 2005/36/EC — Concept of 'regulated profession')

(2011/C 139/07)

Language of the case: French

Referring court

Cour de cassation

Parties in the proceedings brought by

Josep Peñarroja Fa

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Articles 43 EC, 45 EC, 49 EC and 50 EC — National legislation under which appointment as a court expert is reserved for persons enrolled in registers established by the national judicial authorities and that enrolment is subject to conditions relating to age, competence, character and independence, but under which no account need be taken of the fact that the applicant has been recognised as an expert by the judicial authorities of another Member State and no alternative arrangements are introduced for assessing compliance with those conditions — Whether that legislation is compatible with the provisions of primary law relating to freedom of establishment and freedom to provide services

Operative part of the judgment

1. *A duty entrusted by a court, in relation to specific matters within the context of a dispute before it, to a professional who has been appointed as a court expert translator constitutes the provision of services for the purposes of Article 50 EC (now Article 57 TFEU).*

2. *The activities of court experts in the field of translation, such as those at issue in the main proceedings, do not constitute activities which are connected with the exercise of official authority for the purposes of the first paragraph of Article 45 EC (now the first paragraph of Article 51 TFEU).*

3. *Article 49 EC (now Article 56 TFEU) precludes national legislation, such as that at issue in the main proceedings, under which enrolment in a register of court expert translators is subject to conditions concerning qualifications, but the interested parties cannot obtain knowledge of the reasons for the decision taken in their regard and that decision is not open to effective judicial scrutiny enabling its legality to be reviewed, inter alia, as regards its compliance with the requirement under European Union law that the qualifications obtained and recognised in other Member States must have been properly taken into account.*

4. *Article 49 EC (now Article 56 TFEU) precludes a requirement, such as that laid down in Article 2 of Law No 71-498 of 29 June 1971 on court experts, as amended by Law No 2004-130 of 11 February 2004, to the effect that no person may be enrolled in a national register of court experts as a translator unless he can prove that he has been enrolled for three consecutive years in a register of court experts maintained by a cour d'appel, where it is found that such a requirement prevents, in the consideration of an application by a person established in another Member State who cannot prove that he has been so enrolled, the qualification obtained by that person and recognised in that other Member State from being duly taken into account for the purposes of determining whether — and, if so, to what extent — that qualification may attest to skills equivalent to those normally expected of a person who has been enrolled for three consecutive years in a register of court experts maintained by a cour d'appel.*

5. *The duties of court expert translators, as discharged by experts enrolled in a register such as the national register of court experts maintained by the Cour de cassation, are not covered by the definition of 'regulated profession' set out in Article 3(1)(a) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.*

([1]) OJ C 282, 21.11.2009.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Arbeidshof te Brussel (Belgium)) — Maurits Casteels v British Airways plc

(Case C-379/09) ([1])

(Freedom of movement for workers — Articles 45 TFEU and 48 TFEU — Social security for migrant workers — Protection of supplementary pension rights — Inaction on the part of the Council — Worker employed successively by the same employer in several Member States)

(2011/C 139/08)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Maurits Casteels

Defendant: British Airways plc

Re:

Reference for a preliminary ruling — Arbeidshof te Brussel — Interpretation of Articles 39 EC and 42 EC and of Council Directive 98/49/EC of 29 June 1998 on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community (OJ 1998 L 209, p. 46) — Absence of action on the part of the Council — Employee working successively in the operating units of the same employer in several Member States (otherwise than in the context of postings) and subject on each occasion to the locally applicable supplementary pension scheme

Operative part of the judgment

1. *Article 48 TFEU does not have any direct effect capable of being relied on by an individual against his private-sector employer in a dispute before national courts.*

2. *Article 45 TFEU must be interpreted as precluding, in the context of the mandatory application of a collective labour agreement:*

   — *for the determination of the period for the acquisition of definitive entitlements to supplementary pension benefits in a Member State, the non-inclusion of the years of service completed by a worker for the same employer in establishments of that employer situated in different Member States and pursuant to the same coordinating contract of employment;*

   — *a worker who has been transferred from an establishment of his employer in one Member State to an establishment of the same employer in another Member State from being regarded as having left the employer of his own free will.*

(1) OJ C 312, 19.12.2009.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Cour de cassation (France)) — Charles Defossez v Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)

(Case C-477/09) (1)

(Preliminary ruling — Directives 80/987/EEC and 2002/74/EC — Insolvency of the employer — Protection of employees — Payment of outstanding workers' claims — Determination of the competent guarantee institution — More favourable guarantee under national law — Possibility of relying on that law)

(2011/C 139/09)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Charles Defossez

Defendants: Christian Wiart, in his capacity as liquidator of Sotimon SARL, Office national de l'emploi — fonds de fermeture d'entreprises, Centre de gestion et d'études de l'Association pour la gestion du régime de garantie des créances des salariés de Lille (CGEA)

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 8a of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC (OJ 2002 L 270, p. 10), in conjunction with Article 9 of that directive — Determination of the competent guarantee institution in respect of payment of workers' outstanding claims — Guarantee institution of the Member State on the territory of which the workers are habitually employed — Possibility for the employees to take advantage of the more favourable guarantee provided by the institution with which their employer is insured and to which it makes contributions under national law

Operative part of the judgment

Article 3 of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version thereof as it existed before it was amended by Directive 2002/74, is to be interpreted as meaning that, for the payment of the outstanding claims of workers having been habitually employed in a Member State other than that where their employer is established, where the employer was declared insolvent before 8 October 2005 and that employer is not established in that other Member State and fulfils its obligation to contribute to the financing of the guarantee institution in the Member State where it is established, it is that institution which is liable for the obligations defined by that article.

Directive 80/987 does not preclude a Member State's legislation from providing that employees may avail themselves of the salary guarantee from that Member State's institution in accordance with its law, either in addition to or instead of the guarantee offered by the institution designated as competent under that directive, provided however that that guarantee results in a greater level of worker protection.

(1) OJ C 37, 13.2.2010.

Judgment of the Court (Second Chamber) of 17 March 2011 (reference for a preliminary ruling from the Tribunal da Relação do Porto (Portugal)) — Manuel Carvalho Ferreira Santos v Companhia Europeia de Seguros SA

(Case C-484/09) [1]

(Reference for a preliminary ruling — Directive 72/166/EEC — Article 3(1) — Directive 84/5/EEC — Article 2(1) — Directive 90/232/EEC — Article 1 — Right to compensation by means of compulsory insurance against civil liability in respect of the use of motor vehicles — Limitation criteria — Contribution to the damage — Lack of driver fault — Liability for risk)

(2011/C 139/10)

Language of the case: Portuguese

Referring court

Tribunal da Relação do Porto

Parties to the main proceedings

Applicant: Manuel Carvalho Ferreira Santos

Defendant: Companhia Europeia de Seguros SA

Re:

Reference for a preliminary ruling — Tribunal da Relação do Porto — Interpretation of Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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 (OJ, English Special Edition 1972 (II), p. 360), of Article 2(1) of 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 (OJ 1984 L 8, p. 17) and of Article 1 of 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 (OJ 1990, L 129, p. 33) — Determination of the type of civil liability applicable to road-traffic accidents — Conditions for limiting the right to compensation paid by compulsory motor vehicle insurance based on the contribution to the damage of one of the drivers responsible for the accident — Neither driver at fault — Liability for risk

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of 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, Article 2(1) of 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, and Article 1 of 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, must be interpreted as not precluding national provisions which, in the case of a collision between two motor vehicles which has caused damage, where neither driver is at fault, apportions the liability for that damage in accordance with the extent of the contribution of each of those vehicles to the occurrence of the damage and, in the event of doubt in that regard, fixes the contributions at parity.

[1] OJ C 37, 13.2.2010.

