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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

The following replaces the information note published in OJ 2009 C 297, p. 1, as a consequence of the addition of a new paragraph 25 and the amendment of paragraph 40.

INFORMATION NOTE

on references from national courts for a preliminary ruling

(2011/C 160/01)

I – **General**

1. The preliminary ruling system is a fundamental mechanism of European Union law aimed at enabling national courts to ensure uniform interpretation and application of that law in all the Member States.

2. The Court of Justice of the European Union has jurisdiction to give preliminary rulings on the interpretation of European Union law and on the validity of acts of the institutions, bodies, offices or agencies of the Union. That general jurisdiction is conferred on it by Article 19(3)(b) of the Treaty on European Union (OJEU 2008 C 115, p. 13) ('the TEU') and Article 267 of the Treaty on the Functioning of the European Union (OJEU 2008 C 115, p. 47) ('the TFEU').

3. Article 256(3) TFEU provides that the General Court is to have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute. Since no provisions have been introduced into the Statute in that regard, the Court of Justice alone has jurisdiction to give preliminary rulings.

4. While Article 267 TFEU confers on the Court of Justice a general jurisdiction, a number of provisions exist which lay down exceptions to or restrictions on that jurisdiction. This is true in particular of Articles 275 and 276 TFEU and Article 10 of Protocol (No 36) on Transitional Provisions of the Treaty of Lisbon (OJEU 2008 C 115, p. 322).

5. The preliminary ruling procedure being based on cooperation between the Court of Justice and national courts, it may be helpful, in order to ensure that that cooperation is effective, to provide the national courts with the following information.

6. This practical information, which is in no way binding, is intended to provide guidance to national courts as to whether it is appropriate to make a reference for a preliminary ruling and, should they proceed, to help them formulate and submit questions to the Court.

The role of the Court of Justice in the preliminary ruling procedure

7. Under the preliminary ruling procedure, the Court's role is to give an interpretation of European Union law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings, which is the task of the national court. It is not for the Court either to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law.

8. In ruling on the interpretation or validity of European Union law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute, but it is for the referring court to draw the appropriate conclusions from that reply, if necessary by disapplying the rule of national law in question.

The decision to submit a question to the Court

The originator of the question

9. Under Article 267 TFEU, any court or tribunal of a Member State, in so far as it is called upon to give a ruling in proceedings intended to arrive at a decision of a judicial nature, may as a rule refer a question to the Court of Justice for a preliminary ruling. [1] Status as a court or tribunal is interpreted by the Court of Justice as a self-standing concept of European Union law.

10. It is for the national court alone to decide whether to refer a question to the Court of Justice for a preliminary ruling, whether or not the parties to the main proceedings have requested it to do so.

References on interpretation

11. Any court or tribunal **may** refer a question to the Court of Justice on the interpretation of a rule of European Union law if it considers it necessary to do so in order to resolve a dispute brought before it.

12. However, courts or tribunals against whose decisions there is no judicial remedy under national law **must, as a rule**, refer such a question to the Court, unless the Court has already ruled on the point (and there is no new context that raises any serious doubt as to whether that case-law may be applied), or unless the correct interpretation of the rule of law in question is obvious.

13. Thus, a court or tribunal against whose decisions there is a judicial remedy may, in particular when it considers that sufficient guidance is given by the case-law of the Court of Justice, itself decide on the correct interpretation of European Union law and its application to the factual situation before it. However, a reference for a preliminary ruling may prove particularly useful, at an appropriate stage of the proceedings, when there is a new question of interpretation of general interest for the uniform application of European Union law in all the Member States, or where the existing case-law does not appear to be applicable to a new set of facts.

14. It is for the national court to explain why the interpretation sought is necessary to enable it to give judgment.

References on determination of validity

15. Although national courts may reject pleas raised before them challenging the validity of acts of an institution, body, office or agency of the Union, the Court of Justice has exclusive jurisdiction to declare such an act invalid.

16. All national courts **must** therefore refer a question to the Court when they have doubts about the validity of such an act, stating the reasons for which they consider that that act may be invalid.

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[1] Article 10(1) to (3) of Protocol No 36 provides that the powers of the Court of Justice in relation to acts adopted before the entry into force of the Treaty of Lisbon (OJ 2007 C 306, p. 1) under Title VI of the TEU, in the field of police cooperation and judicial cooperation in criminal matters, and which have not since been amended, are, however, to remain the same for a maximum period of five years from the date of entry into force of the Treaty of Lisbon (1 December 2009). During that period, such acts may, therefore, form the subject-matter of a reference for a preliminary ruling only where the order for reference is made by a court of a Member State which has accepted the jurisdiction of the Court of Justice, it being a matter for each State to determine whether the right to refer a question to the Court is to be available to all of its national courts or is to be reserved to the courts of last instance.

17. However, if a national court has serious doubts about the validity of an act of an institution, body, office or agency of the Union on which a national measure is based, it may exceptionally suspend application of that measure temporarily or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers the act to be invalid.

The stage at which to submit a question for a preliminary ruling

18. A national court or tribunal may refer a question to the Court for a preliminary ruling as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment; it is the national court which is in the best position to decide at what stage of the proceedings such a question should be referred.

19. It is, however, desirable that a decision to seek a preliminary ruling should be taken when the national proceedings have reached a stage at which the national court is able to define the factual and legal context of the question, so that the Court of Justice has available to it all the information necessary to check, where appropriate, that European Union law applies to the main proceedings. It may also be in the interests of justice to refer a question for a preliminary ruling only after both sides have been heard.

The form of the reference for a preliminary ruling

20. The decision by which a national court or tribunal refers a question to the Court of Justice for a preliminary ruling may be in any form allowed by national law as regards procedural steps. It must however be borne in mind that it is that document which serves as the basis of the proceedings before the Court and that it must therefore contain such information as will enable the latter to give a reply which is of assistance to the national court. Moreover, it is only the actual reference for a preliminary ruling which is notified to the interested persons entitled to submit observations to the Court, in particular the Member States and the institutions, and which is translated.

21. Owing to the need to translate the reference, it should be drafted simply, clearly and precisely, avoiding superfluous detail.

22. A maximum of about 10 pages is often sufficient to set out in a proper manner the context of a reference for a preliminary ruling. The order for reference must be succinct but sufficiently complete and must contain all the relevant information to give the Court and the interested persons entitled to submit observations a clear understanding of the factual and legal context of the main proceedings. In particular, the order for reference must:

— include a brief account of the subject-matter of the dispute and the relevant findings of fact, or, at least, set out the factual situation on which the question referred is based;

— set out the tenor of any applicable national provisions and identify, where necessary, the relevant national case-law, giving in each case precise references (for example, a page of an official journal or specific law report, with any internet reference);

— identify the European Union law provisions relevant to the case as accurately as possible;

— explain the reasons which prompted the national court to raise the question of the interpretation or validity of the European Union law provisions, and the relationship between those provisions and the national provisions applicable to the main proceedings;

— include, if need be, a summary of the main relevant arguments of the parties to the main proceedings.

In order to make it easier to read and refer to the document, it is helpful if the different points or paragraphs of the order for reference are numbered.

23. Finally, the referring court may, if it considers itself able, briefly state its view on the answer to be given to the questions referred for a preliminary ruling.

24. The question or questions themselves should appear in a separate and clearly identified section of the order for reference, generally at the beginning or the end. It must be possible to understand them without referring to the statement of the grounds for the reference, which will however provide the necessary background for a proper assessment.

25. Under the preliminary ruling procedure, the Court will, as a rule, use the information contained in the order for reference, including nominative or personal data. It is therefore for the referring court itself, if it considers it necessary, to render anonymous, in the order for reference, one or more persons concerned by the dispute in the main proceedings.

The effects of the reference for a preliminary ruling on the national proceedings

26. A reference for a preliminary ruling calls for the national proceedings to be stayed until the Court of Justice has given its ruling.

27. However, the national court may still order protective measures, particularly in connection with a reference on determination of validity (see point 17 above).

Costs and legal aid

28. Preliminary ruling proceedings before the Court of Justice are free of charge and the Court does not rule on the costs of the parties to the main proceedings; it is for the national court to rule on those costs.

