ISSN 1725-2423

# Official Journal of the European Union

C 173

English edition

Information and Notices

Volume 54

11 June 2011

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# COURT OF JUSTICE OF THE EUROPEAN UNION

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

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**Past publications**

OJ C 152, 21.5.2011

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These texts are available on:

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

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

**Judgment of the Court (Grand Chamber) of 29 March 2011 — ArcelorMittal Luxembourg SA, formerly Arcelor Luxembourg SA v European Commission, ArcelorMittal Belval & Differdange SA, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International SA, formerly Arcelor International SA (C-201/09 P), European Commission v ArcelorMittal Luxembourg SA, formerly Arcelor Luxembourg SA, ArcelorMittal Belval & Differdange SA, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International SA (C-216/09 P)**

**(Joined Cases C-201/09 P and C-216/09 P)** [1]

***(Appeals — Competition — Agreements, decisions and concerted practices — Community market in steel beams — Decision finding an infringement of Article 65 CS after the expiry of the ECSC Treaty on the basis of Regulation (EC) No 1/2003 — Powers of the Commission — Attributability of the unlawful conduct — Res judicata — Rights of the defence — Limitation period — Suspension of the limitation period — Effect erga omnes or inter partes — No statement of reasons)***

(2011/C 173/02)

*Language of the case: French*

**Parties**

*(C-201/09 P)*

*Appellant:* ArcelorMittal Luxembourg SA, formerly Arcelor Luxembourg SA (represented by: A. Vandencasteele and C. Falmagne, avocats)

*Other parties to the proceedings:* European Commission (represented by: F. Castillo de la Torre and E. Gippini Fournier, acting as Agents), ArcelorMittal Belval & Differdange SA, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International SA, formerly Arcelor International SA

*(C-216/09 P)*

*Appellant:* European Commission (represented by: F. Castillo de la Torre, X. Lewis and E. Gippini Fournier, acting as Agents)

*Other parties to the proceedings:* ArcelorMittal Luxembourg SA, formerly Arcelor Luxembourg SA, ArcelorMittal Belval & Differdange SA, formerly Arcelor Profil Luxembourg SA, ArcelorMittal International SA, formerly Arcelor International SA (represented by: A. Vandencasteele, avocat)

**Re:**

Appeals — Competition — Community market in steel beams — Agreements fixing prices in the beams sector – Decision finding an infringement of Article 65 CS after the expiry of the ECSC Treaty on the basis of Regulation (EC) No 1/2003 — Powers of the Commission — Attributability of the unlawful conduct — Principle that penalties must fit the offence and principle of res judicata — Rules on limitation periods — Suspension of the limitation period

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeals;*

2. *Orders ArcelorMittal Luxembourg SA to bear its own costs and to pay those incurred by the European Commission in relation to the appeal in Case C-201/09 P;*

3. *Orders the European Commission, ArcelorMittal Belval & Differdange SA and ArcelorMittal International SA to bear their own costs in relation to the appeal in Case C-216/09 P.*

[1] OJ C 205, 29.8.2009.

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

**(Case C-321/09 P)** [1]

***(Appeal — EAGGF — Expenditure excluded from Community financing owing to failure to comply with Community rules — Expenditure incurred by the Hellenic Republic)***

(2011/C 173/03)

*Language of the case: Greek*

**Parties**

*Appellant:* Hellenic Republic (represented by: I. Chalkias, Agent)

*Other party to the proceedings:* European Commission (represented by: H. Tserepa-Lacombe and F. Jimeno Fernández, Agents)

**Re:**

Appeal brought against the judgment of the Court of First Instance (Eighth Chamber) of 11 June 2009, in Case T-33/07 *Greece* v *Commission*, by which that court dismissed an application for the partial annulment of Commission Decision 2006/932/EC of 14 December 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (notified under document number C(2006) 5993) — Olive oil, cotton, dried grapes and citrus fruit sectors

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeal;*

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

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([1]) OJ C 244, 10.10.2009.

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**Order of the Court (Sixth Chamber) of 20 January 2011 — (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium)) — Criminal proceedings against Aboulkacem Chihabi and Others**

**(Case C-432/10)** ([1])

***(Reference for a preliminary ruling — Manifest inadmissibility)***

(2011/C 173/04)

