ISSN 1725-2423

Official Journal of the European Union

C 282

English edition

Information and Notices

Volume 54

24 September 2011

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Price: EUR 4

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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 282/01)

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

OJ C 269, 10.9.2011

Past publications

OJ C 252, 27.8.2011

OJ C 238, 13.8.2011

OJ C 232, 6.8.2011

OJ C 226, 30.7.2011

OJ C 219, 23.7.2011

OJ C 211, 16.7.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main (Germany), lodged on 20 June 2011 — Chemische Fabrik Kreussler & Co. GmbH v John O. Butler GmbH

(Case C-308/11)

(2011/C 282/02)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Appellant: Chemische Fabrik Kreussler & Co. GmbH

Respìondent: John O. Butler GmbH

Questions referred

1. For the purpose of defining the term 'pharmacological action' in Article 1(2)(b) of Directive 2001/83/EC, ([1]) as amended by Directive 2004/27/EC, ([2]) can recourse be had to the document compiled under the auspices of the European Commission to provide guidance in distinguishing between medicinal products and medical devices (the 'Medical Devices: Guidance document'), which states that there must be an interaction between the molecules of the substance in question and a cellular constituent, usually referred to as a receptor, which either results in a direct response or blocks the response of another agent?

2. If the first question is answered in the affirmative: does the term 'pharmacological action' require that there should be an interaction between the molecules of the substance in question and cellular constituents of the user, or is it sufficient if there is an interaction between the substance in question and a cellular constituent which does not form part of the human body?

3. In the event that the first question is answered in the negative or that neither of the two definitions proposed in the second question is appropriate: which alternative definition should be used instead?

([1]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67).

([2]) Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34).

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 20 June 2011 — Grattan plc v The Commissioners of Her Majesty's Revenue & Customs

(Case C-310/11)

(2011/C 282/03)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Grattan plc

Defendant: The Commissioners of Her Majesty's Revenue & Customs

Question referred

In relation to the period before 1 January 1978, does a taxable person have a directly effective right under Article 8(a) of the Second Council Directive of 11 April 1967 (67/228/EEC ([1])), and/or the principles of fiscal neutrality and of equal treatment, to treat the basis of assessment of a supply of goods as retrospectively reduced where, after the time of that supply of goods, the recipient of the supply received a credit from the supplier which the recipient then elected either to take as a payment of money, or as a credit against amounts owed to the supplier in respect of supplies of goods to the recipient that had already taken place?

([1]) Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax
OJ 71, p. 1303

Reference for a preliminary ruling from the Juzgado de lo Mercantil de A Coruña (Spain) lodged on 28 June 2011 — Germán Rodríguez Cachafeiro and Maria Reyes Martínez-Reboredo Varela-Villamayor v Iberia Líneas Aéreas de España S.A.

(Case C-321/11)

(2011/C 282/04)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de A Coruña

Parties to the main proceedings

Applicants: Germán Rodríguez Cachafeiro and Maria Reyes Martínez-Reboredo Varela-Villamayor

Defendant: Iberia Líneas Aéreas de España S.A.

Question referred

May the definition of 'denied boarding' contained in Article 2(j), in conjunction with Article 3(2) and 4(3), of Regulation (EC) No 261/2004, ([1]) be regarded as including a situation in which an airline refuses to allow boarding because the first flight included in the ticket is subject to a delay ascribable to the airline and the latter erroneously expects the passengers not to arrive in time to catch the second flight, and so allows their seats to be taken by other passengers?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement; OJ 2004 L 46, p. 1.

Action brought on 22 June 2011 — European Commission v Kingdom of Denmark

(Case C-323/11)

(2011/C 282/05)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: I. Hadjiyiannis and U. Nielsen, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— declare that, by failing to publish the final river basin management plans by 22 December 2009 and by failing to send the Commission copies thereof by 22 March 2010 and, in any event, by failing to inform the Commission thereof, the Kingdom of Denmark has failed to fulfil its obligations under Directive 2000/60/EC ([1]) of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy;

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

Article 13(1), (2) and (6) of the Directive provides that the Member States were to adopt the laws and administrative provisions necessary to comply with the Directive by 22 December 2009 and to send the Commission copies thereof by 22 March 2010.

Since the Commission is not in possession of any information which enables it to establish that the necessary provisions have been adopted, the Commission must proceed on the assumption that Denmark has not yet adopted those provisions and has therefore failed to fulfil its obligations under the Directive.

([1]) OJ 2000 L 327, p. 1, 22.12.2000.

Reference for a preliminary ruling from the A Magyar Köztársaság Legfelsőbb Bírósága (Hungary) lodged on 29 June 2011 — Gábor Tóth v Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága, as successor to Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

(Case C-324/11)

(2011/C 282/06)

Language of the case: Hungarian

Referring court

A Magyar Köztársaság Legfelsőbb Bírósága (Supreme Court of the Republic of Hungary)

Parties to the main proceedings

Appellant: Gábor Tóth

Respondent: Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága, as successor to Adó- és Pénzügyi Ellenőrzési Hivatal Hatósági Főosztály Észak-magyarországi Kihelyezett Hatósági Osztály

Questions referred

1. Is the principle of tax neutrality (Article 9 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax) infringed by a legal interpretation which prevents the addressee of an invoice from exercising his right to deduct where the operator who issued it has, prior to full performance of the contract or issue of the invoice, had his business operator's licence withdrawn by the municipal authority?

2. Can the fact that the individual operator who issued the invoice has not declared the workers whom he employs (who, as a result, work 'in the black economy'), and the fact that, for that reason, the tax authority has found that the said operator 'has no declared workers', prevent the addressee of that invoice from exercising the right to deduct, having regard to the principle of tax neutrality?

3. Can it be held that the addressee of the invoice is guilty of a lack of care when he does not verify either whether a legal relationship exists between the workers employed on a work site and the issuer of the invoice or whether the latter has fulfilled his tax-return obligations or any other obligations relating to those workers? Can it be held that such conduct constitutes an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of VAT?

4. Having regard to the principle of tax neutrality, can the national court take the above circumstances into consideration when its overall assessment leads it to the conclusion that the economic transaction did not take place between the persons specified on the invoice?

([1]) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

Action brought on 30 June 2011 — European Commission v Slovak Republic

(Case C-331/11)

(2011/C 282/07)

Language of the case: Slovak

Parties

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

Defendant: Slovak Republic

Forms of order sought

— declare that, by authorising the operation of the Žilina — Považský Chlmec waste site without a conditioning plan for the waste site and without adopting a definite decision on whether operations might continue on the basis of the said conditioning plan, the Slovak Republic has failed to fulfil its obligations under Article 14(a), (b) and (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste ([1])

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The Žilina — Považský Chlmec waste site is operated without any conditioning plan having been submitted and without the approval of any measures which might be needed on the basis of such a plan. The Commission therefore submits that the Court should declare that, by authorising the operation of the Žilina — Považský Chlmec waste site without a conditioning plan for the waste site and without adopting a definite decision on whether operations might continue on the basis of the said conditioning plan, the Slovak Republic has failed to fulfil its obligations under Article 14(a), (b) and (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.

([1]) OJ 1999 L 182, p. 1.

Appeal brought on 29 June 2011 by Lancôme parfums et beauté & Cie against the judgment of the General Court (Eighth Chamber) delivered on 14 April 2011 in Case T-466/08: Lancôme parfums et beauté & Cie v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Focus Magazin Verlag GmbH

(Case C-334/11 P)

(2011/C 282/08)

Language of the case: English

Parties

Appellant: Lancôme parfums et beauté & Cie (represented by: A. von Mühlendahl, J. Pagenberg, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Focus Magazin Verlag GmbH

Form of order sought

The appellant requests the Court of Justice to decide as follows:

— The judgment of the General Court of 14 April 2011 in Case T-466/08 an the decision of the First Board of Appeal of the Office of 29 July 2008 in Case R 1796/2007-1 are annulled.

— The costs of the proceedings before the Board of Appeal of the Office, before the General Court and before this court shall be borne by the Office and by the Intervener.

Pleas in law and main arguments

The Appellant claims that the contested judgment must be annulled because the General Court violated Article 43 (2) and (3) CTMR and committed legal error in deciding that in the contested case the five-year period following registration within which the earlier German mark FOCUS on which the opposition against the CTM application for ACNO FOCUS was based must be put to genuine use did not begin to run until 13 January 2004.

The Appellant does not challenge the finding of likelihood of confusion. While the Appellant disagrees with the finding, the Appellant considers that the General Court did not commit any error of law.

Reference for a preliminary ruling from the Tribunal d'Instance, Paris (France) lodged on 4 July 2011 — Thomson Sales Europe SA v Administration des Douanes (National Directorate for Customs Intelligence and Investigations)

(Case C-348/11)

(2011/C 282/09)

Language of the case: French

Referring court

Tribunal d'Instance, Paris

Parties to the main proceedings

Applicant: Thomson Sales Europe SA

Defendant: Administration des Douanes (National Directorate for Customs Intelligence and Investigations)

Questions referred

1. Is the investigation carried out by OLAF in Thailand and initiated on the basis of provisions concerning preferential origin invalid since it is contrary to international law, namely to the principle of full sovereignty and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty of the UN General Assembly of 21 December 1965?

2. Is the investigation carried out by OLAF in Thailand and initiated on the basis of provisions concerning preferential origin invalid where, as in the present case, OLAF did not strictly comply with Article 94 of the regulation implementing the Community Customs Code?

3. Is the investigation carried out by OLAF in Thailand invalid and may the information collected during OLAF's investigation be used to challenge the origin applicable under ordinary law when:

   — the information was sought in the context of an investigation on preferential origin;

   — OLAF infringed Community legislation and in particular Regulation (EC) No 1073/1999 [1] as it did not act 'in accordance with the cooperation agreements in force, in third countries';

   — the competent local authority did not legally commit itself to providing assistance;

   — the information obtained was not communicated with the agreement of the competent local authority or in compliance with their domestic provisions applicable to the transfer of personal data to third countries;

   — the investigation was carried out unofficially, in complete confidentiality and without observing the rights of the defence?

4. Are Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand [2] and amending Council Regulation No 2584/98 of 27 November 1998 [3] invalid because the application of zeroing in determining the weighted average dumping margin was referred to neither in their preambles nor in the preamble to the previous regulation, Commission Regulation (EC) No 2376/94 of 27 September 1994 imposing a provisional anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand [4]?

5. Are Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and amending Council Regulation No 2584/98 of 27 November 1998 invalid in so far as the Council of the European Union applied, for the purposes of determining the dumping margin for the product covered by the investigation, the zeroing method to the negative dumping margins for each type of product concerned?

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[1] Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1).
[2] OJ 1995 L 73, p. 3.
[3] OJ 1998 L 324, p. 1.
[4] OJ 1994 L 255, p. 50.

Reference for a preliminary ruling from the Tribunal de Première Instance de Liège (Belgium) lodged on 4 July 2011 — Auditeur du Travail v Yangwei SPRL

(Case C-349/11)

(2011/C 282/10)

Language of the case: French

Referring court

Tribunal de Première Instance de Liège

Parties to the main proceedings

Applicant: Auditeur du Travail

Defendant: Yangwei SPRL

Question referred

Must Clause 5.1(a) of the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1], be interpreted as precluding national legislation such as:

— The obligation to keep a copy of the part-time employment contract or an extract, containing the work schedule, identity and signature of the two parties at the place where the rules governing employment can be consulted (Article 157 of the Programme Law);

— The obligation that it must be possible to ascertain at any time when the cycle commences (Article 158 of the Programme Law);

— As regards variable work schedules, the obligation for the employer to notify the worker by notice five days in advance; a notice must furthermore be displayed at the beginning of the day containing the individual work schedule of each part-time worker; this notice must furthermore be retained for one year (Article 159 of the Programme Law);

— The obligation for an employer who employs part-time workers to have a document recording all the departures from work schedules referred to in Articles 157 to 159 (Article 160 of the Programme Law), a document that must be kept in accordance with certain conditions specified in Article 161 of the Programme Law?

[1] OJ 1998, L 14, p. 9

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 4 July 2011 — Argenta Spaarbank NV v Belgische Staat

(Case C-350/11)

(2011/C 282/11)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Question referred

Does Article 43 EC [now Article 49 TFEU] preclude national tax legislation pursuant to which, for the purposes of the calculation of its taxable profit, a company subject to unlimited tax liability in Belgium cannot apply a deduction in respect of risk capital in the amount of the positive difference between (i) the net book value of the assets of the establishments that that company runs in another Member State of the European Union and (ii) the total liabilities that are imputable to those establishments, whereas it can apply a deduction in respect of risk capital if that positive difference can be imputed to a permanent establishment located in Belgium?

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 4 July 2011 — KGH Belgium NV v Belgische Staat

(Case C-351/11)

(2011/C 282/12)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: KGH Belgium NV

Defendant: Belgische Staat

Question referred

1. Is Article 217(2) of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1992 L 302, p. 1) to be interpreted as meaning that, when determining the practical procedures for the entry in the accounts of the amounts of duty, the Member States can confine themselves to including in their national legislation provisions stipulating merely:

   — that, for the purposes of such national legislation, 'entry in the accounts' is to mean 'the entry, in the accounts or on any alternative medium, of the amount of duty corresponding to a customs debt' — in this case, Article 1(6) of the General Law on customs and excise duty (Algemene Wet inzake douane en accijnzen), coordinated by the Royal Decree of 18 July 1977 (*Belgisch Staatsblad* of 21 September 1977, p. 11425), confirmed by the Law of 6 July 1978 on customs and excise duty (Wet inzake douane en accijnzen) (*Belgisch Staatsblad* of 12 August 1978, p. 9013) and replaced, with effect from 1 January 1994, by Article 1(4) of the Law amending the general law on customs and excise duty (Wet tot wijziging van de algemene wet inzake douane en accijnzen) (*Belgisch Staatsblad* of 30 December 1993, p. 29031);

   and

   — that the rules relating to entry in the accounts and conditions of payment of the amounts of duty payable pursuant to a customs debt are laid down in the

regulations of the European Communities — in this case, Article 3 of the General Law on customs and excise duty, coordinated by the Royal Decree of 18 July 1977 (*Belgisch Staatsblad* of 21 September 1977, p. 11425), confirmed by the Law of 6 July 1978 on customs and excise duty (*Belgisch Staatsblad* of 12 August 1978, p. 9013), as amended, with effect from 1 July 1990, by Article 72 of the Law of 22 December 1989 relating to tax provisions (Wet houdende fiscale bepalingen) (*Belgisch Staatsblad* of 29 December 1989, p. 21141),

or must the Member States, in implementing Article 217(2) of the Community Customs Code, determine in their national legislation how the entry in the accounts provided for in Article 217(1) of the Community Customs Code is to be effected in practice, so that a debtor can ascertain whether such entry in the accounts has actually been effected by the customs authorities?

2. Is Article 217(2) of the Community Customs Code to be interpreted as meaning that, where national legislation merely provides:

— that, for the purposes of such national legislation, 'entry in the accounts' is to mean 'the entry, in the accounts or on any alternative medium, of the amount of duty corresponding to a customs debt' — in this case, Article 1(6) of the General Law on customs and excise duty, coordinated by the Royal Decree of 18 July 1977 (*Belgisch Staatsblad* of 21 September 1977, p. 11425), confirmed by the Law of 6 July 1978 on customs and excise duty (*Belgisch Staatsblad* of 12 August 1978, p. 9013) and replaced, with effect from 1 January 1994, by Article 1(4) of the Law amending the general law on customs and excise duty (*Belgisch Staatsblad* of 30 December 1993, p. 29031);

and

— that the rules relating to the entry in the accounts and conditions of payment of the amounts of duty payable pursuant to a customs debt are laid down in the regulations of the European Communities — in this case, Article 3 of the General Law on customs and excise duty, coordinated by the Royal Decree of 18 July 1977 (*Belgisch Staatsblad* of 21 September 1977, p. 11425), confirmed by the Law of 6 July 1978 on customs and excise duty (*Belgisch Staatsblad* of 12 August 1978, p. 9013), as amended, with effect from 1 July 1990, by Article 72 of the Law of 22 December 1989 relating to tax provisions (*Belgisch Staatsblad* of 29 December 1989, p. 21141),

the customs authorities can maintain that the entry by those authorities of the amount of duty on a '1552 B form' or in a 'PLDA' (paperless customs and excise duty) debt database, or any other registration or entry by the customs authorities of the amount of duty on any other possible medium constitutes an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code?

3. On the assumption that the entry by the customs authorities of the amount of duty on a 1552 B form may be deemed to constitute an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code, is Article 217 of the Community Customs Code to be interpreted as meaning that only the entry on a 1552 B form of the precise amount of the duty arising pursuant to a customs debt constitutes an entry in the accounts within the meaning of Article 217(1) of the Community Customs Code?

Appeal brought on 6 July 2011 by Maurice Emram against the judgment of the General Court (Second Chamber) delivered on 10 May 2011 in Case T-187/10 Emram v OHIM

(Case C-354/11 P)

(2011/C 282/13)

Language of the case: French

Parties

Appellant: Maurice Emram (represented by: M. Benavï, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Guccio Gucci Spa

Form of order sought

— set aside the entire judgment of the General Court in that it dismissed the action for annulment of the decision of 11 February 2010 of the First Board of Appeal of OHIM;

— set aside the decision of the Board of Appeal under Article 61 of the Statute of the Court of Justice;

— order OHIM to pay the costs of the proceedings before the General Court and the Court of Justice, and order the company Gucci to pay the costs of the proceedings before OHIM and the General Court.

Pleas in law and main arguments

The appellant submits that there has been infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, ([1]) and also infringement of Article 17 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. ([2])

The appellant submits in that regard, first, that the General Court found that there was a likelihood of confusion without taking into account all the relevant aspects of the present case, including the non-use of earlier marks on the market, the taking into account of the distinctive character of the earlier marks, the actual presence on the market of other products of the same type bearing different 'G' signs, and the level of importance accorded by the relevant public to that type of sign to identify a commercial mark. The appellant further submits that the General Court found that there had been an incorrect assessment of the similarity between the conflicting marks resulting, inter alia, from a distortion of the facts, an incorrect assessment of the distinctive and dominant character of the earlier marks and an incorrect assessment of the nature of the products at issue.

The appellant submits, second, that there was an incorrect application of the case-law by the General Court, in that it failed to take account of earlier national decisions, in disregard of Article 17 of Regulation No 207/2009.