29. If a party has insufficient means and where it is possible under national rules, the national court may grant that party legal aid to cover the costs, including those of lawyers' fees, which it incurs before the Court. The Court itself may also grant legal aid where the party in question is not already in receipt of legal aid under national rules or to the extent to which that aid does not cover, or covers only partly, costs incurred before the Court.

Communication between the national court and the Court of Justice

30. The order for reference and the relevant documents (including, where applicable, the case file or a copy of the case file) are to be sent by the national court directly to the Court of Justice, by registered post (addressed to the Registry of the Court of Justice, L-2925 Luxembourg, telephone + 352-4303-1).

31. The Court Registry will stay in contact with the national court until a ruling is given, and will send it copies of the procedural documents.

32. The Court of Justice will send its ruling to the national court. It would welcome information from the national court on the action taken upon its ruling in the national proceedings and, where appropriate, a copy of the national court's final decision.

II – **The Urgent preliminary ruling procedure (PPU)**

33. This part of the note provides practical information on the urgent preliminary ruling procedure applicable to references relating to the area of freedom, security and justice. The procedure is governed by Article 23a of Protocol (No 3) on the Statute of the Court of Justice of the European Union (OJEU 2008 C 115, p. 210) and Article 104b of the Rules of Procedure of the Court of Justice. National courts may request that this procedure be applied or request the application of the accelerated procedure under the conditions laid down in Article 23a of the Protocol and Article 104a of the Rules of Procedure.

Conditions for the application of the urgent preliminary ruling procedure

34. The urgent preliminary ruling procedure is applicable only in the areas covered by Title V of Part Three of the TFEU, which relates to the area of freedom, security and justice.

35. The Court of Justice decides whether this procedure is to be applied. Such a decision is generally taken only on a reasoned request from the referring court. Exceptionally, the Court may decide of its own motion to deal with a reference under the urgent preliminary ruling procedure, where that appears to be required.

36. The urgent preliminary ruling procedure simplifies the various stages of the proceedings before the Court, but its application entails significant constraints for the Court and for the parties and other interested persons participating in the procedure, particularly the Member States.

37. It should therefore be requested only where it is absolutely necessary for the Court to give its ruling on the reference as quickly as possible. Although it is not possible to provide an exhaustive list of such situations, particularly because of the varied and evolving nature of the rules of European Union law governing the area of freedom, security and justice, a national court or tribunal might, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the following situations: in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under European Union law depends on the answer to the question referred for a preliminary ruling.

The request for application of the urgent preliminary ruling procedure

38. To enable the Court to decide quickly whether the urgent preliminary ruling procedure should be applied, the request must set out the matters of fact and law which establish the urgency and, in particular, the risks involved in following the normal preliminary ruling procedure.

39. In so far as it is able to do so, the referring court should briefly state its view on the answer to be given to the question(s) referred. Such a statement makes it easier for the parties and other interested persons participating in the procedure to define their positions and facilitates the Court's decision, thereby contributing to the rapidity of the procedure.

40. The request for the urgent preliminary ruling procedure must be submitted in an unambiguous form that enables the Court Registry to establish immediately that the file must be dealt with in a particular way. Accordingly, the referring court is asked to couple its request with a mention of Article 104b of the Rules of Procedure and to include that mention in a clearly identifiable place in its reference (for example at the head of the page or in a separate judicial document). Where appropriate, a covering letter from the referring court can usefully refer to that request.

41. As regards the order for reference itself, it is particularly important that it should be succinct where the matter is urgent, as this will help to ensure the rapidity of the procedure.

Communication between the Court of Justice, the national court and the parties

42. As regards communication with the national court or tribunal and the parties before it, national courts or tribunals which submit a request for an urgent preliminary ruling procedure are requested to state the e-mail address or any fax number which may be used by the Court of Justice, together with the e-mail addresses or any fax numbers of the representatives of the parties to the proceedings.

43. A copy of the signed order for reference together with a request for the urgent preliminary ruling procedure can initially be sent to the Court by e-mail (ECJ-Registry@curia.europa.eu) or by fax (+352 43 37 66). Processing of the reference and of the request can then begin upon receipt of the e-mailed or faxed copy. The originals of those documents must, however, be sent to the Court Registry as soon as possible.

(2011/C 160/02)

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

OJ C 152, 21.5.2011

Past publications

OJ C 145, 14.5.2011

OJ C 139, 7.5.2011

OJ C 130, 30.4.2011

OJ C 120, 16.4.2011

OJ C 113, 9.4.2011

OJ C 103, 2.4.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 7 April 2011 — European Commission v Portuguese Republic

(Case C-20/09) [1]

(Failure of a Member State to fulfil obligations — Admissibility of the action — Free movement of capital — Article 56 EC — Article 40 of the EEA Agreement — Public debt securities — Preferential tax treatment — Justification — Combating of tax evasion — Combating of tax avoidance)

(2011/C 160/03)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: R. Lyal and A. Caeiros, Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, C. Guerra Santos and J. Menezes Leitão, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 56 EC and 40 EEA Agreement — Public debt securities — Preferential tax treatment for securities issued by the Portuguese State

Operative part of the judgment

The Court:

1. *By providing under the exceptional tax regularisation scheme for assets not in Portuguese territory on 31 December 2004 ('regime excepcional de regularização tributária de elementos patrimoniais que não se encontrem no território português em 31 de Dezembro de 2004') established by Law No 39-A/2005 of 29 July 2005, for preferential tax treatment of public debt securities issued only by the Portuguese State, the Portuguese Republic has failed to fulfil its obligations under Article 56 EC and Article 40 of the Agreement on the European Economic Area of 2 May 1992.*

2. *The Portuguese Republic is ordered to pay the costs.*

[1] OJ C 82, 4.4.2009.

Judgment of the Court (First Chamber) of 7 April 2011 (reference for a preliminary ruling from the Rechtbank van koophandel te Brussel — Belgium) — Francesco Guarnieri & Cie v Vandevelde Eddy VOF

(Case C-291/09) [1]

(Free movement of goods — Article 34 TFEU — Cautio judicatum solvi — Company governed by Monegasque law — First paragraph of Article 18 TFEU)

(2011/C 160/04)

Language of the case: Dutch

Referring court

Rechtbank van koophandel te Brussel

Parties to the main proceedings

Applicant: Francesco Guarnieri & Cie

Defendant: Vandevelde Eddy VOF

Re:

Reference for a preliminary ruling — Rechtbank van Koophandel te Brussel — Interpretation of Articles 28 EC, 29 EC and 30 EC — Whether security for costs and damages (*cautio judicatum solvi*) is an infringement of Community rules in relation to the free movement of goods

Operative part of the judgment

Article 34 TFEU must be interpreted as not precluding the legislation of a Member State from requiring the provision of security pending judgment, by a claimant of Monegasque nationality which has brought proceedings before one of the civil courts of that State against a national of that State in order to obtain payment of invoices relating to the delivery of goods assimilated to Community goods, although such a requirement is not imposed on nationals of that Member State.

[1] OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 7 April 2011 (reference for a preliminary ruling from the Tribunalul Sibiu — Romania) — Ioan Tatu v Statul român prin Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului

(Case C-402/09) [1]

(Internal taxation — Article 110 TFEU — Pollution tax charged on first registration of motor vehicles — Neutrality of tax between imported second-hand motor vehicles and similar vehicles already on the domestic market)

(2011/C 160/05)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Ioan Tatu

Defendants: Statul român prin Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului

Re:

Reference for a preliminary ruling — Tribunalul Sibiu — Registration of second-hand vehicles previously registered in other Member States — National legislation subjecting first registration of those vehicles to payment of an environment tax, whereas second-hand vehicles already on the national market are exempted from payment of that tax on a subsequent registration — Compatibility of the national legislation with Article 90 EC — Obstacle to the free movement of goods

Operative part of the judgment

Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax levied on motor vehicles on their first registration in that Member State if that tax is arranged in such a way that it discourages the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market.

[1] OJ C 24, 30.1.2010.

