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Notice No | Contents | Page

EN

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(Continued overleaf)

EN

EN

(Continued overleaf)

(Continued overleaf)

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 319/01)

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

OJ C 311, 22.10.2011

Past publications

OJ C 305, 15.10.2011

OJ C 298, 8.10.2011

OJ C 290, 1.10.2011

OJ C 282, 24.9.2011

OJ C 269, 10.9.2011

OJ C 252, 27.8.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 15 September 2011 — European Commission v Slovak Republic

(Case C-264/09) [1]

(Failure of a Member State to fulfil obligations — Energy — Internal market in electricity — Directive 2003/54/EC — Investment contract — Bilateral agreement on the protection of investments concluded prior to accession to the European Union — Article 307 EC)

(2011/C 319/02)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: O. Beynet, F. Hoffmeister and J. Javorský, Agents)

Defendant: Slovak Republic (represented by: B. Ricziová, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 9(e) and 20(1) of European Parliament and Council Directive 2003/54/EC of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37) — Priority access of an operator to part of the cross-border electricity transmission capacity — Infringement of the obligation to ensure non-discriminatory access for transport and distribution networks

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay the costs.*

[1] OJ C 282, 21.11.2009.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Conseil d'État (France)) — Ministre du Budget, des Comptes publics et de la Fonction publique v Accor SA

(Case C-310/09) [1]

(Free movement of capital — Tax treatment of dividends — National rules conferring a tax credit in respect of dividends distributed by resident subsidiaries of parent companies — Refusal to grant a tax credit in respect of dividends distributed by non-resident subsidiaries — Redistribution of dividends by the parent company to its shareholders — Setting off the tax credit against the advance payment payable by the parent company at the time of redistribution — Refusal to reimburse the advance payment made by the parent company — Unjust enrichment — Evidence required regarding the taxation of non-resident subsidiaries)

(2011/C 319/03)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ministre du Budget, des Comptes publics et de la Fonction publique

Defendant: Accor SA

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Articles 43 and 56 of the EC Treaty — National rules whereby dividends originating from subsidiaries established in the State of residence of the parent company are taxed in a different way from dividends originating from subsidiaries established in other Member States — Option of off-setting against the advance payment for which a parent company is liable when it redistributes such dividends to shareholders the tax credit applied to the distribution of those dividends if they come from a subsidiary established in France but not if they come from a subsidiary established in another Member State of the Community — Refusal to reimburse the advance payment made by the parent company, on grounds of

unjust enrichment or absence of adverse effects on that company — Reimbursement of sums paid by the parent company conditional upon the production of evidence regarding the tax paid by its subsidiaries in a Member State other than that in which the parent company has its registered office — Compliance with the principles of equivalence and effectiveness

Operative part of the judgment

1. *Articles 49 TFEU and 63 TFEU preclude legislation of a Member State intended to eliminate economic double taxation of dividends, such as that at issue in the main proceedings, which allows a parent company to set off against the advance payment, for which it is liable when it redistributes to its shareholders dividends paid by its subsidiaries, the tax credit applied to the distribution of those dividends if they originate from a subsidiary established in that Member State, but does not offer that option if those dividends originate from a subsidiary established in another Member State, since, in that case, that legislation does not give entitlement to a tax credit applied to the distribution of those dividends by that subsidiary.*

2. *Where a national tax regime such as that at issue in the main proceedings does not of itself lead to the passing on to a third party of the tax unduly paid by the person liable for that tax, EU law precludes a Member State refusing to reimburse sums paid by the parent company on the grounds either that such reimbursement would lead to the unjust enrichment of the parent company, or that the sum paid by the parent company does not constitute an accounting or tax charge for it but is set off against the total of the sums which may be redistributed to its shareholders.*

3. *The principles of equivalence and effectiveness do not preclude the reimbursement to a parent company of sums which ensure the application of the same tax regime to dividends distributed by its subsidiaries established in France and those distributed by the subsidiaries of that company established in other Member States, and subsequently redistributed by that parent company, being subject to the condition that the person liable for the tax furnish evidence which is in its sole possession and relating, with respect to each dividend concerned, in particular to the rate of taxation actually applied and the amount of tax actually paid on profits made by subsidiaries established in other Member States, whereas, with respect to subsidiaries established in France, that evidence, known to the administration, is not required. Production of that evidence may however be required only if it does not prove virtually impossible or excessively difficult to furnish evidence of payment of the tax by the subsidiaries established in the other Member States, in the light in particular of the provisions of the legislation of those Member States concerning the avoidance of double taxation, the recording of the corporation tax which must be paid and the retention of administrative documents. It is for the national court to determine whether those conditions are met in the case before the national court.*

(1) OJ C 233, 26.9.2009.

Judgment of the Court (Fourth Chamber) of 15 September 2011 (reference for a preliminary ruling from the Bezirksgericht Linz — Austria) — Criminal proceedings against Jochen Dickinger, Franz Ömer

(Case C-347/09) (1)

(Freedom to provide services — Freedom of establishment — National legislation laying down a monopoly of the operation of internet casino games — Conditions under which permissible — Expansionist commercial policy — Checks on operators of games of chance carried out in other Member States — Monopoly awarded to a company governed by private law — Possibility of obtaining the monopoly reserved to capital companies established in national territory — Holder of the monopoly prohibited from setting up branches outside the Member State of establishment)

(2011/C 319/04)

Language of the case: German

Referring court

Bezirksgericht Linz

Parties in the main proceedings

Jochen Dickinger, Franz Ömer

Re:

Reference for a preliminary ruling — Bezirksgericht Linz — Interpretation of Articles 43 EC and 49 EC — National legislation prohibiting, on pain of criminal penalties, the operation of games of chance without a licence issued by the competent authority, but reserving the possibility of obtaining such a licence, for a maximum period of 15 years, to capital companies which are established within the country and which do not have branches abroad

Operative part of the judgment

1. *European Union law, in particular Article 49 EC, precludes the imposition of criminal penalties for infringing a monopoly of operating games of chance, such as the monopoly of operating online casino games laid down by the national legislation at issue in the main proceedings, if such legislation is not compatible with European Union law.*

2. *Article 49 EC must be interpreted as applying to services of games of chance marketed over the internet in the territory of a host Member State by an operator established in another Member State despite the fact that the operator:*

   — *has set up certain computer support infrastructure, such as a server, in the host Member State and*

   — *makes use of computer support services of a provider established in the host Member State in order to provide his services to consumers who are likewise established in that Member State.*

3. *Article 49 EC must be interpreted as meaning that:*

(a) *a Member State seeking to ensure a particularly high level of consumer protection in the sector of games of chance may be entitled to consider that it is only by setting up a monopoly for a single entity subject to strict control by the public authorities that it can tackle crime linked to that sector and pursue the objective of preventing incitement to squander money on gambling and combating addiction to gambling with sufficient effectiveness;*

(b) *to be consistent with the objective of fighting crime and reducing opportunities for gambling, national legislation establishing a monopoly of games of chance which allows the holder of the monopoly to follow an expansionist policy must:*

— *be based on a finding that the crime and fraud linked to gaming and addiction to gambling are a problem in the Member State concerned which could be remedied by expanding authorised regulated activities, and*

— *allow only moderate advertising limited strictly to what is necessary for channelling consumers towards monitored gaming networks;*

(c) *the fact that a Member State has opted for a system of protection that differs from that adopted by another Member State cannot affect the assessment of the need for and proportionality of the relevant provisions, which must be assessed solely by reference to the objectives pursued by the competent authorities of the Member State concerned and the level of protection which they seek to ensure.*

([1]) OJ C 282, 21.11.2009.