Lastly, the appellant submits that there has been infringement of the principle of equal treatment by the General Court in that it conducted a partial assessment of the similarity between the signs, whilst ignoring the word content of the mark applied for and comparing the signs on the basis of excessively broad criteria.

([1]) OJ 1994 L 11, p. 1.
([2]) OJ 2009 L 78, p. 1.

Reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 6 July 2011 — G. Brouwer v Staatssecretaris van Economische Zaken, Landbouw en Innovatie

(Case C-355/11)

(2011/C 282/14)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellant: G. Brouwer

Respondent: Staatssecretaris van Economische Zaken, Landbouw en Innovatie

Questions referred

1. Must Directive 91/629/EEC ([1]) be interpreted as meaning that the management requirements within the meaning of Article 4 of Regulation (EC) No 1782/2003 ([2]) arising out of that directive are also applicable to calves which are kept confined by a farmer in the context of a dairy farming operation?

2. If that question is answered in the negative, does the fact that a Member State has implemented that directive by means of legislation which declares the aforementioned requirements to be nevertheless applicable to such calves, give grounds, in the event of an infringement of those requirements in that Member State, for deeming a reduction or exclusion under Article 6 of Regulation (EC) No 1782/2003 to be necessary?

([1]) Council Directive of 19 November 1991 laying down minimum standards for the protection of calves (OJ 1991 L 340, p. 28).
([2]) Council Regulation of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

Action brought on 8 July 2011 — European Commission v Kingdom of Spain

(Case C-360/11)

(2011/C 282/15)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios, Agent)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that, by applying a reduced rate of VAT to:

  — Medicinal substances which may be used habitually or are suited to the production of medicinal products, in accordance with paragraph 1(5) of the first section of Article 91 and paragraph 1(3) of the second section of Article 91 of the Ley española del IVA (Spanish Law on VAT);

  — Sanitary products, material, equipment and appliances which, viewed objectively, can be used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, but which are not 'normally intended to alleviate or treat disabilities, for the exclusive personal use of the disabled', in accordance with the second subparagraph of paragraph 1(6) of the first section of Article 91 of the Spanish Law on VAT;

  — Aids and equipment which may be used essentially or primarily to treat physical disabilities in animals, in accordance with the first subparagraph of paragraph 1(6) of Article 91 of the Spanish Law on VAT;

— Aids and equipment essentially and primarily used to treat human disabilities, but which are not intended for the exclusive personal use of 'the disabled'; the common understanding of this term is to be assumed, that is as being different from and more restrictive than the term 'the sick', in accordance with the first subparagraph of paragraph 1(6) of the first section of Article 91 of the Spanish Law on VAT,

the Kingdom of Spain has failed to fulfil its obligations under Article 98 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax, in conjunction with Annex III thereto;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the system of reduced rates laid down in paragraph 1(5) and (6) of the first section of Article 91 and paragraph 1(3) of the second section of the Spanish Law on VAT goes beyond what is authorised by the VAT Directive, since it surpasses the possibilities granted to the Member States in categories 3 and 4 of Annex III to that directive. The interpretation of the Spanish authorities is at odds with the wording and general scheme of the directive and is not in line with the case-law, pursuant to which exceptions to the general rules of the common VAT system must be interpreted strictly.

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

Reference for a preliminary ruling from the Rechtbank Haarlem (Netherlands), lodged on 8 July 2011 — Hewlett-Packard Europe BV v Inspecteur van de Belastingdienst/Douane West, kantoor Hoofddorp Saturnusstraat

(Case C-361/11)

(2011/C 282/16)

Language of the case: Dutch

Referring court

Rechtbank Haarlem

Parties to the main proceedings

Applicant: Hewlett-Packard Europe BV

Defendant: Inspecteur van de Belastingdienst/Douane West, kantoor Hoofddorp Saturnusstraat

Questions referred

1. In the light of its examination … concerning print and copying speeds, the Rechtbank requests the Court of Justice to provide it with further guidance on the answer to the question of the significance to be attached to a situation in which the print and copying speeds are determined by the same printing unit and the difference in speed between those functions is attributable solely to the fact that a document to be copied must first be scanned before printing can take place.

2. In the light of its examination … concerning the number of paper trays and the presence of a sheet feeder, the Rechtbank requests the Court of Justice to clarify whether its guidance in the judgment in Joined Cases C-362/07 and C-363/07 *Kip Europe and Others* [2008] ECR I-9489 in that connection must be interpreted as meaning that the presence of more than one paper tray and a sheet feeder are objective characteristics which indicate that the device concerned is a copying device rather than a printing unit.

3. In the light of its examination … concerning the appraisal of the question as to what is the essential characteristic of the devices here at issue, in the light of, *inter alia*, the criteria laid down by the Cour d'appel de Paris in its judgment of 20 May 2010 in this matter with regard to devices similar to those here at issue, the Rechtbank requests the Court of Justice to provide it with further guidance on the question whether the value and weight of the central printing unit (the print engine) must be attributed to the print function or to the copying function and whether the value and weight of the scanner must be fully or partly attributed to the copying function.

4. In the light of the examination carried out by the Rechtbank, is the rate of customs duty of 6 % specified for CN code 8443 31 91 by Regulation No 1031/2008 [1] valid in so far as it applies to MFPs [multifunctional printers] which, according to the guidance given by the Court of Justice in its judgment in Joined Cases C-362/07 and C-363/07 *Kip Europe and Others*, ought to have been classified under CN code 8471 60 20 if they were imported before 1 January 2007?

[1] Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2008 L 291, p. 1).

Reference for a preliminary ruling from the Tribunal Judicial de Santa Maria da Feira (Portugal) lodged on 8 July 2011 — Serafim Gomes Oliveira v Lusitânia Companhia de Seguros SA

(Case C-362/11)

(2011/C 282/17)

Language of the case: Portuguese

Referring court

Tribunal Judicial de Santa Maria da Feira

Parties to the main proceedings

Applicant: Serafim Gomes Oliveira

Defendant: Lusitânia Companhia de Seguros SA

Question referred

Is the provision of Portuguese law requiring compensation to be reduced in proportion to the fault of both parties in the accident in question, which occurred in November 2006 between a bicycle and a passenger vehicle with compulsory motor insurance, consistent with Community law, even though the cyclist was less than 20 % at fault?

Reference for a preliminary ruling from the Tribunal de Pequena Instância Cível de Lisboa (Portugal) lodged on 8 July 2011 — João Nuno Esteves Coelho dos Santos v TAP Portugal

(Case C-365/11)

(2011/C 282/18)

Language of the case: Portuguese

Referring court

Tribunal de Pequena Instância Cível de Lisboa

Parties to the main proceedings

Applicant: João Nuno Esteves Coelho dos Santos

Defendant: TAP Portugal

Question referred

As a result of the judgment of the Court of Justice of 19 November 2009 in Joined Cases C-402/07 and C-432/07 [1], in which it was held that Articles 5, 6 and 7 of Regulation No 261/2004 [2] must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled where the time that they have lost due to the delayed flight is more than three hours, should the said articles be interpreted in the same way in the case of a flight that, having started on time at the place of departure, was delayed at the stop-over airport for three hours and fifty five minutes before taking off again because the airline, for operational reasons, decided to change equipment, where the equipment that replaced the previous equipment had already broken down prior to the stopover and needed a technical intervention, so that the flight arrived at the destination location with the said delay of three hours and fifty five minutes?

[1] OJ C 24, 30.1.2010, p. 4

[2] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1)

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 11 July 2011 — Déborah Prete v Office National De L'emploi

(Case C-367/11)

(2011/C 282/19)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellant: Déborah Prete

Respondent: Office National De L'emploi

Questions referred

1. Do Articles 12, 17, 18 and, so far as necessary, 39 of the Treaty establishing the European Community, as consolidated at Amsterdam on 2 October 1997, preclude a provision of national law under which, in the manner of Article 36(1)(2)(j) of the Belgian Royal Decree of 25 November 1991 laying down unemployment regulations, entitlement to tideover allowance for a young European Union national, who does not have the status of a 'worker' within the meaning of Article 39 of the Treaty, has completed secondary studies in the European Union but not at an educational establishment run, subsidised or approved by one of the communities in Belgium and has obtained either a document issued by one of those communities establishing the equivalence of those studies to the study certificate issued by the competent authority of one of those communities for studies completed in those Belgian educational establishments, or else a document giving access to higher education, is conditional upon the young person in question having previously completed six years' studies at an educational establishment run, approved or subsidised by one of the communities in Belgium, if that condition is exclusive and absolute?

2. If so, do the circumstances of the young person described in the first question, who has not completed six years' studies at a Belgian educational establishment, resides in Belgium with her Belgian spouse and is registered as a job-seeker with a Belgian employment service, constitute factors to be taken into consideration in order to appraise that young person's link to the Belgian employment market, having regard to Articles 12, 17, 18 and, if appropriate, 39 of the Treaty? To what extent must the length of those periods of residence, marriage and registration as a job-seeker be taken into consideration?

Reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) on 11 July 2011 — criminal proceedings against Raffaele Arrichiello

(Case C-368/11)

(2011/C 282/20)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere (Italy).

Party to the main proceedings

Raffaele Arrichiello.

Questions referred

What is the interpretation to be given to Articles 43 EC and 49 EC concerning freedom of establishment and the freedom to provide services in the sector of bets on sporting events, for the purposes of determining whether or not the above-mentioned provisions of the treaty authorise national legislation establishing a monopoly regime in favour of the State and a system of concessions and authorisations which, in the case of a certain number of concessions, makes provision for: a) the existence of a general tendency to protect the holders of concessions granted in an earlier period, on the basis of a procedure which unlawfully excluded some operators; b) the presence of provisions de facto guaranteeing the maintenance of commercial positions acquired on the basis of a procedure which unlawfully excluded some operators (such as, for example, a prohibition on new concessionaires installing their windows at less than a certain distance from those already existing); and c) the setting of hypotheses for the expiry of the concession and acquisition of guarantees of a very high amount, such hypotheses including that in which the concessionnaire directly or indirectly operates cross-border gaming activities similar to those forming the subject-matter of the concession?

Action brought on 12 July 2011 — European Commission v Italian Republic

(Case C-369/11)

(2011/C 282/21)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: E. Montaguti and H. Støvlbæk, acting as Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article 6(3) and Annex II of Directive 91/440/EEC [1], as amended, and with Articles 4(2), 14(2), 4(1), 30(3) and 30(1) of Directive 2001/14/EC [2], the Italian Republic has failed to fulfil its obligations under those provisions.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission's complaints concern the independence of the body carrying out essential functions in the matter of access to infrastructure and the imposition of dues for railway access and the powers and autonomy of the body regulating the railway sector.

The Commission argues that the regime governing the exercise by the infrastructure manager of essential functions concerning access to the infrastructure does not provide sufficient guarantees that that manager operates independently of the holding company of the group of which it forms part, which also includes the main railway undertaking on the market.

Moreover, given that it is for the Minister for Transport to determine dues for access to the network, whereas the infrastructure manager can only make a proposal on the matter and has only the operating duty of calculating the dues actually payable by a single railway undertaking, the latter is deprived of an essential management tool, in contrast with the requirement for independent management.

Finally, the necessary full independence of the body for regulating all railway undertakings has not yet been assured, since the staff of the regulatory body consists of officials of the Ministry of Transport and the latter continues to exercise a decisive influence on the holding company of the group which includes the main Italian railway undertaking, and thus also on the latter.

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[1] OJ 1991 L 237, p. 25.
[2] OJ 2001 L 75, p. 29.

Reference for a preliminary ruling from the Hof van beroep te Gent (Belgium) lodged on 13 July 2011 — Punch Graphix Prepress Belgium N.V. v Belgische Staat

(Case C-371/11)

(2011/C 282/22)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Appellant: Punch Graphix Prepress Belgium N.V.

Respondent: Belgische Staat

Question referred

Can the national tax authorities exclude the application of Article 4(1) of Council Directive 90/435/EEC ([1]) of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States on the basis of the provision in that Article that it is not applicable in a case where the subsidiary is liquidated, by relying on a provision of domestic law (here, Article 210 WIB92 [Income Tax Code 1992]) which treats a merger by acquisition where in reality no liquidation of the subsidiary takes place, as a merger where liquidation of the subsidiary does in fact take place?

([1]) OJ 1990 L 225, p. 6

Appeal brought on 14 July 2011 by Power-One Italy SpA against the order of the General Court (Sixth Chamber) of 24 May 2011 in Case T-489/08 Power-One Italy SpA v European Commission

(Case C-372/11 P)

(2011/C 282/23)

Language of the case: Italian

Parties

Appellant: Power-One Italy SpA (represented by: A. Giussani and R. Giuffrida, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order of the General Court (Sixth Chamber) of 24 May 2011 in Case T-489/09 and, accordingly:

  — Declare that the European Commission acted in breach of Article 10(2) of Regulation 1655/2000, ([1]) Article 14 of the SAP ([2]) and the general legal principle of the protection of legitimate expectations;

  — declare, in so far as the state of the proceedings so permits, that there is a causal link between the Commission's conduct and the loss that has been sustained and continues to be sustained by Power-One Italy and, accordingly, order the European Union, on the basis of Article 268 TFEU (formerly Article 235 EC), to compensate Power-One Italy for all the loss sustained, assessed at EUR 2 876 188,99 or the cost incurred in respect of the PNEUMA project, as evidenced by the documents annexed to the appeal, which are in any event already in the Commission's possession, and relied on in the proceedings;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, Power-One Italy alleges, first, infringement of the general legal principle of the protection of legitimate expectations and that the statement of reasons was inadequate and contradictory, with reference to the claim alleging abuse of process.

The General Court stated, at paragraph 47 of the order under appeal, that the appellant could have derived a greater advantage from annulment of the Commission's decision in respect of the sums reimbursed, corresponding to the recovery of the entire financial assistance provided for the project at issue and that 'the payment of such a sum by way of compensation may be regarded as being closely connected to the annulment of the decision in question', thus setting out its reasons in relation to the submissions alleging abuse of process. The General Court therefore arbitrarily split the appellant's claim, separating the substantive unity of the acts which made up the conduct giving rise to the loss from the loss-causing event, represented by the overall expenses incurred. Adequate reasons were therefore not given for upholding the objection raised by the Commission.

The second ground on which the appeal is based alleges breach of the general legal principle of the protection of legitimate expectations, misapplication of the rules governing the burden of proof and obtaining evidence and inadequate and contradictory reasoning as regards the claims relating to residual damage.

Paragraph 55 of the General Court's decision states that 'the application does not set out the nature or scope of the residual damage which the applicant claims to have suffered' and that 'the application does not give any indication of the grounds on which the applicant claims that the residual damage is attributable to the withdrawal by the Commission of the financing for the project at issue'. It should be noted in that regard that the loss sustained by the appellant company can only be said to be self-evident, since the financing in question was intended to perform a specific function, which can be identified in the project undertaken, and the withdrawal of the financing could only give rise to costs being incurred which, in the absence of the funding, the appellant would not have afforded, Those arguments, previously set out in the observations relating to the plea of inadmissibility raised by the Commission (the appellant company's balance sheet having been, moreover, annexed to those observations), were not considered by the General Court, which confined itself to challenging the alleged lack of particulars relating to the loss sustained.

Lastly, the appellant alleges breach of the general legal principle of the protection of legitimate expectations, misapplication of the rules governing the burden of proof and obtaining of evidence and failure to assess facts which would have had a bearing on the outcome of the case, by reference to the causal link.

At paragraph 57 of the order under appeal, in relation to the claims concerning the causal link, the General Court stated that the appellant company 'does not provide any indication as to the effect of the conduct in question on the fact that the applicant bore the cost of project at issue in excess of the

maximum amount committed by the Commission'. According to the appellant, it is clear that in the present case the General Court carried out a substantively inaccurate assessment of the facts on the file submitted in the proceedings. In essence, the General Court distorted the evidence put forward by denying the existence of a clear causal link between the Commission's conduct and the loss sustained by the appellant. Thus, in stating the grounds for its decision, the General Court failed to consider circumstances already relied on in the application at first instance or the observations subsequently submitted. It is clear from the appellant's submissions in particular that the alleged failure on the part of the Commission is of an ancillary, not an essential nature, and consists in a delay in supplementing the documentation in relation to a project that is fully completed.

(1) Regulation of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE) (OJ 2000 L 192, p. 1).

(2) Standard Administrative Provisions annexed to the Grant Agreement.

Action brought on 13 July 2011 — European Commission v Ireland

(Case C-374/11)

(2011/C 282/24)

Language of the case: English

Parties

Applicant: European Commission (represented by: E. White, I. Hadjiyiannis, A. Marghelis, agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to take the necessary measures to comply with the judgment of this Court in Case C-188/08 Commission v Ireland, Ireland has failed to fulfil its obligations wider Article 260 TFEU;

— order Ireland to pay to the Commission a lump sum of EUR 4 771,20 multiplied by the number of days between the judgment in Case C-188/08 and the judgment in the present proceedings (or full compliance by Ireland with the judgment in Case C-188/08 if that should be achieved during the pendency of these proceedings);

— order Ireland to pay to the Commission a daily penalty payment of EUR 26 173,44 from the date of the judgment in the present proceedings to the date of compliance by Ireland with the judgment in Case C-188/08; and

— order Ireland to pay the costs of this action.

Pleas in law and main arguments

More than one and a half years have elapsed since the Court's judgment in Case C-188/08. The Commission considers that this should have been sufficient time for Ireland to comply with the judgment of the Court. It notes, indeed, that Ireland announced that it intended to have the required legislation adopted by the end of 2010. However that goal has not been respected and Ireland does not appear to be close to achieving full compliance. Accordingly, the Commission considers that Ireland has failed to satisfy its obligation under Article 260(1) TFEU.

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 15 July 2011 — Belgacom SA, Mobistar SA, KPN Group Belgium SA (formerly 'Base') v Etat belge

(Case C-375/11)

(2011/C 282/25)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Belgacom SA, Mobistar SA, KPN Group Belgium SA (formerly 'Base')

Defendant: Etat belge

Questions referred

1. Do Articles 3, 12 and 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (1), as they currently apply, permit Member States to charge operators holding individual rights to use mobile phone frequencies for a period of fifteen years, in the context of authorisations to install and operate on their territory mobile phone networks issued under the scheme instituted under the former legal framework, a one-off fee for the renewal of their individual rights to use frequencies the amount of which, relating to the number of frequencies and months to which the rights of use relate, is calculated on the basis of the former one-off grant fee that was associated with the issue of the aforementioned authorisations, when that one-off fee is additional to both an annual charge for making frequencies available (intended first and foremost to cover the costs of making frequencies available while at the same time also partially reflecting the value of frequencies, the purpose of the one-off fee and the annual charge being to encourage optimal use of the frequencies) and a charge covering the cost of managing the authorisation?