Judgment of the Court (Fifth Chamber) of 7 April 2011 — European Commission v Republic of Finland

(Case C-405/09) [1]

(Failure of a Member State to fulfil obligations — The European Union's own resources — Procedures relating to the collection of import or export duties — Delay in establishing the own resources relating to those rights)

(2011/C 160/06)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by: A. Caeiros and M. Huttunen, acting as Agents)

Defendant: Republic of Finland (represented by: A. Guimaraes-Purokoski and M. Pere, acting as Agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by: B. Klein, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of 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 (OJ 1989 L 155, p. 1) and 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) and of Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Failure to comply, where there is post-clearance recovery, with the time limits laid down for entry in the accounts and the establishment of the Communities' own resources

Operative part of the judgment

The Court:

1. *Declares that by applying an administrative procedure according to which the European Union's own resources are established only after the debtor has been granted a period of at least 15 days to submit his observations and by not complying, where there is post-clearance recovery, with the time limits laid down for the entry of those resources, which has the consequence of delaying payment of them, the Republic of Finland has failed to fulfil its obligations 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 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 and under Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code;*

2. *Orders the Republic of Finland to pay the costs;*

3. *Orders the Federal Republic of Germany to bear its own costs.*

(1) OJ C 312, 19.12.2009.

Judgment of the Court (Sixth Chamber) of 7 April 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Sony Supply Chain Solutions (Europe) BV

(Case C-153/10) (1)

(Regulation (EEC) No 2913/92 — Community Customs Code — Articles 12(2) and (5), 217(1) and 243 — Regulation (EEC) No 2454/93 — Implementing provisions of Regulation No 2913/92 — Articles 10 and 11 — Classification of goods — Binding tariff information — Invocation by a trader other than the holder with respect to the same goods — Legitimate expectations)

(2011/C 160/07)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden (Netherlands)

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Sony Supply Chain Solutions (Europe) BV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 12(2) and (5), 217(1), and 243 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and Article 11 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) — Classification of goods — Challenge to a decision of the customs authorities on the classification of a product — Reliance by the complainant on binding tariff information issued by the customs authorities of another Member State concerning a similar product

Operative part of the judgment

1. *Article 12(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, and Articles 10 and 11 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 12/97 of 18 December 1996, must be interpreted as meaning that a person who makes customs declarations in his own name and on his own behalf cannot rely on a binding tariff information of which he is not the holder, but which is held by an associated company on whose instructions he made those declarations.*

2. *Articles 12(2) and (5) and 217(1) of Regulation No 2913/92, as amended by Regulation No 82/97, and Article 11 of Regulation No 2454/93, read in conjunction with Article 243 of Regulation No 2913/92, as amended by Regulation No 12/97, must be interpreted as meaning that, in proceedings relating to the imposition of customs duties, an interested party may challenge that imposition by submitting as evidence a binding tariff information issued in respect of the same goods in another Member State although the binding tariff information cannot produce the legal effects attaching to it. It is, however, for the national court to determine whether the relevant procedural rules of the Member State concerned provide for the possibility of producing such types of evidence.*

3. *Article 12 of Regulation No 2913/92, as amended by Regulation No 82/97, and Article 10(1) of Regulation No 2454/93, as amended by Regulation No 12/97, must be interpreted as meaning that a national policy which allows national authorities to refer, for the purpose of the tariff classification of declared goods, to a binding tariff information issued to a third party for the same goods, could not give rise, on the part of traders, to a legitimate expectation that they could rely on that policy.*

(1) OJ C 179, 3.7.2010.

S Judgment of the Court (Fifth Chamber) of 7 April 2011 — European Commission v Grand Duchy of Luxembourg

(Case C-305/10) (1)

(Failure of a Member State to fulfil obligations — Rail transport — Directive 2005/47/EC — Working conditions of mobile workers engaged in interoperable cross-border services in the railway sector — Agreement between sectoral social partners at European level — Failure to transpose within the prescribed period)

(2011/C 160/08)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg (represented by: C. Schiltz, acting as Agent)

Re:

Action for failure to fulfil obligations — Failure to adopt and/or notify, within the prescribed period, the laws, regulations and administrative provisions provided for by Council Directive 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector (OJ 2005 L 195, p. 15)

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 2005/47/EC of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;*

2. *Orders the Grand Duchy of Luxembourg to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (Seventh Chamber) of 7 April 2011 — European Commission v Ireland

(Case C-431/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 2005/85/EC — Right of asylum — Procedure for granting and withdrawing refugee status — Minimum standards — Failure to transpose provisions fully within the prescribed period)

(2011/C 160/09)

Language of the case: English

Parties

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

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period the provisions necessary to comply with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13)

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 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Ireland has failed to fulfil its obligations under Article 43 of that directive;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 301, 6.11.2010.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 March 2011 — M.J. Bakker v Staatssecretaris van Financiën

(Case C-106/11)

(2011/C 160/10)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: M.J. Bakker

Other party: Staatssecretaris van Financiën

Questions referred

1. Are the designation rules in Title II of Regulation (EEC) No 1408/71 ([1]) applicable in a case such as the present, where an employed person with Netherlands nationality residing in Spain is employed as a seafarer by an employer established in the Netherlands, and carries out his work on board dredgers which navigate outside the territory of the Community under the Netherlands flag, with the result that the legislation of the Netherlands is designated as the legislation applicable, so that consequently Netherlands national insurance contributions may be levied, whereas judging solely on the basis of the national legislation of the Netherlands he is not affiliated to the Netherlands social security scheme as a result of the fact that he does not reside in the Netherlands?

2. To what extent is it important in that regard that in the implementation of the Netherlands employed persons' insurance scheme a policy is followed by virtue of which seafarers in a case such as the present are considered by the implementing body to be insured persons on the basis of Community law?

([1]) Regulation (EEC) No 1408/71 of the Council 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).

Action brought on 3 March 2011 — European Commission v Czech Republic

(Case C-109/11)

(2011/C 160/11)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: K. Walker and D. Triantafyllou, acting as Agents)

Defendants: Czech Republic

Form of order sought

— Declare that, by authorising non-taxable persons to become members of a VAT group, the Czech Republic has failed to fulfil its obligations under Articles 9 and 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax; [1]

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

According to Article 9(1) of Directive 2006/112/EC, 'taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Article 11 of that directive provides that, after consulting the advisory committee on value added tax (hereafter, the 'VAT Committee'), each Member State may regard as a single taxable person any persons established in the territory of that Member State who, while legally independent, are closely bound to one another by financial, economic and organisational links.

In the opinion of the Commission, by permitting non-taxable persons to become members of VAT groups in accordance with Article 11 of Directive 2006/112/EC, the Czech Republic has failed to fulfil its obligations under Articles 9 and 11 of Regulation 20é6/112/EC.

[1] OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 4 March 2011 — Minister van Financiën, interested party: G. in 't Veld

(Case C-110/11)

(2011/C 160/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Minister van Financiën

Interested party: G. in 't Veld

Questions referred

1. Are the designation rules in Title II of Regulation (EEC) No 1408/71 [1] applicable in a case such as the present, where an employed person with Netherlands nationality residing in Spain is employed as a seafarer by an employer established in the Netherlands, subject to Netherlands labour law, and carries out his work on board seagoing ships which navigate outside the territory of the Community under the flag of the Netherlands Antilles, with the result that the legislation of the Netherlands is designated as the legislation applicable, so that consequently Netherlands national insurance contributions may be levied, whereas judging solely on the basis of the national legislation of the Netherlands he is not affiliated to the Netherlands social security scheme as a result of the fact that he does not reside in the Netherlands?

2. To what extent is it important in that regard that in the implementation of the Netherlands employed persons' insurance scheme a policy is followed by virtue of which seafarers in a case such as the present are considered by the implementing body to be insured persons on the basis of Community law?

3. To what extent is it important in that regard that the activities are carried out occasionally in the territorial sea of a Member State or in a port in the territory of a Member State?

[1] 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 (OJ L 149, p. 2).

Action brought on 8 March 2011 — European Commission v Kingdom of Belgium

(Case C-122/11)

(2011/C 160/13)

Language of the case: French

Parties

Applicant: European Commission (represented by: V. Kreuschitz and G. Rozet, lawyers)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by having removed with effect only from 1 August 2004 the condition of residence which precluded the indexation of the pensions of citizens of the European Union and of the EEA residing outside a country having concluded a reciprocal agreement with Belgium, and by not having removed the discrimination which they suffered throughout the period before 1 August 2004, by being deprived of part of their pension, the Kingdom of Belgium has failed to fulfil its obligations under Articles 4 and 7 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, [1] and Article 18 and 45 TFEU which lay down the principle of non-discrimination on grounds of nationality;

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission claims that the national legislation discriminates between nationals of other Member States to the extent that it imposes only on them a condition of residence on the territory of one of the Member States or of one of the countries which concluded a reciprocal agreement with Belgium in order to benefit from the indexation of their pension for the period up to 1 August 2004.