*Language of the case: Dutch*

**Referring court**

Rechtbank van eerste aanleg te Antwerpen

**Parties to the main criminal proceedings**

Aboulkacem Chihabi, Mustapha Chihabi, Trans Atlantic International, Dani Danieli, Roland Prosper Julia Jozef Peeters, Jacobus Robert Maria Wick, Shlomo Ben-David, David Ben-David, Yehuda Cohen, Johannes Josephus Maria van Aert, Mirella Cohen, Roland Prosper Julia Jozef Peeters, Brigitte Frieda Guido Briels, Monty Lambert Pieters, Jemmy Jozef Juliette Pieters, Peter Edouard Martha Kilian, Yehuda Cohen, Herman Jozef Albert Van Landeghem, Van Landeghem BVBA, Roland Prosper Julia Jozef Peeters, Herman Jozef Albert Van Landeghem, Van Landeghem BVBA, Brigitte Frieda Guido Briels, Monty Lambert Pieters, Jemmy Jozef Juliette Pieters, Mediterranean Shipping Company Belgium NV, Mirella Cohen, Roland Prosper Julia Jozef Peeters, Brigitte Frieda Guido Briels, Monty Lambert Pieters, Jemmy Jozef Juliette Pieters, Peter Edouard Martha Kilian, Yehuda Cohen, Yves Claude Robert Van De Merckt, CMA CGM Belgium NV, CMA CGM Logistics NV, Herman Jozef Albert Van Landeghem, Van Landeghem BVBA, Rudi François Albertine Avaert, Ronny Bruno Van Wesenbeeck, Wally Louis Alice De Vooght, Christian Gustave Alain Bekkers, Avraham Dror, Yehuda Cohen, Yehuda Cohen, Frank Jozef Hilda Decock, Rubi Danieli, Dani Danieli, Jean Marie Dom, Roland Prosper Julia Jozef Peeters, Peter Edouard Martha Kilian, Simeon Beniurishvili, Ludo Maria Jan Gijsen, Van Landeghem BVBA, Anex BVBA, Pasha Tech Ltd, Louis Simon Catherina De Vos, Aboulkacem Chihabi, Herman Jozef Albert Van Landeghem, Deba BVBA, Universal Shipping NV, DFDS Transport NV, ACR Logistics Belgium NV, Forwarding & Shipping Group NV, Mister-Trans BVBA, Firma De Vos NV, Yehuda Cohen, Avraham Dror, Aboulkacem Chihabi, Peter Edouard Martha Kilian, Louis Simon Catherina De Vos, Roland Prosper Julia Jozef Peeters, Jemmy Jozef Juliette Pieters, Yves Claude Robert Van De Merckt, Dani Danieli, Rubi Danieli, Dov Horny, Albert Tizov, Gocha Tizov, Herman Jozef Albert Van Landeghem, Christiaan Marcel Hélène Hendrickx

*Intervening party:* Geert Vandendriessche

**Re:**

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Antwerpen — Interpretation of Articles 5, 38 to 41 and 43, second indent of Article 177 and Articles 202(1) and (3) and 221(1) and (3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) and of Article 199(1) 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) — Post-clearance recovery of import or export duties — Communication to the debtor — Creation of a customs debt following the unlawful introduction of goods

**Operative part of the order**

*The reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen, made by decision of 31 May 2007, is manifestly inadmissible.*

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([1]) OJ C 301, 6.11.2010.

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**Reference for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 25 February 2011 — Alfred Strigl v Deutsches Patent- und Markenamt**

**(Case C-90/11)**

(2011/C 173/05)

*Language of the case: German*

**Referring court**

Bundespatentgericht

**Parties to the main proceedings**

*Applicant:* Alfred Strigl

*Defendant:* Deutsches Patent- und Markenamt

**Question referred**

Is the ground for refusal under Article 3(1)(b) and/or (c) of Directive 2008/95/EC [1] also applicable to a word sign which consists of a descriptive word combination and a non descriptive letter sequence, if the trade perceives the letter sequence as an abbreviation of the descriptive words because it reproduces their initial letters, and the trade mark as a whole can thus be construed as a combination of mutually explanatory descriptive indications or abbreviations?

[1] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version); OJ 2008 L 299, p. 25.

**Reference for a preliminary ruling from the Bundespatentgericht (Germany) lodged on 25 February 2011 — Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH v Öko-Invest Verlagsgesellschaft mbH; Other party: Deutsches Patent- und Markenamt**

**(Case C-91/11)**

(2011/C 173/06)

*Language of the case: German*

**Referring court**

Bundespatentgericht

**Parties to the main proceedings**

*Applicant:* Securvita Gesellschaft zur Entwicklung alternativer Versicherungskonzepte mbH

*Defendant:* Öko-Invest Verlagsgesellschaft mbH

*Other party:* Deutsches Patent- und Markenamt

**Question referred**

Is the ground for refusal under Article 3(1)(b) and/or (c) of Directive 2008/95/EG [1] also applicable to a word sign which consists of a letter sequence which is non-descriptive — when considered on its own — and a descriptive word combination, if the trade perceives the letter sequence as an abbreviation of the descriptive words because it reproduces their initial letters, and the trade mark as a whole can thus be construed as a combination of mutually explanatory descriptive indications or abbreviations?

[1] Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (Text with EEA relevance); OJ 2008 L 299, p. 25.

**Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 2 March 2011 — Federal Republic of Germany v Z**

**(Case C-99/11)**

(2011/C 173/07)

*Language of the case: German*

**Referring court**

Bundesverwaltungsgericht

**Parties to the main proceedings**

*Applicant:* Federal Republic of Germany

*Defendant:* Z

*Other parties:* Der Vertreter des Bundesinteresses beim Bundesverwaltungsgericht (The Representative of Federal Interests at the Federal Administrative Court); Der Bundesbeauftragte für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge (Federal Commissioner for Asylum issues at the Federal Office for Migration and Refugees)

**Questions referred**

1. Is Article 9(1)(a) of Directive 2004/83/EC [1] to be interpreted as meaning that not every interference with religious freedom which breaches Article 9 of the European Convention on Human Rights constitutes an act of persecution within the meaning of Article 9(1)(a) of Directive 2004/83/EC, but that a severe violation of religious freedom as a basic human right arises only if the core area of that religious freedom is adversely affected?