2. Do Articles 3, 12 and 13 of the same Authorisation Directive permit the Member States to charge operators hoping to acquire new rights to use mobile phone frequencies a one-off fee the amount of which is determined at auction on the assignment of frequencies, in order to reflect the value of frequencies, when that one-off fee is additional to both an annual charge for making frequencies available (intended first and foremost to cover the costs of

making frequencies available while at the same time also partially reflecting the value of frequencies, the purpose of the one-off fee and the annual charge being to encourage optimal use of the frequencies) and an annual charge for the management of authorisations to install and operate mobile phone networks issued under the scheme instituted under the former legal framework?

3. Does Article 14(2) of the same Authorisation Directive permit the Member States to charge mobile phone operators, in respect of the renewal of their individual rights to use mobile phone radiofrequencies, to which certain of them were already entitled, before the beginning of the renewal period, a one-off fee relating to the renewal of the rights to use frequencies they enjoyed before the renewal period, intended to encourage optimal use of the frequencies by way of reflecting their value, when that one-off fee is additional to both an annual charge for making frequencies available (intended first and foremost to cover the costs of making frequencies available while at the same time also partially reflecting the value of frequencies, the purpose of the one-off fee and the annual charge being to encourage optimal use of the frequencies) and an annual charge for the management of authorisations to install and operate mobile phone networks issued under the scheme instituted under the former legal framework?

4. Does Article 14(1) of the same Authorisation Directive permit the Member States to add, as a condition of acquiring and renewing rights to use frequencies, a one-off fee that is determined at auction, without limit, when that one-off fee is additional to both an annual charge for making frequencies available (intended first and foremost to cover the costs of making frequencies available while at the same time also partially reflecting the value of frequencies, the purpose of the one-off fee and the annual charge being to encourage optimal use of the frequencies) and an annual charge for the management of authorisations to install and operate mobile phone networks issued under the scheme instituted under the former legal framework?

([1]) OJ 2002 L 108, p. 21

Reference for a preliminary ruling from the Rechtbank van Eerste Aanleg te Brussel (Belgium) lodged on 19 July 2011 — Tate & Lyle Investments Ltd v Belgische Staat, other party: Syral Belgium NV

(Case C-384/11)

(2011/C 282/26)

Language of the case: Dutch

Referring court

Rechtbank van Eerste Aanleg te Brussel

Parties to the main proceedings

Applicant: Tate & Lyle Investments Ltd

Defendant: Belgische Staat

Other party: Syral Belgium NV

Question referred

Does Article 63 TFEU (previously Article 56 of the EC Treaty) preclude legislation on the part of a Member State whereby a dividend distributed to a resident shareholder company, which has a holding of less than 10 % in the capital of another resident company but with a purchase value of at least EUR 1.2 million, is subject to withholding tax of 10 %, but whereby such withholding tax is deductible from the corporate tax payable in Belgium and the balance, if any, is refundable, and whereby such a company, where appropriate, is also entitled to the application of a tax regime ('DBI': definitief belasten inkomsten: definitively taxed income) which allows the tax base to be reduced still further by the costs related to the shareholding, whereas for companies established in another Member State of the European Union which receive such dividends, and distributions regarded as dividends, from an identical holding in a resident company, the 10 % withholding tax levied constitutes a final tax which is not refundable and which cannot be reduced by relying on the aforementioned tax regime ('DBI')?

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 25 July 2011 — Field Fisher Waterhouse LLP v Commissioners for Her Majesty's Revenue and Customs

(Case C-392/11)

(2011/C 282/27)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Field Fisher Waterhouse LLP

Defendant: Commissioners for Her Majesty's Revenue and Customs

Questions referred

1. The principal question in the present case is whether the services provided by landlords under a lease agreement with their tenants ('the Services') should be regarded as an element of a single exempt supply of a lease of land, either because the Services form objectively a single indivisible economic supply together with the lease or because they are 'ancillary' to the lease, which forms the principal supply ("the Principal Supply"). In determining this question and in the light of the ECJ's decision in Case C-572/07 Tellmer, how relevant is it that the Services could be (but are not in fact) supplied by persons other than the landlords, albeit under the terms of the present leases in question the tenants had no choice but to receive the services from the landlords?

2. In determining whether there is a single supply, is it relevant that a failure by the tenant to pay the service charge would entitle the landlord not only to refuse to provide the Services but also to terminate the lease agreement with the tenant?

3. If the answer to question 1 is that the possibility of third parties providing the Services direct to the tenant is relevant, is it merely a contributory factor in determining whether the Services are either a single, indivisible economic supply, which it would be artificial to split or an ancillary supply to the Principal Supply, or is it a determining factor? If it is merely a contributory factor or if it is not relevant at all, what other factors are relevant in determining whether the Services are an ancillary supply? In particular how relevant is it whether the Services are performed in or in respect of the demised premises which are the subject matter of the letting or in other parts of the building?

4. If the possibility of third parties providing the Services is relevant, is more particularly what is relevant whether the Services could as a legal matter be supplied by third parties, even if this would be difficult in practice to organise or agree with the landlord, or is the practical possibility or the common practice in the provision of such services the relevant consideration?

5. The Services in the present case represent a range of services provided in return for a single service charge. In the event that some of these services (e.g, cleaning of common parts, the provision of security services) are not part of a single indivisible economic supply or are to be regarded as ancillary to the Principal Supply, but other services are, would it be correct to apportion the total consideration between the various services in order to determine the portion of the consideration chargeable to tax and that portion not so chargeable? Alternatively would it be correct to regard the range of services provided as so closely linked to each other that they form'a single indivisible economic supply which it would be artificial to split' being of itself a single supply separate from the leasing of property?

Reference for a preliminary ruling from the Consiglio di Stato (Italy) on 25 July 2011 — Autorità per l'Energia Elettrica e il Gas v Antonella Bertazzi and Others

(Case C-393/11)

(2011/C 282/28)

Langague of the case: Italian

Referring court

Consiglio di Stato (Italy).

Parties to the main proceedings

Applicant: Autorità per l'Energia Elettrica e il Gas.

Defendants: Antonella Bertazzi, Annalise Colombo, Maria Valeria Contin, Angela Filippina Marasco, Guido Giussani, Lucia Lizzi, Fortuna Peranio.

Questions referred

1. Is Article 75(2) of Legislative Decree No112/08, which completely disregards length of service under fixed-term working contracts with independent administrative authorities in cases where the workers concerned are established exceptionally — in derogation from the principle in Article 36(5) of Legislative Decree No 165/01 — following 'selection tests' which are not comparable with public competitions on the basis of ordinary tests (seeking the optimal employment of successful candidates in the posts to be filled) but which are nevertheless capable of establishing, exceptionally, what should be regarded as a new working relationship valid 'ex nunc', compatible, in that it is justified on objective grounds, with clause 4, paragraphe 4, of the Annex to Directive 1999/70/CE, (according to which 'period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds')?

2. or is it contrary to Directive 1999/70/CE — thereby necessarily implying refusal to apply the above-mentioned national provision — not to take account not only of length of service but also of the career progression achieved at the date of establishment, in its entirety or in respect of the part exceeding either the length of service required for access to those selection tests, or any safeguard measures which the national legislature may be empowered to adopt for the purposes of protecting, within reasonable limits, the positions of successful competition candidates?

Reference for a preliminary ruling from the Curtea de Apel Constanța (Romania) lodged on 27 July 2011 — Criminal proceedings against Ciprian Vasile Radu

(Case C-396/11)

(2011/C 282/29)

Language of the case: Romanian

Referring court

Curtea de Apel Constanța

Party to the main proceedings

Ciprian Vasile Radu

Questions referred

1. Are Articles 5(1) and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, read in conjunction with Articles 48 and 52 of the Charter of Fundamental Rights of the European Union, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, provisions of primary Community law, contained in the founding Treaties?

2. Does the action of the competent judicial authority of the State of execution of a European arrest warrant, entailing deprivation of liberty and forcible surrender, without the consent of the person in respect of whom the European arrest warrant has been issued (the person whose arrest and surrender is requested) constitute interference, on the part of the State executing the warrant, with the right to individual liberty of the person whose arrest and surrender is requested, which is authorised by European Union law, pursuant to Article 6 TEU, read in conjunction with Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and pursuant to Article 6 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms?

3. Must the interference on the part of the State executing a European arrest warrant with the rights and guarantees laid down in Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 6 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, satisfy the requirements of necessity in a democratic society and of proportionality in relation to the objective actually pursued?

4. Can the competent judicial authority of the State executing a European arrest warrant refuse the request for surrender without being in breach of the obligations authorised by the founding Treaties and the other provisions of Community law, by reason of the fact that the necessary conditions under Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 6 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, have not been cumulatively satisfied?

5. Can the competent judicial authority of the State executing a European arrest warrant refuse the request for surrender without being in breach of the obligations authorised by the founding Treaties and the other provisions of Community law, on the ground that the State issuing the European arrest warrant has failed to transpose or fully to transpose or has incorrectly transposed (in the sense that the condition of reciprocity has not been satisfied) Council Framework Decision 2002/584/JHA?

6. Is the domestic law of Romania, a Member State of the European Union — in particular Title III of Law No 302/2004 — incompatible with Article 5(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 6 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 48 and 52 thereof, with reference also to Article 5(3) and (4) and Article 6(2) and (3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which Article 6 TEU refers, and have the above provisions properly transposed into national law Council Framework Decision 2002/584/JHA?

GENERAL COURT

Order of the General Court of 30 June 2011 — Tecnoprocess v Commission and EU Delegation to the Kingdom of Morocco

(Case T-264/09) ([1])

(Action for failure to act — Invitation to act — Inadmissibility — Action for damages — Causal link — Loss — Action manifestly lacking any foundation in law)

(2011/C 282/30)

Language of the case: Italian

Parties

Applicant: Technoprocess Srl (Rome, Italy) (represented by: A. Majoli, lawyer)

Defendants: European Commission (represented by: A. Bordes and L. Prete, Agents); and EU Delegation to the Kingdom of Morocco

Re:

APPLICATION firstly, for a declaration that the European Commission and the EU Delegation to the Kingdom of Morocco have failed to act and secondly, for damages to compensate for the loss allegedly suffered as a result of, inter alia, that failure to act.

Operative part of the order

1. *The action is dismissed as in part inadmissible and in part manifestly without foundation in law.*

2. *Technoprocess Srl is ordered to pay the costs.*

([1]) OJ C 220, 12.9.2009.

Order of the General Court of 4 July 2011 — Sepracor Pharmaceuticals v Commission

(Case T-275/09) ([1])

(Action for annulment — Medicinal products for human use — Active substance eszopiclone — Marketing authorisation — Refusal of recognition as a new active substance — Act not amenable to review — Inadmissibility)

(2011/C 282/31)

Language of the case: English

Parties

Applicant: Sepracor Pharmaceuticals (Ireland) Ltd (Dublin, Ireland) (represented by: I. Dodds-Smith, Solicitor, D. Anderson QC, and J. Stratford, Barrister)

Defendant: European Commission (represented by: A. Sipos, and subsequently by M. Wilderspin and M. Šimerdová, Agents)

Re:

ACTION for annulment of the decision in the letter of the Commission addressed to the applicant on 6 May 2009 in the context of the procedure for authorising the placing on the market of Lunivia, inasmuch as it concerns classification of the active substance eszopiclone

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Sepracor Pharmaceuticals (Ireland) Ltd shall pay the costs.*

([1]) OJ C 220, 12.9.2009.

Order of the General Court of 7 July 2011 — Acetificio Marcello de Nigris v Commission

(Case T-351/09) ([1])

(Action for annulment — Registration of a protected geographical indication — Lack of individual concern — Inadmissibility)

(2011/C 282/32)

Language of the case: Italian

Parties

Applicant: Acetificio Marcello de Nigris Srl (Afragola, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

Defendant: European Commission (represented by: P. Rossi and B. Rasmussen, acting as Agents)

Intervener in support of the defendant: Italian Republic (represented by: G. Palmieri and S. Fiorentino, lawyers)

Re:

Application for annulment of Commission Regulation (EC) No 583/2009 of 3 July 2009 entering a name in the register of protected designations of origin and protected geographical indications [Aceto Balsamico di Modena (PGI)] (OJ 2009 L 175, p. 7)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the application for leave to intervene of Consorzio Filiera Aceto Balsamico di Modena.*

3. *Acetificio Marcello de Nigris Srl shall bear its own costs and pay those incurred by the European Commission.*

4. *The Italian Republic and Consorzio Filiera Aceto Balsamico di Modena shall bear their own costs.*

([1]) OJ C 256, 24.10.2009.

Order of the General Court of 30 June 2011 — Tecnoprocess v Commission

(Case T-367/09) ([1])

(Action for failure to act — Request to act — Manifest inadmissibility — Action for damages — Causal link — Action manifestly lacking any foundation in law)

(2011/C 282/33)

Language of the case: Italian

Parties

Applicant: Tecnoprocess Srl (Rome, Italy) (represented by: A. Majoli, lawyer)

Defendant: European Commission (represented by: L. Prete and A. Bordes, acting as Agents)

Re:

Action, first, for a declaration that the European Commission and the European Union delegation to Nigeria have failed to act and, secondly, for compensation for damage allegedly suffered as a result of that failure to act

Operative part of the order

1. *The action is dismissed in part as inadmissible and in part as manifestly lacking any foundation in law.*

2. *Tecnoprocess Srl shall pay the costs.*

([1]) OJ C 267, 7.11.2009.

Order of the General Court of 30 June 2011 — Tecnoprocess v Commission

(Case T-403/09) ([1])

(Action for damages — Unjust enrichment — Application initiating proceedings — Formal requirements — Inadmissibility)

(2011/C 282/34)

Language of the case: Italian

Parties

Applicant: Tecnoprocess Srl (Rome, Italy) (represented by: A. Majoli, lawyer)

Defendant: European Commission (represented by: A. Bordes and L. Prete, Agents)

Re:

Application, first, for a declaration that the European Commission and the delegations of the European Union to Morocco and Nigeria have been unjustly enriched and, second, for an order that the Commission pay the sum of EUR 114 069,94 and the interest due on that sum.

Operative part of the order

1. *The application is dismissed as inadmissible.*

2. *Tecnoprocess Srl is ordered to pay the costs.*

([1]) OJ C 297, 5.12.2009.

Order of the General Court of 28 June 2011 — van Arum v Parliament

(Case T-454/09 P) ([1])

(Appeals — Staff Cases — Officials — Reports — Staff report — Reporting exercise for 2005 — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2011/C 282/35)

Language of the case: Dutch

Parties

Appellant: Rinse van Arum (Winksele, Belgium) (represented by: W. van den Muijsenbergh, lawyer)

Other party to the proceedings: European Parliament (represented by: J. F. de Wachter, K. Zejdová et R. Ignătescu, Agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 10 September 2009 in Case F-139/07 *van Arum* v *Parliament* ECR-SC I-A-1-0000 and II-A-1-0000, seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Rinse van Arum is ordered to bear his own costs and to pay those incurred by the European Parliament in these proceedings.*

([1]) OJ C 37, 13.2.2010.

Order of the General Court of 30 June 2011 — Al Saadi v Commission

(Case T-4/10) [1]

(Death of the applicant — Proceedings not resumed by the successors — No need to adjudicate)

(2011/C 282/36)

Language of the case: English

Parties

Applicant: Faraj Faraj Hassan Al Saadi (Leicester, United Kingdom) (represented by J. Jones, Barrister and M. Arani, Solicitor)

Defendant: European Commission (represented by M. Konstantinidis, T. Scharf and E. Paasivirta, Agents)

Interveners in support of the defendant: Council of the European Union (represented by R. Szostak and E. Finnegan, Agents); Italian Republic (represented initially by G. Palmieri, and subsequently by G. Albenzio, lawyers); and French Republic (represented by G. de Bergues, E. Belliard and L. Butel, Agents)

Re:

APPLICATION for the annulment in part of Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Council Regulation (EC) No 881/2002 of 27 May 2002, imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, in so far as the applicant appears on the list of persons, groups and entities covered by those provisions (OJ 2009 L 269, p. 20).

Operative part of the order

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

2. *Each party shall bear its own costs.*

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[1] OJ C 51, 27.2.2010.

Order of the General Court of 14 July 2011 — Goutier v OHIM — Rauch (ARANTAX)

(Case T-13/10) [1]

(Community trade mark — Opposition — Withdrawal of the opposition — No need to give judgment)

(2011/C 282/37)

Language of the case: German

Parties

Applicant: Klaus Goutier (Frankfurt am Main, Germany) (represented by: E.E. Happe, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by B. Schmidt and then by B. Schmidt and R. Pethke, agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Norbert Rauch (Herzogenaurach, Germany) (represented by: A. Fottner and M. Müller, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 10 November 2009 (Case R 1796/2008-4) concerning opposition proceedings between Norbert Rauch and Klaus Goutier.

Operative part of the order

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

2. *The applicant is ordered to bear his own costs and those incurred by the defendant. The intervener will bear his own costs.*

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[1] OJ C 80, 27.3.2010.

Order of the General Court of 30 June 2011 — Cross Czech v Commission

(Case T-252/10) [1]

(Action for annulment — Sixth framework programme for research, technological development and demonstration activities — Letter confirming the findings of an audit report and informing the applicant of the next steps in the procedure — Contractual and non-decision-making character of the letter — Inadmissibility)

(2011/C 282/38)

Language of the case: English

Parties

Applicant: Cross Czech a.s. (Prague, Czech Republic) (represented by: T. Schollaert, lawyer)

Defendant: European Commission (represented by: R. Lyal and W. Roels, Agents)

Re:

Application for annulment of the Commission letter of 12 March 2010, reference number INFSO-O2/FD/GVC/Isc D (2010) 208676, confirming the findings of financial audit report 09-BA74-006 concerning the financial statements declared by the applicant over the period 1 February 2005 to 30 April 2008 for three contracts concluded between the applicant and the Commission under the sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European research area and to innovation (2002-06), and informing the applicant of the next steps in the procedure

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Cross Czech a.s. is to bear its own costs and to pay those of the European Commission, including the costs incurred in the proceedings for interim relief.*

([1]) OJ C 209, 31.7.2010.