The Commission pleads, in addition, that the said Regulation (EC) No 883/2004 no longer provides that residence on the territory of a Member State is necessary in order to be able to rely on the principle of equal treatment. The persons covered by that regulation may therefore request the application of that principle even if they reside in a third State. Thus, a State may no longer reserve indexation of pensions for its nationals alone, but must also grant such indexation to retired persons residing in a third State.

Finally, according to the Commission, legitimate expectations, practical difficulties and the financial impact, grounds relied on by the Belgian authorities to justify the impossibility of applying the amended legislation retroactively, cannot be accepted.

[1] OJ 2004 L 166, p. 1, corrigendum OJ 2004 L 200, p. 1.

Action brought on 25 March 2011 — European Commission v French Republic

(Case C-145/11)

(2011/C 160/14)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Šimerdová and A. Marghelis, Agents)

Defendant: French Republic

Form of order sought

— declare that, by refusing to approve two applications for marketing authorisations of the veterinary medicinal products CT-Line 15 % Premix and CT-Line 15 % Oral Powder in the context of the decentralised procedure laid down by Directive 2001/82/EC on the Community code relating to veterinary medicinal products, [1] the French Republic has failed to fulfil its obligations under Articles 32 and 33 of that directive;

— order the French Republic to pay the costs.

Pleas in law and main arguments

By the present action, the Commission submits that the above-mentioned Directive 2001/82/EC does not allow a Member State, in the context of the decentralised procedure, to carry out a legal and scientific assessment of an application for authorisation. The purpose of the validation phase is merely to verify if the dossier submitted is identical in all the Member States, if it is complete, and if it includes the list of Member States concerned, in accordance with the conditions laid down in Article 32(1) of the directive. The applicant thus criticises the defendant for refusing applications for authorisation by relying inter alia on grounds concerning the composition of the medicinal product and its pharmaceutical form, its alleged non-compliance with national law and the possible dangers to public health.

The Commission also points out that, at the validation stage, the Member States affected by an application for authorisation have the obligation to approve the assessment report submitted by the reference Member State, unless they invoke a serious potential risk to human or animal health or the environment, in compliance with Article 33 of the directive. The French authorities therefore failed to follow the procedure laid down by that article.

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

Reference for a preliminary ruling from the Riigikohus (Estonia) lodged on 25 March 2011 — AS Pimix v Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus, Põllumajandusministeerium

(Case C-146/11)

(2011/C 160/15)

Language of the case: Estonian

Referring court

Riigikohus

Parties to the main proceedings

Applicant: AS Pimix

Defendants: Maksu- ja Tolliameti Lõuna maksu- ja tollikeskus, Põllumajandusministeerium

Questions referred

1. Is Article 288 of the Treaty on the Functioning of the European Union in conjunction with Article 58 of the Act of Accession to be interpreted in the light of the case-law of the Court of Justice (the judgments in Case C-161/06 *Skoma-Lux* [2007] ECR I-10841; Case C-560/07 *Balbiino* [2009] ECR I-4447; and Case C-140/08 *Rakvere Lihakombinaat* [2009] ECR I-10533) as meaning that an individual can be required to fulfil the obligation deriving from European Commission Regulation (EC) No 1972/2003 [1] of 10 November 2003

   (a) even despite the fact that that regulation had not been published in Estonian in the *Official Journal of the European Union* by 1 May 2004

   (b) and the legislature of the Member State concerned has not reproduced in a measure of national law the term 'agricultural products' defined in the regulation but has confined itself to referring to Article 4(5) of that regulation, which has not been duly published

   (c) if the individual has nevertheless fulfilled an obligation deriving from the regulation (he has declared the stock according to the correct goods code) and has not challenged such an obligation

   (d) and the charge was levied on him by the competent office of the Member State at a time when Regulation No 1972/2003 had already been published in Estonian in the *Official Journal of the European Union*?

2. Can it be concluded from Article 58 of the Act of Accession in conjunction with Article 297(1) of the Treaty on the Functioning of the European Union and the third recital in the preamble to and Article 4 of Commission Regulation (EC) No 1972/2003 of 10 November 2003 that a Member State can demand a charge on surplus stocks from an individual if Regulation No 1972/2003 had not been published in Estonian in the *Official Journal of the European Union* by 1 May 2004 but that regulation had indeed been published in Estonian in the *Official Journal of the European Union* by the time that the competent office of the Member State later levied the charge?

[1] Commission Regulation (EC) No 1972/2003 of 10 November 2003 on transitional measures to be adopted in respect of trade in agricultural products on account of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia; OJ 2003 L 293, p. 3

Action brought on 28 March 2011 — European Commission v Kingdom of Belgium

(Case C-150/11)

(2011/C 160/16)

Language of the case: French

Parties

Applicant: European Commission (represented by: O. Beynet and A. Marghelis, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by requiring, in addition to the production of a certificate of registration, the production of a certificate of conformity of a vehicle for the purpose of a roadworthiness test prior to the registration of a vehicle which was previously registered in another Member State, and by making vehicles which were previously registered in another Member State subject to a roadworthiness test prior to their registration without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles [1] and Article 34 of the Treaty on the Functioning of the European Union;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission puts forward two complaints in support of its action alleging that the national legislation which, first, requires the production of a certificate of conformity before the registration of a vehicle which was previously registered in another Member State and, secondly, refuses to take into account the results of the roadworthiness test carried out previously in that other State, fails to comply with Article 34 of the Treaty on the Functioning of the European Union and with Directive 1999/37/EC.

By its first complaint the Commission alleges that the defendant imposed in a general and systematic way a roadworthiness test prior to the registration of second-hand vehicles which were previously registered in other Member States without taking into account possible tests already carried out in those States. Such a test is capable of dissuading some interested parties from importing second-hand vehicles which were previously registered in other Member States into Belgium and therefore constitutes a barrier to the free movement of goods, which is prohibited by Article 34 TFEU.

By its second complaint the Commission submits that, according to the national legislation, an application for registration cannot be validated without a roadworthiness test certificate, which is issued by the Belgian authorities only on the condition that a certificate of conformity is produced, which has to be submitted in addition to the certificate of registration issued in another Member State. Such legislation is contrary to Article 4 of Directive 1999/37/EC and renders meaningless the principle of recognition of harmonised registration certificates issued by other Member States. Such a measure, although applicable equally to vehicles registered in Belgium or in another Member State, affects second-hand vehicles from another Member State more inasmuch as, in most of the Member States, the certificate of conformity does not come with the vehicle.

([1]) OJ 1999 L 138, p. 57.

GENERAL COURT

Judgment of the General Court of 13 April 2011 — Far Eastern New Century v Council

(Case T-167/07) [1]

(Dumping — Imports of polyethylene terephthalate originating in Taiwan — Determination of the dumping margin — Asymmetrical method of calculation — Export pricing pattern differing according to purchasers and time periods — Full degree of dumping margin cannot be reflected by symmetrical methods of calculation — Duty to state reasons)

(2011/C 160/17)

Language of the case: English

Parties

Applicant: Far Eastern New Century Corp., formerly Far Eastern Textile Ltd (Taipei, Taiwan) (represented by: P. De Baere, lawyer)

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

Intervener in support of the defendant: European Commission (represented by: initially, H. van Vliet and K. Talabér-Ritz and, subsequently, H. van Vliet and M. França, Agents)

Re:

Application for annulment of Council Regulation (EC) No 192/2007 of 22 February 2007 imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Indonesia, Malaysia, the Republic of Korea, Thailand and Taiwan following an expiry review and a partial interim review pursuant to Article 11(2) and Article 11(3) of Regulation (EC) No 384/96 (OJ 2007 L 59, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Far Eastern New Century Corp. to bear its own costs, together with those incurred by the Council of the European Union;*

3. *Orders the European Commission to bear its own costs.*

[1] OJ C 170, 21.7.2007.