Judgment of the Court (Eighth Chamber) of 10 March 2011 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Tanja Borger v Tiroler Gebietskrankenkasse

(Case C-516/09) [1]

(Social security for workers — Regulation (EEC) No 1408/71 — Scope ratione personae — Interpretation of the term 'employed person' — Benefits for a dependent child — Extension of unpaid leave)

(2011/C 139/11)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Claimant: Tanja Borger

Defendant: Tiroler Gebietskrankenkasse

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 1(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 416) — Childcare allowance — Scope *ratione personae* — Interpretation of the term 'employed person' — Person residing in Switzerland and agreeing with her employer, established in a Member State, a suspension of their employment relationship by reason of the birth of her child ('Karenz') for a period exceeding the two-year period provided for by the law of that Member State

Operative part of the judgment

The status of an 'employed person', within the meaning of Article 1(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, must be attributed to a person in a situation such as that of the claimant in the main proceedings during the six-month period of extended unpaid leave following the birth of her child, on condition that, during that period, that person is covered, even if only in respect of a single risk, on a compulsory or optional basis, by a general or special social security scheme mentioned in Article 1(a) of that regulation. It is for the national court to determine whether that condition is satisfied in the dispute before it.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (Fourth Chamber) of 10 March 2011 (reference for a preliminary ruling from the Regeringsrätten (Sweden)) — Skandinaviska Enskilda Banken AB Momsgrupp v Skatteverket

(Case C-540/09) ([1])

(Reference for a preliminary ruling — Sixth VAT Directive — Article 13B(d)(5) — Exemptions — Underwriting guarantee provided against payment of a commission by credit institutions to the issuing companies in respect of a share issue on the capital markets — Transactions in securities)

(2011/C 139/12)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: Skandinaviska Enskilda Banken AB Momsgrupp

Defendant: Skatteverket

Re:

Reference for a preliminary ruling — Högsta förvaltningsdomstolen (formerly Regeringsrätten) — Interpretation of Article 13 B 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) — Exemptions — Underwriting guarantee issued by a bank to a company issuing new shares in return for payment of a commission — Transaction consisting in an undertaking by the bank to acquire part of the shares in the issuing company in the event that an insufficient number of shares is subscribed, in order to guarantee to the issuing company the financing sought by the issue (underwriting)

Operative part of the judgment

Article 13B(d)(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 must be interpreted as meaning that the exemption from VAT laid down therein covers services supplied by a credit institution, for consideration, in the form of an underwriting guarantee to a company wishing to issue shares, where under that guarantee the credit institution undertakes to acquire any shares which are not subscribed within the period for share subscription.

([1]) OJ C 51, 27.2.2010.

Judgment of the Court (Seventh Chamber) of 17 March 2011 — European Commission v Portuguese Republic

(Case C-23/10) ([1])

(Failure of a Member State to fulfil obligations — Placing fresh bananas in free circulation — Weight declared not corresponding to actual weight — Obligation of customs authorities to check the weight declared — Community Customs Code — Regulation (EEC) No 2913/92 — Article 68 et seq. — Regulation (EEC) No 2454/93 — Article 290a — Annex 38b — System of own resources — Loss of revenue — Regulation (EEC, Euratom) No 1552/89 — Regulation (EC, Euratom) No 1150/2000 — Articles 2, 6, 9, 10 and 11)

(2011/C 139/13)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: A. Caeiros, Agent)

Defendant: Portuguese Republic (represented by: I. Inez Fernandes, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 68 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), of Article 290a 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 (OJ 1993 L 253, p. 1) and of Annex 38b thereto, and infringement of Articles 2, 6, 9, 10 and 11 of Council Regulations (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) — Placing bananas in free circulation — Weight declared not corresponding to actual weight — Own resources — Loss of revenue

Operative part of the judgment

The Court:

1. *Declares that, by systematically accepting, throughout the years 1998 to 2002, customs declarations of release for free circulation of fresh bananas by its customs authorities, although they knew or ought reasonably to have known that the declared weight of the bananas did not correspond to their actual weight and because of the Portuguese authorities' refusal to make available own resources corresponding to the loss of revenue and interest due for late payment, the Portuguese Republic failed to fulfil its obligations under Articles 13, 68 and 71 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in conjunction with Article 290a 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, as amended by Commission Regulation (EC) No 89/97 of 20 January 1997, and under Articles 2, 6, and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, and under the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission and the Portuguese Republic to bear their own costs.*

(1) OJ C 100, 17.04.2010.

Judgment of the Court (Grand Chamber) of 15 March 2011 (reference for a preliminary ruling from the Cour d'appel — Luxembourg) — Heiko Koelzsch v État du Grand-Duché de Luxembourg

(Case C-29/10) (1)

(Rome Convention on the law applicable to contractual obligations — Contract of employment — Choice made by the parties — Mandatory rules of the law applicable in the absence of choice — Determination of that law — Notion of the country in which the employee 'habitually carries out his work' — Employee carrying out his work in more than one Contracting State)

(2011/C 139/14)

Language of the case: French

Referring court

Cour d'appel

Parties to the main proceedings

Applicant: Heiko Koelzsch

Defendant: État du Grand-Duché de Luxembourg

Re:

Reference for a preliminary ruling — Cour d'appel — Interpretation of Article 6(2)(a) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) — Determination of the law applicable to an action for wrongful dismissal in the absence of a choice by the parties to an individual employment contract — Concept of place'in which the employee habitually carries out his work' — Employee working in more than one country but returning systematically to one of them

Operative part of the judgment

Article 6(2)(a) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that, in a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of that provision, is that in which or from which, in the light of all the factors which characterise that activity, the employee performs the greater part of his obligations towards his employer.

(1) OJ C 80, 27.3.2010.

Judgment of the Court (First Chamber) of 10 March 2011 — Agencja Wydawnicza Technopol sp. z o.o. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-51/10 P) [1]

(Appeal — Community trade mark — Sign composed exclusively of numerals — Application for registration of the sign '1000' as a mark in respect of brochures, periodicals and newspapers — Allegedly descriptive character of that sign — Criteria for the application of Article 7(1)(c) of Regulation (EC) No 40/94 — Obligation on OHIM to take into account its previous decision-making practice)

(2011/C 139/15)

Language of the case: English

Parties

Appellant: Agencja Wydawnicza Technopol sp. z o.o. (represented by: A. von Mühlendahl, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 19 November 2009 in Case T-298/06 *Agencja Wydawnicza Technopol* v *OHIM* by which that Court dismissed an action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 August 2006 in Case R 447/2006-4 dismissing the appeal against the examiner's decision refusing to register the word mark '1000' for goods and services in Classes 16, 28 and 41 — Infringement of Article 7(1)(c) of Regulation (EC) No 40/94

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Agencja Wydawnicza Technopol sp. z o.o. to pay the costs.*

[1] OJ C 113, 1.5.2010.

Judgment of the Court (Third Chamber) of 10 March 2011 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Telefónica Móviles España, SA v Administración del Estado, Secretaría de Estado de Telecomunicaciones

(Case C-85/10) [1]

(Telecommunication services — Directive 97/13/EC — General authorisations and individual licences — Fees and charges applicable to undertakings holding individual licences — Article 11(2) — Interpretation — National legislation which does not allocate any special use to a fee — Increase in the fee for digital systems, but no change in the fee for first generation analogue systems — Compatibility)

(2011/C 139/16)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Telefónica Móviles España, SA

Defendants: Administración del Estado, Secretaría de Estado de Telecomunicaciones

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 11(2) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15) — Fees and charges applicable to undertakings holding individual licences — Imposition of pecuniary charges above and beyond those authorised by the directive and for a purpose not provided for therein — More advanced technologies penalised as compared with obsolete technologies

Operative part of the judgment

The requirements laid down in Article 11(2) of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications — under which a charge imposed on operators of telecommunications services for the use of scarce resources must seek to ensure optimal use of those resources and must take into account the need to foster the development of innovative services and competition — must be interpreted as not precluding national legislation which provides for a fee to be levied on operators of telecommunications services holding individual licences for the use of radio frequencies, but does not allocate a specific use

to the income derived from that fee, and which significantly increases the fee for a particular technology but leaves it unchanged for another.

(1) OJ C 134, 22.5.2010.

Judgment of the Court (Third Chamber) of 17 March 2011 (reference for a preliminary ruling from the Supremo Tribunal Administrativo — Portugal) — Strong Segurança SA v Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

(Case C-95/10) (1)

(Public service contracts — Directive 2004/18/EC — Article 47(2) — Direct effect — Whether applicable to the services referred to in Annex II B to that directive)

(2011/C 139/17)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Strong Segurança SA

Respondents: Município de Sintra, Securitas-Serviços e Tecnologia de Segurança

Re:

Reference for a preliminary ruling — Supremo Tribunal Administrativo — Interpretation of Articles 21, 23, 35(4) and 47(2) of, and of Annex II B to, 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) — Economic and financial capacity of the tenderers — Whether an economic operator can rely on the capacities of other entities — Direct effect of a directive implemented late

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 does not create the obligation, for Member States, to apply Article 47(2) of that directive also to contracts which have as their object services referred to in Annex II B thereto. However, that directive does not preclude Member States and, possibly, contracting authorities from providing for such application in, respectively, their legislation and the documents relating to the contract.