Order of the General Court of 15 July 2011 — Marcuccio v Commission

(Case T-366/10 P) ([1])

(Appeal — Civil service — Officials — Non-contractual liability — Reimbursement of recoverable costs — Exception for parallel proceedings — Procedural defects — Rights of the defence — Appeal partly manifestly inadmissible and partly manifestly unfounded)

(2011/C 282/39)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission (represented by: J. Curral and C. Berardis-Kayser, agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) of 22 June 2010 in Case F-78/09 *Marcuccio* v *Commission*, not yet published in the ECR, and seeking to annul that order.

Operative part of the order

1. *The appeal is dismissed;*

2. *Mr Luigi Marcuccio is to bear his own costs and those incurred by the European Commission in the present proceedings.*

([1]) OJ C 288, 23.10.2010.

Order of the President of the General Court of 13 April 2011 — Westfälische Drahtindustrie and Others v Commission

(Case T-393/10 R)

(Application for interim measures — Competition — Decision of the Commission imposing a fine — Bank guarantee — Application to suspend operation)

(2011/C 282/40)

Language of the case: German

Parties

Applicants: Westfälische Drahtindustrie GmbH (Hamm, Germany); Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co KG (Hamm); and Pampus Industriebeteiligungen GmbH & Co KG (Iserlohn, Germany) (represented by: C. Stadler and N. Tkatchenko, lawyers)

Defendant: European Commission (represented by: V. Bottka, R. Sauer and C. Hödlmayr, agents, assisted by R. van der Hout, lawyer)

Re:

Application to suspend the operation of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel), as amended by Commission Decision C(2010) 6676 final of 30 September 2010, in so far as a fine was thereby imposed on the applicants.

Operative part of the order

1. *The obligation of Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG to provide the Commission with a bank guarantee in order to avoid immediate collection of the fines imposed on them under Article 2(1) of Commission Decision C(2010) 4387 final of 30 June 2010 in a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel) as amended by Commission Decision C(2010) 6676 final of 30 September 2010, is suspended under the following conditions*

   (a) *by 30 June 2011, Westfälische Drahtindustrie GmbH, Westfälische Drahtindustrie Verwaltungsgesellschaft mbH & Co. KG and Pampus Industriebeteiligungen GmbH & Co. KG shall pay the Commission the sum of EUR [confidential] million;*

   (b) *from 15 July 2011 until further notice they shall pay to the Commission monthly instalments of EUR 300 000 (on the 15th of each month), but not beyond delivery of judgment in the main proceedings.*

2. *The costs are reserved.*

Order of the President of the General Court of 15 July 2011 — Fapricela v Commission

(Case T-398/10 R)

(Application for interim measures — Competition — Decision of the Commission imposing a fine — Bank guarantee — Application to suspend operation — Financial damage — Lack of exceptional circumstances — Lack of urgency)

(2011/C 282/41)

Language of the case: Portuguese

Parties

Applicant: Fapricela — Indústria de Trefilaria, SA (Ançã, Portugal) (represented by: M. Gorjão-Henriques and S. Roux, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, P. Costa de Oliveira and V. Bottka, agents, assisted by M. Marques Mendes, lawyer)

Re:

Application to suspend the operation of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel), inter alia in so far as it imposes the obligation to set up a bank guarantee in order to avoid immediate recovery of the fine imposed under Article 2 of that decision.

Operative part of the order

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

2. *Costs are reserved.*

Order of the General Court of 18 July 2011 — Marcuccio v Commission

(Case T-450/10 P) ([1])

(Appeal — Civil service — Officials — Reasonable period of time within which to bring a damages claim — Lateness — Appeal partly manifestly inadmissible and partly manifestly unfounded)

(2011/C 282/42)

Language of the case: Italian

Parties

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

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

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) of 9 July 2010 in Case F-91/09 *Marcuccio* v *Commission*, not yet published in the ECR, and seeking to annul that order.

Operative part of the order:

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio is to bear his own costs and those incurred by the European Commission in the present proceedings.*

([1]) OJ C 317, 20.11.2010.

Order of the General Court of 21 July 2011 — Fuchshuber Agrarhandel v Commission

(Case T-451/10) ([1])

(Action for damages — Common agricultural policy — Standing invitations to tender for the purchase of cereals on the Community market — Commission's supervisory power — Sufficiently serious breach of a rule of law conferring rights on individuals — Action obviously lacking any basis in law)

(2011/C 282/43)

Language of the case: German

Parties

Applicant: Fuchshuber Agrarhandel GmbH (Hörsching, Germany) (represented by: G. Lehner, lawyer)

Defendant: European Commission (represented by: G. von Rintelen and D. Triantafyllou, Agents)

Re:

Action seeking compensation for the loss allegedly suffered by the applicant because of the lack of supervision, by the Commission, of the conditions for implementing standing invitations to tender for the purchase of cereals on the Community market, in this case maize held by the Hungarian intervention agency

Operative part of the order

1. *The action is dismissed as obviously lacking any basis in law.*

2. *Fuchshuber Agrarhandel GmbH shall bear its own costs and pay those of the European Commission.*

([1]) OJ C 317, 20.11.2010.

Order of the General Court of 6 July 2011 — SIR v Council

(Case T-142/11) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Côte d'Ivoire — Withdrawal of the list of persons concerned — Action for annulment — No need to adjudicate)

(2011/C 282/44)

Language of the case: French

Parties

Applicant: Société ivoirienne de raffinage (SIR) (Abidjan, Côte d'Ivoire) (represented by: M. Ceccaldi, lawyer)

Defendant: Council of the European Union (represented by: B. Driessen and A. Vitro, Agents)

Re:

Application for annulment of Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 11, p. 36) and, secondly, of Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1), on the ground that those measures establish restrictive measures which cause the applicant harm

Operative part of the order

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

2. *The Council of the European Union shall pay the costs.*

3. *There is no longer any need to adjudicate on the European Commission's application for leave to intervene.*

([1]) OJ C 130, of 30.4.2011.

Order of the General Court of 6 July 2011 — Petroci v Council

(Case T-160/11) ([1])

(Common Foreign and Security Policy — Restrictive measures taken in view of the situation in Côte d'Ivoire — Removal from the list of persons concerned — Action for annulment — No need to adjudicate)

(2011/C 282/45)

Language of the case: French

Parties

Applicant: Société nationale d'opérations pétrolières de la Cote d'Ivoire Holding (Petroci Holding) (Abidjan, Côte d'Ivoire) (represented by: M. Ceccaldi, lawyer)

Defendant: Council of the European Union (represented by: B. Driessen and A. Vitro, Agents)

Re:

Annulment of Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 11, p. 36), and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1), in so far as those acts introduce restrictive measures which adversely affect the applicant.

Operative part of the order

1. *There is no longer any need to adjudicate.*

2. *The Council of the European Union shall pay the costs.*

3. *There is no need to adjudicate on the application of the European Commission for leave to intervene*

([1]) OJ C 139 of 7.5.2011.

Order of the President of the General Court of 14 July 2011 — Trabelsi and Others v Council

(Case T-187/11 R)

(Interim measures — Common foreign and security policy — Restrictive measures directed against certain persons and entities in view of the situation in Tunisia — Freezing of funds — Application for suspension of operation and for interim measures — Lack of urgency)

(2011/C 282/46)

Language of the case: French

Parties

Applicants: Mohamed Trabelsi (Paris, France); Ines Lejri (Paris); Moncef Trabelsi (Paris); Selima Trabelsi (Paris); and Tarek Trabelsi (Paris) (represented initially by A. Metzker, and subsequently by A. Tekari, lawyers)

Defendant: Council of the European Union (represented by: A. Vitro and G. Étienne, Agents)

Re:

Application for interim measures and for suspension of operation of Council Implementing Decision 2011/79/CFSP of 4 February 2011 implementing Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 31, p. 40).

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 15 July 2011 — College of staff representatives of the EIB and Others v Bömcke

(Case T-213/11 P(I)) [1]

(Appeal — Civil Service — Application to intervene before the Civil Service Tribunal — Calculation of time limit — Out of time)

(2011/C 282/47)

Language of the case: French

Parties

Appellants: College of staff representatives of the European Investment Bank (Luxembourg, Luxembourg); Jean-Pierre Bodson (Luxembourg); Evangelos Kourgias (Senningerberg, Luxembourg); Manuel Sutil (Nondkeil, France); Patrick Vanhoudt (Gonderange, Luxembourg); Marie-Christel Heger (Luxembourg) (represented by: J. Wilson, A. Senes and B. Entringer, lawyers)

Other party to the proceedings: Eberhard Bömcke (Athus, Belgium) (represented by: D. Lagasse, lawyer)

Re:

Appeal against the order of the President of the Second Chamber of the Civil Service Tribunal of the European Union of 17 March 2011 in Case F-95/10 INT *Bömcke* v *EIB*, not published in the ECR, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *The College of staff representatives of the European Investment Bank, Jean-Pierre Bodson, Evangelos Kourgias, Manuel Sutil, Patrick Vanhoudt and Marie-Christel Heger are ordered to bear their own costs.*

[1] OJ C 152, 21.5.2011.

Order of the President of the General Court of 29 July 2011 — Cemex and Others v Commission

(Case T-292/11 R)

(Interim measures — Competition — Request for information Article 18(3) of Regulation (EC) No 1/2003 — Application for suspension of application — Lack of urgency)

(2011/C 282/48)

Language of the case: Spanish

Parties

Applicants: Cemex S.A.B. de C.V. (Monterrey, Mexico), New Sunward Holding BV (Amsterdam, The Netherlands), Cemex España, SA (Madrid, Spain), CEMEX Deutschland AG (Ratingen, Germany), Cemex UK (Egham, Surrey, United Kingdom), CEMEX Czech Operations s.r.o. (Prague, Czech Republic), Cemex France Gestion (Rungis, France) and CEMEX Austria AG (Langenzersdorf, Austria) (represented by: J. Folguera Crespo, P. Vidal Martínez, H. González Durántez and B. Martínez, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, F. Castilla Contreras and C. Hödlmayr, acting as Agents, assisted by J. Rivas, lawyer)

Re:

Application for suspension of application of Commission Decision C(2001) 2360 final of 30 March 2011 in proceedings pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 29 July 2011 — Holcim (Deutschland) and Holcim v Commission

(Case T-293/11 R)

(Interim relief — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for stay of execution — Lack of urgency)

(2011/C 282/49)

Language of the case: German

Parties

Applicants: Holcim AG (Hamburg, Germany) and Holcim Ltd (Rapperswil-Jona, Switzerland) (represented by: P. Niggemann and K. Gaßner, lawyers)

Defendant: European Commission (represented by: M. Kellerbauer, R. Sauer and C. Hödlmayr, acting as Agents)

Re:

Application for a stay of execution of Commission Decision C(2011) 2363 final of 30 March 2011 concerning a proceeding pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products)

Operative part of the order

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Order of the President of the General Court of 29 July 2011 — Cementos Portland Valderrivas v Commission

(Case T-296/11 R)

(Interim relief — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for stay of execution — Lack of urgency)

(2011/C 282/50)

Language of the case: Spanish

Parties

Applicant: Cementos Portland Valderrivas, SA (Pamplona, Spain) (represented by: L. Ortiz Blanco, lawyer)

Defendant: European Commission (represented by: F. Castilla Contreras, C. Urraca Caviedes and C. Hödlmayr, acting as Agents, and J. Rivas, lawyer)

Re:

Application for a stay of execution of Commission Decision C(2011) 2363 final of 30 March 2011 concerning a proceeding pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products)

Operative part of the order

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Order of the President of the General Court of 29 July 2011 — HeidelbergCement v Commission

(Case T-302/11 R)

(Interim relief — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for stay of execution — Lack of urgency)

(2011/C 282/51)

Language of the case: German

Parties

Applicant: HeidelbergCement AG (Heidelberg, Germany) (represented by: U. Denzel, T. Holzmüller and P. Pichler, lawyers)

Defendant: European Commission (represented by: M. Kellerbauer, R. Sauer and C. Hödlmayr, acting as Agents)

Re:

Application for a stay of execution of Commission Decision C(2011) 2363 final of 30 March 2011 concerning a proceeding pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products)

Operative part of the order

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Appeal brought on 14 June 2011 by Ioannis Vakalis against the judgment of the Civil Service Tribunal of 13 April 2011 in Case F-38/10, Vakalis v Commission

(Case T-317/11 P)

(2011/C 282/52)

Language of the case: French

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Annul the contested judgment;

— Uphold the claims submitted at first instance, except that correctly held to be inadmissible by the Tribunal;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present appeal seeks the annulment of the judgment of the Civil Service Tribunal (First Chamber) of 13 April 2011, delivered in Case F-38/10 *Vakalis* v *Commission*.

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

1. First plea in law, alleging inconsistency in the reasoning of the Civil Service Tribunal in that no conclusions are drawn from its findings, since it found that it is for the Commission to take account of exchange rate movements. The Commission does not take that question into account. The contested judgment is therefore vitiated by inconsistent reasoning.

2. Second plea in law, alleging that the Civil Service Tribunal misconstrued the question put to it. It is apparent from the contested judgment that the Tribunal understood that the applicant asked it whether the difference in treatment of officials subject to the general implementing provisions in Articles 11 and 12 of Annex VIII to the Staff Regulations ('the GIPs') of 1969 and those subject to those of 2004 was unlawful, while the question asked of the Tribunal was whether 'the new GIPs are discriminatory in that they treat different factual situations identically'. In that regard, the applicant submits that the Tribunal was incorrect to reject the plea in law alleging infringement of the principle of equal treatment.

3. Third plea in law, alleging a substitution of grounds by the Tribunal. The applicant submits, firstly, that the budgetary grounds for the GIPs emerged only at the hearing and, secondly, that that ground is different from that given to the applicant in the rejection of his claim (a ground which the Tribunal, moreover, accepted was inadequate). In accordance with the case-law, it is not for the Tribunal to remedy any lack of grounds or to supplement the Commission's grounds by adding to them or by substituting for them elements which are not apparent from the contested decision itself.

4. Fourth plea in law, alleging a manifest error of assessment, since the Civil Service Tribunal rejected the ground relating to the principle of equal treatment since the applicant failed to show that there was an unjustified difference in treatment. The applicant demonstrated that the difference in treatment at issue was not justified by the introduction of the Euro, the original ground for rejection of the claim.

Action brought on 23 June 2011 — Régie Networks and NRJ Global v Commission

(Case T-340/11)

(2011/C 282/53)

Language of the case: French

Parties

Applicants: Régie Networks (Lyon, France) and NRJ Global (Paris, France) (represented by: B. Geneste and C. Vannini, lawyers)

Defendant: European Commission

Form of order sought

The applicant submits that the Court should:

— establish the liability of the European Union for:

  — the European Commission's unlawful decision of 10 November 1997 concerning State aid N 679/97;

  — the Commission's failure to act following the formal establishment of that unlawfulness in the letter addressed to the French authorities on 8 May 2003;

— order the European Commission to compensate in full for the loss resulting for the applicants from the wrongful acts referred to in the application, which loss encompasses:

  — the amount of the tax paid for the period from 1 January 1998 to 31 December 2000;

  — the fees incurred for the legal proceedings brought in order to obtain reimbursement of the tax paid for the period from 1 January 2001 to 31 December 2002;

  — the fees incurred for the present legal proceedings;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging wrongful acts committed due to the unlawfulness of the Commission decision of 10 November 1997. In examining the radio broadcasting aid scheme in 1997, the Commission declared it to be compatible with the Treaty rules, without examining the manner in which that aid scheme was financed, which it was however required to do according to the Court of Justice's well-established case-law in the area, since the financing was an integral part of the aid scheme in question. The decision thus adopted by the Commission is unlawful and is a wrongful act entailing non-contractual liability on the part of the European Union.

2. Second plea in law, alleging infringement of the principle of sound administration resulting from the Commission's failure, in 2003, to compensate for the harmful effects of its 1997 decision. The Commission found that its decision of 19 November 1997 was unlawful at the latest on 8 May 2003, when it addressed a letter to the French authorities, stating that the detailed rules for financing the radio broadcasting aid scheme, as approved most recently by the decision of 10 November 1997, were contrary to the Treaty rules. However, the Commission did not take any measures to remedy the unlawful situation thus established. It is on that basis that the applicants consider that the Commission's failure to compensate for the harmful effects of the unlawful decision of 1997 infringes the principle of sound administration, which is a general principle of European Union law, and is therefore such as to entail liability on the part of the European Union.

Action brought on 7 July 2011 — Makhlouf v Council

(Case T-359/11)

(2011/C 282/54)

Language of the case: French

Parties

Applicant: Hafez Makhlouf (Damas, Syria) (represented by: P. Grollet and G. Karouni, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant submits that the Court should:

— annul Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria, in so far as it concerns the applicant;

— annul Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, in so far as it concerns the applicant;

— annul Council Implementing Decision 2011/302/CFSP, by which the Annex to Decision 2011/273/CFSP is replaced by the text set out in the Annex to the Decision of 23 May, in so far as it concerns the applicant;

— order the Council of the European Union to pay the costs, pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

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 infringement of the rights of the defence and the right to a fair hearing. The applicant argues that his rights of defence have been infringed by the imposition of the penalties in question, without his having previously been heard, had the opportunity to defend himself or having been informed of the evidence on the basis of which the measures were adopted.

2. Second plea in law, alleging infringement of the obligation to state reasons provided for by the second paragraph of Article 296 TFEU. The applicant criticises the Council for having adopted restrictive measures in respect of him without having informed him of the grounds, in order to enable him to put forward his pleas in defence. The applicant criticises the defendant for having merely used a general, stereotypical formulation, without specifying the factual and legal elements justifying its decision and the considerations which led it to adopt that measure.

3. Third plea in law, alleging infringement of the guarantee relating to effective judicial protection. The applicant argues that not only did he not have the opportunity to make his views duly known to the Council, but that, in the absence of any indication in the contested decision as to the specific and actual reasons justifying it, nor is he able to pursue his action properly before the General Court.