Judgment of the General Court of 14 April 2011 — Visa Europe and Visa International Service v Commission

(Case T-461/07) [1]

(Competition — Agreements, decisions and concerted practices — Market for the provision of credit and deferred debit card acquiring services — Decision finding an infringement of Article 81 EC — Restriction of competition — Potential competitor — Fines — Mitigating circumstances — Reasonable time — Legal certainty — Rights of the defence)

(2011/C 160/18)

Language of the case: English

Parties

Applicants: Visa Europe Ltd (London, United Kingdom); and Visa International Service (Wilmington, Delaware, United States) (represented initially by S. Morris QC, H. Davies and A. Howard, Barristers, V. Davies and H. Masters, Solicitors, and subsequently by S. Morris and P. Scott, Solicitor, A. Howard, V. Davies and C. Thomas, Solicitor)

Defendant: European Commission (represented initially by F. Arbault, N. Khan and V. Bottka, and subsequently by N. Khan and V. Bottka, Agents)

Re:

Application for annulment of Commission Decision C(2007) 4471 final of 3 October 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (COMP/D1/37.860 — Morgan Stanley/Visa International and Visa Europe) and, in the alternative, an application for annulment or reduction of the fine imposed on the applicants by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Visa Europe Ltd and Visa International Service to pay the costs.*

[1] OJ C 51, 23.2.2008.

Judgment of the General Court of 15 April 2011 — Czech Republic v Commission

(Case T-465/08) ([1])

(PHARE — 'Revolving funds' obtained by the Czech Republic — Reimbursement of amounts paid — Commission decision to offset — Legal basis — Distinct legal orders — Concept of being certain and of a fixed amount — Obligation to state reasons)

(2011/C 160/19)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek, acting as Agent)

Defendant: European Commission (represented by: P. van Nuffel, F. Dintilhac and Z. Malůšková, acting as Agents)

Re:

Annulment of the decision of the Commission of 7 August 2008 on offsetting the amounts owed by the Czech Republic under the 'revolving funds' of the PHARE programme.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 327, 20.12.2008.

Judgment of the General Court of 14 April 2011 — Lancôme v OHIM — Focus Magazin Verlag (ACNO FOCUS)

(Case T-466/08) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark ACNO FOCUS — Earlier national word mark FOCUS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Genuine use of the earlier mark — Article 43(2) and (3) of Regulation No 40/94 (now Article 42(2) and (3) of Regulation No 207/2009))

(2011/C 160/20)

Language of the case: English

Parties

Applicant: Lancôme parfums et beauté & Cie (Paris, France) (represented by: A. von Mühlendahl and J. Pagenberg, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Focus Magazin Verlag GmbH (Munich, Germany) (represented by: R. Schweizer and J. Berlinger, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 July 2008 (Case R 1796/2007-1) relating to opposition proceedings between Focus Magazin Verlag GmbH and Lancôme parfums et beauté & Cie.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Lancôme parfums et beauté & Cie to pay the costs.*

([1]) OJ C 6, 10.1.2009.

Judgment of the General Court of 13 April 2011 — Germany v Commission

(Case T-576/08) ([1])

(Agriculture — Common organisation of the markets — Distribution of food from intervention stocks for the benefit of the most deprived persons — Regulation (EC) No 983/2008 — Plan allocating to the Member States resources to be charged to the 2009 budget year for the distribution programme — Mobilisations on the market — Actions for annulment)

(2011/C 160/21)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: initially M. Lumma and B. Klein, then M. Lumma, B. Klein, T.Henze and N. Graf Vitzthum, acting as Agents)

Defendant: European Commission (represented by: F. Erlbacher and A. Szmytkowska, acting as Agents)

Intervener in support of the applicant: Kingdom of Sweden (represented by A. Falk, K. Petkovska, S. Johannesson and M. A Engman, acting as Agents)

Interveners in support of the defendant: Kingdom of Spain (represented by B. Plaza Cruz, acting as Agent); French Republic (represented by G. de Bergues and B. Cabouat, acting as Agents); Italian Republic (represented initially by I. Bruni, acting as Agent, and subsequently par M. P. Gentili, avvocato dello Stato); and Republic of Poland (represented initially by M. Dowgielewicz, and subsequently by M. Szpunar, and finally by Szpunar, B. Majczyna and M. Drwiecki, acting as Agents)

Re:

ACTION for partial annulment of Commission Regulation (EC) No 983/2008 of 3 October 2008 adopting the plan allocating to the Member States resources to be charged to the 2009 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community (OJ 2008 L 268, p. 3).

Operative part of the judgment

The Court:

1. *Annuls Article 2 of and Annex II to Commission Regulation (EC) No 983/2008 of 3 October 2008 adopting the plan allocating to the Member States resources to be charged to the 2009 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community;*

2. *Orders that the validity of allocations already made is not affected by the annulment of Article 2 of and Annex II to Regulation No 983/2008;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by the Federal Republic of Germany;*

4. *Orders the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Poland and the Kingdom of Sweden to bear their own costs.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 14 April 2011 — Netherlands v Commission

(Case T-70/09) ([1])

(ERDF — Single programming document for the Groningen-Drenthe region — Decision on the reduction of the aid and ordering partial reimbursement of the amounts paid — Obligation to state reasons — Article 23(1) and Article 24(1) and (2) of Regulation (EEC) No 4253/88)

(2011/C 160/22)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels and M. Noort, acting as Agents)

Defendant: European Commission (represented by: W. Roels and A. Steiblyte, acting as Agents)

Re:

Action for annulment in part of Commission Decision C(2008) 8355 of 11 December 2008 on the reduction of the aid from the European Regional Development Fund (ERDF) within the framework of the single programming document no 97.07.13.003 coming under objective 2 for the Groningen-Drenthe region, granted in accordance with Commission Decision 97/711/EC of 26 May 1997.

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the Kingdom of the Netherlands to pay the costs.*

([1]) OJ C 90, 18.04.2009.

Judgment of the General Court of 13 April 2011 — Tubesca v OHIM — Tubos del Mediterráneo (T TUMESA TUBOS DEL MEDITERRANEO S.A.)

(Case T-98/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark T TUMESA TUBOS DEL MEDITERRANEO S.A. — Earlier national word mark and international figurative mark TUBESCA — Relative ground of 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 160/23)

Language of the case: French

Parties

Applicant: Tubesca (Ailly-sur-Noye, France) (represented by: F. Greffe, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Tubos del Mediterráneo S.A. (Sagunto, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 17 December 2008 (Case R 518/2008-4) relating to opposition proceedings between Tubesca and Tubos del Mediterráneo S.A.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tubesca to pay the costs.*

([1]) OJ C 102, 1.5.2009.

Judgment of the General Court of 13 April 2011 — Deichmann v OHIM (Representation of a curved band with dotted lines)

(Case T-202/09) ([1])

(Community trade mark — International registration designating the European Community — Figurative mark representing a curved band with dotted lines — Absolute ground for refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2011/C 160/24)

Language of the case: German

Parties

Applicant: Deichmann SE, formerly Heinrich Deichmann-Scuhe GmbH & Co. KG (Essen, Germany) (represented by: O. Rauscher, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 April 2009 (Case R 224/2007-4) concerning an international registration designating the European Community of a figurative mark representing a curved band with dotted lines

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Deichmann SE to pay the costs.*

([1]) OJ C 180, 1.8.2009.

Judgment of the General Court of 13 April 2011 — Alder Capital v OHIM — Gimv Nederland (ALDER CAPITAL)

(Case T-209/09) ([1])

(Community trade mark — Invalidity proceedings — Community word mark ALDER CAPITAL — Earlier Benelux word marks Halder and Halder Investments — Earlier international word mark Halder — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) and Article 52(1)(a) of Regulation (EC) No 40/94 (now Article 8(1)(b) and Article 53(1)(a) of Regulation (EC) No 207/2009) — Genuine use of the trade mark — Article 15 of Regulation No 40/94 (now Article 15 of Regulation No 207/2009))

(2011/C 160/25)

Language of the case: English

Parties

Applicant: Alder Capital Ltd (Dublin, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider and R. Manea, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Gimv Nederland BV (The Hague, Netherlands) (represented by: M. van de Braak and S. Beelaard, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 February 2009 (Case R 486/2008-2) in relation to invalidity proceedings between Halder Holdings BV and Alder Capital Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Alder Capital Ltd to pay the costs, including the costs necessarily incurred by Gimv Nederland BV for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 180, 1.8.2009.