Judgment of the Court (Grand Chamber) of 13 September 2011 (reference for a preliminary ruling from the Bundesarbeitsgericht (Germany)) — Reinhard Prigge, Michael Fromm, Volker Lambach v Deutsche Lufthansa AG

(Case C-447/09) ([1])

(Directive 2000/78/EC — Articles 2(5), 4(1) and 6(1) — Prohibition of discrimination on grounds of age — Airline pilots — Collective agreement — Clause automatically terminating employment contracts at age 60)

(2011/C 319/05)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicants: Reinhard Prigge, Michael Fromm, Volker Lambach

Defendant: Deutsche Lufthansa AG

Re:

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Articles 2(5), 4(1) and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination on grounds of age — Whether those rules are compatible with a collective agreement which provides, on grounds of air safety, that a pilot's contract of employment terminates automatically at the end of the month in which that pilot reaches the age of 60

Operative part of the judgment

Article 2(5) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the Member States may authorise, through rules to that effect, the social partners to adopt measures within the meaning of Article 2(5) in the areas referred to in that provision that fall within collective agreements on condition that those rules of authorisation are sufficiently precise so as to ensure that those measures fulfil the requirements set out in Article 2(5). A measure such as that at issue in the main proceedings, which fixes the age limit from which pilots may no longer carry out their professional activities at 60 whereas national and international legislation fixes that age at 65, is not a measure that is necessary for public security and protection of health, within the meaning of the said Article 2(5).

Article 4(1) of Directive 2000/78 must be interpreted as precluding a clause in a collective agreement, such as that at issue in the main proceedings, that fixes at 60 the age limit from which pilots are considered as no longer possessing the physical capabilities to carry out their professional activity while national and international legislation fix that age at 65.

The first paragraph of Article 6(1) of Directive 2000/78 must be interpreted to the effect that air traffic safety does not constitute a legitimate aim within the meaning of that provision.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Fourth Chamber) of 15 September 2011 (reference for a preliminary ruling from the Audiencia Provincial de Tarragona — Spain) — Criminal proceedings against Magatte Gueye and Valentín Salmerón Sánchez

(Joined Cases C-483/09 and C-1/10) [1]

(Police and judicial cooperation in criminal matters — Framework Decision 2001/220/JHA — Standing of victims in criminal proceedings — Domestic crimes — Obligation to impose as an ancillary penalty an injunction prohibiting the offender from approaching the victim of the offence — Choice of forms of penalty and level of penalty — Compatibility with Articles 2, 3 and 8 of the Framework Decision — Provision of national law excluding mediation in criminal cases — Compatibility with Article 10 of the Framework Decision)

(2011/C 319/06)

Language of the case: Spanish

Referring court

Audiencia Provincial de Tarragona

Parties in the main proceedings

Magatte Gueye (C-483/09)

intervener: **X**

Valentín Salmerón Sánchez (C-1/10)

intervener: **Y**

Re:

Reference for a preliminary ruling — Audiencia Provincial de Tarragona — Interpretation of Articles 2, 8 and 10 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (OJ 2001 L 82, p. 1) — Respect for and recognition of victims — Right to protection — Mediation in criminal proceedings — Agreement between victim and offender

Operative part of the judgment

The Court rules:

1. *Articles 2, 3 and 8 of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings must be interpreted as not precluding the mandatory imposition of an injunction to stay away for a minimum period, provided for as an ancillary penalty by the criminal law of a Member State, on persons who commit crimes of violence within the family, even when the victims of those crimes oppose the application of such a penalty.*

2. *Article 10(1) of Framework Decision 2001/220 must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.*

[1] OJ C 37, 13.2.2010.
OJ C 63, 13.3.2010.

Judgment of the Court (Sixth Chamber) of 15 September 2011 — Federal Republic of Germany v European Commission

(Case C-544/09 P) [1]

(Appeal — State aid — Introduction of digital terrestrial television in the Berlin-Brandenburg region — Article 87(3)(c) EC — Market failure — Proportionality — Technological neutrality — Incentive effect)

(2011/C 319/07)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: M. Lumma, J. Möller and B. Klein, acting as Agents)

Other party to the proceedings: European Commission (represented by: H. van Vliet and K. Gross, acting as Agents)

Re:

Appeal against the judgment of the Court of First Instance (Seventh Chamber) of 6 October 2009 in Case T-21/06 *Germany* v *Commission* by which the Court dismissed the action for annulment of Commission Decision 2006/513/EC of 9 November 2005 on the State Aid which the Federal Republic of Germany has implemented for the introduction of digital terrestrial television in Berlin-Brandenburg (OJ 2006 L 200, p. 14) — Infringement of Article 107(3)(c) TFEU

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Federal Republic of Germany to pay the costs.*

[1] OJ C 51, 27.2.2010.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Land Hessen v Franz Mücksch OHG

(Case C-53/10) [1]

(Environment — Directive 96/82/EC — Control of major-accident hazards involving dangerous substances — Prevention — Appropriate distances between areas of public use and establishments where large quantities of dangerous substances are present)

(2011/C 319/08)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Land Hessen

Defendant: Franz Mücksch OHG

Intervener: Merck KGaA

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 12(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13), as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny (OJ 2008 L 311, p. 1) — Prevention of major accidents — Extent of the obligation on Member States to ensure that their land-use policies take account of the need, in the long term, to maintain appropriate distances between areas of public use and establishments where large quantities of dangerous substances are present — Construction of a garden centre near such an establishment — Existence of several other businesses in the same area at risk

Operative part of the judgment

1. *Article 12(1) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, as amended by Directive 2003/105/EC of the European Parliament and of the Council of 16 December 2003, must be interpreted as meaning that the obligation of Member States to ensure that account is taken of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use also applies to a public authority, such as the city of Darmstadt (Germany), responsible for issuing planning permissions, even when it has no discretion in the exercise of that prerogative.*

2. *The obligation set out in Article 12(1) of Directive 96/82, as amended by Directive 2003/105, to take account of the need, in the long term, to maintain appropriate distances between establishments covered by that directive and buildings of public use does not require the competent national authorities to prohibit the siting of a building of public use in circumstances such as those of the case in the main proceedings. By contrast, that obligation precludes national legislation that provides that it is mandatory to issue an authorisation for the siting of such a building without the hazards connected with the siting of the building within the perimeter of those distances having been duly assessed at the planning stage or at that of the individual decision.*

(1) OJ C 113, 1.5.2010.

Judgment of the Court (Second Chamber) of 15 September 2011 (reference for a preliminary ruling from the rechtbank van eerste aanleg te Leuven (Belgium)) — Olivier Halley, Julie Halley, Marie Halley v Belgische Staat

(Case C-132/10) (1)

(Direct taxation — Free movement of capital — Article 63 TFEU — Inheritance tax on registered shares — Limitation period for the valuation of shares in non-resident companies longer than that applicable for resident companies — Restriction — Justification)

(2011/C 319/09)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Leuven

Parties to the main proceedings

Applicants: Olivier Halley, Julie Halley, Marie Halley

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Leuven — Interpretation of Articles 26 TFEU, 49 TFEU, 63 TFEU and 65 TFEU — National legislation providing, in respect of inheritance tax on registered shares, for a limitation period of two years where the centre of effective management of the company issuing the shares is in the Member State concerned, and for a limitation period of 10 years in other cases

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings which provides, as regards inheritance tax, for a limitation period of 10 years for the valuation of registered shares in a company whose centre of effective management is established in another Member State, while the same limitation period is two years when the company's centre of effective management is in the first Member State.

(1) OJ C 134, 22.5.2010.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria)) — 'DP grup' EOOD v Direktor na Agentsia 'Mitnitsi'

(Case C-138/10) [1]

(Customs union — Customs declaration — Acceptance by the customs authorities of that declaration — Invalidation of a customs declaration which has already been accepted — Consequences for penal measures)

(2011/C 319/10)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: 'DP grup' EOOD

Defendant: Direktor na Agentsia 'Mitnitsi'

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Articles 4(5), 8(1), first indent, 62, 63 and 68 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Acceptance by the customs authority of a customs declaration made in writing by the person liable to pay duty — Treatment of such acceptance as equivalent to an administrative decision open to judicial review — Acceptance of the declaration on a provisional basis pending definitive verification of the information provided therein by means of an expert report for the purpose of confirming the tariff code — Delimitation of the review conducted by the customs authority at the time of that verification

Operative part of the judgment

The provisions of European Union law in customs matters must be interpreted as meaning that a declarant cannot request a court to annul a customs declaration made by it when that declaration has been accepted by the customs authorities. By contrast, under the conditions laid down in Article 66 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006, that declarant may request those authorities to invalidate that declaration, even after they have released the goods. At the conclusion of their assessment, the customs authorities must, subject to the possibility of a court action, either reject the declarant's application by reasoned decision or proceed with the invalidation requested.