4. Fourth plea in law, alleging infringement of the general principle of proportionality.

5. Fifth plea in law, alleging infringement of the right to property, in that the restrictive measures, more specifically the measure freezing funds, constitute a disproportionate interference with the applicant's fundamental right to dispose freely of his assets.

6. Sixth plea in law, alleging infringement of the right to privacy, in that the measures freezing funds and restricting the freedom of movement also constitute a disproportionate interference with the applicant's fundamental right.

Action brought on 12 July 2011 — Arla Foods v OHIM — Artax (Lactofree)

(Case T-364/11)

(2011/C 282/55)

Language in which the application was lodged: English

Parties

Applicant: Arla Foods AMBA (Viby J, Denmark) (represented by: J. Hansen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Artax Beteiligungs- und Vermögensverwaltungs AG (Linz, Austria)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 April 2011 in case R 1357/2009-2, and Community trade mark registration No 4647533 be declared invalid for goods in classes 5, 29, 30 and 32 in accordance with the decision of the Cancellation Division of 11 September 2009; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings before the Cancellation Division, before the Board of Appeal and before the General Court.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'Lactofree', for goods in classes 5, 29, 30 and 32 — Community trade mark registration No 4647533

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

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

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request pursuant to Articles 53(1)(a) and 8(1)(b) of Council Regulation (EC) No 207/2009, which was based on the earlier Community trade mark registration No 4532751 for the figurative mark (in colour) 'lactofree', for goods in class 29

Decision of the Cancellation Division: Upheld the cancellation for a part of the goods

Decision of the Board of Appeal: Annulled the decision of the Cancellation Division and dismissed the request for a declaration of invalidity

Pleas in law: Infringement of Articles 53(1)(a) and 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in its evaluation of the comparison of the signs and thus in the overall assessment as to the likelihood of confusion between the figurative marks 'lactofree' and 'Lactofree'.

Appeal brought on 5 July 2011 by AO against the order of the Civil Service Tribunal of 4 April 2011 in Case F-45/10 AO v Commission

(Case T-365/11 P)

(2011/C 282/56)

Language of the case: English

Parties

Appellant: AO (Brussels, Belgium) (represented by: P. Lewisch, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Set aside the order of the Civil Service Tribunal of 4 April 2011 in Case F-45/10 *AO* v *Commission*;

— In case the General Court is in the position to decide the case on the merits to give the same form of order as sought at first instance, *i.e.* to:

  — Annul decision CMS 07/046 of the European Commission of 23 July 2009 due to harassment, mismanagement and the abuse of the fundamental rights to be heard;

  — Annul all decisions taken by the appointing authority against the applicant between the period September 2003 until the removing from the post due to harassment and mismanagement, alleging the abuse of the right of the applicant to be heard;

  — Enable a hearing of the applicant according to Articles 7(1) and 24 of the Staff Regulation [1] and refer in this respect to the submitted requests in February 2008 and March 2008;

  — Grant a symbolic compensation of EUR 1,00 (one) to the applicant in order to compensate his moral and professional prejudice suffered as exposed in the application, as far as the objective of such a complaint is not financial but rather recognition of the dignity and the professional reputation of the applicant; and

— Order the other party to the proceedings to pay all costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the conditions for a decision by order in accordance with Article 76 of the Rules of Procedure of the Civil Service Tribunal were not met and that the action was not manifestly bound to fail, as:

   — The Civil Service Tribunal did not take into consideration several claims made and evidence presented with regard to the harassment of the applicant;

   — The applicant was denied the right to be prescribed a period of time to put his application in order, in accordance with Article 36 of the Rules of Procedure of the Civil Service Tribunal, with regard to two decisions of the appointing authority cited by the applicant in its application.

2. Second plea in law, alleging that the order in case F-45/10 infringes European Union law as described under Article 11(1) of Annex I to the Statute of the Court of Justice of the European Union, as the applicant is entitled to compensation since harassment took place.

3. Third plea in law, alleging the Civil Service Tribunal violated the right of the applicant to a hearing, as provided in Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Article 47(2) of the Charter of Fundamental Rights of the European Union.

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[1] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, as amended (OJ English special edition: Series I Chapter 1959-1962, p. 135)

Action brought on 4 July 2011 — Lyder Enterprises v CPVO Liner Plants NZ (1993) (Southern Splendour)

(Case T-367/11)

(2011/C 282/57)

Language in which the application was lodged: English

Parties

Applicant: Lyder Enterprises Ltd (Auckland, New Zealand) (represented by: G. Pickering, Solicitor)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal: Liner Plants NZ (1993) Ltd (Waitakere, New Zealand)

Form of order sought

— Set aside and annul the decision of the Board of Appeal of the Community Plant Variety Office of 18 February 2011 in case A007/2010; and

— Stay the proceedings until the final decision of the High Court of New Zealand in case No CIV:2011:404:2969 is taken.

Pleas in law and main arguments

Applicant for Community plant variety right: The applicant

Community plant variety right concerned: Southern Splendour — Community plant variety right application No 2006/1888

Objector to the Community plant variety right application: The other party to the proceedings before the Board of Appeal

Grounds of the objection: The objection was based on the contention that the applicant was not the person who bred, or discovered and developed the variety, or his successor in title

Decision of the Committee of the CPVO: Refused the application No 2006/1888 for the variety 'Southern Splendour' (Decision No R972)

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of the *audi alteram partum* rule, lack of competence, failure to understand the fundamental rules of natural justice and infringement of an essential procedural requirement, as the Board of Appeal decided that the evidence contained in the applicant's letters was not acceptable as it was not in affidavit format.

Action brought on 8 July 2011 — Polyelectrolyte Producers Group e.a./Commission

(Case T-368/11)

(2011/C 282/58)

Language of the case: English

Parties

Applicants: Polyelectrolyte Producers Group (Brussels, Belgium), SNF SAS (Andrezieux Boutheon, France) and Travetanche Injection SPRL (Brussels, Belgium) (represented by: K. Van Maldegem and R. Cana, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission Regulation (EU) No 366/2011 of 14 April 2011 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (Acrylamide) (OJ 2011 L 101, p. 12);

— Order the Commission to pay the cost and expenses.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that the contested Regulation contains manifest errors of appraisal in so far as the European Commission, firstly, relied on information that is not relevant, under the applicable legal framework, for the exposure of human beings and the environment in the EU, and, secondly, failed to identify risks resulting from acrylamide grouting, as per relevant applicable requirements, relying instead on information concerning the use of a different substance; as a result, the adoption of the said Regulation does not meet the conditions imposed by the relevant legal provisions;

2. Second plea in law, alleging

   — that the contested Regulation infringes the principle of proportionality;

3. Third plea in law, alleging

— that the contested Regulation is inadequately reasoned, contrary to Article 296 TFEU.

Action brought on 5 July 2011 — Diadikasia Symbouloi Epicheiriseon/Commission and others

(Case T-369/11)

(2011/C 282/59)

Language of the case: English

Parties

Applicant: Diadikasia Symbouloi Epicheiriseon AE (Chalandri, Greece) (represented by: A. Krystallidis, lawyer)

Defendants: European Commission; EU Delegation to Turkey (Ankara, Turkey); and Central Finance & Contracts Unit (CFCU) (Ankara)

Form of order sought

— Make good damages caused to the applicant by the allegedly unlawful decision of one of the defendants (EU Delegation to Turkey) of 5 April 2011 (and any subsequent one) cancelling the award of tender: Enlargement of the European Turkish Business Centres Network to Sivas, Antakya, Batman and Van — Europe Aid/128621/D/SER/TR to the Consortium ([1]) due to allegedly made a 'false declaration';

— Order the defendants to pay the costs.

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

— that the defendants frustrated its legitimate expectations, acting in violation of Article 10 of the European Code of Good Administrative Behaviour, by unexpectedly cancelling the decision to award the project in question to the Consortium on the ground of the allegedly made a 'false declaration';

2. Second plea in law, alleging

— that the defendants infringed the general principle of legal certainty and the provisions of article 4 of the European Code of Good Administrative Behaviour, by accusing the applicant of having made a false declaration, without previously identifying any of the documents submitted as falsified;

3. Third plea in law, alleging

— that the defendants violated its right to be heard by not informing the applicant about their intention to cancel the award, contrary to article 16 of the Code of Good Administrative Behaviour;

4. Fourth plea in law, alleging

— that the defendants failed to provide reasoned statement as regards which documents had allegedly been falsified by the applicant, contrary to article 18 of the Code of Good Administrative Behaviour;

5. Fifth plea in law, alleging

— that the defendants failed to inform the applicant of the available actions in law to challenge the decision taken against it, contrary to articles 11 and 19 of the Code of Good Administrative Behaviour;

6. Sixth plea in law, alleging

— that the defendants acted in abuse of their discretion to decide upon the facts presented before them and hence exceeded the limits of their powers in that the reasons put forward by the contracting authority could have had only be applied to disqualify an offer during the tendering procedure, as not complying with the evaluation criteria, and not once the award had actually been made.

([1]) 'DIADIKASIA BUSINESS CONSULTANTS S.A. (GR) — WYG INTERNATIONAL LTD (UK) — DELEEUW INTERNATIONAL LTD (TR) — CYBERPARK (TR)'

Action brought on 15 July 2011 — Palirria Souliotis v Commission

(Case T-380/11)

(2011/C 282/60)

Language of the case: English

Parties

Applicant: Anonymi Viotechniki kai Emporiki Etairia Kataskevis Konservon — Palirria Souliotis AE (Psacha, Greece) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Implementing Regulation (EU) No 447/2011 of 6 May 2011 concerning the classification of certain goods in the Combined Nomenclature (OJ 2011 L 122, p. 63); and

— Order the Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed an essential procedural requirement as it failed to properly consult the Nomenclature Committee. In addition, the Commission failed to address the opinion submitted by the applicant.

2. Second plea in law, alleging that the Commission exceeded the limits of the powers conferred upon it by Article 9 of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1)

3. Third plea in law, alleging that the Commission erred in law by classifying tinned stuff wine leaves under the CN-code set out in the annex to the contested regulation.

Action brought on 15 July 2011 — Pigui v Commission

(Case T-382/11)

(2011/C 282/61)

Language of the case: English

Parties

Applicant: Cristina Pigui (Strejnic, Romania) (represented by: M. Alexe, lawyer)

Defendant: European Commission

Form of order sought

— Oblige the defendant to disclose information as to the identity of any higher education institution involved in the online Master 2008-2010 of the Jean Monnet programme;

— Oblige the defendant to stop the program if no higher education institution is involved, to ask written study contract between students and organizers and to ask for a uniform system of evaluation for all students involved; and

— Oblige the Commission to restore the *ab initio* situation of the applicant showing that the 2008-2010 programme did not meet the Jean Monnet programme standards, at least in so far as the applicant is concerned.

Pleas in law and main arguments

By means of its application the applicant seeks, pursuant to Article 265 TFUE, a declaration that the defendant unlawfully failed to act, as it did not disclose the results of the public investigation requested by the applicant.

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

1. First plea in law, alleging that the defendant infringed Article 6(3) and 15 of Decision No 1720/2006/EC [1], as it failed to investigate and disclose information as requested by the applicant, as well as Articles 11 and 38 of the Charter of Fundamental Rights of the European Union, as the defendant infringed the transparency principle and consumer protection laws.

2. Second plea in law, alleging that the defendant infringed Article 4 and 5 of Directive 97/7/EC [2] and Articles 2(a)(b) and 5 of Directive 2005/29/EC [3] as it failed to investigate and evaluate the online master of the Jean Monet programme against its objectives in accordance with Article 15 of Decision No 1720/2006/EC.

3. Third plea in law, alleging that the defendant infringed Article 5 of Directive 97/7/EC and Articles 2(a)(b), 6 and 7 of Directive 2005/29/EC, as it failed to investigate the double standard of students' evaluation system.

4. Fourth plea in law, alleging that the defendant infringed Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 2 of Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as the applicant did not receive equal treatment in the framework of the online master of the Jean Monnet programme.

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[1] Decision No 1720/2006/EC of the European Parliament and of the Council of 15 November 2006 establishing an action programme in the field of lifelong learning (OJ 2006 L 327, p. 45)

[2] Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19)

[3] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22)

Action brought on 21 July 2011 — Makhlouf v Council

(Case T-383/11)

(2011/C 282/62)

Language of the case: French

Parties

Applicant: Eyad Makhlouf (Damas, Syria) (represented by: P. Grollet and G. Karouni, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Decision 2011/302/CFSP of 23 May 2011 implementing Decision 2011/273/CFSP concerning restrictive measures against Syria, to the extent that it affects the applicant in that it infringes fundamental rights;

— Order the Council of the European Union to pay the costs pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of the defence and of the right to a fair hearing. The applicant submits that his rights of the defence have been infringed since the sanctions at issue have been applied to him, without his having previously been heard, having the opportunity of defending himself or having any knowledge of the basis on which those measures have been taken.

2. Second plea in law, alleging infringement of the duty to state reasons laid down in the second paragraph of Article 296 TFEU. The applicant complains that the Council has taken restrictive measures affecting him, without having informed him of the grounds thereof in order to enable him to defend himself. The applicant argues that the defendant gave information merely in a general and stereotypical manner without giving precise details the factual and legal elements which form the legal justification for its decision or the considerations which led it to adopt that decision.

3. Third plea in law, concerning the merits of the reasoning. The applicant submits that the Council relied on a manifestly incorrect reasoning and that it used a synthesis thereof, such that it could not be regarded as adequate in law.

4. Fourth plea in law, alleging breach of the guarantee in respect of the right to effective legal protection. The applicant submits that not only was he unable effectively to make his views known to the Council, but, in the absence of any indication in the contested decision of specific and concrete grounds justifying that decision, nor was he in a position to avail himself of a right of action before the General Court.

5. Fifth plea in law, alleging infringement of the general principle of proportionality.

6. Sixth plea in law, alleging infringement of the right of property, since the restrictive measures and, more precisely, the measure freezing funds, disproportionately affecting the applicant's fundamental right to use his assets as he sees fit.

7. Seventh plea in law, alleging infringement of the right of privacy, since the measures freezing funds and restricting his freedom from restraint also disproportionately affect the applicant's fundamental right.

Action brought on 22 July 2011 — Safa Nicu Sepahan v Council

(Case T-384/11)

(2011/C 282/63)

Language of the case: English

Parties

Applicant: Safa Nicu Sepahan (Isfahan, Iran) (represented by: A. Bahrami, lawyer)

Defendant: Council of the European Union

Form of order sought

— Declare that entry No. 19 of Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), as amended by Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26), is null and void;

— Declare that the defendant has violated Article 265 TFEU by failing to examine the applicant's request dated 7 June 2011 for reconsideration of entry No 19;

— Order removal of the name of the applicant from EU list of sanctions;

— Award the applicant compensation, for an amount to be determined in the course of the present proceedings, but not less than EUR 2 000 000,00; and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council committed a manifest error of appreciation as the inclusion of the name of the applicant on the list of persons and entities subject to restrictive measures is erroneous, misleading, unspecific, incomplete and, therefore, plainly illegal.

2. Second plea in law, alleging that the Council has manifestly failed to state the reasons for the inclusion of the name of the applicant on the list of persons and entities subject to restrictive measures.

Action brought on 21 July 2011 — BP Products North America v Council

(Case T-385/11)

(2011/C 282/64)

Language of the case: English

Parties

Applicant: BP Products North America, Inc. (Naperville, United States) (represented by: H.-J. Prieß and B. Sachs, lawyers and C. Farrar, solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Article 2 of Council Implementing Regulation (EU) No 443/2011 ([1]) of 5 May 2011, insofar as it affects the applicant;

— Annul Article 2 of Council Implementing Regulation (EU) No 444/2011 ([2]) of 5 May 2011, insofar as it affects the applicant; and

— Order the defendant to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging violation of the basic anti-dumping and countervailing duty regulations by extending Council Regulations (EC) No 598/2009 and No 599/2009 on biodiesel imports originating in the United States of America ([3]) to biodiesel products not originally covered by the anti-dumping and countervailing duty regulations, rather than by carrying out a '*de novo*' investigation, even though the blends now subject to Council Implementing Regulation (EU) No 444/2011 were specifically excluded from the scope of Council Regulations (EC) No 598/2009 and No 599/2009.

2. Second plea in law, alleging manifest errors of appraisal as regards the assessment of facts, in particular with regard to the fact that the lower blended biodiesel products (and not subject to any duty) cannot be re-converted to higher blends (that are subject to the duty), so that circumvention is actually not possible, and as regards an alleged circumvention by the applicant by manifestly erring the economic justifications for the exports by the applicant.

3. Third plea in law, alleging violation of an essential procedural requirement by failing to provide adequate reasoning in Council Implementing Regulation (EU) No 444/2011 for the extension of the definitive duties to biodiesel products of blends of 20 % and lower.

4. Fourth plea in law, alleging violation of the basic European Union law principles of non-discrimination and good administration, by not according to the applicant the duty rate applicable to 'cooperating companies' despite the fact that the applicant did fully cooperate.

([1]) Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 1)

([2]) Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 12)

([3]) Council Regulation (EC) No 598/2009 of 7 July 2009 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ 2009 L 179, p. 1) and Council Regulation (EC) No 599/2009 of 7 July 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in the United States of America (OJ 2009 L 179, p. 26)

Action brought on 22 July 2011 — Nitrogénművek Vegyipari v Commission

(Case T-387/11)

(2011/C 282/65)

Language of the case: English

Parties

Applicant: Nitrogénművek Vegyipari Zrt. (Pétfürdő, Republic of Hungary) (represented by: Z. Tamás and M. Le Berre, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested Commission Decision of 27 October 2010 on State aid C 14/09 (ex NN 17/09) granted by Hungary to Péti Nitrogénművek Zrt. *(notified under document C(2010) 7274)*; and

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

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

   — the Commission's failure to apply the market transaction principle;

2. Second plea in law, alleging

   — that the contested decision was issued in violation of Article 107(1) TFEU;

3. Third plea in law, alleging

   — that the contested decision was issued in violation of Article 41(2)(c) of the Charter of fundamental rights of the European Union and Article 296 TFEU;

4. Fourth plea in law, alleging

   — that the contested decision was issued in violation of Article 41(1) of the Charter of fundamental rights of the European Union;

5. Fifth plea in law, alleging

   — that the contested decision was issued in violation of principle of the protection of legitimate expectations;

6. Sixth plea in law (as alternative to the first and second pleas), alleging

   — that the contested decision was issued in violation of Article 107(3)(b)TFEU.