Judgment of the General Court of 13 April 2011 — United States Polo Association v OHIM — Textiles CMG (U.S. POLO ASSN.)

(Case T-228/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark U.S. POLO ASSN. — Earlier Community and national word marks POLO-POLO — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2011/C 160/26)

Language of the case: English

Parties

Applicant: United States Polo Association (Lexington, Kentucky, United States) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

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: Textiles CMG, SA (Onteniente, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 (Case R 886/2008-4) relating to opposition proceedings between Textiles CMG, SA and United States Polo Association.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders United States Polo Association to pay the costs.*

[1] OJ C 180, 1.8.2009.

Judgment of the General Court of 13 April 2011 — Safariland v OHIM — DEF-TEC Defense Technology (FIRST DEFENSE AEROSOL PEPPER PROJECTOR)

(Case T-262/09) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark FIRST DEFENSE AEROSOL PEPPER PROJECTOR — Relative ground for refusal — Article 8(3) of Regulation (EC) No 207/2009 — Implementation by OHIM of a judgment annulling a decision adopted by one of the OHIM Boards of Appeal — Rights of the defence — Obligation to state reasons — Articles 63(2), 65(6), 75 and 76 of Regulation No 207/2009)

(2011/C 160/27)

Language of the case: English

Parties

Applicant: Safariland LLC, formerly Defense Technology Corporation of America (Jacksonville, Florida, United States) (represented by: R. Kunze and G. Würtenberger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: DEF-TEC Defense Technology GmbH (Frankfurt am Main, Germany) (represented: initially by H. Daniel and O. Haleen, and subsequently by O. Haleen, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 4 May 2009 (Case R 493/2002-4 (II)), relating to opposition proceedings between Defense Technology Corporation of America and DEF-TEC Defense Technology GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Safariland LLC to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by DEF-TEC Defense Technology GmbH.*

[1] OJ C 205, 29.8.2009.

Judgment of the General Court of 12 April 2011 — Fuller & Thaler Asset Management v OHIM (BEHAVIOURAL INDEXING and BEHAVIOURAL INDEX)

(Cases T-310/09 and T-383/09) [1]

(Community trade mark — Applications for Community word marks BEHAVIOURAL INDEXING and BEHAVIOURAL INDEX — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 160/28)

Language of the case: English

Parties

Applicant: Fuller & Thaler Asset Management, Inc. (San Mateo, United States) (represented by: S. Malynicz, Barrister)

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

Re:

ACTIONS brought, in Case T-310/09, against the decision of the Grand Board of Appeal of OHIM of 28 April 2009 (Case R 323/2008-G) concerning an application for registration of the word sign BEHAVIOURAL INDEXING as a Community trade mark and, in Case T-383/09, against the decision of the First Board of Appeal of OHIM of 11 June 2009 (Case R 138/2009-1) concerning an application for registration of the word sign BEHAVIOURAL INDEX as a Community trade mark.

Operative part of the judgment

The Court:

1. *Orders that Cases T-310/09 and T-383/09 be joined for the purposes of the present judgment;*

2. *Dismisses the applications;*

3. *Orders Fuller & Thaler Asset Management, Inc., in Cases T-310/09 and T-383/09, to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 244, 10.10.2009.

Judgment of the General Court of 13 April 2011 — Bodegas y Viñedos Puerta de Labastida v OHIM — Unión de Cosecheros de Labastida (PUERTA DE LABASTIDA)

(Case T-345/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark PUERTA DE LABASTIDA — Earlier national word mark CASTILLO DE LABASTIDA — Earlier Community word marks CASTILLO LABASTIDA — Relative ground for refusal — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009)

(2011/C 160/29)

Language of the case: Spanish

Parties

Applicant: Bodegas y Viñedos Puerta de Labastida, SL (Autol, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Unión de Cosecheros de Labastida, S. Coop. Ltda (Labastida, Spain) (represented: initially by P. López Ronda and G. Macias Bonilla and subsequently by F. Brandolini Kujman, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 May 2009 (Case R 1021/2008-1) concerning opposition proceedings between Unión de Cosecheros de Labastida, S. Coop. Ltda and Bodegas y Viñedos Puerta de Labastida, SL

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bodegas y Viñedos Puerta de Labastida, SL to pay the costs.*

([1]) OJ C 256, 24.10.2009.

Judgment of the General Court of 13 April 2011 — Sociedad Agricola Requingua v OHIM — Consejo Regulador de la Denominación de Origen Toro (TORO DE PIEDRA)

(Case T-358/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark TORO DE PIEDRA — Earlier Community figurative mark D. ORIGEN TORO — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Right to be heard — Obligation to state the reasons on which a decision is based — Article 75 of Regulation No 207/2009)

(2011/C 160/30)

Language of the case: English

Parties

Applicant: Sociedad Agricola Requingua Ltda (Santiago, Chile) (represented by: E. Vorbuchner, C. Ley and M. Heidelberg, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Consejo Regulador de la Denominación de Origen Toro (Toro, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 June 2009 (Case R 1117/2008-2) concerning opposition proceedings between Consejo Regulador de la Denominación de Origen Toro and Sociedad Agricola Requingua Ltda.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sociedad Agricola Requingua Ltda to pay the costs.*

([1]) OJ C 267, 7.11.2009.

Judgment of the General Court of 14 April 2011 — TTNB v OHIM — March Juan (Tila March)

(Case T-433/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark Tila March — Earlier national figurative mark CARMEN MARCH — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 160/31)

Language of the case: French

Parties

Applicant: TTNB (Paris, France) (represented initially by J.-M. Moiroux, then J.-M. Moiroux and C. Beudard, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Carmen March Juan (Madrid, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 August 2009 (Case R 1538/2008-2), relating to opposition proceedings between Carmen March Juan and TTNB.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders TTNB to pay the costs.*

([1]) OJ C 312, 19.12.2009.

Judgment of the General Court of 13 April 2011 — Smart Technologies v OHIM (WIR MACHEN DAS BESONDERE EINFACH)

(Case T-523/09) ([1])

(Community trade mark — Application for Community word mark WIR MACHEN DAS BESONDERE EINFACH — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 160/32)

Language of the case: English

Parties

Applicant: Smart Technologies ULC (Calgary, Canada) (represented by: M. Edenborough, QC, T. Elias, Barrister, and R. Harrison, Solicitor)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 September 2009 (Case R 554/2009-2), concerning an application for the word sign WIR MACHEN DAS BESONDERE EINFACH as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Smart Technologies ULC to pay the costs.*

([1]) OJ C 51, 27.2.2010.

Judgment of the General Court of 12 April 2011 — Euro-Information v OHIM (EURO AUTOMATIC PAYMENT)

(Case T-28/10) ([1])

(Community trade mark — Application for Community word mark EURO AUTOMATIC PAYMENT — Absolute ground for refusal — Descriptive nature — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 160/33)

Language of the case: French

Parties

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 November 2009 (Case R 635/2009-2) regarding an application for registration of the word sign EURO AUTOMATIC PAYMENT as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Euro-Information — Européenne de traitement de l'information to pay the costs.*

([1]) OJ C 80, 27.3.2010.

Judgment of the General Court of 13 April 2011 — Air France v OHMI (Parallelogram shape)

(Case T-159/10) [1]

(Community trade mark — Application for Community figurative mark representing the shape of a parallelogram — Absolute ground of refusal — Absence of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 160/34)

Language of the case: French

Parties

Applicant: Air France (Roissy-en-France, France) (represented by: A. Grolée, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 January 2010 (Case R 1018/2009-2) concerning an application for registration of a sign representing a parallelogram as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Air France to pay the costs.*

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[1] OJ C 161, 19.6.2010.

Judgment of the General Court of 13 April 2011 — Zitro IP v OHIM — Show Ball Informática (BINGO SHOWALL)

(Case T-179/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark BINGO SHOWALL — Earlier figurative Community trade mark SHOW BALL — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 160/35)

Language of the case: Spanish

Parties

Applicant: Zitro IP Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Show Ball Informática Ltda (São Paulo, Brazil)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 February 2010 (Case R 666/2009-2) concerning opposition proceedings between Zitro IP Sàrl and Show Ball Informática Ltda

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Zitro IP Sàrl to pay the costs.*

---

[1] OJ C 161, 19.6.2010.