[1] OJ C 148, 5.6.2010.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Supreme Court of the United Kingdom) — Williams and Others v British Airways plc

(Case C-155/10) [1]

(Working conditions — Directive 2003/88/EC — Organisation of working time — Right to annual leave — Airline pilots)

(2011/C 319/11)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Williams and Others

Defendant: British Airways plc

Re:

Reference for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Article 7 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) and of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — Scope of the obligations laid down by the directives as to the nature and level of allowances for paid annual leave — Extent of the Member States' freedom to lay down the conditions therefor — Paid annual leave granted to airline pilots

Operative part of the judgment

Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time and Clause 3 of the Agreement annexed to Council Directive 2000/79/EC of 27 November 2000 concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation, concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA), must be interpreted as meaning that an airline pilot is entitled, during his annual leave, not only to the maintenance of his basic salary, but also, first, to all the components intrinsically linked to the performance of the tasks which he is required to carry out under his contract of employment and in respect of which a monetary amount, included in the calculation of his total remuneration, is provided and, second, to all the elements relating to his personal and professional status as an airline pilot.

It is for the national court to assess whether the various components comprising that worker's total remuneration meet those criteria.

[1] OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 15 September 2011 (references for a preliminary ruling from the Naczelny Sąd Administracyjny — Republic of Poland) — Jarosław Słaby v Minister Finansów

(Joined Cases C-180/10 and C-181/10) [1]

(Taxation — Value added tax — Directive 2006/112/EC — Meaning of taxable person — Sale of building land — Articles 9, 12 and 16 — No deduction of input VAT)

(2011/C 319/12)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Jarosław Słaby

Defendant: Minister Finansów

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) and Article 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Sale of several plots of building land — Whether the seller is a taxable person if the land forms part of the seller's agricultural activity and he ceases that activity following the reclassification of his land by the municipality as building land

Operative part of the judgment

The supply of land designated for development must be regarded as subject to value added tax under the national legislation of a Member State if that State has availed itself of the option provided for by Article 12(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2006/138/EC of 19 December 2006, irrespective of whether the transaction is carried out on a continuing basis or whether the person who effected the supply carries out an activity of a producer, a trader or a person supplying services, to the extent that that transaction does not constitute the mere exercise of the right of ownership by its holder.

A natural person who carried out an agricultural activity on land that was reclassified, following a change to urban management plans which occurred for reasons beyond his control, as land designated for development must not be regarded as a taxable person for value added tax for the purposes of Articles 9(1) and 12(1) of Directive 2006/112, as amended by Directive 2006/138, when he begins to sell that land if those sales fall within the scope of the management of the private property of that person.

If, on the other hand, that person takes active steps, for the purpose of concluding those sales, to market property by mobilising resources similar to those deployed by a producer, a trader or a person supplying services within the meaning of the second subparagraph of Article 9(1) of Directive 2006/112, as amended by Directive 2006/138, that person must be regarded as carrying out an 'economic activity' within the meaning of that article and must, therefore, be regarded as a taxable person for value added tax.

The fact that that person is a 'flat-rate farmer' within the meaning of Article 295(1)(3) of Directive 2006/112, as amended by Directive 2006/138, is irrelevant in this respect.

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[1] OJ C 179, 3.7.2010.

Judgment of the Court (First Chamber) of 15 September 2011 (reference for a preliminary ruling from the Tribunal Supremo (Spain)) — Unió de Pagesos de Catalunya v Administración del Estado

(Case C-197/10) [1]

(Common agricultural policy — Regulation (EC) No 1782/2003 — Single payment scheme — Entitlements to payments from the national reserve — Conditions for granting — Farmers commencing an agricultural activity — Hypothetical nature of the question referred — Inadmissibility)

(2011/C 319/13)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Unió de Pagesos de Catalunya

Defendant: Administración del Estado

Intervening party: Coordinadora de Organizaciones de Agricultores y Ganaderos — Iniciativa Rural del Estado Español

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 42(3) of Council Regulation No 1782/2003 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) and of Article 22 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development EAFRD (OJ 2005 L 277, p. 1) — Integrated administration and control system for certain support schemes — Single payment scheme — Fixing of the reference amount — Entitlement to the payment not granted in certain situations — Young farmers

Operative part of the judgment

The reference for a preliminary ruling made by the Tribunal Supremo (Spain) by decision of 18 March 2010 is inadmissible because the question referred is hypothetical.

([1]) OJ C 195, 17.7.2010.

Judgment of the Court (Fourth Chamber) of 15 September 2011 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg, Germany) — Cathy Schulz-Delzers, Pascal Schulz v Finanzamt Stuttgart III

(Case C-240/10) ([1])

(Free movement of persons — Non-discrimination and citizenship of the Union — Income tax — Taking into account expatriation allowances in calculating a tax rate applicable to other revenue applying a progressive tax scale — Taking into account allowances granted to civil servants of another Member State exercising their functions on national territory — Disregarding allowances granted to national civil servants exercising their functions outside national territory — Comparability)

(2011/C 319/14)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicants: Cathy Schulz-Delzers, Pascal Schulz

Defendant: Finanzamt Stuttgart III

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation of Articles 18, 21 and 45 TFEU — National income tax provisions exempting expatriation allowances granted to taxpayers employed by a legal person governed by public law and pertaining to a State-funded salary — Lack of such exemption with regard to allowances paid to taxpayers employed on national territory by a legal person governed by public law of another Member State and pertaining to a salary funded by that other State

Operative part of the judgment

Article 39 EC must be interpreted as not precluding a provision, such as Paragraph 3(64) of the Law on income tax (Einkommensteuergesetz), according to which allowances such as those at issue in the main proceedings, granted to a civil servant of a Member State working in another Member State in order to compensate for a loss of purchasing power at the place of secondment, are not taken into account in determining the tax rate applicable in the first Member State to the other income of the taxpayer or of his spouse, whereas equivalent allowances granted to a civil servant of that other Member State working on the territory of the first Member State are taken into account for the purposes of determining that tax rate.

([1]) OJ C 221, 14.8.2010.

Appeal brought on 3 March 2011 by Ignacio Ruipérez Aguirre and ATC Petition against the judgment of the General Court (Fourth Chamber) delivered on 20 January 2011 in Case T-487/10 Ignacio Ruipérez Aguirre and ATC Petition v European Commission

(Case C-111/11 P)

(2011/C 319/15)

Language of the case: Spanish

Parties

Appellants: Ignacio Ruipérez Aguirre and ATC Petition (represented by: M.J. Sánchez González, abogada)

Other party to the proceedings: European Commission

By order of 14 July 2011, the Court of Justice (Sixth Chamber) dismissed the appeal.

Reference for a preliminary ruling from the Landgericht Köln (Germany) lodged on 5 August 2011 — Germanwings GmbH v Amend

(Case C-413/11)

(2011/C 319/16)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Germanwings GmbH

Defendant: Amend

Question referred

Is it compatible with the principle of the separation of powers in the European Union if, in order to remedy what would otherwise be unequal treatment, Regulation No 261/2004 [1] is interpreted as meaning that a passenger who is affected by a mere delay of more than three hours is entitled to compensation under Article 7 of the Regulation, although the Regulation provides for this only in the case of denied boarding or cancellation of the booked flight but, in the event of delay, restricts the passenger's claims to assistance under Article 9 of the Regulation and, if the delay is for more than five hours, also assistance under Article 8(1)(a) of the Regulation?

[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, OJ 2004 L 46, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 10 August 2011 — Jutta Leth v Republic of Austria, Land Niederösterreich

(Case C-420/11)

(2011/C 319/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Jutta Leth

Defendants: Republic of Austria, Land Niederösterreich

Question referred

Is Article 3 of Council Directive 85/337/EEC of 27 June 1985, [1] in the version of Council Directive 97/11/EC of 3 March 1997, [2] and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 [3] ('EIA Directive') to be interpreted as meaning that

1. the term 'material assets' covers only their substance or also their value;

2. the environmental impact assessment serves also to protect an individual against pecuniary damage as a result of a decrease in the value of his property?

[1] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

[2] Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ 1997 L 73, p. 5.