2. If question 1 is to be answered in the affirmative:

   (a) Is the core area of religious freedom limited to the profession and practice of faith in the areas of the home and neighbourhood, or can there be an act of persecution, within the meaning of Article 9(1)(a) of Directive 2004/83/EC, also in cases where, in the country of origin, the practice of faith in public gives rise to a risk to life or limb or physical freedom and the applicant accordingly abstains from such practice?

   (b) If the core area of religious freedom can also comprise certain religious practices in public:

   — does it suffice in that case, in order for there to be a severe violation of religious freedom, that the applicant feels that such practice of his faith is indispensable in order for him to preserve his religious identity,

   — or is it further necessary that the religious community to which the applicant belongs should regard that religious practice as constituting a central part of its doctrine,

   — or can further restrictions arise as a result of other circumstances, such as the general conditions in the country of origin?

3. If Question 1 is to be answered in the affirmative:

   Is there a well-founded fear of persecution within the meaning of Article 2(c) of Directive 2004/83/EC if it is established that the applicant will carry out certain religious practices — other than those falling within the core area — after returning to the country of origin, even though they will give rise to a risk to life or limb or physical freedom, or is the applicant to be expected to abstain from engaging in such religious practices in the future?

(1) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

**Reference for a preliminary ruling from the Oberlandesgericht Köln (Germany) lodged on 4 March 2011 — ebookers.com Deutschland GmbH v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.**

**(Case C-112/11)**

(2011/C 173/08)

*Language of the case: German*

**Referring court**

Oberlandesgericht Köln

**Parties to the main proceedings**

*Applicant:* ebookers.com Deutschland GmbH

*Defendant:* Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e. V.

**Question referred**

Does Article 23(1) of the Regulation, (1) according to which optional price supplements are to be communicated in a clear, transparent and unambiguous way at the start of any booking process and are to be accepted by the customer on an opt-in basis, also apply to costs connected with air travel arising from services provided by third parties (*in this case, an insurer offering travel cancellation insurance*) and which are charged to the air traveller by the company organising the air travel together with the air fare as part of a total price?

(1) Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ 2008 L 293, p. 3.

**Reference for a preliminary ruling from the Schienen-Control Kommission Wien (Austria), lodged on 18 March 2011 — Westbahn Management GmbH v ÖBB-Infrastruktur AG**

**(Case C-136/11)**

(2011/C 173/09)

*Language of the case: German*

**Referring tribunal**

Schienen-Control Kommission Wien

**Parties to the main proceedings**

*Complainant:* Westbahn Management GmbH

*Defendant:* ÖBB-Infrastruktur AG

**Questions referred**

1. Is Article 8(2) of, in conjunction with Annex II, Part II, to, Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations (1) to be interpreted as meaning that information on main connecting services must include, in addition to scheduled departure times, notification of delays to or cancellations of those connecting services?

2. If the answer to Question 1 is in the affirmative: is Article 5 of, in conjunction with Annex II to, Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure [and safety certification] (2) to be interpreted, in the light of Article 8(2) of, in conjunction with Annex II, Part II, to, Regulation (EC) No 1371/2007, as meaning that the infrastructure manager is under an obligation to make real-time data on other railway undertakings' trains available to railway undertakings in a non-discriminatory manner, in so far as those trains constitute main connecting services within the meaning of Annex II, Part II, to Regulation (EC) No 1371/2007?

(1) OJ 2007 L 315, p. 14.

(2) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

**Reference for a preliminary ruling from the Landesarbeitsgericht Berlin-Brandenburg (Germany), lodged on 29 March 2011 — Ahmed Mahamdia v People's Democratic Republic of Algeria**

**(Case C-154/11)**

(2011/C 173/10)

*Language of the case: German*

**Referring court**

Landesarbeitsgericht Berlin-Brandenburg

**Parties to the main proceedings**

*Applicant:* Ahmed Mahamdia

*Defendant:* People's Democratic Republic of Algeria

**Questions referred**

1. Does an embassy of a State outside the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Regulation No 44/2001') ([1]) which is situated in a Member State constitute a branch, agency or other establishment within the meaning of Article 18(2) of Regulation No 44/2001?

2. If the answer to the first question should be in the affirmative:

   Can an agreement conferring jurisdiction reached prior to the existence of a dispute confer jurisdiction on a court outside the scope of Regulation No 44/2001, if, by virtue of the agreement conferring jurisdiction, the jurisdiction conferred under Articles 18 and 19 of Regulation No 44/2001 would not apply?

([1]) OJ 2001 L 12, p. 1.