(1) OJ C 113, 1.5.2010.

Judgment of the Court (Eighth Chamber) of 17 March 2011 (reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece)) — Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10) v Ipourgos Emborikis Navtilías

(Joined Cases C-128/10 and C-129/10) (1)

(Reference for a preliminary ruling — Freedom to provide services — Maritime cabotage — Regulation (EEC) No 3577/92 — Articles 1 and 4 — Prior administrative authorisation for cabotage services — Review of conditions relating to the safety of ships — Maintenance of order in ports — Public service obligations — Absence of precise criteria known in advance)

(2011/C 139/18)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicants: Navtiliaki Etairia Thasou AE (C-128/10), Amalthia I Navtiki Etairia (C-129/10)

Defendant: Ipourgos Emborikis Navtilías

Intervener: Koinopraxia Epibatikon Ochimatagogon Ploion Kavalas — Thasou (C-128/10)

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Arts 1, 2 and 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) — National legislation requiring prior administrative authorisation for cabotage services — System aimed at verifying whether schedules can be implemented under conditions of safety for the ship and maintenance of order in the port — No precise criteria known in advance

Operative part of the judgment

The provisions of Article 1 in conjunction with Article 4 of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) must be interpreted as not precluding national legislation which establishes a system of prior authorisation for maritime cabotage services providing for the adoption of administrative decisions imposing compliance with certain timeslots for reasons relating, first, to the safety of ships and order in ports and, second, to public service obligations, provided that such a system is based on objective, non-discriminatory criteria which are known in advance, particularly in cases where more than one shipowner is interested in entering the same port at the same time. With respect to the administrative decisions imposing public service obligations, it is also necessary that a genuine public service need

arising from the inadequacy of the regular transport services under conditions of free competition can be demonstrated. It is for the national court to determine whether in the main proceedings those conditions are met.

([1]) OJ C 134, 22.5.2010.

Appeal brought on 10 November 2010 by Mariyus Noko Ngele against the order of the General Court (Third Chamber) made on 10 December 2009 in Case T-390/09 Mariyus Noko Ngele v European Commission

(Case C-525/10 P)

(2011/C 139/19)

Language of the case: French

Parties

Appellant: Mariyus Noko Ngele (represented by: F. Sabakunzi, avocat)

Other party to the proceedings: European Commission

By order of 10 March 2011, the Court of Justice (Eighth Chamber) declared the appeal inadmissible.

Action brought on 22 November 2010 — Transportes y Excavaciones J. Asensi S.L. v Kingdom of Spain

(Case C-540/10)

(2011/C 139/20)

Language of the case: Spanish

Parties

Applicant: Transportes y Excavaciones J. Asensi S.L. (represented by: C. Nicolau Castellanos, abogado)

Defendant: Kingdom of Spain

By order of 10 March 2011 the Court of Justice (Eighth Chamber) declared that it is clear that the Court has no jurisdiction to take cognisance of the action.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 4 February 2011 — Schutzverband der Spirituosen-Industrie eV v Sonnthurn Vertriebs GmbH

(Case C-51/11)

(2011/C 139/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Schutzverband der Spirituosen-Industrie eV

Defendant: Sonnthurn Vertriebs GmbH

Questions referred

1. Does the concept of health in the definition of the expression 'health claim' in Article 2(2)(5) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, ([1]) last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, ([2]) also cover general well-being?

2. If the answer to Question 1 is in the negative:

   Is a statement made in commercial communications, whether in the labelling, presentation or advertising of foods, which are to be to be delivered as such to the final consumer, intended to cover at least also general well-being or merely health-related well-being where it refers to one of the functions mentioned in Article 13(1) and Article 14(1) of Regulation (EC) No 1924/2006 in the manner described in Article 2(2)(5) thereof?

3. If the answer to Question 1 is in the negative and a statement in the sense described in Question 2 is intended to cover at least also health-related well-being:

   Having regard to the freedom of expression and information under Article 6(3) TEU, in conjunction with Article 10 of the ECHR, is it consistent with the Community law principle of proportionality to include in the scope of the prohibition laid down in the first sentence of Article 4(3) of Regulation (EC) No 1924/2006 a statement that a particular beverage containing more than 1,2 % by volume of alcohol does not place a strain on or adversely affect the body or its functions?

([1]) OJ 2006 L 404, p. 9.
([2]) OJ 2010 L 37, p. 16.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — Vodafone España, S.A.

(Case C-55/11)

(2011/C 139/22)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Vodafone España, S.A.

Questions referred

1. Must Article 13 of Directive 2002/20/EC [1] of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?

2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?

3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

[1] OJ L 108, p. 21

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — Vodafone España, S.A. v Ayuntamiento de Tudela

(Case C-57/11)

(2011/C 139/23)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Vodafone España, S.A.

Respondent: Ayuntamiento de Tudela

Questions referred

1. Must Article 13 of Directive 2002/20/EC [1] of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?

2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?

3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

[1] OJ L 108, p. 21

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 7 February 2011 — France Telecom España, S.A.

(Case C-58/11)

(2011/C 139/24)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: France Telecom España, S.A.

Questions referred

1. Must Article 13 of Directive 2002/20/EC [1] of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding national legislation under which a fee may be required for the right to install facilities on municipal public land from operating undertakings which, without being proprietors of the network, use it to provide mobile telephony services?

2. In the event that the levy is found to be compatible with Article 13 of Directive 2002/20/EC, do the conditions in accordance with which the fee is required under the contested local regulation satisfy the requirements of objectivity, proportionality and non-discrimination laid down in that provision, together with the need to ensure the optimal use of the resources concerned?

3. Is it appropriate to recognise Article 13 of Directive 2002/20/EC as having direct effect?

[1] OJ L 108, p. 21

Appeal brought on 22 February 2011 by Longevity Health Products, Inc. against the judgment of the General Court (Fifth Chamber) delivered on 16 December 2010 in Case T-363/09: Longevity Health Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gruppo Lepetit SpA

(Case C-81/11 P)

(2011/C 139/25)

Language of the case: English

Parties

Appellant: Longevity Health Products, Inc. (represented by: J. Korab, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gruppo Lepetit SpA

Form of order sought

The appellant claims that the Court should:

— admit the appeal filed by the company Longevity Health Products, Inc.

— annul the decision of the General Court of 16 December 2010 in case T-363/09

— order the Office for Harmonization in the Internal Market to pay the costs

Pleas in law and main arguments

The appellant submits that the General Court violated its right to due process of law by failing to grant a time period for the appellant to reply to the submissions of OHIM.

It is also submitted that the General Court did not deal with the arguments advanced by the holder of the trademark concerning the likelihood of confusion.

Reference for a preliminary ruling from the Tribunale di Bergamo (Italy) lodged on 28 February 2011 — Criminal proceedings against Survival Godwin

(Case C-94/11)

(2011/C 139/26)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Party/parties to the main proceedings

Survival Godwin

Question(s) referred

In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 15 and 16 of Directive 2008/115/EC [1] preclude the possibility that the conduct of a third-country national illegally staying in a Member State may be categorised as punishable under criminal law — simply on account of his lack of cooperation in the deportation procedure, in particular his mere failure to comply with a removal order issued by the administrative authorities — by a sentence of imprisonment of up to four years for failure to comply with the initial order issued by the Questore and a term of imprisonment of up to five years for failure to comply with subsequent orders?

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[1] OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione Siciliana (Italy) lodged on 3 March 2011 — Ministero dell'Interno, Questura di Caltanissetta v Massimiliano Rizzo

(Case C-107/11)

(2011/C 139/27)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicants: Ministero dell'Interno, Questura di Caltanissetta

Defendant: Massimiliano Rizzo

Questions referred

Is the national legislation introduced initially by the Bersani Decree — namely, Decree-Law No 223 of 4 July 2006, converted into Law No 248 of 4 August 2006 — compatible with Articles 43 and 49 of the EC Treaty, and specifically as regards the national rules which, inter alia:

(a) tend generally to protect holders of licences issued at an earlier period on the basis of a procedure under which some operators were unlawfully excluded;

(b) ensure *de facto* the maintenance of commercial positions already acquired (by, for example, prohibiting new licensees from locating their kiosks at a distance from existing kiosks which falls short of the specified minimum);

(c) make it possible for the licence to lapse in cases where the licensee engages, directly or indirectly, in cross-border gaming activities analogous to those covered by the licence?