[3] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission, OJ 2003 L 156, p. 17.

Action brought on 1 September 2011 — European Commission v Portuguese Republic

(Case C-450/11)

(2011/C 319/18)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: M. Afonso and L. Lozano Palacios, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by applying the special VAT scheme for travel agents to travel services sold to persons other than travellers, as provided for by Decree-Law No 221/85 of 3 July 1985, the Portuguese Republic has failed to fulfil its obligations under Articles 306 to 310 of the VAT Directive. [1]

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that, in so far as the Portuguese Republic applies the special scheme in question to the services supplied by travel agents to other travel agents or to other persons liable to VAT other than travellers, its application of that scheme is not consistent with the provisions of the European Union legislation in that field, since in accordance with the VAT Directive the special scheme must be applied only to services supplied to travellers.

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

GENERAL COURT

Judgment of the General Court of (Second Chamber) of 20 September 2011 — Arch Chemicals and Others v Commission

(Joined Cases T-75/04 and T-77/04 to T-79/04) [1]

(Actions for annulment — Health policy — Placing on the market of biocidal products — Regulation (EC) No 2032/2003 — Not individually concerned — Inadmissibility)

(2011/C 319/19)

Language of the case: English

Parties

Applicants: Arch Chemicals, Inc. (Norwalk, Connecticut, United States) and Arch Timber Protection Ltd (Castleford, West Yorkshire, United Kingdom) (Case T-75/04); Rhodia UK Ltd, formerly Rhodia Consumer Specialties Ltd (Watford, Hertfordshire, United Kingdom) (Case T-77/04); Sumitomo Chemical (UK) plc (London, United Kingdom) (Case T-78/04); Troy Chemical Co. BV (Vlaardingen, Netherlands) (Case T-79/04); (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission (represented: initially by X. Lewis and F. Simonetti, and subsequently by P. Oliver and G. Wilms, acting as Agents)

Intervener in support of the applicant: European Chemical Industry Council (CEFIC) (Brussels, Belgium) represented: initially by M. Bronckers, Y. van Gerven and P. Charro, and subsequently by Y. van Gerven, lawyers)

Interveners in support of the defendant: European Parliament (represented: initially by A. Neergaard and M. Moore, and subsequently by A. Neergaard and J. Rodrigues, acting as Agents); Council of the European Union (represented: initially by B. Hoff-Nielsen, M. Sims and F. Ruggeri Laderchi, and subsequently by M. Sims and F. Florindo Gijón, and finally by F. Florindo Gijón and R. Liudvinaviciute-Cordeiro, acting as Agents); Kingdom of the Netherlands (represented: initially by S. Terstal, and subsequently by H. Sevenster, acting as Agents)

Re:

Action for annulment of Article 3, Article 4(2), Article 5(3), the second subparagraph of Article 10(2), Article 11(3), Article 13, Article 14(2) of and Annex II to Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 (OJ 2003 L 307, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Arch Chemicals, Inc., Arch Timber Protection Ltd, Rhodia UK Ltd, Sumitomo Chemical (UK) plc and Troy Chemical Co. BV to bear their own costs and to pay those incurred by the European Commission including, in the case of Sumitomo Chemical (UK) plc, those relating to the application for interim relief;*

3. *Orders the European Parliament, the Council of the European Union, the Kingdom of the Netherlands and the European Chemical Industry Council (CEFIC) to bear their own costs.*

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[1] OJ C 106, 30.4.2004.

Judgment of the General Court of 20 September 2011 — Arch Chemicals and Others v Commission

(Joined Cases T-400/04, T-402/04 to T-404/04) [1]

(Health policy — Placing on the market of biocidal products — Identification of active substances on the market — Decision refusing amendment of certain provisions of the legislation — Actions for failure to act — Obligation to act — Actions for annulment — Not individually concerned — Inadmissibility)

(2011/C 319/20)

Language of the case: English

Parties

Applicants: Arch Chemicals, Inc. (Norwalk, Connecticut, United States); Arch Timber Protection Ltd (Castleford, West Yorkshire, United Kingdom) (Case T-400/04); Rhodia UK Ltd, formerly Rhodia Consumer Specialities Ltd (Watford, Hertfordshire, United Kingdom) (Case T-402/04); Sumitomo Chemical (UK) plc (London, United Kingdom) (Case T-403/04); Troy Chemical Co. BV (Vlaardingen, Netherlands) (Case T-404/04); (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission (represented by: X. Lewis and D. Recchia, and subsequently by P. Oliver and G. Wilms, acting as Agents)

Re:

Action, firstly, seeking a declaration of the Commission's failure to act in that it unlawfully refrained from amending certain provisions of Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ 2000 L 228, p. 6) and of Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8 and amending Regulation (EC) No 1896/2000 (OJ 2003 L 307, p. 1) and, in the alternative, action for annulment of the Commission's letter of 20 July 2004 refusing to grant the applicants' requests and, secondly, action for compensation for the loss which the applicants suffered as a result of the Commission's failure to act and, in the alternative, action for compensation for the loss caused by the Commission's letter of 20 July 2004.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Arch Chemicals, Inc., Arch Timber Protection Ltd, Rhodia UK Ltd, Sumitomo Chemical (UK) plc and Troy Chemical Co. BV to bear their own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 19, 22.1.2005.

Judgment of the General Court of 21 September 2011 — Berliner Institut für Vegleichende Sozialforschung v Commission

(Case T-34/08) ([1])

(Financial assistance paid in the context of the Daphné II program — Determination of the amount to be paid to the beneficiary — Erroneous assessment)

(2011/C 319/21)

Language of the case: German

Parties

Applicant: Berliner Institut für Vergleichende Sozialforschung eV (Berlin, Germany) (represented by: initially, B. Hening, then U. Claus and, finally, S. Reichmann and L.-J. Schmidt, lawyers)

Defendant: European Commission (represented by: initially, S. Grünheid and B. Simon, then S. Grünheid and F. Dintilhac, Agents)

Re:

Application for the annulment of the Commission's decision of 16 November 2007 concerning the Commission's partial non-recognition of the costs incurred by the applicant in the context of Daphné Grant Agreement JAI/DAP/2004-2/052/W.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 16 November 2007 concerning its partial non-recognition of the costs incurred by Berliner Institut für Vergleichende Sozialforschung eV in the context of Daphné Grant Agreement JAI/DAP/2004-2/052/W in so far as concerns the expenses relating to items A6, A39, A40, A41, A43 and E41;*

2. *Orders Berliner Institut für Vergleichende Sozialforschung to bear two thirds of its own costs and two thirds of the costs incurred by the European Commission. The Commission shall bear a third of its own costs and a third of the costs incurred by Berliner Institut für Vergleichende Sozialforschung.*

([1]) OJ C 79, 29.3.2008.

Judgment of the General Court of (Second Chamber) of 20 September 2011 — Arch Chemicals and Others v Commission

(Case T-120/08) ([1])

(Action for annulment — Health policy — Marketing of biocidal products — Regulation (EC) No 1451/2007 — Not individually concerned — Inadmissibility — Default procedure)

(2011/C 319/22)

Language of the case: English

Parties

Applicants: Arch Chemicals, Inc. (Norwalk, Connecticut, United States); Arch Timber Protection Ltd (Castleford, West Yorkshire, United Kingdom); Rhodia UK Ltd (Watford, Hertfordshire, United Kingdom); Sumitomo Chemical (UK) plc (London, United Kingdom); Troy Chemical Co. BV (Vlaardingen, Netherlands) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission (represented by: P. Oliver and E. Kružíková, acting as Agents)

Intervener in support of the applicants: European Chemical Industry Council (CEFIC), (Brussels, Belgium) (represented: initially by Y. van Gerven and V. Terrien, and subsequently by Y. van Gerven, lawyers)

Re:

Application for annulment of Article 3(2), Article 4, Article 7(3), the second subparagraph of Article 14(2), Article 15(3), Article 17 of and Annex II to Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ 2007, L 325, p. 3)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Declares that there is no need to adjudicate on the applications for leave to intervene made by the European Parliament and the Council of the European Union;*

3. *Orders Arch Chemicals, Inc., Arch Timber Protection Ltd, Rhodia UK Ltd, Sumitomo Chemical (UK) plc and Troy Chemical Co. BV to bear their own costs;*

4. *Orders the European Chemical Industry Council (CEFIC) to bear its own costs.*

([1]) OJ C 128, 24.5.2008.