Action brought on 22 July 2011 — Deutsche Post v Commission

(Case T-388/11)

(2011/C 282/66)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

Defendant: European Commission

Form of order sought

— annul the Commission decision of 10 May 2011 in the State aid case C 36/2007 — Germany, State aid to Deutsche Post AG (C(2011) 3081 final);

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

Pleas in law and main arguments

The applicant seeks the annulment of Commission Decision C(2011) 3081 final of 10 May 2011 in State aid case C 36/2007 — Germany, State aid to Deutsche Post AG, by which the Commission decided to extend the investigation procedure under Article 108(2) TFEU in that case. The extension relates to the State financing of pensions of officials engaged by Deutsche Bundespost prior to the establishment of the applicant, a matter which was already the subject-matter of the Commission's decision of 12 September 2007 to open proceedings in the present case.

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

1. First plea in law: breach of Article 107(1) TFEU — Manifestly erroneous classification as aid

   The manifest error of assessment committed by the Commission lies in the fact that the Commission failed to apply the *Combus* case-law (judgment in Case T-157/01 *Danske Busvognmænd* v *Commission* [2004] ECR II-917) to the present case. According to that case-law, measures which relieve former State undertakings from pension burdens which go beyond those normally borne by private undertakings do not constitute aid. Applied to the facts of the present case, it must necessarily follow that the State financing of pension liabilities cannot constitute aid.

2. Second plea in law: breach of Article 1(b) of Regulation No 659/1999, ([1]) Article 107 TFEU and Article 108 TFEU — Manifest error of appraisal in the classification as 'new' aid

   The Commission's patent error of assessment lies in the fact that the Commission failed to have regard for the fact that State liability for pension obligations — if the conditions for a finding that there is aid are at all met — can relate only to existing aid. The ongoing liability of the Federal authorities for the pension obligations results from the German *Grundgesetz* (Basic Law), and thus already existed when the Treaties entered into force and has since then undergone no essential alteration. Furthermore, the Commission is bound by the declaration in Case T-266/02 *Deutsche Post* v *Commission* [2008] ECR II-1233 that, with regard to pension regulation, it denied that there was precondition that there must be an aid-related 'advantage' already in its decision of 19 June 2002, which is equivalent to a negative certification under the law relating to aid.

3. Third plea in law: breach of Article 107(1) TFEU — Manifestly erroneous method for calculating the alleged aid

   The applicant alleges that the Commission failed to carry out the compensatory calculation, which by its own submission was necessary, of the social benefits for officials actually borne by the applicant, less alleged 'surcharges' for social burdens unusual in competition in the prices authorised for the regulated products, and of the social contributions to be borne under normal market conditions by private competitors. The Commission's method of calculation thus impermissibly excludes totally the level of the actual social benefits paid by the applicant for officials, with the result that it is immaterial for the level of the alleged aid calculated by the Commission whether and to what extent the applicant deducted social benefits. The applicant further submits that the alleged 'surcharges' in the prices are not verifiable and that, in any case, the social costs which are not normal in competition cannot in fact be covered by the results.

4. Fourth plea in law: breach of Article 107(1) TFEU — Manifestly erroneous classification of the alleged 'cross-subsidisation' of the non-regulated area by the regulated area as a factor determining the existence of aid

   In this connection, the applicant submits, in particular, that the Commission failed to carry out the requisite over-compensation calculation and failed to check whether the State compensation payments had at all exceeded the costs in respect of which compensation was payable.

5. Fifth plea in law: breach of Article 107(1) TFEU — Manifest error in the application of the benchmark of the social burdens usual in competition

   The applicant submits in this regard in particular that, in its calculation of the social contributions of private employers which are usual in competition, the Commission included employees' contributions, even though these are attributable to the assets of the employees and not to the social contributions to be borne by the employer; furthermore, the Commission, for the purpose of the benchmark, took as its point of reference the (excessive) level of salaries of officials instead of the wage and salary level of private undertakings usual in competition. If these two errors are corrected, as is required, the alleged aid disappears entirely.

6. Sixth plea in law: breach of the second paragraph of Article 296 TFEU — Failure to state reasons

   Finally, the applicant submits, the contested decision is not adequately reasoned.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 18 July 2011 — Guccio Gucci v OHIM Chang Qing Qing (GUDDY)

(Case T-389/11)

(2011/C 282/67)

Language in which the application was lodged: English

Parties

Applicant: Guccio Gucci SpA (Firenze, Italy) (represented by: F. Jacobacci, lawyer)

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

Other party to the proceedings before the Board of Appeal: Chang Qing Qing (Firenze, Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 April 2011 in case R 143/2010-1 insofar as it rejected the opposition for the remainder of goods in classes 9 and 14; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'GUDDY', for various goods in classes 9, 14, 18 and 25 — Community trade mark application No 6799531

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

Mark or sign cited in opposition: Community trade mark registration No 121988 of the word mark 'GUCCI', for goods in classes 9, 14, 18 and 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Partially annulled the decision of the Opposition Division and partially dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed (i) to examine accurately the documents submitted to reach the appropriate conclusion regarding the higher distinctiveness of the trademark 'GUCCI' and as regards the phonetic comparison between the trademarks and subsequently erred in (ii) interpreting and applying Article 8(1)(b) of the Community Trade Mark Regulation.

Action brought on 26 July 2011 — Masottina v OHIM — Bodegas Cooperativas de Alicante (CA' MARINA)

(Case T-393/11)

(2011/C 282/68)

Language in which the application was lodged: English

Parties

Applicant: Masottina SpA [Conegliano (TV), Italy] (represented by: N. Schaeffer, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bodegas Cooperativas de Alicante, trading as Coop. V. BOCOPA (Alicante, Spain)

Form of order sought

— Annul and rescind the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2011 in case R 518/2010-1, as well as the decision of the Opposition Division of 2 February 2010

— Decline and reject the action formed by Bodegas Cooperativas de Alicante, Coop. V. BOCOPA, and by which it opposed the registration of the trademark 'CA' MARINA', and admit the application for registration of the Community trademark No 6375216 to which Masottina SpA shall be entitled; and

— Sentence Bodegas Cooperativas de Alicante, Coop. V. BOCOPA, to payment of all court and related costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CA' MARINA', for goods in class 33 — Community trade mark application No 6375216

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

Mark or sign cited in opposition: Community trade mark registration No 1796374 of the word mark 'MARINA ALTA', for goods in class 33

Decision of the Opposition Division: Rejected the CTM application for all the goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94, as the Board of Appeal erroneously applied the above mentioned Article: (i) as regards the absence or at least an insufficient determination and distinction of the trademark 'MARINA ALTA'; (ii) as there is no existence of any risk of confusion in respect of the concerned signs; and (iii) regarding the lacking consideration that there does not exist any identity of the merchandises, their respective channels of distribution and the public of reference.

Action brought on 26 July 2011 — Elti v Delegation of the European Union to Montenegro

(Case T-395/11)

(2011/C 282/69)

Language of the case: English

Parties

Applicant: Elti d.o.o. (Gornja Radgona, Republic of Slovenia) (represented by: N. Zidar Klemenčič, lawyer)

Defendant: European Union, represented by the Delegation of the European Union to Montenegro

Form of order sought

— Declare the defendant in violation of Article 2 and 30(3) of Directive 2004/18/EC [1];

— Annul the negotiation procedure conducted in the framework of the tender procedure 'Support to the Digitalisation of the Montenegrin Public Broadcasting — Supply of equipment, Montenegro' (reference EuropaAid/129435/C/SUP/ME-NP) (OJ 2010/S 178-270613), since the applicant had not been given an equal treatment and, as a result, it had not been able to correct/explain its tender;

— Annul the contract award decision in the above mentioned tender procedure;

— In the event the contract had already been concluded, to declare such contract null and void;

— In the alternative, if the contract had already been carried out when the Court gives judgment, or the decision can no longer be declared void, declare the defendant in violation of Article 2 and 30(3) of Directive 2004/18/EC and order defendant to pay the applicant damages of EUR 172 541,56 as compensation for the loss suffered by the applicant in regard to that procedure; and

— Order the defendant to pay the applicant's costs, including the costs of any intervening party.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law.

1. First plea in law, alleging that the defendant violated Articles 2 and 30(3) of Directive 2004/18/EC, as:

   — Information relevant for submitting the offer was not made available to all participants in the public procurement procedure in the same manner and quality;

   — The successful tenderer was provided information in a discriminatory manner which gave it an advantage as it was able to correct its tender; and

   — The negotiation procedure was conducted in such a way that the defendant influenced the outcome of the procedure by requesting additional information or clarifications from only certain participants, thereby violating the principle of non-discrimination and transparency.

(1) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114)

Action brought on 26 July 2011 — Symfiliosi/FRA

(Case T-397/11)

(2011/C 282/70)

Language of the case: English

Parties

Applicant: Symfiliosi (Nicosia, Republic of Cyprus) (represented by: L. Christodoulou, lawyer)

Defendant: European Union Agency for Fundamental Rights (FRA)

Form of order sought

— Annul the decision of the European Union Agency for Fundamental Rights of 23 May 2011 to award the first framework contract under the tender procedure F/SE/10/03 — Lot 12 Cyprus to First Elements and the second framework contract to Symfiliosi;

— Order the European Union Agency for Fundamental Rights to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law, alleging that the Agency failed to provide reasons for its decision. It further contests the substance of the evaluation of tendering bids, alleging that the latter had been arbitrary, unreasonable and unlawful.

Action brought on 29 July 2011 — Banco Santander and Santusa v Commission

(Case T-399/11)

(2011/C 282/71)

Language of the case: Spanish

Parties

Applicants: Banco Santander, SA (Santander, Spain), Santusa Holding, SL (Boadilla del Monte, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— admit and uphold the pleas for annulment contained in the application and consequently annul Article 1(1) of the contested decision, which classifies Article 12(5) of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (consolidated text of the Law on Corporation Tax) as State aid;

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

— alternatively, annul Article 4 of the contested decision in so far as it makes the recovery order applicable to transactions completed prior to the publication in the Official Journal of the European Union of the final decision which is the subject-matter of this action (OJ 2011 L 135, p. 1);

— alternatively, annul Article 1(1), and in the further alternative Article 4, in so far as they relate to transactions in Mexico, the United States and Brazil;

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

Pleas in law and main arguments

This action is brought against Commission Decision C(2010) 9566 of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions.

In support of their action, the applicants rely on three pleas in law.

1. First plea in law, alleging a manifest error of law in the analysis of the concept of selectivity and in classifying the measure at issue as State aid.

   — The applicants submit that the Commission has not shown that the tax measure at issue favours 'certain undertakings or the production of certain goods' as required by Article 107(1) TFEU. The Commission merely assumes that the measure is selective because it applies only to the acquisition of shareholdings in foreign undertakings (in this case in non-Member countries) and not in domestic undertakings. The applicants submit that such reasoning is erroneous and circular: the fact that the application of the measure examined — as for any other tax rule — depends on the fulfilment of certain objective requirements does not render it, in law or in fact, a selective measure. Spain has produced evidence which shows that Article 12(5) TRLIS is a general measure open, in law and fact, to all undertakings which are subject to Spanish corporation tax irrespective of their size, nature, sector or origin.

   — In the second place, far from constituting a selective advantage, the *prima facie* difference in treatment under Article 12(5) TRLIS serves to place all transactions for the acquisitions of shares on an equal tax footing, whether they be national or foreign. In non-Member countries, there are considerable barriers to mergers, in practice precluding them; by contrast, mergers are possible in Spain and the amortisation of financial goodwill is permitted in relation to them. Consequently, Article 12(5) TRLIS does no more than extend such amortisation to the purchase of shareholdings in undertakings in non-Member countries, a transaction which represents the closest — and most feasible — functional equivalent to domestic mergers and is thus integral to the scheme and broad logic of the Spanish system.

   — The Commission is mistaken to find that there are no barriers to merger transactions with undertakings in non-Member countries, and it is therefore mistaken to set up the reference system for establishing selectivity while not accepting the arguments regarding tax neutrality. It is particularly mistaken in its analysis of the transactions in the United States, Brazil and Mexico.

   — Alternatively, the contested decision should be annulled at least in those cases where majority control is acquired of undertakings in non-Member countries in circumstances comparable to domestic mergers and thus justified by the scheme and broad logic of the Spanish system.

2. Second plea in law, alleging an error of law in determining the beneficiary of the measure.

   — Alternatively, although it considers that Article 12(5) TRLIS contains elements of State aid, the Commission ought to have carried out an exhaustive economic analysis to ascertain who the beneficiaries of the potential aid were. The applicants claim that the beneficiaries of the aid (in the form of an inflated purchase price for the shares) were those selling the shares and not, as the Commission alleges, the Spanish undertakings which applied that measure.

3. Third plea in law, alleging infringement of the general legal principle of the protection of legitimate expectations, with regard to the manner in which the temporal scope of the recovery order is defined.

   — Alternatively, if Article 12(5) TRLIS were to be considered aid, the Commission fails to have regard to the case-law of the Courts of the European Union, in limiting the temporal scope of the principle of the protection of legitimate expectations to the date of publication of the decision to initiate the formal investigation procedure (21 December 2007), and therefore in seeking recovery in those transactions subsequent to that date (except for transactions entailing the acquisition of majority shareholdings, in India and China, for which the principle of the protection of legitimate expectations is extended until 21 May 2011, the date of publication of the final decision, on the basis that in those cases there are explicit legal barriers to international mergers).

   — The applicants submit that since, in accordance with the Commission's practice and with case-law, the initiation of the formal investigation procedure does not prejudge the nature of the measure, the initiation of that procedure cannot constitute the date on which the protection of legitimate expectations ends, but rather the latter should coincide in any event with the date on which the final decision is published in the Official Journal of the European Union.

   — Furthermore, the actual limits which the contested decision places on the protection of legitimate expectations recognised between the application of the opening decision and the final decision cannot be justified, since the protection is limited to transactions entailing the acquisition of majority shareholdings in India and China. Such protection of legitimate expectations should be extended, in accordance with case-law, to all transactions in any non-Member country.

Action brought on 29 July 2011 — Altadis v Commission

(Case T-400/11)

(2011/C 282/72)

Language of the case: Spanish

Parties

Applicant: Altadis, SA (Madrid, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— admit and uphold the request for evidence;

— admit and uphold the pleas for annulment contained in the application;

— annul Article 1(1) of the contested decision in so far as it declares that Article 12(5) of the Texto Refundido de la Ley del Impuesto sobre Sociedades ('TRLIS') (consolidated text of the Law on Corporation Tax) contains elements of State aid when it applies to acquisitions of shareholdings entailing acquisition of control;

— alternatively, annul Article 4 of the contested decision in so far as it makes the recovery order applicable to transactions completed prior to the publication in the Official Journal of the European Union of the final decision which is the subject-matter of this action;

— alternatively, annul Article 1(1), and in the further alternative Article 4, of the contested decision in so far as they relate to transactions in Morocco;

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

Pleas in law and main arguments

This action is brought against Commission Decision C(2010) 9566 of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions.

The pleas in law and main arguments are those already raised in Case T-399/11 *Banco de Santander and Santusa Holding* v *Commission*.

Appeal brought on 27 July 2011 by Livio Missir Mamachi di Lusignano against the judgment of the Civil Service Tribunal of 12 May 2011 in Case F-50/09, Livio Missir Mamachi di Lusignano v Commission

(Case T-401/11 P)

(2011/C 282/73)

Language of the case: Italian

Parties

Appellant: Livio Missir Mamachi di Lusignano (Kerkhove-Avelgem, Belgium) (represented by F. Di Gianni, R. Antonini, G. Coppo and A. Scalini, lawyers)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the judgment of the Civil Service Tribunal (First Chamber) of 12 May 2011 in Case F-50/09 *Livio Missir Macachi di Lusignano* v *European Commission* rejecting the action brought by Livio Missir Mamachi di Lusignano under Article 236 EC and Article 90(2) of the Staff Regulations for annulment of decision of the appointing authority of 3 February 2009 and an order that the Commission pay compensation for the material and non-material damage arising as a result of the murder of Alessandro Missir Mamachi di Lusignano and his wife;

— Order the Commission to pay to the appellant and the successors of Alessandro Missir Mamachi di Lusignano represented by the appellant a sum of money by way of compensation for the material and non-material damage sustained by them as well as the non-material damage suffered by the victim before his death;

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

Pleas in law and main arguments

The appellant relies on three grounds in support of his appeal:

1. First ground, alleging that the Civil Service Tribunal erred in holding that the claim for compensation for the non-material damage suffered by the appellant, Alessandro Missir and his heirs was inadmissible.

   In support of that ground, the appellant submits, first, that the Civil Service Tribunal applied in an illogical, incorrect and discriminatory manner what is known as the rule on consistency, which requires identity of cause and subject-matter solely between the complaint submitted under Article 90(2) of the Staff Regulations and the appeal lodged under Article 91 of those regulations, not between the request under Article 90(1) and the complaint under Article 90(2). Second, the appellant submits that the Civil Service Tribunal's interpretation of the rule on consistency gives rise to a limitation on the exercise of the fundamental right to effective judicial protection, enshrined, inter alia, in Article 47 of the Charter of Fundamental Rights of the European Union.

2. The second ground of appeal, alleging that the Civil Service Tribunal erred in finding that the Commission was only 40 % responsible for the damage caused.

   In support of this ground, the appellant submits that the Civil Service Tribunal made an incorrect assessment of the relationship between the Commission's unlawful conduct and the possible consequences of that failure to act, since the damage caused to the official was the direct and foreseeable consequence of that institution's negligent conduct. Moreover, the appellant submits that, while the damage came about as a result of various contributory causes, the Commission is to be held jointly and severally liable with the murderer for the compensation for the damage. It follows that 100 % of the appellant's claim for compensation to be paid by the Commission should be granted.

3. The third ground, alleging that the Civil Service Tribunal erred in finding that, as a result of the benefits already paid to Alessandro Missir's heirs, the Commission has fully compensated for the damage for which it is responsible.

   In support of the third ground, the appellant submits that, in the light of the principles to be inferred from European Union case-law, benefits other than those referred to in Article 73 cannot contribute to the compensation for the damage, since such benefits differ from compensation for damage under European Union law on account of the grounds and conditions on which they are granted and their purpose. Consequently, as the Commission has failed to compensate fully for the damage for which it is responsible, it must be ordered to pay to the appellant a sufficient amount to ensure full compensation for the damage suffered by the murdered official and his successors.