GENERAL COURT

Judgment of the General Court of 22 March 2011 — Altstoff Recycling Austria v Commission

(Case T-419/03) [1]

(Competition — Agreements, decisions and concerted practices — System for collection and recycling of used packaging in Austria — Agreements for collection and sorting containing exclusivity clauses — Individual exemption decision — Charges imposed — Principle of proportionality)

(2011/C 139/28)

Language of the case: German

Parties

Applicant: Altstoff Recycling Austria AG, formerly Altstoff Recycling Austria AG and ARGEV Verpackungsverwertungs-Gesellschaft mbH (Vienna, Austria) (represented by: H. Wollman, lawyer)

Defendant: European Commission (represented by: initially, W. Mölls, then W. Mölls and H. Gading, and finally R. Sauer, acting as Agents)

Interveners in support of the defendant: EVA Erfassen und Verwerten von Altstoffen GmbH (Vienna) (represented by: A. Reidlinger and I. Hartung, lawyers); and Bundeskammer für Arbeiter und Angestellte (Vienna) (represented by K. Wessely, lawyer)

Re:

Application for annulment of Articles 2 and 3 of Commission Decision 2004/208/EC of 16 October 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Cases COMP D3/35470 — ARA and COMP D3/35473 — ARGEV, ARO) (OJ 2004 L 75, p. 59).

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Altstoff Recycling Austria AG to bear its own costs and pay those incurred by the European Commission, EVA Erfassen und Verwerten von Altstoffen GmbH and the Bundeskammer für Arbeiter und Angestellte, including costs related to the interim proceedings.*

[1] OJ C 59, 6.3.2004.

Judgment of the General Court of 22 March 2011 — Republic of Latvia v Commission

(Case T-369/07) [1]

(Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — National allocation plan for the allocation of emission allowances for Latvia for the period from 2008 to 2012 — Three-month time-limit — Article 9(3) of Directive 2003/87)

(2011/C 139/29)

Language of the case: Latvian

Parties

Applicant: Republic of Latvia (represented by: initially by E. Balode-Buraka and K. Bārdiņa, and subsequently by L. Ostrovska and lastly by L. Ostrovska and K. Drēviņa, Agents)

Defendant: European Commission (represented by: U. Wölker, E. Kalnins and I. Rubene, Agents)

Intervener in support of the applicant: Republic of Lithuania (represented by D. Kriaučiūnas, Agent); and Slovak Republic (represented initially by J. Čorba, and subsequently by B. Ricziová, Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by Z. Bryanston-Cross, and subsequently by S. Behzadi-Spencer, I. Rao and F. Penlington, Agents, assisted by J. Maurici, Barrister)

Re:

APPLICATION for annulment of Commission Decision C(2007) 3409, of 13 July 2007, on the amendment of the national plan for the allocation of greenhouse gas emission allowances notified by the Republic of Latvia for the period from 2008 to 2012, under 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 (OJ 2003 L 275, p. 32).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2007) 3409, of 13 July 2007, on the amendment of the national plan for the allocation of greenhouse gas emission allowances notified by the Republic of Latvia for the period from 2008 to 2012, under 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;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by the Republic of Latvia;*

3. *Orders the Republic of Lithuania, the Slovak Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the General Court of 22 March 2011 — Ford Motor v OHIM

(Case T-486/07) ([1])

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark CA — Earlier Community word and figurative marks KA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 139/30)

Language of the case: English

Parties

Applicant: Ford Motor Company (Dearborn, Michigan, United States) (represented by: R. Ingerl, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Alkar Automotive, SA (Derio, Spain) (represented by: S. Alsonso Maruri, lawyer)

Re:

Action brought against the decision of the Fourth Chamber of the Board of Appeal of OHIM of 25 October 2007 (Case R 85/2006-4), relating to opposition proceedings between Ford Motor Company and Alkar Automotive, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ford Motor Company to pay the costs.*

([1]) OJ C 51, 23.2.2008.

Judgment of the General Court of 22 March 2011 — Access Info Europe v Council

(Case T-233/09) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Document concerning an ongoing legislative procedure — Partial refusal of access — Action for annulment — Period allowed for bringing proceedings — Admissibility — Disclosure by a third party — Interest in bringing proceedings not lost — Identification of the Member State delegations which made proposals — Exception relating to the protection of the decision-making process)

(2011/C 139/31)

Language of the case: English

Parties

Applicant: Access Info Europe (Madrid, Spain) (represented by: O.W. Brouwer and J. Blockx, lawyers)

Defendant: Council of the European Union (represented by: C. Fekete and M. Bauer, Agents)

Interveners in support of the defendant: Hellenic Republic (represented by E.-M. Mamouna and K. Boskovits, Agents) and by United Kingdom of Great Britain and Northern Ireland (represented by E. Jenkinson and S. Ossowski, Agents, and by L.J. Stratford, Barrister)

Re:

Application for annulment of the decision of the Council of 26 February 2009 refusing in part to grant the applicant access to a note from the General Secretariat of the Council to the Working Party on Information (Document No 16338/08) concerning the Proposal for a Regulation of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents

Operative part of the judgment

The Court:

1. *Annuls the Council's decision of 26 February 2009 refusing access to certain information, contained in a note of 26 November 2008, concerning a proposal for a regulation regarding public access to European Parliament, Council and Commission documents;*

2. *Orders the Council to bear its own costs and to pay those incurred by Access Info Europe;*

3. *Orders the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 205, 29.8.2009

Judgment of the General Court of 21 March 2011 — Visti Beheer v OHIM — Meister (GOLD MEISTER)

(Case T-372/09) [1]

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark GOLD MEISTER — Earlier national and Community trade marks MEISTER — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 139/32)

Language of the case: German

Parties

Applicant: Visti Beheer BV (Helmond, The Netherlands) (represented by: A. Herbetz, 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, intervening before the General Court: Meister & Co. AG (Wollerau, Switzerland) (represented by: V. Knies, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 June 2009 (Case R 1465/2008-1) concerning opposition proceedings between Meister & Co. AG and Visti Beheer BV

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Visti Beheer BV to bear its own costs and pay those incurred by OHIM;*
3. *Orders Meister & Co. AG to bear its own costs.*

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[1] OJ C 282, 21.11.2009.

Order of the General Court of 14 March 2011 — Campailla v Commission

(Case T-429/09) [1]

(Action for damages — Limitation period — Article 46 of the Statute of the Court of Justice — Inadmissibility)

(2011/C 139/33)

Language of the case: French

Parties

Applicant: Massimo Campailla (Boulogne-sur-Mer, France (represented initially by P. Georgen, subsequently by G. Reuter and C. Verbruggen, lawyers)

Defendant: European Commission (represented by A. Bordes and T. Scharf, Agents)

Re:

Action for damages to compensate for the harm allegedly suffered following the Commission's refusal to intervene in a dispute between the applicant and the Cameroonian State.

Operative part of the order

1. *The action is dismissed.*
2. *Massimo Campailla shall bear his own costs and those incurred by the European Commission.*

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[1] OJ C 161, 19.6.2010.

Order of the General Court of 8 March 2011 — Herm. Sprenger v OHIM — Kieffer Sattlerwarenfabrik (Form of a stirrup)

(Case T-463/09) [1]

(Community trade mark — Application for a declaration of invalidity — Withdrawal of that application — No need to give judgment)

(2011/C 139/34)

Language of the case: German

Parties

Applicant: Herm. Sprenger GmbH & Co. KG (Iserlohn, Germany) (represented by: V. Schiller, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Jenewein and B. Schmidt, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Georg Kieffer Sattlerwarenfabrik GmbH (Munich, Germany) (represented by: N. Fischer, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 4 September 2009 (Case R 1614/2008-4) relating to invalidity proceedings between Georg Kieffer Sattlerwarenfabrik GmbH and Herm. Sprenger GmbH & Co. KG.