**Reference for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 31 March 2011 — Giuseppe Sibilio v Comune di Afragola**

**(Case C-157/11)**

(2011/C 173/11)

*Language of the case: Italian*

**Referring court**

Tribunale di Napoli

**Parties to the main proceedings**

*Applicant:* Giuseppe Sibilio

*Defendant:* Comune di Afragola

**Questions referred**

1. Is Directive 1999/70/EC ([1]) applicable to socially useful workers or should such workers be regarded, in accordance with Clause 3(1) thereof, as persons having an employment relationship entered into directly between an employer and a worker where the end of the employment relationship is determined by objective conditions such as reaching a specific date, being in the present case the end of a project?

2. Does Clause 4 preclude a socially useful worker or a publicly useful worker from receiving less remuneration than a permanent worker who carries out the same duties and has the same length of service solely because his employment relationship was initiated on the terms described above, or does this constitute an objective reason justifying less favourable treatment in terms of pay?

([1]) OJ 1999 L 175, p. 43.

**Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 1 April 2011 — Azienda Sanitaria Locale di Lecce v Ordine degli Ingegneri della Provincia di Lecce and Others — Università del Salento**

**(Case C-159/11)**

(2011/C 173/12)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Applicant:* Azienda Sanitaria Locale di Lecce

*Defendants:* Ordine degli Ingegneri della Provincia di Lecce; Consiglio Nazionale degli Ingegneri; Associazione delle Organizzazioni di Ingegneri, di Architettura e di Consultazione Tecnico-Economica (Oice); Etacons Srl; Ing. Vito Prato Engineering Srl; Barletti — del Grosso & Associati Srl; Ordine degli Architetti della Provincia di Lecce; Consiglio Nazionale degli Architetti Pianificatori, Paesaggisti e Conservatori (Cnappc)

*Intervener*: Università del Salento

**Question referred**

Does Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1] and, in particular, Article 1(2)(a) and (d), Article 2 and Article 28 of that directive and Categories 8 and 12 in Annex II thereto, preclude national legislation which permits written agreements to be entered into between two contracting authorities for the study of the seismic vulnerability of hospital buildings and its evaluation in the light of national regulations on the safety of structures and of strategic buildings in particular, for a consideration not exceeding the costs incurred in the performance of the service, where the authority responsible for performance is capable of acting in the capacity of an economic operator?

[1] OJ L 134, p. 114.

**Reference for a preliminary ruling from the Tribunale di Trani (Italy) lodged on 1 April 2011 — Cosimo Damiano Vino v Poste Italiane SpA**

**(Case C-161/11)**

(2011/C 173/13)

*Language of the case: Italian*

**Referring court**

Tribunale di Trani

**Parties to the main proceedings**

*Applicant:* Cosimo Damiano Vino

*Defendant:* Poste Italiane SpA

**Questions referred**

(a) Does the general Community principle of non-discrimination and equality preclude national rules (such as that laid down by Article 2(1)a of Legislative Decree No 368/2001) which introduced into the national legal order an 'acausal' case that places at a disadvantage employees of Poste Italiane SpA, and, in relation to that company, other undertakings in the same sector or in other sectors?

(b) if the answer to the foregoing question is in the affirmative, is the national court required to disapply (or not to apply) the national rules which are contrary to Community law?

**Reference for a preliminary ruling from the Audiencia Provincial de Oviedo (Spain) lodged on 5 April 2011 — Angel Lorenzo González Alonso v Nationale Nederlanden Vida Cia De Seguros y Reaseguros S.A.E**

**(Case C-166/11)**

(2011/C 173/14)

*Language of the case: Spanish*

**Referring court**

Audiencia Provincial de Oviedo

**Parties to the main proceedings**

*Applicant:* Angel Lorenzo González Alonso

*Defendant:* Nationale Nederlanden Vida Cia De Seguros y Reaseguros S.A.E.

**Question referred**

Must Article 3(2)(d) of Council Directive 85/577/EEC [1] of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises be interpreted restrictively so as not to cover a contract, concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company itself?

[1] OJ 1985 L 372, p. 31.

**Appeal brought on 5 April 2011 by Cantiere Navale De Poli SpA against the judgment of the General Court (Eighth Chamber) delivered on 3 February 2011 in Case T-584/08 *Cantiere Navale De Poli v Commission***

**(Case C-167/11 P)**

(2011/C 173/15)

*Language of the case: Italian*

**Parties**

*Appellant:* Cantiere Navale De Poli SpA in liquidation and arrangement with creditors (represented by: A. Abate and A. Franchi, avvocati)

*Other party to the proceedings:* European Commission

**Form of order sought**

— uphold the appeal seeking the setting aside of the judgment of the General Court of 3 February 2011 and the related decision of the European Commission of 21 October 2008 and, in so far as is necessary and possible, a direct decision on the substance of the main action;

— in the alternative, set aside that judgment and refer the case back to the General Court;

— order the Commission to pay all costs and expenses relating to the proceedings.