Action brought on 29 July 2011 — Preparados Alimenticios del Sur v Commission

(Case T-402/11)

(2011/C 282/74)

Language of the case: Spanish

Parties

Applicant: Preparados Alimenticios del Sur, SL (Murcia, Spain) (represented by: I. Acero Campos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision to return to the Spanish customs authority the dossier on the application for remission;

— order the Commission to adjudicate upon the application for remission submitted by Prealisur S.L. which directly affects the application submitted by Zukan S.L.;

— so that it may adjudicate upon that application, order the Commission to take the necessary measures and steps, even it means taking measures against the Spanish customs authority, in order to obtain all the necessary information to decide the case, including the documents which the Commission states that it has requested from Spanish customs but which the latter has not yet supplied;

— order the European Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the European Commission's decision of 29 June 2011, returning to the Spanish customs authority the dossier on the applicant's application for remission so that that authority might adjudicate upon the application (Dossier No. 003-004-005-006-2009 RRPP-J Y REC 04/10), on the basis that the Commission did not have sufficient information to decide the case itself. The Spanish customs authority had previously transmitted the dossier to the Commission on the basis of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

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

1. First plea in law, alleging infringement of certain articles 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).

   — The applicant alleges, specifically, infringement of Articles 872 and 873, since the intention to take an unfavourable decision was not communicated to it — which would enable it to submit its observations in that regard — and the applicant was not informed of the European Commission's request for information to the Spanish customs authority and the consequent extension of the period of time to adjudicate upon the application for remission.

2. Second plea in law, alleging infringement of Article 220(2)(b) of the Customs Code, in so far as that article does not — contrary to the Commission's understanding — provide that the Customs authority's error must be an active one, the dossier being returned due to a lack of information from the party making the error, that is, the Spanish customs authority itself.

3. Third plea in law, alleging infringement of the Commission's Rules of Procedure and, in particular, of the Annex containing the Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public.

   — The applicant submits in that regard that the contested decision infringed the general principles of good administration, the guidelines for good administrative behaviour and the right to information of interested parties. The applicant submits that the Commission has also failed to supply any of the documents requested, and has failed to provide any response to the decision which is the subject of this action.

4. Fourth plea in law, alleging infringement of the Charter of Fundamental Rights of the European Union.

   — The applicant alleges, specifically, infringement of Articles 41, 42, 47, 48 and 51 of that charter.

Action brought on 29 July 2011 — Axa Mediterranean v Commission

(Case T-405/11)

(2011/C 282/75)

Language of the case: Spanish

Parties

Applicant: Axa Mediterranean Holding, SA (Palma de Mallorca, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

— Admit and uphold the request for the taking of evidence;

— admit and uphold the grounds for annulment set out in this application;

— annul Article 1(1) of the Decision insofar as it declares that Article 12(5) of the Spanish Law on corporation tax comprises elements of State aid;

— alternatively, annul Article 1(1) of the Decision insofar as it declares that Article 12(5) of the Spanish Law on corporation tax comprises elements of State aid when applied to shareholding acquisitions that involve acquisition of control;

— alternatively, annul Article 4 of the Decision insofar as it applies the recovery order to transactions concluded prior to publication in the OJEU of the final Decision to which this action refers;

— alternatively, annul Article 1(1) and, alternatively, Article 4 of the Decision insofar as it refers to transactions carried out in Mexico and Turkey, and

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

Pleas in law and main arguments

The present action is directed against Commission Decision C(2010) 9566, of 12 January 2011, on the tax amortisation of financial goodwill for foreign shareholding acquisitions.

The pleas and main arguments are those already put forward in Case T-399/11, Banco de Santander and Santusa Holding v Commission.

Action brought on 29 July 2011 — Prosegur Compañía de Seguridad v Commission

(Case T-406/11)

(2011/C 282/76)

Language of the case: Spanish

Parties

Applicant: Prosegur Compañía de Seguridad, S.A. (Madrid, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro and M. Muñoz de Juan, lawyers)

Defendant: European Commission

Form of order sought

— Admit and uphold the request for the taking of evidence;

— admit and uphold the grounds for annulment set out in this application;

— annul Article 1(1) of the Decision insofar as it declares that Article 12(5) of the Spanish Law on corporation tax comprises elements of State aid;

— alternatively, annul Article 1(1) of the Decision insofar as it declares that Article 12(5) of the Spanish Law on corporation tax comprises elements of State aid when applied to shareholding acquisitions that involve acquisition of control;

— alternatively, annul Article 4 of the Decision insofar as it applies the recovery order to transactions concluded prior to publication in the OJEU of the final Decision to which this action refers;

— alternatively, annul Article 1(1) and, alternatively, Article 4 of the Decision insofar as it refers to transactions carried out in Argentina, Peru and Colombia;

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

Pleas in law and main arguments

The present action is directed against Commission Decision C(2010) 9566, of 12 January 2011, on the tax amortisation of financial goodwill for foreign shareholding acquisitions.

The pleas and main arguments are those already put forward in Case T-399/11, Banco de Santander and Santusa Holding v Commission.

Action brought on 26 July 2011 — SRF v Council

(Case T-407/11)

(2011/C 282/77)

Language of the case: English

Parties

Applicant: SRF Ltd (New Delhi, India) (represented by: F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul the Council Implementing Regulation (EU) No 469/2011 of 13 May 2011 amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India (OJ 2009 L 129, p. 1, hereafter referred to as 'the contested Regulation'); and

— Order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law, alleging that the contested Regulation infringes Article 9(6) of the Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([1]), in that:

1. Firstly, the said Article stipulates that the anti-dumping duty for exporters or producers which have made themselves known but were not included in the sample shall not exceed the weighted average dumping margin established for parties selected in the sample, whereby zero and *de minimis* margins shall be disregarded. By imposing an anti-dumping duty of 15,5 % on SRF, the contested Regulation violates this rule since the weighted average dumping margin for the parties selected in the sample, whose dumping margins are not zero or *de minimis* is lower than 15,5% ; and

2. Secondly, by requiring an exporting producer to request an interim review pursuant to Article 11(3) of the Council Regulation (EC) No 1225/2009 for the application of Article 9(6), in a situation in which existing anti-dumping duty rates are adjusted following the expiry of concurrent countervailing measures, the contested Regulation inserts a condition into Article 9(6) that is absent in the express text of that provision, which amounts to the impermissible interpretation by the Council.

([1]) OJ 2009 L 343, p. 51 (consolidated text)

Action brought on 28 July 2011 — Maharishi Foundation v OHIM (TRANSCENDENTAL MEDITATION)

(Case T-412/11)

(2011/C 282/78)

Language of the case: English

Parties

Applicant: Maharishi Foundation Ltd (St. Helier, Jersey) (represented by: A. Meijboom, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 March 2011 in case R 1293/2010-2;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'TRANSCENDENTAL MEDITATION' for goods and services in classes 16, 41, 44 and 45 — Community trade mark application No 8246647

Decision of the Examiner: Rejected the application for a Community trade mark, for part of the goods and services

Decision of the Board of Appeal: Allowed the appeal and remitted the case to the Examination Division for further prosecution

Pleas in law: The applicant puts forward four pleas in law: (i) infringement of Articles 75 and 7(1)(a) of Council Regulation No 207/2009, as the Board of Appeal did not explicitly decided on Article 7(1)(a) of CTMR, but did, nevertheless, consider that the mark 'TRANSCENDENTAL MEDITATION' is generic; (ii) infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly decided that the mark is devoid of any distinctive character; (iii) infringement of Article 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal incorrectly concluded that the mark consists exclusively of indications, which may serve, in trade, to designate characteristics of the goods or services, for which applicant filed the mark; and (iv) infringement of Article 7(3) of Council Regulation No 207/2009, as the Board of

Appeal incorrectly decided that the mark has not become distinctive in relation to the goods or services, for which registration is requested in consequence of the use, which has been made of it.

Appeal brought on 3 August 2011 by Carlo De Nicola against the judgment of the Civil Service Tribunal of 28 June 2011 in Case F-49/10, De Nicola v EIB

(Case T-418/11 P)

(2011/C 282/79)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by L. Isloa, lawye)

Other party to the proceedings: European Investment Bank

Form of order sought by the appellant

The appellant claims that the Court should:

— Vary the judgment delivered on 28 June 2011 by the Civil Service Tribunal in Case F-49/10, concerning:

— the annulment of the decision in the e-mail of 11 May 2010, in so far as the EIB refused to allow the administrative procedure to be completed and obstructed the attempted amicable settlement of the matter, rejecting by implication the claim for reimbursement of medical expenses in the sum of EUR 3 000,00;

— order the EIB to reimburse the sum of EUR 3 000 incurred by the appellant for laser therapy treatment prescribed for him and carried out in Italy, together with interest, monetary inflation and the costs of the proceedings.

Pleas in law and main arguments

In support of his claims, the appellant submits as follows:

A. The facts:

1. The appellant alleges distortion of one claim and failure to rule on another.

2. The appellant also complains of the privileged position enjoyed by the Institution, which, once again, has confined itself to asserting certain facts, which the Tribunal then found to be proved.

B. The application for annulment

3. The appellant sought annulment of the decision communicated to him by e-mail on 11 May 2010, in so far as the EIB refused to appoint a third doctor, refused to initiate the mediation procedure under Article 41 of the Staff Regulations and refused to reimburse expenditure in the sum of EUR 3 000 incurred for laser therapy treatment prescribed for the appellant and carried out in Italy.

4. As regards the challenge of the refusal to appoint a third doctor, the Civil Service Tribunal found that the claim was inadmissible, on the assumption that the appellant should have challenged a non-existent provision of 24 March 2008, without explaining the link between the provision challenged and that which it assumes to be in breach of the law, and without clarifying under which rules the opinion attributed to the EIB's representative became a decision refusing a claim on the part of the EIB.

5. The appellant submits that, since it forms part of an internal procedure, an opinion is without prejudice and can never be challenged automatically.

The General Court, however, overturned all previous case-law and held that it was entitled to introduce a three-month period for challenging any measure forming part of an internal procedure, stating that the time-limit for bringing court proceedings starts to run from the same date on which the employee submits an application, irrespective of whether a measure has been adopted and without the employee's even being aware of the reasons.

6. The appellant challenges the entire system of rules laid down for public institutions, which the Tribunal claims apply to the EIB, which is organised as a private bank and whose employees have a private-law contract of employment. The effect of this is that measures affecting such employees are not administrative measures, do not represent the exercise of public authority, are not authoritative acts and do not enjoy a presumption of legitimacy, so that no analogy can be made with public employees and nor is there any need to confer immediate effect on measures of internal organisation adopted in the same way as in any private bank.

7. Moreover, the appellant complains that the reasoning is illogical, in so far as it fails to have regard to his excusable error, attributing to him knowledge of a measure notified only to his lawyer.

8. Lastly, the appellant states that, under any legal system, an act that is null and void may be challenged at any time, not solely within the time limit laid down for measures capable of being annulled.

9. The appellant submits that the mediation procedure under Article 41 of the Staff Regulations is not a procedural requirement. Nevertheless, the Tribunal unlawfully claims that it may be treated in the same was as an administrative appeal, which public employees of the European Union are required to lodge and which is, by contrast, obligatory, establishing the limits of any subsequent court proceedings.

10. As regards the challenge of the refusal to initiate the mediation procedure, the appellant submits that the decision of the Civil Service Tribunal is unlawful, since the bank can never refuse such a procedure.

    It follows from the above, first, that no reasons can legitimately justify such a refusal and, second, that the upholding of the employee's claim should give rise to aggravated liability on the part of the bank and it being ordered without question to pay the costs of the proceedings.

11. As regards the refusal by implication to reimburse the laser therapy treatment expenditure, the appellant submits that the lack of reasoning is a clear sign of misuse of power, given that reimbursement may lawfully be refused in only three cases, and the fact that there existed no formal measure provides grounds for absolute nullity, which can as such be challenged at any time.

12. Lastly, the decision by which the Civil Service Tribunal failed to give a ruling on the basis of the assumption that it did not have before it the necessary evidence must clearly be regarded as unlawful.

C. The order as to costs

13. The Tribunal found that the application was inadmissible on grounds of *litis pendenza,* whereas no provision is made for the defect of *litis pendenza* in the Code of Procedure. Moreover, it failed to explain how there can be identity of claims between a case pending at first instance and a case pending on appeal and also failed to clarify how the facts on which that decision was based were established and by whom.

14. Lastly, the appellant claims that the granting of the appeal and the variation of the judgment under appeal should give rise to a new ruling as to costs, including the costs of the proceedings at first instance.

Action brought on 29 July 2011 — Ellinika Touristika Akinita v Commission

(Case T-419/11)

(2011/C 282/80)

Language of the case: Greek

Parties

Applicant: Ellinika Touristika Akinita A.E. (Athens, Greece) (represented by: N. Fragkakis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— allow the application in its entirety;

— annul and set aside the contested decision of the Commission addressed to the Hellenic Republic;

— order that any sum that may have been 'recovered' directly or indirectly from the applicant in implementation of the contested decision be refunded with interest;

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2011) 3504 final of 24 May 2011 relating to State aid to certain Greek casinos, No C 16/2010 (ex NN 22/2010, ex CP 318/2009), which was implemented by the Hellenic Republic.

The applicant puts forward the following grounds for annulment.

The first ground is derived from the incorrect interpretation and application of Article 107(1) TFEU and insufficient reasoning in breach of Article 296 TFEU. In particular, the measure under consideration: (i) does not ensure an economic advantage for the casino of Parnitha and that of Corfu through the transfer of State resources, (ii) is not selective in nature and (iii) is not capable of affecting trade between Member States and does not distort or threaten to distort competition.

The second ground is derived from the incorrect interpretation and application of Article 14(1)(a) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1). In particular: (i) the recovery of unlawful State aid can be sought only from the actual beneficiaries of the aid and (ii) there is no identity between the actual beneficiaries of the measure at issue (the casinos' customers) and the persons to which the order for recovery is addressed (the casinos of Corfu, Parnitha and Thessaloniki), which were not charged for admission tickets.

The third ground is derived from the incorrect interpretation and application of Article 14(1)(b) of that regulation. Recovery of the aid at issue is contrary to: (i) the principle of the protection of legitimate expectations and (ii) the principle of proportionality.

Action brought on 6 August 2011 — Qualitest FZE v Council

(Case T-421/11)

(2011/C 282/81)

Language of the case: English

Parties

Applicant: Qualitest FZE (Dubai, United Arab Emirates) (represented by: M. Catrain González, lawyer, E. Wright and H. Zhu, Barristers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26) and Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65), so far 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 three pleas in law.

1. First plea in law, alleging that the defendant has breached the obligation imposed upon it by Article 296 TFEU to state the reasons for including the applicant in the contested measures.

2. Second plea in law, alleging that by failing to include any statement of reasons in the contested measures, the defendant has infringed the applicant's right of defence, as:

   — The absence of any justification prevents the applicant to effectively make known his view on the information or material against it; and

   — These failures constitute a fundamental breach of the defendant's obligations in relation to the contested measures and render such invalid in so far as they apply to the applicant.

3. Third plea in law, alleging that the defendant committed a manifest error of assessment in concluding that the applicant was involved in the procurement of components for Iranian nuclear programme and that the legal conditions for its inclusion have been fulfilled.

Action brought on 4 August 2011 — Cementos Molins v Commission

(Case T-424/11)

(2011/C 282/82)

Language of the case: Spanish

Parties

Applicant: Cementos Molins, SA (Sant Vicenç del Horts, Spain) (represented by: C. Fernández Vicién, I. Moreno-Tapia Rivas and M. López Garrido, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order the European Commission to pay the costs.

Pleas in law and main arguments

Pursuant to Article 263 TFEU, the applicant seeks the annulment of the decision of the European Commission of 12 January 2011 in Case No C 45/2007 (ex NN 51/2007, ex CP 9/2007) on the tax amortisation of financial goodwill for foreign shareholding acquisitions implemented by Spain. [1]

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

1. First plea in law, alleging an infringement of Article 107 TFEU.

   — In the view of the applicant, the contested decision infringes Article 107 TFEU in so far it finds that the tax amortisation of financial goodwill for foreign shareholding acquisitions, laid down in Articles 12(5) of the Spanish Corporate Tax Act (TRLIS), constitutes State aid which is incompatible with the internal market. The applicant submits that the abovementioned amortisation does not involve any advantage, does not affect intra-Community trade and is not selective.

2. Second plea in law, alleging an infringement of the principle of the protection of legitimate expectations and the duty to state reasons in relation to the principle of the protection of legitimate expectations.

   — This plea in law is divided into two parts, which both relate to the period during which the applicant was entitled to entertain legitimate expectations, established in Article 1(2) and (3) of the contested decision:

— First part of the second plea: primarily, infringement of the principle of the protection of legitimate expectations. The applicant submits that that principle should protect all the beneficiaries from recuperation of the aid until the date of publication of the contested decision, since the publication of the decision to initiate proceedings is not sufficient to thwart the legitimate expectations born from the Commission's statements before the European Parliament.

— Second part of the second plea: in the alternative, infringement of the principle of the protection of legitimate expectations and of the duty to state reasons. The applicant considers that the European Commission was wrong to exclude from the period during which it was entitled to entertain legitimate expectations the whole of the day of publication in the Official Journal of the European Union of the decision to initiate proceedings which led to the adoption of the contested decision. First, in accordance with Community law, the final day of a specified period should be included in that period in full and, second, the exclusion of the final day of that period, in the operative part of the contested decision, is inconsistent with the grounds for the decision.

3. Third plea in law, alleging an infringement of the principle of proportionality in relation to the principle of the protection of legitimate expectations.

— The applicant submits that it is disproportionate for the Commission to require, for the application of the principle of the protection of legitimate expectations in the case of Article 1(4) of the contested decision, that explicit legal obstacles exist to cross-border business combinations.

([1]) Published in the Official Journal of the European Union on 21 May 2011 (OJ 2011 L 135, 1)

Action brought on 3 August 2011 — Hellenic Republic v Commission

(Case T-425/11)

(2011/C 282/83)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: P. Milonopoulos and K. Boskovits)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2011) 3504 final of 24 May 2011 relating to State aid to certain Greek casinos, No C 16/2010 (ex NN 22/2010, ex CP 318/2009).