Operative part of the order

1. *There is no longer any need to give judgment on the action.*

2. *The applicant and the intervener shall each bear their own costs and half of the defendant's costs.*

(1) OJ C 11, 16.1.2010.

Order of the General Court of 17 March 2011 — Marcuccio v Commission

(Case T-44/10 P) (1)

(Appeal — Civil service — Officials — Social security — Reimbursement of medical expenses — Obligation to state reasons — Act adversely affecting an official — Appeal manifestly unfounded)

(2011/C 139/35)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) delivered on 25 November 2009 in Case F-11/09 *Marcuccio* v *Commission*, not published in the ECR, seeking annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio shall bear his own costs and pay the costs incurred by the European Commission in the appeal proceedings.*

(1) OJ C 80, 27.3.2010.

Action brought on 4 January 2011 — Portugal v Commission

(Case T-3/11)

(2011/C 139/36)

Language of the case: Portuguese

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Decision of 4 November 2010 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), in so far as under the reason 'Weaknesses in LPIS-GIS [Land Parcel Identification System and Geographic Information System respectively] system, performance of on-the-spot checks and in calculation of sanctions' it applied financial corrections to several measures, excluding from European Union financing the sum of EUR 40 690 655,11 relating to expenditure incurred by the applicant in the financial years 2005, 2006 and 2007;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of its action, the applicant puts forward 10 pleas in law.

1. First plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the checks made in connection with the LPIS-GIS, on the basis of the risk analysis, in accordance with Article 27 of Commission Regulation (EC) No 796/2004.

2. Second plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the intensification of the checks made in connection with the LPIS-GIS in accordance with Article 26 of Commission Regulation (EC) No 796/2004.

3. Third plea in law, alleging a manifest error by the Commission in failing to take account of information produced by the Portuguese authorities concerning the checks made in connection with the LPIS-GIS in accordance with the 75 %/90 % rule referred to in Article 24(1)(c) of Commission Regulation (EC) No 796/2004.

4. Fourth plea in law, alleging a manifest error by the Commission in finding serious and reasonable doubts as to the existence of inconclusive and/or poor checks, on the sole basis of a single special case in which a motorway was included in the eligible area.

5. Fifth plea in law, alleging a manifest error by the Commission in applying the 'Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of EAGGF Guarantee Section accounts' laid down in Document VI/5330/1997-PT, with the consequent non-observance of the principle of the equality of Member States.

6. Sixth plea in law, alleging a manifest error by the Commission in applying financial corrections over and above the expenditure under the Single Payment Scheme ('the SPS'), financial year 2006, so including all the measures relating to the first and second pillars.

7. Seventh plea in law, alleging a manifest error by the Commission in failing to take into consideration the factors relating to the 'Calculation of Sanctions' in the light of the information provided by the Portuguese authorities showing fulfilment of the obligations under Article 49(1) of Commission Regulation No 796/2004, and shows also that there was no risk for the Fund, so that on this point too the contested decision constitutes a breach of the principle of proportionality.

8. Eighth plea in law, alleging a manifest error by the Commission in levelling a charge of deliberate failure to fulfil obligations in the light of the information provided by the Portuguese authorities, which shows that the obligations under Article 53 of Commission Regulation No 796/2004 were wholly fulfilled.

9. Ninth plea in law, alleging a manifest error by the Commission in that it failed to take into account the information provided by the Portuguese authorities, showing compliance with Article 21 of Regulation No 2237/2003 for the year 2004 and with Article 13(5) of Commission Regulation No 796/2004 for the year 2005, concerning checks on the minimum density of nut trees.

10. Tenth plea in law, alleging a manifest error by the Commission relating to the corrections affecting amounts paid in connection with the Additional Amounts of Aid measure — meat premiums and SPS payments for special rights.

Action brought on 24 January 2011 — AECOPS v Commission

(Case T-51/11)

(2011/C 139/37)

Language of the case: Portuguese

Parties

Applicant: AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 88 0369 P1, reducing to PTE 37 056 405 the amount of the assistance granted by Commission Decision C(88) 831 of 29 April 1988 and. at the same time, requiring reimbursement of the amount of EUR 294 298,41;

— order the European Commission to pay both its own costs and those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:

   — the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;

   — breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have the matters concerning them dealt with by the institutions of the Union within a reasonable period;

   — breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.

2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.

Action brought on 24 January 2011 — Aecops v Commission

(Case T-52/11)

(2011/C 139/38)

Language of the case: Portuguese

Parties

Applicant: AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 89 0979 P3, reducing to PTE 426 070 the amount of the assistance granted by Commission Decision C(89) 0570 of 22 March 1989 and. at the same time, requiring reimbursement of the amount of EUR 14 430;

— order the European Commission to pay both its own costs and those of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:

   — the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;

   — breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have the matters concerning them dealt with by the institutions of the Union within a reasonable period;

   — breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.

2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.

Action brought on 24 January 2011 — Aecops v Commission

(Case T-53/11)

(2011/C 139/39)

Language of the case: Portuguese

Parties

Applicant: AECOPS — Associação de Empresas de Construção, Obras Públicas e Serviços (Lisbon, Portugal) (represented by J. da Cruz Vilaça and L. Pinto Monteiro, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with and for the purpose of Article 263 TFEU, the Commission's decision of 27 October 2010 relating to file No 89 0771 P1, reducing to PTE 48 504 201 the amount of the assistance granted by Commission Decision C(89) 0570 of 22 March 1989 and. at the same time, requiring reimbursement of the amount of EUR 628 880,97;

— order the European Commission to pay both its own costs and those of the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on @@ plea(s) in law.

1. First plea in law, alleging failure to observe a reasonable time-limit within which to take the decision, as a result of which:

   — the proceedings are time-barred: the applicant maintains that the contested decision was adopted after the elapse of the period of four years fixed for the limitation of proceedings, as provided for by Article 3 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. Likewise, even if there had been an interruption to the running of the limitation period for the proceedings, twice the limitation period had elapsed without any decision's having been adopted, in accordance with Article 3(1) of that regulation. The contested decision must be considered unlawful and incapable of being given effect, for the exercise of the corresponding right is time-barred;

   — breach of the principle of legal certainty: the applicant takes the view that the fact of the Commission's having let more than 20 years go by between the alleged irregularities and the adoption of the final decision entailed disregard for the principle of legal certainty. That fundamental principle of the legal order of the European Union states that all persons have the right to have the matters concerning them dealt with by the institutions of the Union within a reasonable period;

   — breach of rights of defence: the applicant claims that its rights of defence have been breached, inasmuch as, seeing that more than 20 years passed between the occurrence of the alleged irregularities and the adoption of the final decision, the applicant was deprived of any chance of submitting its observations in good time, that is to say, at a time when it still held documents that might have enabled it to explain the expenditure considered ineligible by the Commission.

2. Second plea in law, alleging breach of the duty to state reasons: the applicant argues that the contested decision does not satisfy the obligation to state reasons imposed by Article 296 TFEU. The contested decision does not explain, even summarily, what reasons led to the reduction of the financial assistance granted by the European Social Fund, nor does the letter of the European Social Fund Management Institute notifying the applicant of the contested decision explain, in an even remotely comprehensible manner, the reasons prompting the reduction of that assistance or which expenditure was, and which was not, eligible. In the applicant's view, the defect of want of reasoning must lead the Court to annul the contested decision.

Appeal brought on 18 February 2011 by the European Training Foundation (ETF) against the judgment of the Civil Service Tribunal of 9 December 2010 in Case F-87/08 Schuerings v ETF

(Case T-107/11 P)

(2011/C 139/40)

Language of the case: French

Parties

Appellant: European Training Foundation (ETF) (represented by L. Levi, lawyer)

Other party to the proceedings: Gisela Schuerings (Nice, France)

Form of order sought by the appellant

— Annul the judgment of the European Union Civil Service Tribunal of 9 December 2010 in case F-87/08;

— In consequence, dismiss the action at first instance and, accordingly,

— Order the respondent to the appeal to pay all the costs of both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging that the CST disregarded the interest of the service and of the post, and infringed Articles 2 and 47 of the Conditions of employment of other servants of the European Union and the obligation to state reasons, insofar as the CST held in paragraph 62 of the judgment under appeal that 'before an agency dismisses a member of staff employed under a contract of indefinite duration on the ground that the tasks to which that member of staff was assigned have been cancelled or transferred to another body, the agency concerned is under an obligation to consider whether the person concerned can be reassigned to another post already in existence or soon to be created, in particular, following the attribution of new responsibilities to the agency concerned'.