**Pleas in law and main arguments**

By its appeal, the appellant challenges the judgment of the General Court of 3 February 2011 in Case T-584/08 *Cantiere Navale De Poli* v *Commission*, particularly in the following respects:

a) Procedural defects on grounds of failure to state adequate reasons in relation to:

— the teleological interpretation of Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding ('the TDM Regulation') [1] in order to identify the objectives pursued by the Council for the protection of the interests of those Community shipyards affected by the unfair conditions of competition applied by Korean shipyards;

— the relationship (order of precedence of legislative acts) between the TDM Regulation of the Council and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 88 of the EC Treaty; [2]

— reference to the principle of subsidiarity in order to determine the rules governing the time-limits for notifications of aid to the Commission on the part of the Member States.

b) Breach of Community law in relation to:

— the temporal aspects of the exercise of the Member States' power to notify aid to the Commission in the context of the TDM Regulation;

— the Commission's sphere of competence in the assessment of the 'compatibility with the common market' of the aid envisaged by the TDM Regulation;

— the governance of the legal relations arising under the TDM Regulation following the expiry of the period in which that regulation remained in force (31 March 2005);

— the application of the principles of equal treatment and of the protection of legitimate expectations.

[1] OJ 2002 L 172, p. 1.
[2] OJ 2004 L 140, p. 1.

**Reference for a preliminary ruling from the Tribunale di Frosinone (Italy) lodged on 7 April 2011 — Criminal proceedings against Patrick Conteh**

**(Case C-169/11)**

(2011/C 173/16)

*Language of the case: Italian*

**Referring court**

Tribunale di Frosinone

**Party to the main proceedings**

Patrick Conteh

**Question referred**

Are Articles 15 and 16 of Directive 2008/115/EC [1] to be interpreted as precluding a Member State from applying to an illegally staying third country national who does not cooperate in the administrative return procedure measures involving deprivation of liberty, on the basis of measures which are other than detention measures and as defined by national law, without the pre-conditions and safeguards laid down in Articles 15 and 16 of Directive 2008/115, on grounds of failure to comply with a removal order issued by the competent administrative authority in accordance with Article 8(3) of that directive?

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

**Order of the President of the Court of 16 February 2011 (references for a preliminary ruling from the Landgericht Berlin — Germany) — Agrargenossenschaft Münchehof e.G. (C-18/10), Landwirtschaftliches Unternehmen e.G. Sondershausen (C-37/10) v BVVG Bodenverwertungs- und -verwaltungs GmbH**

**(Joined Cases C-18/10 and C-37/10)** [1]

(2011/C 173/17)

*Language of the case: German*

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

[1] OJ C 80, 27.3.2010.
OJ C 100, 17.4.2010.

**Order of the President of the Court of 9 February 2011 — Nokia Oyj v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Medion AG**

**(Case C-154/10 P)** [1]

(2011/C 173/18)

*Language of the case: Finnish*

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

[1] OJ C 179, 3.7.2010.

**Order of the President of the Court of 7 February 2011 (reference for a preliminary ruling from the Landesarbeitsgericht Köln — Germany) — Land Nordrhein-Westfalen v Melanie Klintz**

**(Case C-312/10)** [1]

(2011/C 173/19)

*Language of the case: German*

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

[1] OJ C 274, 9.10.2010.

**Order of the President of the Eighth Chamber of the Court of 28 February 2011 — European Commission v Republic of Estonia**

**(Case C-407/10)** [1]

(2011/C 173/20)

*Language of the case: Estonian*

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

[1] OJ C 274, 9.10.2010.

**Order of the President of the Court of 17 February 2011 — European Commission v Portuguese Republic**

**(Case C-470/10)** [1]

(2011/C 173/21)

*Language of the case: Portuguese*

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

[1] OJ C 328, 4.12.2010.

# GENERAL COURT

## Order of the General Court of 12 April 2011 — Stichting Corporate Europe Observatory v Commission

**(Case T-395/10)** [1]

***(Access to documents — Regulation (EC) No 1049/2001 — Implied refusal of access — Express decision adopted after the action was brought — No need to adjudicate)***

(2011/C 173/22)

*Language of the case: English*

### Parties

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

*Other party to the proceedings:* European Commission (represented by: F. Clotuche-Duvieusart and C. ten Dam, Agents)

### Re:

Application for annulment of the Commission's implied decision refusing to grant the applicant access to certain documents concerning the relations between the European Union and India.

### Operative part of the order

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

2. *The European Commission shall pay the costs.*

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[1] OJ C 301, 6.11.2010.

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## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-478/10)** [1]

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/23)

*Language of the case: French*

### Parties

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

### Re:

Application for annulment of Commission Decision 2010/419/EU of 28 July 2010 renewing the authorisation for continued marketing of products containing, consisting of, or produced from genetically modified maize Bt11 (SYN-BTØ11-1), authorising foods and food ingredients containing or consisting of field maize Bt11 (SYN-BTØ11-1) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council and repealing Decision 2004/657/EC (OJ 2010 L 197, p. 11).

### Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Department de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Department des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

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[1] OJ C 346, 18.12.2010.

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## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-479/10)** [1]

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/24)

*Language of the case: French*

### Parties

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

**Re:**

Application for annulment of Commission Decision 2010/420/EU of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON89034xNK603 (MON-89Ø34-3xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 197, p. 15).