Judgment of the General Court of 23 September 2011 — Vion v OHIM (PASSION FOR BETTER FOOD)

(Case T-251/08) [1]

(Community trade mark — Application for Community word mark PASSION FOR BETTER FOOD — Absolute ground for refusal — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) No 40/94 (now Article 7(1)(b) of Regulation (EC) No 207/2009))

(2011/C 319/23)

Language of the case: German

Parties

Applicant: Vion NV (Best, Netherlands) (represented by: A. Klinger, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: M. Kicia and subsequently by: R. Manea, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 April 2008 (Case R 562/2007-4) concerning the registration of the word sign PASSION FOR BETTER FOOD as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Vion NV to pay the costs.*

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[1] OJ C 223, 30.8.2008.

Judgment of the General Court of 20 September 2011 — Regione autonoma della Sardegna and others v Commission

(Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08) [1]

(State aids — Aid in favour of the hotel industry in the Region of Sardinia — Decision declaring the aid partly compatible and partly incompatible with the common market and ordering its recovery — New aid — Obligation to state reasons — Protection of legitimate expectations — Incentive effect — De minimis rule)

(2011/C 319/24)

Language of the case: Italian

Parties

Applicant: Regione autonoma della Sardegna (Italy) (represented by: A. Fantozzi, P. Carrozza and G. Mameli, lawyers) (Case T-394/08); SF Turistico Immobiliare Srl (Orosei, Italy) (represented by: L. Marcialis, lawyer) (T-408/08); Timsas Srl (Arezzo, Italy) (represented by: D. Dodaro, S. Pinna and S. Cianciullo, lawyers) (T-453/08); and Grand Hotel Abi D'Oru SpA (Olbia) (represented by: D. Dodaro, S. Cianciullo, and R. Masuri, lawyers) (T-454/08)

Defendant: European Commission (represented by: in Cases T-394/08 and T-454/08 E. Righini, D. Grespan and C. Urraca Caviedes; in Case T-408/08 E. Righini and D. Grespan; and in Case T-453/08 D. Grespan and C. Urraca Caviedes, agents)

Interveners in support of the applicant in Case T-394/08: Selene di Alessandra Cannas Sas (Cagliari, Italy); HGA Srl (Golfo Aranci, Italy); Gimar Srl (Sassari, Italy); Coghene Costruzioni Srl (Alghero, Italy); Camping Pini e Mare di Cogoni Franco & C. Sas (Quartu Sant'Elena, Italy); Immobiliare 92 Srl (Arzachena, Italy); Gardena Srl (Santa Teresa di Gallura, Italy); Hotel Stella 2000 Srl (Olbia, Italy); Vadis Srl (Valledoria, Italy); Macpep Srl (Sorso, Italy); San Marco SRl, (Alghero); Due Lune SpA (Milan, Italy); Nicos Residence Srl (Santa Teresa di Gallura); Rosa Murgese (Iglesias, Italy); Mavi Srl (Arzachena); Hotel Mistral di Bruno Madeddu & C. Sas (Alghero); L'Esagono di Mario Azara & C. Snc (San Teodoro, Italy); Le Buganville di Cogoni Giuseppe & C. Snc (Villasimius, Italy); and Le Dune di Stefanelli Vincenzo & C. Snc (Arbus, Italy) (represented by: G. Dore, F. Cuilli and A. Vinci, lawyers)

Re:

Application for annulment of Commission Decision 2008/854/EC of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998 (OJ 2008 L 302, p. 9), by which the Regione autonoma della Sardegna gave grants towards initial investment in the hotel industry in Sardinia.

Operative part of the judgment

The Court:

1. *Joins Cases T-394/08, T-408/08, T-453/08 and T-454/08 for the purposes of judgment;*

2. *Dismisses the actions;*

3. *Orders the applicants to pay the Commission's costs, excluding those incurred by it as a result of its intervention, and their own costs;*

4. *Orders the interveners in Case T-394/08 to bear the Commission's costs relating to the intervention and their own costs.*

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[1] OJ C 285, 8.11.2008.

Judgment of the General Court of 20 September 2011 — Evropaïki Dynamiki v EIB

(Case T-461/08) [1]

(Public service contracts — Tender procedure — Provision of services in the form of assistance in the maintenance, support and development of an information technology system — Rejection of a tenderer's bid — Contract awarded to another tenderer — Action for annulment — Admissibility — Jurisdiction — Obligation to state reasons — Right to an effective remedy — Transparency — Proportionality — Equal treatment and non-discrimination — Selection and award criteria — Action for damages — Admissibility — Loss of profit)

(2011/C 319/25)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Defendant: European Investment Bank (EIB) (represented by: C. Gómez de la Cruz and T. Pietilä, Agents, and J. Stuyck, lawyer)

Re:

Application, first, for annulment of the EIB's decision of 31 January 2008 not to accept the tender submitted by the applicant in connection with a call for tenders for the provision of services in the form of assistance in the maintenance, support and development of an information technology system and to award the contract to another tenderer, on the basis of Articles 225 EC and 230 EC, and, second, for damages, on the basis of Articles 225 EC, 235 EC and 288 EC.

Operative part of the judgment

The Court:

1. *Annuls the decision of the European Investment Bank (EIB) not to accept the tender submitted by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE in the context of call for tenders 2007/S 176-215155 for the provision of services in the form of 'assistance in the maintenance, support and development of the Loans Front Office system (Serapis)' and to award the contract to Sybase BVBA;*

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

3. *Orders the EIB to pay the costs.*

[1] OJ C 19, 24.1.2009.

Judgment of the General Court of 23 September 2011 — NEC Display Solutions Europe v OHIM — C More Entertainment (see more)

(Case T-501/08) [1]

(Community trade mark — Opposition proceedings — Application for a Community figurative mark 'see more' — Earlier national word marks CMORE — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2011/C 319/26)

Language of the case: English

Parties

Applicant: NEC Display Solutions Europe GmbH (Munich, Germany) (represented by: P. Munzinger, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: C More Entertainment AB (Stockholm, Sweden) (represented by: R. Almaraz Palmero, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 28 August 2008 (Case R 1388/2007-4) relating to opposition proceedings between C More Entertainment AB and NEC Display Solutions Europe GmbH

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders NEC Display Solutions Europe GmbH to pay the costs.*

[1] OJ C 19, 24.1.2009.

Judgment of the General Court of 20 September 2011 — Dornbracht v OHIM — Metaform Lucchese (META)

(Case T-1/09) [1]

(Community trade mark — Opposition procedure — Application for the Community word mark META — Earlier Community figurative mark METAFORM — Relative grounds for refusal — Similarity of the goods and the signs — Refusal of registration — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Likelihood of confusion)

(2011/C 319/27)

Language of the case: German

Parties

Applicant: Aloys F. Dornbracht GmbH & Co KG (Iserlohn, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt and M. Bergermann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Metaform Lucchese SpA (Pescaglia, Italy) (represented by: P. Pozzi and A. Perani, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 November 2008 (Case R 1152/2006-4) concerning opposition proceedings between Metaform Lucchese SpA and Aloys F. Dornbracht GmbH & Co KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Dornbracht GmbH & Co. KG to pay the costs of the present proceedings.*

([1]) OJ C 69, 21.3.2009.

Judgment of the General Court of 22 September 2011 — Evropaïki Dynamiki v Commission

(Case T-86/09) ([1])

(Public service contracts — Tendering procedure — Provision of computer and related services, including the maintenance and development of the information systems of the Commission Directorate-General for Maritime Affairs and Fisheries — Rejection of a tender — Obligation to state reasons — Equal treatment — Transparency — Award criteria — Conflict of interests — Manifest error of assessment — Non-contractual liability)

(2011/C 319/28)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, P. Katsimani and M. Dermitzakis, lawyers)

Defendant: European Commission (represented by: N. Bambara and E. Manhaeve, Agents, assisted by J. Stuyck, lawyer)

Re:

APPLICATION for annulment of the Commission's decision of 12 December 2008 rejecting the tender submitted by the applicant in response to Call for Tenders MARE/2008/01 for the provision of computer and related services, including the maintenance and development of the information systems of the Commission's Maritime Affairs and Fisheries Directorate-General (OJ 2008, S 115) and of the decision to award the contract to another tenderer, and an application for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 113, 16.5.2009.