2. Second plea in law, alleging breach of the principles of proportionality and legal certainty, insofar as the CST held in paragraph 63 of the judgment under appeal that the administration must, when considering the possibility of reassignment, 'weigh the interest of the service, which requires the recruitment of the most suitable person to fill the post already in existence or *soon to be created*, against the interest of the member of staff whose dismissal is contemplated. In order to do so, it must take account … of various criteria, which include the requirements of the post in the light of the qualifications and *potential of the member of staff*, … and his age, seniority and the number of years of pension contributions remaining before he can claim a retirement pension'.

3. Third plea in law, alleging breach of the rules prohibiting rulings *ultra vires* or *ultra petita*, and of the procedural rules relating to the principle that both sides should be heard, insofar as the CST:

   — based its ruling on reasoning which had not been the subject of an exchange of arguments between the parties,

   — upheld a plea in law which was not one of those raised by Mrs Schuerings and

   — required the ETF to reinstate Mrs Schuerings although she did not seek an order that she be reinstated.

4. Fourth plea in law alleging breach of Article 266 TFEU and of the obligation to state reasons, insofar as the CST disregarded the power devolved on the ETF to implement a judgment setting aside a decision, and the settled case-law on the subject, by ordering the reinstatement of the person concerned rather than financial compensation when setting aside the decision to dismiss her.

Appeal brought on 18 February 2011 by the European Training Foundation (ETF) against the judgment of the Civil Service Tribunal of 9 December 2010 in Case F-88/08 Vandeuren v ETF

(Case T-108/11 P)

(2011/C 139/41)

Language of the case: French

Parties

Appellant: European Training Foundation (ETF) (represented by L. Levi, lawyer)

Other party to the proceedings: Monique Vandeuren (Pino Torinese, Italy)

Form of order sought by the appellant

The appellant contends that the Court should:

— set aside the judgment of the European Union Civil Service Tribunal of 9 December 2010 in Case F-88/08,

— consequently, dismiss the action brought at first instance and, therefore,

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

Pleas in law and main arguments

The pleas in law and main arguments relied upon by the appellant are identical to those relied upon in Case T-107/11 P *ETF* v *Schuerings*.

Action brought on 18 February 2011 — ASA v OHIM — Merck (FEMIFERAL)

(Case T-110/11)

(2011/C 139/42)

Language in which the application was lodged: Polish

Parties

Applicant: ASA Sp. z o.o. (Głubczyce, Poland) (represented by: M. Chimiak, 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: Merck Sp. z o.o. (Warsaw, Poland)

Form of order sought

— set aside in its entirety the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 November 2010 in Case No R 0182/2010-1;

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

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: the word mark 'FEMIFERAL' for goods in Class 5 — Application No 5320701

Proprietor of the mark or sign cited in the opposition proceedings: Merck Sp. z o.o.

Mark or sign cited in opposition: the national word mark 'Feminatal' and the national figurative mark containing the word element 'feminatal' for goods in Class 5.

Decision of the Opposition Division: dismissal of the opposition.

Decision of the Board of Appeal: invalidation of the decision of the Opposition Division and dismissal of the application for the trade mark in its entirety.

Pleas in law: Breach of Article 8(1)(b) of Regulation No 207/2009 [1] by reason of the erroneous finding that the trade marks 'Feminatal' and 'FEMIFERAL' are similar to one another in a manner which is likely to mislead Polish consumers as to the origin of the goods, by reason of the misappraisal of the distinctive character of the prefix 'femi' and lack of regard for characteristics specific to Polish consumers and also the principles of the Polish language, as also by reason of the defective assessment of the similarity of the marks in all three aspects: visual, phonetic and conceptual.

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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 25 February 2011 — Giordano v Commission

(Case T-114/11)

(2011/C 139/43)

Language of the case: French

Parties

Applicant: Jean-François Giordano (Sète, France) (represented by: D.Rigeade and J. Jeanjean, lawyers)

Defendant: European Commission

Form of order sought

— Declaration that the enactment of Commission Regulation No 530/2008 of 12 June 2008 caused damage to Mr Jean-François Giordano;

— That the Commission pay Mr Giordano damages of EUR 542 594, plus interest at the statutory rate and on a compound basis;

— The Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant makes five please:

1. First plea, alleging infringement of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, [1] and a manifest error of assessment, in that only a serious threat to the conservation of marine resources would allow the Commission to adopt emergency measures. The applicant argues that the Commission has failed to demonstrate that, during the 2008 fishing season for bluefin tuna, there was fishing outside quotas.

2. Second plea, alleging infringement of the right under Article 15(1) of the Charter of Fundamental Rights of the European Union to engage in work and pursue an occupation, in that Regulation No 530/2008 entailed a restriction on the applicant's business

3. Third plea, alleging infringement of the principle of legal certainty, in that Regulation No 530/2008 prohibited fishing for bluefin tuna as from 16 June 2008, whereas it was authorised until 30 June 2008 in France.

4. Fourth plea, alleging infringement of the principle of the protection of legitimate expectations, the applicant having had a legitimate expectation that he would be able to carry on his fishing business until 30 June 2008, since bluefin tuna fishing was initially authorised in France until 30 June 2008.

5. Fifth plea, alleging infringement of the right to property, in that Regulation No 530/2008 involved the compulsory cessation of the applicant's business of fishing for bluefin tuna, whereas he had a fishing permit granted by the Minstry of Agriculture and Fisheries for the period from 1 April 2008 to 30 June 2008 — that authorisation constituting an indispensable part of the applicant's economic interests. He argues:

   — that he has suffered a serious economic loss in connection with the carrying on of his business, bluefin tuna coming from fishing being 'property' within the meaning of Article 1 of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms, and

   — that it constitutes a non-material debt in that the applicant had the legitimate expectation thereof.

[1] OJ 2002 L 358, p. 59

Action brought on 10 March 2011 — pelicantravel.com v OHIM — Pelikan (Pelikan)

(Case T-136/11)

(2011/C 139/44)

Language in which the application was lodged: Slovak

Parties

Applicant: pelicantravel.com (Bratislava, Slovak Republic) (represented by: M. Chlipala, lawyer)

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

Other party to the proceedings before the Board of Appeal: Pelikan Vertriebsgesellschaft mbH & Co. KG (Hannover, Germany)

Form of order sought

— Annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 December 2010 in Case R 1428/2009-2;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: figurative trade mark "Pelikan" for services in Classes 35 and 39 (Community trade mark no 3 325 941).

Proprietor of the Community trade mark: Pelikan Vertriebsgesellschaft mbH & Co. KG

Applicant for the declaration of invalidity of the Community trade mark: The Applicant

Grounds for the application for a declaration of invalidity: The applicant was acting in bad faith when filing the application for the trade mark [Article 52(1)(b) of Regulation (EC) No 207/2009 ([1])].

Decision of the Cancellation Division: Application for declaration of invalidity dismissed.

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 52(1)(b) of Regulation No 207/2009, inasmuch as OHIM incorrectly assessed the facts, evidence and law, and thereby came to the incorrect conclusion that the trade mark in question was not lodged in bad faith.

([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 11 March 2011 — TMS Trademark-Schutzrechtsverwertungsgesellschaft v OHIM

(Case T-152/11)

(2011/C 139/45)

Language in which the application was lodged: German

Parties

Applicant: TMS Trademark-Schutzrechtsverwertungsgesellschaft mbH (Düsseldorf, Germany) (represented by: B. Hein and M.-H. Hoffmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Comercial Jacinto Parera, SA (Barcelona, 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 16 December 2010 in Case R 449/2009-2;

— Order the defendant to pay the costs, including those incurred during the proceedings before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: Figurative mark 'MAD' for goods in Class 25.

Proprietor of the Community trade mark: Comercial Jacinto Parera, SA.

Party applying for revocation of the Community trade mark: The applicant.