**Operative part of the order**

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Department de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Department des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

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([1]) OJ C 346, 18.12.2010.

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## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-480/10)** ([1])

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/25)

*Language of the case: French*

**Parties**

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

**Re:**

Application for annulment of Commission Decision 2010/426/EU of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize Bt11xGA21 (SYN-BTØ11-1xMON-ØØØ21-9) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 199, p. 36).

**Operative part of the order**

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Department de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Department des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

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([1]) OJ C 346, 18.12.2010.

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## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-481/10)** ([1])

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/26)

*Language of the case: French*

**Parties**

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

**Re:**

Application for annulment of Commission Decision 2010/429/EU of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize MON 88017 x MON 810 (MON-88Ø17-3 x MON-ØØ81Ø-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 201, p. 46).

**Operative part of the order**

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Département de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Département des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

(1) OJ C 346, 18.12.2010.

## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-482/10)** (1)

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/27)

*Language of the case: French*

### Parties

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

### Re:

Application for annulment of Commission Decision 2010/432/EU of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 1507x59122 (DAS-Ø15Ø7-1xDAS-59122-7) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 202, p. 11).

### Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Département de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Département des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

(1) OJ C 346, 18.12.2010.

## Order of the General Court of 11 April 2011 — Département du Gers v Commission

**(Case T-502/10)** (1)

***(Action for annulment — Environment and protection of human health — Genetically modified food and feed — No individual concern — Inadmissibility)***

(2011/C 173/28)

*Language of the case: French*

### Parties

*Applicant:* Département du Gers (France) (represented by: S. Mabile and J.-P Mignard, lawyers)

*Defendant:* European Commission (represented by: D. Bianchi and L. Pignataro, Agents)

### Re:

Application for annulment of Commission Decision 2010/428/EU of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 59122x1507xNK603 (DAS-59122-7xDAS-Ø15Ø7xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council (OJ 2010 L 201, p. 41).

### Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *The Département du Gers is ordered to bear its own costs and pay those of the European Commission;*

3. *There is no need to adjudicate on the applications to intervene of the European Parliament, the Council of the European Union, the Centre Region, the Picardy Region, the Département de la Haute–Garonne, the Brittany Region, the Poitou-Charentes Region, the Provence-Alpes-Côte-d'Azur Region, the Burgundy Region, the Midi-Pyrénées Region, the Auvergne Region, the Pays de la Loire Region, the Rhône-Alpes Region, the Département des Côtes d'Armor, the Île de France Region and the Nord-Pas-de-Calais Region.*

(1) OJ C 346, 18.12.2010.

## Action brought on 18 February 2011 — ONP and Others v Commission

**(Case T-90/11)**

(2011/C 173/29)

*Language of the case: French*

### Parties

*Applicants:* Ordre national des pharmaciens (ONP) (Paris, France), Conseil national de l'Ordre des pharmaciens (CNOP) (Paris), Conseil central de la section G de l'Ordre national des pharmaciens (CCG) (Paris) (represented by: O. Saumon, L. Defalque and T. Bontinck, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicants claim that the Court should:

— annul Decision C(2010) 8952 final of the European Commission of 8 December 2010, which was notified to the applicants on 10 December 2010, relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union (Case 39510 — LABCO/ONP);

— in the alternative, assuming that certain heads of claim are proved, reduce the fine of EUR 5 000 000 imposed on the applicants by the European Commission for infringement of Article 101 TFEU taking into account the extenuating circumstances which exist and the specific nature of the association of undertakings in question;

— in any event, order the European Commission to pay all the costs in accordance with Article 87(2) of the Rules of Procedure of the General Court of the European Union.

### Pleas in law and main arguments

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

1. First plea in law, alleging an error of interpretation and application of Article 101 TFEU in so far as the Commission took the view that the exception set out in *Wouters* ([1]) does not apply to the present case.

As regards the restrictions on the development of groups of laboratories on the French market for clinical laboratory tests:

2. Second plea in law, alleging an error of law due to an error of assessment of the scope of the French legislation as regards the respective roles of the prefect and of the Conseil central de la section G de l'Ordre des pharmaciens (Central council of Section G of the Association of pharmacists) ('the CCG') during changes which took place vis-à-vis the running of a société d'exercice libéral (company or firm formed by persons practising a profession).

3. Third plea in law, alleging a failure to take account of the scope of the obligation to inform, under Articles L 4221-19, L 6221-4 and L-6221-5 of the Code de la santé publique (Public Health Code) and a circular of 22 September 1998, in so far as the Commission failed to have regard to the role of the CCG in the context of its ex post inspection of the company documents relating to sociétés d'exercice libéral operating as laboratories for clinical laboratory tests and also disregarded the obligation to submit observations to the prefect.

4. Fourth plea in law, alleging failure to take account of the role of the CCG as guarantor of the professional independence of the practising member, in so far as the Commission supported the idea that the practising member should have the lowest possible share in the capital of sociétés d'exercice libéral resulting in the loss of his economic independence and decision-making autonomy.