Judgment of the General Court of 21 September 2011 — Rügen Fisch v OHIM — Schwaaner Fischwaren (SCOMBER MIX)

(Case T-201/09) ([1])

(Community trade mark — Invalidity proceedings — Community word mark SCOMBER MIX — Absolute grounds of refusal — Descriptive Character — Article 7(1)(b) and (c) of Regulation EC No 40/94 (now Article 7(1)(b) and (c) of Regulation (EC) No 207/2009))

(2011/C 319/29)

Language of the case: German

Parties

Applicant: Rügen Fisch AG (Sassnitz, Germany) (represented by: O. Spuhler and M. Geitz, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Schwaaner Fischwaren GmbH (Schwaan, Germany) (represented by: A. Jaeger-Lenz, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 (Case R 230/2007-4), relating to invalidity proceedings between Rügen Fisch AG and Schwaaner Fischwaren GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rügen Fisch AG to bear the costs.*

([1]) OJ C 180, 1.8.2009.

Judgment of the General Court of 22 September 2011 — Cesea Group v OHIM — Mangini & C. (Mangiami)

(Case T-250/09) [1]

(Community trade mark — Invalidity Proceedings — Community figurative mark Mangiami — Earlier international word mark MANGINI — Admissibility of new evidence — Article 76(2) of Regulation (EC) No 207/2009)

(2011/C 319/30)

Language of the case: Italian

Parties

Applicant: Cesea Group Srl (Rome, Italy) (represented by: D. De Simone, D. Demarinis and J. Wrede, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Mangini & C. Srl (Sestri Levante, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 April 2009 (Case R 982/2008-2) relating to invalidity proceedings between Mangini & C. Srl and Cesea Group Srl.

Operative part of the judgment

The Court

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 April 2009 (Case R 982/2008-2).*

2. *Orders OHIM to pay the costs.*

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[1] OJ C 193, 15.8.2009.

Judgment of the General Court (SecondChamber) of 20 September 2011 — Evropaïki Dynamiki v Commission

(Case T-298/09) [1]

(Public service contracts — Community tendering procedure — Supply of external services for educational programmes — Award of the contract to several tenderers — Tenderer's ranking — Action for annulment — Obligation to state the reasons on which the decision is based — Grounds for exclusion from the contract award procedure — Article 93(1)(f) of the Financial Regulation — Tender validity period — Non-contractual liability)

(2011/C 319/31)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Commission (represented by: N. Bambara and E. Manhaeve, Agents, assisted by P. Wytinck, lawyer)

Re:

APPLICATION, first, for annulment of two Commission decisions, communicated in two separate letters of 12 May 2009 ranking the applicant, for its tenders in response to the open call for tenders EAC/01/2008 for external service provision for educational programmes (ESP-ISEP) (OJ 2008/S 158-212752), for Lot No 1 (IS (information system) Development and Maintenance) and for Lot No 2 (IS (information system) Studies, Testing, Training and Support), as second contractor for each of those lots and, secondly, for damages

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to bear its own costs and to pay those incurred by the European Commission.*

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[1] OJ C 233, 26.9.2009.

Judgment of the General Court of 21 September 2011 — Adjemian and Others v Commission

(Case T-325/09 P) [1]

(Appeals — Civil service — Agents — Contract of employment for a fixed period — Refusal to conclude a new contract of employment or to renew a contract of employment for an indefinite period — Framework Agreement on fixed-term work — Directive 1999/70/EC — Article 88 of the CEOS — Commission decision concerning the maximum duration of the recourse to non-permanent staff in the Commission's services)

(2011/C 319/32)

Language of the case: French

Parties

Appellant: Vahan Adjemian (Angera, Italy) and the 175 agents and former agents of the European Commission whose names appear in annex to the judgment (represented by: S. Orlandi, A. Coolen, J-N. Louis and É. Marchal, lawyers)

Other parties to the proceedings: European Commission (represented by: J. Currall and D. Martin, Agents); and Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, Agents)

Re:

Appeal brought against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) delivered on 4 June 2009 in Joined Cases F-134/07 and F-8/08 *Adjemian and Others* v *Commission* (not yet published in the ECR), asking for that judgment to be set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 4 June 2009 in Joined Cases F-134/07 and F-8/08 Adjemian and Others v Commission in so far as it found that there was no need to adjudicate on the claims made by the applicants in Case F-134/07 whose names appear in annex against the decision rejecting their complaints;*

2. *Dismisses the appeal as to the remainder;*

3. *The action brought by the applicants in Case F-134/07 whose names appear in annex is dismissed to the extent that that action seeks the annulment of the decisions rejecting their complaints.*

4. *Orders Vahan Adjemian and the 175 agents and former agents of the European Commission whose names appear in annex to bear their own costs and to pay those incurred by the Commission and the Council of the European Union in these proceedings.*

([1]) OJ C 256, 24.10.2009.

Judgment of the General Court of 22 September 2011 — Italy v Commission

(Case T-500/09) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Aid for the processing of citrus fruit — Effectiveness of the checks — Proportionality)

(2011/C 319/33)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: L. Ventrella and G. Palmieri, lawyers)

Defendant: European Commission (represented by: P. Rossi, Agent)

Re:

Application for annulment of Commission Decision 2009/721/EC of 24 September 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2009 L 257, p. 28), in so far as it excludes certain expenditure incurred by the Italian Republic in the sector of citrus-fruit processing.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 37, 13.2.2010.

Judgment of the General Court of 22 September 2011 — Kingdom of Spain v European Commission

(Case T-67/10) ([1])

(EAGGF — Guidance Section — Reduction of financial assistance — Financial assistance awarded to an operational programme for the improvement of the processing and marketing of agricultural products — Effectiveness of checks — Proportionality)

(2011/C 319/34)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, abogado del Estado)

Defendant: European Commission (represented by: F. Jimeno Fernández and G. von Rintelen, Agents)

Re:

Application for annulment of Commission Decision C(2009) 9827 of 10 December 2009 applying financial corrections to the EAGGF assistance, Guidance Section, awarded to the operational programme CCI 2000.ES.16.1.PO.007 (Spain, Castilla y León) in relation to the measure improving processing and marketing of agricultural products.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 100, 17.4.2010.

Judgment of the General Court of 20 September 2011 — Meica v OHIM — TofuTown.com (TOFUKING)

(Case T-99/10) ([1])

(Community trade mark — Opposition procedure — Application for the Community trade mark TOFUKING — Earlier national word mark King — Earlier national and Community word marks Curry King — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 319/35)

Language of the case: German

Parties

Applicant: Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co KG (Edewecht, Germany) (represented by: S. Russlies, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: TofuTown.com GmbH (Wiesbaum, Germany) (represented by: B. Krause and F. Cordt, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 January 2010 (Case R 63/2009-4) concerning opposition proceedings between Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co KG and TofuTown.com GmbH.

Operative part of the judgment:

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 January 2010 (Case R 63/2009-4);*

2. *Orders OHIM to bear its own costs and those incurred by Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co KG;*

3. *Orders TofuTown.com GmbH to bear its own costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 22 September 2011 — ara v OHIM — Allrounder (A with two rectangular motifs)

(Case T-174/10) ([1])

(Community trade mark — Opposition procedure — International registration covering the European Community — Figurative mark A with two triangular motifs — Earlier national word mark A — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 319/36)

Language of the case: French

Parties

Applicant: ara AG (Langenfeld, Germany) (represented initially by M. Gial, then by M. Gial and H. Pernez, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Allrounder SARL (Sarrebourg, France) (represented by: N. Boespflug, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 January 2010 (Case R 481/2009-1) concerning opposition proceedings between ara AG and Allrounder SARL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ara AG to pay the costs.*

([1]) OJ C 179, 3.7.2010.