Decision of the Cancellation Division: Rejection in part of the claim.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 15 and Article 51 of Regulation (EC) No 207/2009 ([1]) and of Rule 22 of Regulation (EC) No 2968/95, ([2]) in that the Board of Appeal should not have reached the conclusion on the basis of the documents submitted as proof of use that the figurative mark 'MAD' is in genuine use for 'items of clothing'.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 14 March 2011 — Zenato Azienda Vitivinicola v OHIM — Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (ZENATO RIPASSA)

(Case T-153/11)

(2011/C 139/46)

Language in which the application was lodged: Italian

Parties

Applicant: Zenato Azienda Vitivinicola Srl (Peschiera del Garda, Italy) (represented by: A. Rizzoli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Verona, Italy)

Form of order sought

The applicant claims that the Court should:

— declare the present action, together with the related annexes, admissible;

— annul the decision of the Board of Appeal (points 1, 2 and 3 of the operative part) in so far as it upholds the appeal, upholds the opposition and rejects in its entirety the application for registration, and orders the applicant to pay the costs incurred by the opposing party in the opposition and appeal proceedings;

— 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 'ZENATO RIPASSA' (registration application No 5 848 015), for goods in Class 33 (alcoholic beverages)

Proprietor of the mark or sign cited in the opposition proceedings: La Camera di Commercio, Industria, Artigianato e Agricoltura di Verona

Mark or sign cited in opposition: Italian word mark 'RIPASSO' (No 682 213) for goods in Class 33 ('Wines, spirits and liqueurs')

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: To uphold the opposition and to reject in its entirety the application for registration

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/09.

Action brought on 14 March 2011 — Zenato Azienda Vitivinicola v OHIM — Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Ripassa Zenato)

(Case T-154/11)

(2011/C 139/47)

Language in which the application was lodged: Italian

Parties

Applicant: Zenato Azienda Vitivinicola Srl (Peschiera del Garda, Italy) (represented by: A. Rizzoli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona (Verona, Italy)

Form of order sought

The applicant claims that the Court should:

— declare the present action, together with the related annexes, admissible;

— annul the decision of the Board of Appeal (points 1, 2 and 3 of the operative part) in so far as it upholds the appeal, upholds the opposition and rejects in its entirety the application for registration, and orders the applicant to pay the costs incurred by the opposing party in the opposition and appeal proceedings;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark containing the word element 'RIPASSA ZENATO' (registration application No 5 877 865), for goods in Class 33

Proprietor of the mark or sign cited in the opposition proceedings: Camera di Commercio, Industria, Artigianato e Agricoltura di Verona

Mark or sign cited in opposition: Italian word mark "RIPASSO" (No 682 213), for goods in Class 33

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: To uphold the opposition and to reject in its entirety the application for registration

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/09.

Action brought on 10 March 2011 — Magnesitas de Rubián SA v Parliament and Council

(Case T-158/11)

(2011/C 139/48)

Language of the case: Spanish

Parties

Applicants: Magnesitas de Rubián SA (Incio, Spain) Magnesitas Navarras SA (Zubiri, Spain), Ellinikoi Lefkolithoi Anonimos Metalleftiki Viomichaniki Naftiliaki kai Emporiki Etaireia (Athens, Greece) (represented by: H. Brokelmann, P. Martínez-Lage Sobredo, lawyers)

Defendant: Parliament and Council

Form of order sought

Annulment of the individual decision contained in Article 13(7) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (OJ 2010 L 334, p. 17), insofar as it imposes an obligation on the Member States to respect the conclusions on best available techniques contained in section 3.5 of the reference document on best available techniques for the cement, lime and magnesium oxide manufacturing industries (OJ 2010 C 166, p. 5), as regards the conditions for the permits which the competent authorities grant to manufacturing facilities for magnesium oxide subject to permits under that directive.

The applicant claims that the General Court should:

— annul the contested decision, as its main claim,

— in the alternative and in the event that the General Court should not annul that decision as regards section 3.5 of the reference document in its entirety, annul it in any event as regards section 3.5.5.4 thereof, including in particular the emission levels set out in Table 3.11. and

— in any event, order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission does not have the requisite authority. It is argued that the European Union has no authority to include the manufacture of magnesium dioxide in the reference document.

2. Second plea in law, alleging breaches of essential procedural rules, specifically:

   — failure to notify the applicants of the opening of the procedure for drawing up the reference document and its late participation in that procedure.

   — the absence in the reference document of the 'split views' presented by the applicants.

   — failure to observe the deadline for the analysis of the final draft of the reference document.

3. Third plea in law, alleging breach of Article 1 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control.

   It is alleged in this connection that the reference document infringes the objective declared in Article 1 of the directive, consisting in the protection of the environment taken as a whole, so that the conclusions contained in section 3.5 of that document, which the contested decision makes binding, also infringe that objective.

4. Fourth plea in law alleging breach of the general principle of equal treatment insofar as the contested decision treats undertakings which are in different situations in the same way.

Action brought on 18 March 2011 — Petroci v Council

(Case T-160/11)

(2011/C 139/49)

Language of the case: French

Parties

Applicant: Petroci Holding (Abidjan, Ivory Coast) (represented by: M. Ceccaldi, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Decision 2011/18/CFSP and Council Regulation (EU) No 25/2011 of 14 January 2011 imposing restrictive measures against certain persons and entities including Petroci Holding;

— Order the Council to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are essentially identical with or similar to those raised in Case T-142/11 *SIR* v *Council*.

Action brought on 15 March 2011 — High Tech v OHIM — Vitra Collections (Shape of a chair)

(Case T-161/11)

(2011/C 139/50)

Language in which the application was lodged: Italian

Parties

Applicant: High Tech Srl (Milan, Italy) (represented by: G. Floridia and R. Floridia, lawyers)

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

Other party to the proceedings before the Board of Appeal: Vitra Collections AG

Form of order sought

— Annul the contested decision and declare Community trade mark No 2.298.420 invalid

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: A three-dimensional figurative mark based on the 'Alu chair' (Community trade mark No 2 298 420), for goods in Class 20

Proprietor of the Community trade mark: Vitra Collections AG

Applicant for the declaration of invalidity of the Community trade mark: High Tech Srl

Grounds for the application for a declaration of invalidity: Infringement of Article 7(1)(e)(iii) of Regulation 207/2009. The applicant also claimed that the mark should be declared invalid on the ground that its registration is intended to exclude the applicant from the market in design objects that have entered the public domain and therefore the registration was in bad faith.

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Misinterpretation and misapplication of Articles 7(1)(e)(iii) and 52(1)(b) of Regulation 207/2009.

Action brought on 17 March 2011 — Cofra v OHIM — O2 (can do)

(Case T-162/11)

(2011/C 139/51)

Language in which the application was lodged: German

Parties

Applicant: Cofra Holding AG (Zug, Switzerland) (represented by: K.-U. Jonas and J. Bogatz, lawyers)

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

Other party to the proceedings before the Board of Appeal: O2 Holdings Ltd (Slough, United Kingdom)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2011 in Case R 242/2009-4;

— Order the defendant and, if appropriate, the other party to the proceedings to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: O2 Holdings Ltd.

Community trade mark concerned: Word mark 'can do' for goods and services in Classes 9, 16, 25, 35, 36, 38 and 43.

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

Mark or sign cited in opposition: Word mark 'CANDA' for goods in Class 25.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 15 and Article 42(2) of Regulation (EC) No 207/2009 ([1]) and of Rule 22 of Regulation (EC) No 2868/95, ([2]) in that the Board of Appeal applied criteria which are too narrow in assessing the proof of use sufficient to maintain the right and failed to have sufficient regard to the particular distribution situation in the applicant's undertaking. Further, infringement of Article 76(2) of Regulation (EC) No 207/2009, in that the Board of Appeal wrongly failed to have regard to various documents submitted as proof of use sufficient to maintain the right in the opposing mark. Finally, infringement of Article 75(2) of Regulation (EC) No 207/2009, in that the Board of Appeal did not inform the applicant that it regarded the proof of use submitted as insufficient and did not provide the applicant with an opportunity of submitting further proof in oral proceedings.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 2009 L 303, p. 1).

Action brought on 17 March 2011 — Cofra v OHIM — O2 (can do)

(Case T-163/11)

(2011/C 139/52)

Language in which the application was lodged: German

Parties

Applicant: Cofra Holding AG (Zug, Switzerland) (represented by: K.-U. Jonas and J. Bogatz, lawyers)

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

Other party to the proceedings before the Board of Appeal: O2 Holdings Ltd (Slough, United Kingdom)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2011 in Case R 246/2009-4;

— Order the defendant and, if appropriate, the other party to the proceedings to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: O2 Holdings Ltd.