Order of the President of the General Court of 18 March 2011 — Westfälisch-Lippischer Sparkassen- und Giroverband v Commission

(Case T-457/09 R)

(Interim procedure — Authorisation of State aid for the restructuring of a bank — Abandonment of a branch as a compensatory indemnity — Urgency — Weighing up of the interests)

(2011/C 160/36)

Language of the case: German

Parties

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

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

Re:

Application for stay of execution of Article 2(1), read in conjunction with points 5.4, 5.7 and 6.7 in the Annex to Commission Decision C(2009) 3900 final corr. of 12 May 2009, in Case C-43/2008 (ex N 390/2008) concerning restructuring aid that the German authorities intend to implement for WestLB AG, reading that decision in conjunction with Commission Decision C(2010) 9525 final of 21 December 2010 in State aid Cases MC 8/2009 and C-43/2009 — Germany — WestLB, to the extent that it follows therefrom that new operations by the Westdeutsche Immobilien Bank AG must be terminated after 15 February 2011.

Operative part of the order

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

2. *The order of 31 January 2011 in Case T-457/09 R Westfälisch-Lippischer Sparkassen- und Giroverband v Commission is rescinded.*

3. *The applications to intervene made by Westdeutsche Immobilien Bank AG, Landschaftsverband Westfalen-Lippe, Landschaftsverband Rheinland, WestLB, the Land of Rhineland-North Westphalia and Rheinischer Sparkassen- und Giroverband have become devoid of purpose.*

4. *Costs are reserved.*

Action brought on 25 March 2011 — Automobili Lamborghini v OHIM — Miura Martínez (Miura)

(Case T-191/11)

(2011/C 160/37)

Language in which the application was lodged: German

Parties

Applicant: Automobili Lamborghini Holding SpA (Sant'Agata Bolognese, Italy) (represented by: P. Kather, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Eduardo Miura Martínez (Sevilla, Spain) and Antonio José Miura Martínez (Sevilla, Spain)

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 21 January 2011 in Case R 161/2010-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Automobili Lamborghini Holding SpA

Community trade mark concerned: Figurative mark, containing the word element 'Miura', for goods and services in Classes 12, 14, 18, 25 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: Eduardo Miura Martínez and Antonio José Miura Martínez

Mark or sign cited in opposition: International and national figurative marks, containing the word element 'MIURA', for goods and services in Classes 12, 14, 24, 25 and 39, the national word mark 'MIURA' for goods in Classes 18 and 25, and the name 'MIURA' used in the course of trade for the breeding of bulls.

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 42(2) of Regulation (EC) No 207/2009 ([1]), since the interveners had not shown the use of the marks cited in opposition, and infringement of Article 75 of Regulation (EC) No 207/2009 since the applicant was not able to state the relevant considerations of the decisions, since the evidence of the opposition was not served on it.

([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 1 April 2011 — El-Materi v Council

(Case T-200/11)

(2011/C 160/38)

Language of the case: English

Parties

Applicant: Fahd Mohamed Sakher Ben Mohamed El-Materi (Doha, Qatar) (represented by: M. Lester, Barrister and G. Martin, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72/CSFP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 31, p. 40) and Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons and bodies in view of the situation in Tunisia (OJ 2011 L 31, p. 1), insofar as they apply to the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the criterion for including the applicant in the Annex to Council Implementing Decision 2011/79/CFSP has not been fulfilled, as:

   — The only permissible basis for including the applicant in the said annex would be if he fulfilled the criterion set out in Article 1 of Council Decision 2011/72/CFSP ([1]) namely if he were someone 'responsible for the misappropriation of Tunisian State funds' or someone associated with such a person, since, as recital 2 explains, such persons 'are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country'.

2. Second plea in law, alleging that the Council has violated the applicant's rights of defence and the right to effective judicial protection, as:

   — The restrictive measures provide no procedure for communicating to the applicant the evidence on which the decision to freeze his assets was based, or for enabling him to comment meaningfully on that evidence;

   — The reasons given in the contested measures contain a general, unsupported, vague allegation of a judicial investigation;

   — The Council has not given sufficient information to enable the applicant effectively to make known his views in response, which does not permit a Court to assess whether the Council's decision and assessment was well founded and based on compelling evidence.

3. Third plea in law, alleging that the Council has failed to give the applicant sufficient reasons for his inclusion in the contested measures, in violation of its obligation to give a clear statement of the actual and specific reasons justifying its decision, including the specific individual reasons that led it to consider that the applicant was responsible for misappropriating Tunisian State funds.

4. Fourth plea in law, alleging that the Council has infringed, without justification or proportion, the applicant's right to property and to conduct his business, as:

   — The asset freezing measures have a marked and long-lasting impact on his fundamental rights;

   — They are unjustified in their application to the applicant; and

   — The Council has not demonstrated that a total asset freeze is the least onerous means of ensuring such an objective, nor that the very significant harm to the applicant is justified and proportionate.

5. Fifth plea in law, alleging that the Council committed a manifest error of assessment in deciding to apply these restrictive measures to the applicant, as no evaluation has apparently been carried out by the Council as regards the applicant or, if such assessment has been carried out, the Council erred in concluding that there was justification for including the applicant in the restrictive measures.

(1) Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62).

Action brought on 4 April 2011 — Si.mobil v Commission

(Case T-201/11)

(2011/C 160/39)

Language of the case: English

Parties

Applicants: Si.mobil telekomunikacijske storitve d.d. (Ljubljana, Republic of Slovenia) (represented by: P. Alexiadis and E. Sependa, Solicitors)

Defendants: European Commission

Form of order sought

— Annul the European Commission Decision C(2011) 355 final of 24 January 2011 in Case No COMP/39.707 Si.mobil/Mobitel; and

— Order the defendant to pay applicant's costs.

Pleas in law and main arguments

By means of its application the applicant seeks, pursuant to Article 263 TFEU, the annulment of European Commission Decision C(2011) 355 final of 24 January 2011 in Case No COMP/39.707 Si.mobil/Mobitel, regarding the rejection of a complaint brought under Article 102 TFEU by it on 14 August 2009 for the allegedly abusive practices of Mobitel at the retail and wholesale functional levels of competition across a range of mobile communications markets.

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

1. First plea in law, alleging that the Commission manifestly erred in its application of the jurisdictional allocation rules set forth in Council Regulation (EC) No 1/2003 (1) and in the Commission Notice on cooperation within the Network of Competition Authorities (OJ 2004 C 101, p. 43), as:

   — By adopting the contested decision, the Commission has failed to ensure that an effective application of European Union law will take place, thereby ignoring the over-riding public policy dictates to which Council Regulation (EC) No 1/2003 is subject, while also ignoring its own self-imposed rules contained in the Commission's Notice on cooperation within the Network of Competition Authorities and the relevant case-law;

— The Commission has ignored its obligations under the Notice on cooperation within the Network of Competition Authorities, since it has failed to intervene when an '*National Competition Authority is unduly drawing out proceedings*', which is the case where the two-year deadline imposed by Slovenian law has expired without the National Competition Authority having even sent a final Statement of Objections. Furthermore, the Commission has ignored evidence overwhelmingly demonstrating that it is the '*best placed*' authority to adjudicate on the causes of action at issue. In the circumstances, it is highly unlikely that the Slovenian Competition Authority is '*able to bring the infringement to an ending*' in a reasonable and timely manner. By contrast, in the case at hand, it is clear that the '*Community provisions […] may be […] more effectively applied by the Commission.*'.

2. Second plea in law, alleging that the Commission manifestly erred in its application of the balancing exercise set forth in the *Automec* case-law [2], as:

— The applicant considers that the Commission's discretion in deciding whether or not to assume jurisdiction under the *Automec* case-law is not unfettered. To this end, the applicant has submitted a large body of evidence demonstrating that there exists a 'Community interest' in the Commission exercising jurisdiction over Si.mobil's claims, which the Commission has unduly ignored. Moreover, the Commission has ignored its own Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ 2009 C 45, p. 7), since both types of Competition law infringements (margin squeeze and predatory pricing) to which the applicant is subject are envisaged in the above mentioned document as an enforcement priority for the Commission, and there is an increasing interest in clarifying the ways in which the Commission applies those doctrines, especially in the mobile sector where such precedents have yet to be established.