5. Fifth plea in law, alleging an error of assessment of the legislature's intention as regards the transfer of shares above a ceiling of 25 % and failure to take account of the legal framework applicable to the transfer of shares in sociétés d'exercice liberal.

6. Sixth plea in law, alleging that the Commission erred in the interpretation and application of Article 101 TFEU by taking into consideration, in the contested decision, the disciplinary sanctions imposed in so far as they exacerbate the possible or actual effects of the decisions criticised.

As regards the imposition of minimum prices on the French market for clinical laboratory tests:

7. Seventh plea in law, alleging that the Commission exceeded the limits of the inspection decision ([2]) by seizing documents relating to 'prices', which has the consequence that the items of evidence gathered on that basis were illegally gathered and, consequently, the claim relating to the minimum prices must be regarded as unsubstantiated.

If, *quod non*, the evidence concerning the minimum prices could legitimately be seized by the Commission in the course of its inspection:

8. Eighth plea in law, alleging an error of assessment in respect of the scope of the former Article L 6211-6 of the Code de la santé publique and of the legislature's intention as regards the definition and practice of discounts.

9. Ninth plea in law, alleging an error of assessment of the facts resulting in an error of law as the Commission took the view, first, that the ONP's conduct relating to the discounts does not fall within the scope of its statutory tasks but reflects its anti-competitive objectives and, secondly, that the ONP consistently, in order to protect the interests of small laboratories, attempted to impose a minimum price on the market for clinical laboratory testing services.

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([1]) Case C-309/99 *Wouters and Others* [2002] ECR I-1577.

([2]) Commission Inspection Decision C(2008) 6494 of 29 October 2008 ordering the applicants to submit to an inspection pursuant to Article 20(4) of Council Regulation Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 TFEU and 102 TFEU is the subject-matter of Case T-23/09 *CNOP and CCG* v *Commission* (OJ 2009 C 55, p. 49)

## Action brought on 4 April 2011 — Cahier and Others v Council and Commission

**(Case T-195/11)**

(2011/C 173/30)

*Language of the case: French*

### Parties

*Applicants:* Jean-Marie Cahier (Montchaude, France) Robert Aubineau (Cierzac, France), Laurent Bigot (Saint Palais sur Mer, France), Pascal Bourdeau (Saintes Lheurine, France), Jacques Brard-Blanchard (Boutiers Saint Trojan, France), Olivier Charruaud (St Martial de Mirambeau, France), Daniel Chauvet (Saint Georges Antignac, France), Régis Chauvet (Marignac, France), Fabrice Compagnon (Avy, France), Francis Crepeau (Jarnac Champagne, France), Bernard Deborde (Arthenac, France), Chantal Goulard (Arthenac), Jean Pierre Gourdet (Moings, France), Bernard Goursaud (Brie sous Matha, France), Jean Gravouil (Saint Hilaire de Villefranche, France), Guy Herbelot (Echebrune, France), Rodrigue Herbelot (Echebrune), Sophie Landrit (Ozillac, France), Michel Mallet (Vanzac, France), Alain Marchadier (Villars en Pons, France), Michel Merlet (Jarnac Champagne), René Phelipon (Cierzac, France), Claude Potut (Avy), Philippe Pruleau (Saint Bonnet sur Gironde, France), Béatrice Rousseau (Gensac La Pallue, France), Jean-Christophe Rousseau (Segonzac, France), Françoise Rousseau (Burie, France), Pascale Rulleaud-Beaufour (Arthenac) and Alain Phelipon (Saintes, France) (represented by: C.-E. Gudin, lawyer)

*Defendants:* Council of the European Union and European Commission

### Form of order sought

The applicants claim that the Court should:

— make good in full the loss suffered by virtue of fines, that is the sum of:

  — EUR 53 600 in relation to Jean-Marie Cahier;

  — EUR 105 100 in relation to Robert Aubineau;

  — EUR 240 500 in relation to Laurent Bigot;

  — EUR 111 100 in relation to Pascal Bourdeau;

  — EUR 12 800 in relation to Jacques Brard-Blanchard;

  — EUR 37 600 in relation to Olivier Charruaud;

  — EUR 122 100 in relation to Daniel Chauvet;

  — EUR 40 500 in relation to Régis Chauvet;

  — EUR 97 100 in relation to Fabrice Compagnon;

  — EUR 105 600 in relation to Francis Crepeau;

  — EUR 1 081 500 in relation to Bernard Deborde;

  — EUR 64 800 in relation to Chantal Goulard;

  — EUR 94 400 in relation to Jean Pierre Gourdet;

  — EUR 43 000 in relation to Bernard Goursaud;

  — EUR 82 100 in relation to Jean Gravouil;

  — EUR 20 500 in relation to Guy Herbelot;

  — EUR 65 100 in relation to Rodrigue Herbelot;

  — EUR 53 000 in relation to Sophie Landrit;

  — EUR 39 500 in relation to Michel Mallet;

  — EUR 332 500 in relation to Alain Marchadier;

  — EUR 458 500 in relation to Michel Merlet;