Community trade mark concerned: Word mark 'can do' for goods and services in Classes 9, 16, 25, 35, 36, 38 and 43.

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

Mark or sign cited in opposition: National figurative mark, including the word element 'CANDA', for goods in Class 25.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 15 and Article 42(2) of Regulation (EC) No 207/2009 ([1]) and of Rule 22 of Regulation (EC) No 2868/95, ([2]) in that the Board of Appeal applied criteria which are too narrow in assessing the proof of use sufficient to maintain the right and failed to have sufficient regard to the particular distribution situation in the applicant's undertaking. Further, infringement of Article 76(2) of Regulation (EC) No 207/2009, in that the Board of Appeal wrongly failed to have regard to various documents submitted as proof of use sufficient to maintain the right in the opposing mark. Finally, infringement of Article 75(2) of Regulation (EC) No 207/2009, in that the Board of Appeal did not inform the applicant that it regarded the proof of use submitted as insufficient and did not provide the applicant with an opportunity of submitting further proof in oral proceedings.

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

([2]) Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 2009 L 303, p. 1).

Action brought on 18 March 2011 — Modelo Continente Hipermercados v Commission

(Case T-174/11)

(2011/C 139/53)

Language of the case: Spanish

Parties

Applicant: Modelo Continente Hipermercados, SA (Alcorcón, Spain) (represented by: J.Buendía Sierra, E. Abad Valdenebro, M. Muñoz de Juan, R. Calvo Salinero, lawyers)

Defendant: European Commission

Form of order sought

— Admit and uphold the pleas in support of annulment put forward in this application and accordingly annul Article 1(1) [of the contested decision], in so far as it declares that Article 12(5) of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (Consolidated version of the Law on Corporation Tax) contains elements of State aid;

— in the alternative, annul Article 1(1) of the contested decision in so far as it declares that Article 12(5) TRLIS contains elements of State aid when it applies to acquisitions of shareholdings entailing acquisition of control;

— in the further alternative, annul the contested decision on account of a procedural irregularity;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the Commission's Decision of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions (C 45/07, ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 7, p. 48).

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

1. First plea, alleging that the contested decision infringes Article 107(1) TFEU in finding the measure to constitute State aid

   — The Commission has not shown that the tax measure at issue favours 'certain undertakings or the production of certain goods'. The Commission merely assumes that the measure is selective because it applies only to the acquisition of shareholdings in foreign companies and not in domestic companies. The applicant submits that such reasoning is erroneous and circular. The fact that the application of the measure examined (as for any other tax rule) depends on the fulfilment of certain objective requirements does not render it, in law or in fact, a selective measure. The Commission's reasoning would result in every tax rule being considered to be *prima facie* selective.

— In the second place, the *prima facie* different treatment under Article 12(5) TRLIS, far from constituting a selective advantage, serves to place all transactions for the acquisitions of shares on an equal tax footing, whether they be national or foreign: owing to the impossibility of cross-border mergers, the amortisation of goodwill can be effected only in the national sphere, and therefore the tax system includes rules which allow that. In that regard, Article 12(5) TRLIS does no more than extend such a possibility to the purchase of assets in foreign companies, a transaction which represents the closest functional equivalent to domestic mergers and is thus integral to the scheme and broad logic of the Spanish system.

— In the alternative, the Commission's decision is disproportionate given that its application to cases in which control of foreign companies is taken should at least be equivalent to cases of domestic mergers and therefore justified by the scheme and broad logic of the Spanish system.

2. Second plea in law, alleging a procedural irregularity since the procedure applicable to existing aid was not complied with

— The contested decision rejects the arguments concerning the fact that the measure plays an equivalent role, since it does not accept that intra-EU cross-border mergers are in practice impossible. In the Commission's view, the subsequent adoption of EU Directives in this sphere, all of them later than the entry into force of the measure at issue, removed all barriers or obstacles which may have existed. The applicant submits in that regard that, if the Commission's argument were accepted and if the EU Directives had actually removed the obstacles to cross-border mergers, which is not the case, there would in any event be existing aid. The procedure for reviewing existing aid differs significantly from the procedure followed in this case and thus a fundamental procedural irregularity has been committed.

3. Third plea in law, alleging infringement of Article 107(1) TFEU resulting from an error of law in determining the beneficiary of the measure

— Even if the view is taken that Article 12(5) TRLIS contains elements of State aid, the Commission should have carried out a comprehensive economic analysis in order to determine who the beneficiaries of any possible aid were. The applicant submits that, in any event, the beneficiaries of the aid (in the form of an inflated purchase price for the shares) are those selling the shares and not, as the Commission alleges, Spanish firms which have applied that measure.

Order of the General Court of 14 March 2011 — Global Digital Disc v Commission

(Case T-259/08) [1]

(2011/C 139/54)

Language of the case: German

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

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[1] OJ C 272, 25.10.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 21 January 2011 — Mariën v Commission

(Case F-5/11)

(2011/C 139/55)

Language of the case: English

Parties

Applicant: Peter Mariën (Elsene, Belgium) (represented by: B. Theeuwes and F. Pons, attorneys)

Defendant: European commission

Subject-matter and description of the proceedings

The annulment of the decision of Head of the EU Delegation to Afghanistan which ordered to members of this Delegation to leave their hotel and to move into a housing compound of the EU.

Form of order sought

— Annul the decision contained in the e-mail message of January 11, 2011 of EU Special Representative and Head of the EU Delegation to Afghanistan ordering the Applicant to relocate on January 14, 2011 to the residential compound in Kabul, Afghanistan;

— order the Commission to bear all costs relating to the temporary residence measures;

— order the Commission to pay an indemnity of 10 000 euros to the Applicant for the psychological stress and harm caused;

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

Action brought on 9 February 2011 — Vincent Bouillez and Others v Council

(Case F-11/11)

(2011/C 139/56)

Language of the case: French

Parties

Applicants: Vincent Bouillez (Overijse, Belgium) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision of the appointing authority not to promote the applicants to a higher grade for the promotions year 2010

Form of order sought

— Annul the Council's decision of 3 November 2010 dismissing the applicants' complaint;

— In so far as necessary, annul the decisions not to promote the applicants to a higher grade for the promotions year 2010;

— Order the Council to pay the costs.

Action brought on 18 February 2011 — Mariën v EEAS

(Case F-15/11)

(2011/C 139/57)

Language of the case: English

Parties

Applicant: Peter Mariën (Elsene, Belgium) (represented by: B. Theeuwes and F. Pons, attorneys)

Defendant: European External Action Service

Subject-matter and description of the proceedings

The annulment of the decision of Head of the EU Delegation to Afghanistan which ordered to members of this Delegation to leave their hotel and to move into a housing compound of the EU.

Form of order sought

— Annul the decision contained in the e-mail message of January 11, 2011 of EU Special Representative and Head of the EU Delegation to Afghanistan ordering the Applicant to relocate on January 14, 2011 to the residential compound in Kabul, Afghanistan;

— order the EEAS to bear all costs relating to the temporary residence measures;

— order the EEAS to pay an indemnity of 10 000 euros to the Applicant for the psychological stress and harm caused;

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

Action brought on 28 February 2011 — Conticchio v Commission

(Case F-22/11)

(2011/C 139/58)

Language of the case: Italian

Parties

Applicant: Rosella Conticchio (Rome, Italy) (represented by: R. Giuffridda and A. Tortora, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision relating to the establishment of the applicant's pension rights in so far as she has been recognised as having a right to the retirement pension for Grade AST7/1, rather than for AST7/2.

Form of order sought

— Annul Decision No R/489/10 issued on 18 November 2010 and notified on 24 November 2010, by which the appointing authority rejected the appeal;

— Grant the applicant a transfer from Grade AST7/1 to Grade AST7/2 with retroactive effect;

— Recalculate the amount of the pension payable to the applicant, increasing it by approximately EUR 170 per month;

— Order the body responsible for payment of the applicant's pension to refund the amount owing, as calculated from 1 June 2010 until the date of final settlement, together with interest, monetary indexation and statutory entitlements;

— Place the European Commission under an obligation to refund the applicant the sums, not owed, which she will have paid by the time the judgment is delivered in the present case, in relation to the redemption of pension rights;

— Order the Commission to pay the costs.

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