Judgment of the General Court of 20 September 2011 — Couture Tech v OHIM (Representation of the Soviet coat of arms)

(Case T-232/10) ([1])

(Community trade mark — Application for a Community figurative mark representing the Soviet coat of arms — Absolute ground for refusal — Whether contrary to public policy or accepted principles of morality — Article 7(1)(f) of Regulation (EC) No 207/2009)

(2011/C 319/37)

Language of the case: English

Parties

Applicant: Couture Tech Ltd (Tortola, British Virgin Islands) (represented by: B. Whyatt, Barrister)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 March 2010 (Case R 1509/2008-2) concerning an application for registration of a figurative sign representing the Soviet coat of arms as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Couture Tech Ltd to pay the costs.*

([1]) OJ C 195, 17.7.2010.

Judgment of the General Court of 21 September 2011 — Nike International v OHIM (DYNAMIC SUPPORT)

(Case T-512/10) ([1])

(Community trade mark — Application for Community word mark DYNAMIC SUPPORT — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2011/C 319/38)

Language of the case: English

Parties

Applicant: Nike International Ltd (Beaverton, Oregon, United States of America) (represented by: M. de Justo Bailey, lawyer)

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

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 25 August 2010 (case R 640/2010-4), concerning an application for registration of the word sign DYNAMIC SUPPORT as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Nike International Ltd to pay the costs.*

([1]) OJ C 346, 18.12.2010.

Judgment of the General Court of 16 September 2011 — Kadio Morokro v Council

(Case T-316/11) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Côte d'Ivoire — Freezing of funds — Obligation to state reasons)

(2011/C 319/39)

Language of the case: French

Parties

Applicant: Mathieu Kadio Morokro (Cocody, Ivory Coast) (represented by: S. Le Damany, lawyer)

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

Re:

Application for annulment, first, of Council Decision 2011/221/CFSP of 6 April 2011 amending Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 93, p. 20), and, second, Council Regulation (EU) No 330/2011 of 6 April 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 93, p. 10), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/221/CFSP of 6 April 2011 amending Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 93, p. 20), and, second, Council Regulation (EU) No 330/2011 of 6 April 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, in so far as they concern Mr Mathieu Kadio Morokro.*

2. *Maintains the effects of Decision 2011/221 as far as concerns Mr Kadio Morokro until the annulment of Regulation No 330/2011 takes effect.*

3. *Orders the Council of the European Union to pay, in addition to its own costs, the costs incurred by Mr Kadio Morokro.*

([1]) OJ C 226, 30.7.2011.

Order of the General Court of 1 September 2011 — Maftah v Commission

(Case T-101/09) ([1])

(Action for annulment — Period allowed for commencing proceedings — Out of time — No force majeure — No excusable error — Inadmissibility)

(2011/C 319/40)

Language of the case: English

Parties

Applicant: Elmabruk Maftah (South Harrow, Middlesex, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

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

Intervening party on behalf of the defendant: Council of the European Union, represented by R. Szostak, G. Étienne, M.-M. Josephides and E. Finnegan, Agents

Re:

APPLICATION for annulment of Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2008 L 345, p. 60), in so far as it concerns the applicant.

Operative part of the order

1. *The action is dismissed as being inadmissible;*

2. *Mr Elmabruk Maftah shall bear his own costs and pay the costs of the European Commission;*

3. *The Council of the European Union shall bear its own costs.*

([1]) OJ C 13, 15.1.2011.

Order of the General Court of 1 September 2011 — Elosta v Commission

(Case T-102/09) ([1])

(Action for annulment — Period allowed for commencing proceedings — Out of time — No force majeure — No excusable error — Inadmissibility)

(2011/C 319/41)

Language of the case: English

Parties

Applicant: Abdelrazag Elosta (Pinner, Middlesex, United Kingdom) (represented by: E. Grieves and A. McMurdie, lawyers)

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

Intervener in support of the defendant: Council of the European Union (represented by: R. Szostak, G. Étienne, M.-M. Josephides and E. Finnegan, Agents

Re:

Application for the annulment of Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2002 L 345, p. 60), in so far as it concerns the applicant.

Operative part of the order

1. *The action is dismissed as inadmissible.*
2. *Abdelrazag Elosta is ordered to pay his own costs and those incurred by the European Commission.*
3. *The Council of the European Union is ordered to pay its own costs.*

([1]) OJ C 13, 15.1.2011.

Order of the General Court of 6 September 2011 — Mugraby v Council and Commission

(Case T-292/09) ([1])

(Action for failure to act — Failure of the Council and the Commission to adopt measures against the Republic of Lebanon — Alleged violation of the applicant's fundamental rights and the Association Agreement between the Community and the Republic of Lebanon — Manifest inadmissibility — Actions for damages — Action manifestly devoid of any basis in law)

(2011/C 319/42)

Language of the case: English

Parties

Applicant: Muhamad Mugraby (Beirut, Lebanon) (represented by: J. Regouw and L. Spigt, lawyers)

Defendants: Council of the European Union (represented by: A. Vitro, B. Driessen and E. Finnegan, Agents) and European Commission (represented by: C. Tufvesson and S. Boelaert, Agents)

Re:

Action for failure to act seeking a declaration that the Council and the Commission unlawfully omitted to take a decision on the applicant's request concerning the adoption of measures against the Republic of Lebanon on account of the alleged violation by the latter of the applicant's fundamental rights and the Association Agreement concluded between European Community and its Member States of the one part, and the Republic of Lebanon of the other part, and an action for damages seeking compensation for the harm allegedly suffered by the applicant as a result those institutions' failure to act.

Operative part of the order

1. *The action is dismissed;*
2. *Mr Muhamad Mugraby is to pay the costs.*

([1]) OJ C 244, 10.10.2009.

Order of the General Court of 6 September 2011 — Inuit Tapiritt Kanatami and Others v Parliament and Council

(Case T-18/10) ([1])

(Actions for annulment — Regulation (EC) No 1007/2009 — Trade in seal products — Ban on import and sale — Exception in favour of Inuit communities — Application of the fourth paragraph of Article 263 TFEU — Meaning of 'regulatory act' — Absence of direct or individual concern — Inadmissibility)

(2011/C 319/43)

Language of the case: English

Parties

Applicants: Inuit Tapiritt Kanatami (Ottawa, Canada); Nattivak Hunters and Trappers Association (Qikiqtarjuaq, Canada); Pangnirtung Hunters' and Trappers' Association (Pangnirtung, Canada); Jaypootie Moesesie (Qikiqtarjuaq); Allen Kooneeliusie (Qikiqtarjuaq); Toomasie Newkingnak (Qikiqtarjuaq); David Kuptana (Ulukhaktok, Canada); Karliin Aariak (Iqaluit, Canada); Efstathios Andreas Agathos (Athens, Greece); Canadian Seal Marketing Group (Quebec, Canada); Ta Ma Su Seal Products, Inc. (Cap-aux-Meules, Canada); Fur Institute of Canada (Ottawa); NuTan Furs, Inc. (Catalina, Canada); GC Rieber Skinn AS (Bergen, Norway); Inuit Circumpolar Conference Greenland (ICC) (Nuuk, Greenland, Denmark); Johannes Egede (Nuuk); Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) (Nuuk); represented initially by J. Bouckaert, M. van der Woude and H. Viaene, and subsequently by J. Bouckaert and H. Viaene, lawyers)

Defendants: European Parliament (represented by: I. Anagnostopoulou and L. Visaggio, acting as Agents) and Council of the European Union (represented by: M. Moore and K. Michoel, acting as Agents)

Interveners in support of the defendants: Kingdom of the Netherlands (represented by C. Wissels, Y. de Vries, J. Langer and M. Noort, acting as Agents) and European Commission (represented initially by É. White, P. Oliver and J.-B. Laignelot, and subsequently by É. White, P. Oliver and K. Mifsud-Bonnici, acting as Agents)

Re:

APPLICATION for annulment of Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36)

Operative part of the order

1. *The action is dismissed as inadmissible.*
2. *Inuit Tapiriit Kanatami, Nattivak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Jaypootie Moesesie, Allen Kooneeliusie, Toomasie Newkingnak, David Kuptana, Karliin Aariak, Efstathios Andreas Agathos, the Canadian Seal Marketing Group, Ta Ma Su Seal Products, the Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Conference Greenland (ICC), Johannes Egede and Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) shall bear their own costs and pay those incurred by the European Parliament and the Council of the European Union.*
3. *The Kingdom of the Netherlands and the European Commission shall bear their own costs.*

([1]) OJ C 100, 17.4.2010.