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

[2] Case T-24/90 *Automec* v *Commission*, [1992] ECR II-2223

Action brought on 4 April 2011 — Aeroporia Aigaiou Aeroporiki and Marfin Investment Group Symmetochon v Commission

(Case T-202/11)

(2011/C 160/40)

Language of the case: English

Parties

Applicants: Aeroporia Aigaiou Aeroporiki AE (Athens, Greece) and Marfin Investment Group Symmetochon AE (Athens, Greece) (represented by: A. Ryan, Solicitor, G. Bushell, Solicitor, P. Stamou and I. Dryllerakis, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Decision of the European Commission No C(2011) 316 of 26 January 2011 on Case COMP/M.5830 related to the proposed merger of Aegean Airlines S.A. and Olympic Air S.A., Olympic Handling S.A. and Olympic Engineering S.A. under Council Regulation (EC) No 139/2004 [1]; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging breach of essential procedural requirements and/or manifest error of assessment in defining a market for time-sensitive air passengers only, as:

— The Commission uses yield or revenue management as a basis for defining a market for time sensitive passengers which was never discussed in the administrative procedure; and

— The Decision cannot be based on a market comprising of time sensitive air passengers only, as this cannot be supported by mainstream economic thinking and is contradicted by the Commission's own file.

2. Second plea in law, alleging manifest error of assessment in concluding that ferries exert only a "limited competitive constraint" on air services on eight routes, as:

— The evidence cited by the Commission in support of its conclusions is highly selective, breaches all rules of evidence and does not contain any empirical or survey work. Moreover, this evidence, if read objectively, in fact supports the opposite conclusion, *i.e.* that ferries do exert a real competitive constraint for non-time sensitive and/or all passengers on these eight routes.

3. Third plea in law, alleging failure to state reasons and/or error of law and/or manifest error of assessment in concluding that there would be a significant impediment to effective competition due to the elimination of the close competitive relationship between Aegean and Olympic, as:

   — The Decision fails to state what the precise theory of harm is; and

   — The Commission fails to provide consistent and cogent evidence to show that passengers of one of the applicants would not switch to ferries in the event of a 5-10 % rise in air fares, which would be the relevant question.

4. Fourth plea in law, alleging manifest error of assessment and/or error of law in concluding there are barriers to entry which make post-merger entry unlikely, as:

   — The Commission has applied the wrong legal test, requiring definite and substantiated entry plans pre-merger, which is an impossible test to meet; and

   — The Commission's factual assessment is flawed, based on highly selective evidence and fails completely to undertake a diligent investigation.

5. Fifth plea in law, alleging breach of essential procedural requirements and/or manifest error of assessment in the analysis of the counterfactual, as:

   — As regards the counterfactual of Aegean, the conclusions of the Decision rest entirely on a breach of the applicants' rights of defence. Despite extensive submissions by the applicants the Commission failed to discuss the Aegean counterfactual during the administrative procedure and substantiated its views for the first time in the Decision. Furthermore, the Commission's assessment is erroneous, being based merely on ex post analysis; and

   — With regard to the counterfactual of Olympic, the Commission's analysis limits itself to a criticism of the model put forward by Marfin and fails to conduct a proper ex ante assessment mainly because it does not go beyond the IATA summer 2011 season. Moreover, its conclusions are mere assertions, not based on any data.

6. Sixth plea in law, alleging breach of applicants' fundamental rights, as:

   — The administrative procedure before the Commission failed to meet the standards of administrative fairness as reflected in the right to a fair hearing provided by Article 6(1) of the European Convention on Human Rights and the duty of good administration enshrined in Article 41 of the Charter of Fundamental Rights. The Commission failed to comply with its duty of a diligent investigation, thereby effectively reversing the burden of proof onto the applicants.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1)

Action brought on 4 April 2011 — Spain v Commission

(Case T-204/11)

(2011/C 160/41)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Regulation (EU) No 15/2011 of 10 January 2011 amending Regulation (EC) No 2074/2005 as regards recognised testing methods for detecting marine biotoxins in live bivalve molluscs, and

— order the Commission to pay the costs.

Pleas in law and main arguments

In the contested regulation the Commission decided to impose the liquid chromatography-mass spectrometry (LC-MS/MS) method as the reference method for the detection of marine lipophilic toxins, replacing the mouse bioassay method.

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

1. First plea in law, alleging infringement of Article 168 TFEU and the principle of proportionality which should govern the adoption of decisions by the institutions of the European Union.

   — It is stated in this regard that the new reference method established for the detection of lipophilic toxins is no more beneficial for the protection of public health than mouse bioassay.

2. Second plea in law, alleging infringement of the principle of proportionality.

   — It is stated in this regard that by adopting the decision to replace mouse bioassay with LC-MS/MS as the reference method for the detection of lipophilic toxins, the Commission did not assess all the relevant facts and circumstances of the situation that it intended to regulate, in that it failed to take into consideration the economic impact that such a change would have on the productive sector concerned.

3. Third plea in law, alleging failure to observe the principle of legitimate expectations.

   — According to the applicant State, the producers of live bivalve molluscs were entitled to expect that the Commission would not decide to replace mouse bioassay as the reference method for the detection of lipophilic toxins until the conditions set out in point 4 of Part B of Chapter III of Annex III to Regulation No 2074/2005, in its original wording, had been fulfilled.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 24 March 2011 — Canga Fano v Council

(Case F-104/09) [1]

(Civil service — Officials — Promotion — Promotion exercise 2009 — Decision not to promote — Comparative examination of the merits — Manifest error of assessment — Action for annulment — Action for damages)

(2011/C 160/42)

Language of the case: French

Parties

Applicant: Diego Canga Fano (Brussels, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, agents)

Re:

Application for annulment of the defendant's decision not to include the applicant on the list of officials promoted to Grade AD 13 under the 2009 promotion procedure.

Operative part of the judgment

1. *The application is dismissed.*

2. *Mr Canga Fano shall pay all the costs.*

[1] OJ C 37, 13.2.2010, p. 51.

Judgment of the Civil Service Tribunal (First Chamber) of 13 April 2011 — Vakalis v Commission

(Case F-38/10) [1]

(Civil Service — Officials — Pension — Transfer of pension rights acquired in Greece to the pension scheme of officials of the European Union — Calculation of the pensionable years — Objection of illegality concerning the general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations — Principle of equal treatment — Principle of the neutrality of the Euro)

(2011/C 160/43)

Language of the case: French

Parties

Applicant: Ioannis Vakalis (Luvinate, Italy) (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented by: D. Martin and J. Baquero Cruz, agents)

Re:

Annulment of the decision of the Office for Administration and Payment of Individual Entitlements determining the pension rights of the applicant on his transfer to the European Union scheme

Operative part of the judgment

1. *The application is dismissed partly as inadmissible and partly as unfounded.*

2. *The European Commission is ordered to bear its own costs and half of the applicant's costs.*

3. *Mr Vakalis is to bear half of his own costs.*

[1] OJ C 209, 31.7.2010, p. 54.

Order of the Civil Service Tribunal (First Chamber) of 4 April 2011 — AO v Commission

(Case F-45/10) [1]

(Civil service — Officials — Disciplinary measure — Removal from post — Article 35(1)(d) and (2)(a) of the Rules of Procedure — Action, in part, clearly inadmissible and, in part, clearly unfounded)

(2011/C 160/44)

Language of the case: English

Parties

Applicant: AO (Brussels, Belgium) (represented by: M. Schober, lawyer)

Defendant: European Commission (represented by: J. Currall and J. Baquero Cruz, acting as Agents)

Re:

Application, first, for annulment of decision CMS 07/046 of the Commission ordering the removal of the applicant from his post without reduction to his entitlement to a retirement pension with effect from 15 August 2009 and to annul all the decisions taken against the applicant between the period from September 2003 until his removal from his post and, second, for damages.

Operative part of the order

1. *The action is dismissed as being, in part, clearly inadmissible and, in part, clearly unfounded.*

2. *The applicant shall pay all the costs.*

([1]) OJ C 221, 14.8.2010, p. 60.

Order of the Civil Service Tribunal of 31 March 2011 — M v Agence européenne des médicaments (EMEA)

(Case F-23/07 RENV-RX) ([1])

(2011/C 160/45)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register, following amicable settlement.

([1]) OJ C 117, 26.5.2007, p. 35.

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