  — EUR 23 000 in relation to René Phelipon;

  — EUR 85 100 in relation to Claude Potut;

  — EUR 3 500 in relation to Philippe Pruleau;

  — EUR 34 500 in relation to Béatrice Rousseau;

  — EUR 38 070 in relation to Jean-Christophe Rousseau;

  — EUR 24 300 in relation to Françoise Rousseau;

  — EUR 486 500 in relation to Pascale Rulleaud-Beaufour;

  — EUR 10 500 in relation to Alain Phelipon;

— establish a flat-rate amount for non-material loss at the sum of EUR 100 000 for each of the 29 applicants;

— order the Council and the Commission to pay all the costs and disbursements:

— in relation to the ongoing proceedings before the General Court of the European Union;

— in relation also to all the proceedings brought before all of the national courts.

**Pleas in law and main arguments**

In support of the action, the applicants submit that the extra-contractual liability of the European Union is incurred by a serious breach of Article 40(2) TFEU, insofar as Article 28 of Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ([1]), as implemented by Commission Regulation No 1623/2000 ([2]) and maintained by Council Regulation (EC) No 479/2008 ([3]), prohibits producers of wine obtained from dual-purpose vine varieties from themselves distilling spirits from quantities of wine with a designation of origin produced in excess of the quantity normally produced.

The applicants have been systematically prosecuted and convicted by the national authorities for having failed to deliver the quantities produced in excess of the normal quantity and not exported as wine to third countries for State compulsory distillation into alcohol by approved distillers.

The applicants submit, inter alia, that this is a breach of perfectly clear and unambiguous provisions in respect of which the institutions of the European Union did not have any discretion. They allege a breach of the principles of non-discrimination, legal certainty, proportionality, estoppel, the presumption of innocence, proper administration, care and the right to property, as well as wrongful interference with the freedom to produce industrial goods and put them on the market and the wrongful extension of the application of a regulation with the purpose of stabilising the market and guaranteeing a certain revenue for producers to cases where there are no applications for funding from those producers.

([1]) OJ 1999 L 179, p. 1.

([2]) Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms (OJ 2000 L 194, p. 45).

([3]) Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (OJ 2008 L 148, p. 1).

## Order of the General Court of 8 April 2011 — Bakkers v Council and Commission

**(Case T-146/97)** ([1])

(2011/C 173/31)

*Language of the case: Dutch*

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

([1]) OJ C 199, 28.6.1997.

## Order of the General Court of 11 April 2011 — Quantum v OHIM — Quantum (Q Quantum CORPORATION)

**(Case T-31/08)** ([1])

(2011/C 173/32)

*Language of the case: Greek*

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

([1]) OJ C 92, 12.4.2008.

## Order of the General Court of 15 April 2011 — Amor v OHIM — Jablonex Group (AMORIKE)

**(Case T-371/10)** ([1])

(2011/C 173/33)

*Language of the case: English*

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

([1]) OJ C 288, 23.10.2010.

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Action brought on 14 March 2011 — ZZ v Council

**(Case F-28/11)**

(2011/C 173/34)

*Language of the case: English*

### Parties

*Applicant:* ZZ (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

*Defendant:* Council of the European Union

### The subject matter and description of the proceedings

The annulment of the decision whereby the Appointing Authority of the Council refused to promote him to grade AD 12 under the 2010 promotion exercise, contained in Staff Note 80/10 of 26 April 2010.

### Form of order sought

The applicant claims that the Court should:

— Ask the Council to provide the reports on the former A officials promoted to the grade AD 12 that were considered under the 2010 promotion exercise, as well as the statistics on the average analytical assessment by first reporting officers that were submitted to the AD 'Administrators' Advisory Committee on Promotion;

— annul the contested decision and, in so far as necessary, the decision rejecting the complaint;

— order the Council to pay the costs.

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## Action brought on 21 March 2011 — ZZ v Commission

**(Case F-29/11)**

(2011/C 173/35)

*Language of the case: French*

### Parties

*Applicant:* ZZ (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the selection board's decision in competition EPSO/AD/147/09-RO not to admit the applicant to the oral test in that competition.

### Form of order sought

— Annul the Director of EPSO's decision of 10 December 2010 to dismiss the applicant's complaint;

— in so far as it is necessary, annul the selection board's decision in competition EPSO/AD/147/09-RO to award the applicant an eliminatory mark of 6/10 for his written test C;

— order the Commission to pay the costs.

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## Action brought on 5 April 2011 — ZZ v Commission

**(Case F-37/11)**

(2011/C 173/36)

*Language of the case: French*

### Parties

*Applicant:* ZZ (represented by: P. Nelissen Grade and G. Leblanc, lawyers)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the decision to exclude the applicant from the open competition EPSO AD/177/10.

### Form of order sought

— Annul the appointing authority's decision of 13 July 2010 to exclude the applicant from the open competition EPSO AD/177/10;

— annul the appointing authority's decision of 5 January 2011 dismissing the applicant's complaint;

— order the Commission to pay the costs;

— in the alternative, rule that the applicant should not be ordered to pay the Commission's costs.

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