In support of the action, the applicant puts forward the following grounds for annulment.

1. ***First ground***: Incorrect interpretation of Article 107(1) TFEU relating to the concept of State aid.

   More specifically, the applicant submits that the defendant mistakenly supposes that a lower charge for an admission ticket at certain casinos conferred an advantage upon them through the reduction of State income. Also, the supposed recipients of the aid are not in a comparable legal and factual position vis-à-vis the other casinos that operate in Greece, intra-Community trade is not affected and competition within the internal market is not distorted.

2. ***Second ground***: Inappropriate, deficient and contradictory reasoning as regards establishing State aid.

   The applicant observes in particular that the reasoning is contradictory since it accepts that a lower charge for a ticket can increase custom at the casinos in question while at the same time it contests the increase in State income by reason of the increase in custom. Also, the reasoning is deficient in relation to proof of the advantage and to establishing the effect on intra-Community trade and it is clearly erroneous as regards proof of the measure's selective nature.

3. ***Third ground***: Recovery of the aid infringes Article 14 of Council Regulation (EC) No 659/99. ([1])

   More specifically, the applicant submits that the aid is not sought from the actual beneficiaries, that is to say, the customers of the casinos that charge a lower ticket price. Also, recovery is contrary to the general principle of the protection of legitimate expectations, by reason of the previous case-law of the Greek Council of State and the defendant's conduct, and to the general principle of proportionality since it imposes disproportionate and unjustified burdens on the supposed recipients of the aid and strengthens the competitive position of the casinos that charge the ticket price of EUR 12.

4. ***Fourth ground***: The defendant calculated the sums to be recovered incorrectly.

The applicant maintains that the defendant is unable to calculate precisely the supposed advantage of the recipients of the aid and does not take into account the effect which the charging of a lower ticket price had or could have had on demand.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 1 August 2011 — Maharishi Foundation v OHIM (MÉDITATION TRANSCENDANTALE)

(Case T-426/11)

(2011/C 282/84)

Language of the case: English

Parties

Applicant: Maharishi Foundation Ltd (St. Helier, Jersey) (represented by: A. Meijboom, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 April 2011 in case R 1294/2010-2;

— Order the defendant to pay the costs

Pleas in law and main arguments

Community trade mark concerned: The word mark 'MÉDITATION TRANSCENDANTALE' for goods and services in classes 16, 35, 41, 44 and 45 — Community trade mark application No 8246704

Decision of the Examiner: Rejected the application for a Community trade mark, for part of the goods and services

Decision of the Board of Appeal: Allowed the appeal and remitted the case to the Examination Division for further prosecution

Pleas in law: The applicant puts forward four pleas in law: (i) infringement of Articles 75 and 7(1)(a) of Council Regulation No 207/2009, as the Board of Appeal did not explicitly decided on Article 7(1)(a) of CTMR, but did, nevertheless, consider that the mark 'MÉDITATION TRANSCENDANTALE' is generic; (ii) infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly decided that the mark is devoid of any distinctive character; (iii) infringement of Article 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal incorrectly concluded that the mark consists exclusively of indications, which may serve, in trade, to designate characteristics of the goods or services, for which applicant filed the mark; and (iv) infringement of Article 7(3) of Council Regulation No 207/2009, as the Board of Appeal incorrectly decided that the mark has not become distinctive in relation to the goods or services, for which registration is requested in consequence of the use, which has been made of it.

Action brought on 4 August 2011 — Banco Bilbao Vizcaya Argentaria v Commission

(Case T-429/11)

(2011/C 282/85)

Language of the case: Spanish

Parties

Applicant: Banco Bilbao Vizcaya Argentaria, SA (Bilbao, Spain) (represented by: J. Ruiz Calzado, M. Núñez-Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1(1) of the decision;

— in the alternative, annul Article 1(4) and (5) of the decision;

— in the further alternative, annul Article 4 of the decision, or amend its scope as appropriate; and

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

Pleas in law and main arguments

This action has been brought against Article 1(1) of the decision of the European Commission of 12 January 2011 in Case No C 45/2007 (ex NN 51/2007, ex CP 9/2007) on the tax amortisation of financial goodwill for foreign shareholding acquisitions implemented by Spain ('the decision').

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

1. By its first plea in law, the applicant claims that the Commission infringed Articles 107 and 108 TFEU in finding, in the decision, that Article 12(5) of the consolidated version of the Spanish Corporate Tax Act (Ley del Impuesto sobre Sociedades español; 'TRLIS') constitutes State aid in so far as it provides for tax amortisation of goodwill for acquisitions of shareholdings in non-EU companies (extra-EU acquisitions).

2. By its second plea in law, the applicant submits that the Commission committed an error of law and of procedure in finding that, for there to be State aid which is unlawful in its entirety, it is sufficient that the implementation of the scheme leads to situations which qualify as aid.

3. By its third plea in law, the applicant claims that the principle of proportionality has been infringed in so far as it was found in the decision that: (i) the scheme constitutes unlawful aid in its entirety, including in relation to countries such as China and India and in other countries in which it has been shown or could be shown that there are explicit legal obstacles to cross-border business combinations, and that (ii) the scheme also constitutes State aid which is incompatible in its entirety in so far as it permits the deduction of financial goodwill in relation to acquisitions of majority shareholding in foreign companies outside of the EU.

4. By its fourth plea in law, the applicant claims that the Commission infringed the principles of legitimate expectations and equal treatment in departing from the guidelines on direct taxation and from its administrative practice.

5. By its fifth plea in law, the applicant claims that the Commission infringed the principle of good administration by having failed to examine the precise scope of the practical obstacles to company mergers outside of the EU (extra-EU mergers).

6. By its sixth plea in law, the applicant submits that there were errors of law and errors of assessment in the determination of legitimate expectations in the decision.

7. By its seventh plea in law, the applicant argues that insufficient grounds were given for the decision.

Action brought on 4 August 2011 — Telefónica v Commission

(Case T-430/11)

(2011/C 282/86)

Language of the case: Spanish

Parties

Applicant: Telefónica, SA (Madrid, Spain) (represented by: J. Ruiz Calzado, M. Núñez-Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1(1) of the decision;

— in the alternative, annul Article 1(4) and (5) of the decision;

— in the further alternative, annul Article 4 of the decision, or amend its scope as appropriate, and

— order the Commission to pay all the costs arising from these proceedings.

Pleas in law and main arguments

This action has been brought against the Commission's Decision of 12 January 2011 in Case No C 45/2007 (ex NN 51/2007, ex CP 9/2007), on the tax amortisation of financial goodwill for foreign shareholding acquisitions implemented by Spain.

The pleas in law and main arguments are those raised in Case T-429/11 *BBVA* v *Commission*.

Action brought on 4 August 2011 — Iberdrola v Commission

(Case T-431/11)

(2011/C 282/87)

Language of the case: Spanish

Parties

Applicant: Iberdrola, SA (Bilbao, Spain) (represented by: J. Ruiz Calzado, M. Núñez-Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1(1) of the decision;

— in the alternative, annul Article 1(4) and (5) of the decision;

— in the further alternative, annul Article 4 of the decision, or amend its scope as appropriate, and

— order the Commission to pay all the costs arising from these proceedings.

Pleas in law and main arguments

This action has been brought against the Commission's Decision of 12 January 2011 in Case No C 45/2007 (ex NN 51/2007, ex CP 9/2007), on the tax amortisation of financial goodwill for foreign shareholding acquisitions implemented by Spain.

The pleas in law and main arguments are those raised in Case T-429/11 *BBVA* v *Commission*.

Action brought on 3 August 2011 — Europäisch-Iranische Handelsbank v Council

(Case T-434/11)

(2011/C 282/88)

Language of the case: English

Parties

Applicant: Europäisch-Iranische Handelsbank AG (Hamburg, Germany) (represented by: S. Gadhia and S. Ashley, Solicitors, H. Hohmann, lawyer, D. Wyatt, Queen's Counsel, and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 1 of Table B of Annex I to Council Decision 2011/299/CFSP ([1]), in so far as it relates to the applicant;

— Annul paragraph 1 of Table B of Annex I to Council Implementing Regulation (EU) No 503/2011 ([2]), in so far as it relates to the applicant;

— Declare Article 20(1)(b) of Council Decision 2010/413/CFSP ([3]) inapplicable to the applicant;

— Declare Article 16(2) of Council Regulation (EU) No 961/2010 ([4]) inapplicable 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 defendant breached procedural requirements, as:

   — it did not give adequate, precise and sufficient reasons, and

   — it failed to respect the rights of defence and the right to effective judicial protection.

2. Second plea in law, alleging that the defendant committed a manifest error of assessment in determining whether or not the criteria for designation of the applicant under the contested measures were met, as the transactions in respect of which the applicant has apparently been designated were either authorised or in conformity with the rulings and guidance of the competent national authority (the German Central Bank).

3. Third plea in law, alleging that the defendant has breached the applicant's legitimate expectations that it would not be sanctioned by imposing restrictive measures based on conduct that was authorised by the competent national authority. Alternatively, to sanction the applicant in such circumstances breached the principles of legal certainty and the applicant's right to good administration.

4. Fourth plea in law, alleging that the designation of the applicant is in violation of its property rights and/or the right to conduct its business and is in manifest violation of the principle of proportionality.

5. Fifth plea in law, alleging that if the power under which the defendant appears to have acted is mandatory, it is unlawful as being contrary to the principle of proportionality.

([1]) Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65)

([2]) Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 136, p. 26)

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

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

Order of the General Court of 14 July 2011 — Apotheke DocMorris v OHIM (Representation of a green cross)

(Case T-173/10) ([1])

(2011/C 282/89)

Language of the case: German

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

([1]) OJ C 179, 3.7.2010.

Order of the General Court of 14 July 2011 — Apotheke DocMorris v OHIM (Representation of a green and white cross)

(Case T-196/10) ([1])

(2011/C 282/90)

Language of the case: German

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

([1]) OJ C 179, 3.7.2010.

Order of the General Court of 12 July 2011 — SNCF v OHIM — Infotrafic (infotrafic)

(Case T-491/10) ([1])

(2011/C 282/91)

Language of the case: French

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

([1]) OJ C 13, 15.1.2011.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 5 July 2011 — V v Parliament

(Case F-46/09) [1]

(Staff case — Contract staff — Conditions of engagement — Whether physically fit — Pre-recruitment medical examination. — Protection of individuals with regard to the processing of personal data — Medical confidentiality — Transfer of medical data between institutions — Right to respect for private life)

(2011/C 282/92)

Language of the case: French

Parties

Applicant: V (Brussels, Belgium) (represented by: É. Boigelot and S. Woog, lawyers)

Defendant: European Parliament (represented by: K. Zejdová and S. Seyr, agents)

Intervener in support of the applicant: European Data Protection Supervisor (represented by M. V. Pérez Asinari and H. Kranenborg, agents)

Re:

First, annulment of the medical opinion of physical unfitness of 18 December 2008 and, second, annulment of the decision to withdraw the offer of employment previously made to the applicant.

Operative part of the judgment

The Tribunal:

1. *annuls the decision of 19 December 2008 whereby the European Parliament withdrew the offer of employment made to V;*

2. *orders the European Parliament to pay V the sum of EUR 25 000;*

3. *dismisses the action for the remainder;*

4. *orders the European Parliament to pay the applicant's costs and to bear its own costs;*

5. *orders the European Data Protection Supervisor, as intervener, to bear its own costs.*

[1] OJ C 11 of 16.01.10, p. 40.

Judgment of the Civil Service Tribunal (First Chamber) of 20 July 2011 — Gozi v Commission

(Case F-116/10) [1]

(Staff case — Officials — Duty to provide assistance — Article 24 of the Staff Regulations — Reimbursement of lawyer's fees incurred in legal proceedings before a national court)

(2011/C 282/93)

Language of the case: Italian

Parties

Applicant: Sandro Gozi (Rome, Italy) (represented by: G. Passalacqua, lawyer)

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

Re:

Annulment of the decision rejecting the request for reimbursement of the costs incurred by the applicant in criminal proceedings before a court of a Member State.

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

2. *orders Mr Gozi to pay all the costs.*

[1] OJ C 55 of 19.02.11, p. 38.

Order of the Civil Service Tribunal (First Chamber) of 5 July 2011 — Coedo Suárez v Council

(Case F-73/10) [1]

(Staff case — Officials — Action for damages — Implicit decision rejecting a claim for compensation, followed by an explicit decision rejecting that claim — Lateness of prior complaint against the implicit rejection decision — Not admissible)

(2011/C 282/94)

Language of the case: French

Parties

Applicant: Angel Coedo Suárez (Brussels, Belgium) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

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

Re:

Annulment of the defendant's decision rejecting the applicant's claim for compensation and his claim for compensation for material and non-material damage suffered.

Operative part of the order

The Tribunal:

1. *dismisses the action as inadmissible;*

2. *orders the Council of the European Union to pay all the costs.*

([1]) OJ C 301 of 6.11.10. p. 63

Order of the Civil Service Tribunal (First Chamber) of 5 July 2011 — Alari v Parliament

(Case F-38/11) ([1])

(Staff case — Officials — Promotion — 2009 promotion exercise — Transfer from one institution to another during promotion exercise in which the official would have been promoted in his institution of origin — Institution with competence to decide on promotion of the transferred official)

(2011/C 282/95)

Language of the case: French

Parties

Applicant: Gianluigi Alari (Bertrange, Luxembourg) (represented by: S. Orlandi, A. Coolen, J. N. Louis and É. Marchal, lawyers)

Defendant: European Parliament (represented by: S. Alves and M. Ecker, agents)

Re:

Annulment of the decision not to promote the applicant in the 2009 promotion exercise.

Operative part of the order

The Tribunal:

1. *dismisses the action as manifestly lacking any foundation in law;*

2. *orders the European Parliament to pay the applicant's costs and to bear its own costs.*

([1]) OJ C 179 of 18.06.11, p. 22

Action brought on 19 July 2011 — ZZ v Commission

(Case F-41/11)

(2011/C 282/96)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Director-General of OLAF to reject the applicant's request for the extension of the applicant's contract as a member of the temporary staff within the meaning of Article 2(c) of the Conditions of Employment.

Form of order sought by the applicant

— Annul the decision of the Director-General of OLAF of 11 February 2011 to reject the applicant's request for the extension of the applicant's contract as a member of the temporary staff within the meaning of Article 2(c) of the Conditions of Employment;

— order the Commission to pay the costs.

Action brought on 12 July 2011 — ZZ v Commission

(Case F-66/11)

(2011/C 282/97)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision adopted by the chairman of the selection board for Competition EPSO/AST/111/10 (AST 1) not to admit the applicant to the assessment tests.

Form of order sought by the applicant

— As a main claim:

— annul the decision adopted on 7 April 2011 not to allow the applicant to take part in the assessment tests for Competition EPSO/AST/111/10 — Secretary, grade AST 1;

— as a result, rule that the applicant must be reinstated within the recruitment process initiated by that competition, if necessary, through the organisation of fresh assessment tests;

— in the alternative, in the event that the main claim is not upheld, quod non, order the defendant to pay, by way of material damages, an amount fixed provisionally and ex aequo et bono at EUR 20 000, together with interest for late payment at the statutory rate from the date of the judgment to be delivered;

— in any event, order the defendant to pay, by way of non-material damages, an amount fixed provisionally and ex aequo et bono at EUR 20 000, together with interest for late payment at the statutory rate from the date of the judgment to be delivered;

— order the Commission to pay the costs.

Action brought on 15 July 2011 — ZZ v Commission

(Case F-68/11)

(2011/C 282/98)

Language of the case: English

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision of the Commission terminating the applicant's contract of employment of indefinite duration.

Form of order sought

The applicant claims that the European Union Civil Service Tribunal should:

— Annul the decision of the Authority Authorised to Conclude Contracts of the Commission (hereinafter, the AACC) of 30 September 2010, terminating her contract of employment of indefinite duration;

— together with, and so far as necessary: annul the decision of the AACC of 14 April 2011, rejecting the complaint lodged on 23 December 2010 pursuant to Article 90(2) of the Staff Regulations of Officials of the European Union;

— order the Commission to pay the costs.

Action brought on 20 July 2011 — ZZ v Court of Auditors

(Case F-69/11)

(2011/C 282/99)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi, lawyer)

Defendant: European Court of Auditors

Subject-matter and description of the proceedings

Application for annulment of the decision of the Court of Auditors not to appoint the applicant to the post of Director of the Directorate for Human Resources and to appoint another candidate to that post

Form of orders sought

— Annulment of the decision of the Court of Auditors to appoint another person to the to the post of Director of the Directorate for Human Resources and not to appoint the applicant to that post;

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

— order the Court of Auditors to pay compensation for the material damage suffered consisting in the loss of financial rights connected to the contested decisions (including career and pension rights) and, therefore, the payment of those rights with effect from 1 January 2001;

— order that the Court of Auditors pay symbolic damages of one euro as compensation for the non-material damage;

— order the Court of Auditors to pay the costs.

Action brought on 21 July 2011 — ZZ v Commission

(Case F-70/11)

(2011/C 282/100)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the applicant's appraisal report for the period 1 January 2008 to 31 December 2008.

Form of order sought by the applicant

— Annul the applicant's appraisal report for 2008, that is to say, the part of the report drawn up by EUROSTAT for that period;

— order the European Commission to pay the costs.

Action brought on 25 July 2011 — ZZ v Commission

(Case F-73/11)

(2011/C 282/101)

Language of the case: English

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision not to admit the applicant to the assessment centre stage of the open competition EPSO/AD/181/10.

Form of order sought

The applicant claims that the European Union Civil Service Tribunal should:

— Annul the decision of the European Personnel Selection Office (hereinafter, EPSO) of 20 August 2010 and 15 September 2010, informing him that he was not admitted to the assessment centre stage of the open competition EPSO/AD/181/10 (hereinafter, the contested decision);

— together with, and so far as necessary, annul the EPSO decision of 15 April 2011, rejecting his complaint of 10 November 2010 against the aforementioned decision (hereinafter, the rejection decision);

— consequently, order his reintegration into the selection process, if necessary by the implementation of a new round of tests;

— order the Commission to pay the costs.

Order of the Civil Service Tribunal of 19 July 2011 — Putterie v Commission

(Case F-31/07 RENV) [1]

(2011/C 282/102)

Language of the case: French

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

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[1] OJ C 117, 26.5.2007, p. 38.

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