Order of the General Court of 1 September 2011 — Communauté de communes de Lacq v Commission

(Case T-132/10) ([1])

(Non-contractual liability — Concentration — Commission decision declaring compatible the concentration operation for the acquisition of control of Acetex Corp by Celanese Corp. — No undertaking by Celanese to continue the operation of the factory in Pardies (France) — No breach of a rule of law by the Commission — Action manifestly lacking any foundation in law)

(2011/C 319/44)

Language of the case: French

Parties

Applicant: Communauté de communes de Lacq (Mourenx, France) (represented by: J. Daniel, lawyer)

Defendant: European Commission (represented by: P. Van Nuffel and N. von Lingen, Agents)

Re:

Claim for compensation for various kinds of harm allegedly suffered by the Communauté de communes de Lacq by reason of unlawfulness and deficiency of the Commission's behaviour following the concentration operation involving the acquisition of control of Acetex Corp. situated in Pardies (France) by Celanese Corp.

Operative part of the order

1. *The action is dismissed as partially devoid of any foundation in law and as partially manifestly inadmissible.*
2. *The Communauté de communes de Lacq is ordered to pay the costs.*

([1]) OJ C 148, 5.6.2010.

Order of the General Court of 31 August 2011 — IEM v Commission

(Case T-435/10) ([1])

(Action for annulment — Fourth framework programme for research, technological development and demonstration — Application for the reimbursement of sums paid in advance under a research financing contract — Arbitration clause — Letter notifying the issuing of a debit note — Reminder letter — Acts inseparable from the contract — Inadmissibility)

(2011/C 319/45)

Language of the case: Greek

Parties

Applicant: IEM — Erga — Erevnes — Meletes perivallontos kai chorotaxias AE (Athens, Greece) (represented by: N. Sofokleous, lawyer)

Defendant: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Re:

Action, first, for the annulment of the Commission's letter of 7 May 2010 notifying the applicant of the issuing of a debit note for the reimbursement of the sum of EUR 105 416,47, corresponding to the sums paid in advance to the applicant by Parthénon AE Oikodomikon — Technikon — Touristikon — Viomichanikon — Emporikon kai Exagogikon Ergasion pursuant to Contract FAIR-CT98-9544 concluded in the context of the fourth framework programme for research, technological development and demonstration and, second, for the annulment of the Commission's letter of 14 July 2010 reminding the applicant of the principal outstanding sum, claimed in debit note No 3241004968.

Operative part of the order

1. *The action is dismissed as inadmissible.*
2. *IEM — Erga — Erevnes — Meletes perivallontos kai chorotaxias AE is ordered to pay the costs.*

([1]) OJ C 346, 18.12.2010.

Order of the President of the General Court of 8 September 2011 — Fulmen v Council

(Case T-439/10 R)

(Interim measures — Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds and economic resources — Application for suspension of operation — Lack of urgency)

(2011/C 319/46)

Language of the case: French

Parties

Applicant: Fulmen (Tehran, Iran) (represented by: A. Kronshagen, lawyer)

Defendant: Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute-Cordeiro, Agents)

Party intervening in support of the defendant: European Commission (represented by: M. Konstantinidis, T. Scharf and E. Cujo, Agents)

Re:

Application for suspension of operation of the following contested measures in so far as they concern the applicant:

— Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39);

— Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25);

— Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81);

— 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).

Operative part of the order

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

2. *Costs are reserved.*

Order of the General Court of 6 September 2011 — ClientEarth v Council

(Case T-452/10) [1]

(Action for annulment — Representation by a lawyer who is not a third party — Manifest inadmissibility)

(2011/C 319/47)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: S. Hockman QC, and P. Kirch, lawyer)

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

Intervening parties on behalf of the applicant: Kingdom of Denmark (represented by C. Vang and S. Juul Jørgensen Agents); Republic of Finland (represented by H. Leppo and M. Pere, Agents); and Kingdom of Sweden (represented by K. Petkovska, A. Falk, S. Johannesson and C. Meyer-Seitz, Agents)

Re:

APPLICATION for annulment of the Council decision of 26 July 2010 refusing to grant the applicant full access to an opinion of the Council's Legal Service (Document No 6865/09) on the European Parliament's draft amendments to the Commission's proposal for a regulation amending Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Operative part of the order

1. *The action is dismissed as being manifestly inadmissible.*

2. *ClientEarth shall bear its own costs and also pay those incurred by the Council of the European Union.*

3. *The Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden shall bear their own respective costs.*

[1] OJ C 328, 4.12.2010.

Action brought on 11 August 2011 — Luna International v OHMI — Asteris (Al bustan)

(Case T-454/11)

(2011/C 319/48)

Language in which the application was lodged: English

Parties

Applicant: Luna International Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal: Asteris Industrial and Commercial Company SA (Athens, Greece)

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 20 May 2011 in case R 1358/2008-2;

— Order the defendant and the other party to the proceedings to bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'Al bustan', for goods in classes 29, 30, 31 and 32 — Community trade mark registration No 3540846

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request pursuant to Articles 51(1)(b) and 52(1)(a) of Council Regulation (EC) No 207/2009, and based its request on the earlier Greek trade mark registration No 137497 of the figurative mark 'AL BUSTAN', for goods in class 29

Decision of the Cancellation Division: Declared the Community trade mark invalid in respect of part of the contested goods

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1), 57(2) and 57(3) of Council Regulation No 207/2009, as the Board of Appeal wrongly concluded that the proprietor of the earlier national mark had furnished proof that during the five years preceding the date of the application for declaration of invalidity, the earlier mark had been put to genuine use in the Member State in which it was registered in connection with the goods for which it was registered or that there were proper reasons for non-use. Further the Board of Appeal made impermissible inferences from material of low (or no) evidentiary value.

Action brought on 29 August 2011 — Colgate-Palmolive v OHIM — dm drogerie markt (360º SONIC ENERGY)

(Case T-467/11)

(2011/C 319/49)

Language in which the application was lodged: English

Parties

Applicant: Colgate-Palmolive Company (New York, United States) (represented by: M. Zintler and G. Schindler, lawyers)

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

Other party to the proceedings before the Board of Appeal: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany)

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 25 May 2011 in case R 1094/2010-2; and

— Reject the opposition

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark '360° SONIC ENERGY', for 'toothbrushes' in class 21 — Community trade mark application No 6236533

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: International trade mark registration No 842882 of the word mark 'SONIC POWER', for goods in classes 3 and 21

Decision of the Opposition Division: Upheld the opposition and rejected the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal incorrectly found a likelihood of confusion between the marks at issue.

Action brought on 1 September 2011 — Total and Elf Aquitaine v Commission

(Case T-470/11)

(2011/C 319/50)

Language of the case: French

Parties

Applicants: Total SA (Courbevoie, France) and Elf Aquitaine SA (Courbevoie) (represented by: A. Noël-Baron and É. Morgan de Rivery, lawyers)

Defendant: European Commission

Form of order sought

— Principally, declare invalid the Commission's letters BUDG/DGA/C4/BM/s746396 of 24 June 2011 and BUDG/DGA/C4/BM/s812886 of 8 July 2011 in their entirety;

— In the alternative, reduce the amount of the sum claimed from the applicants in the Commission's letter BUDG/DGA/C4/BM/s812886 of 8 July 2011 or at the very least annul the late-payment interest in the amount of EUR 31 312 114,58 imposed on Elf Aquitaine, for which Total is jointly liable up to the amount of EUR 19 191 296,03;

— In any event, order the Commission to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging that the Commission erred in law and breached its obligations by failing, in their regard, to draw the consequences from the judgment of the General Court in Case T-217/06 *Arkema France and Others* v *Commission* [2011] ECR II-0000, by which the fine imposed on the appellants' subsidiaries in Case COMP/F/38.645 — Methacrylates was reduced. Inter alia, the appellants submit that:

— they should, as parent companies held responsible as such for the cartel, also benefit from the reduction in the fine imposed on their subsidiaries, despite the fact that their own action brought against that decision was dismissed by the judgment of the General Court in Case T-206/06 *Total and Elf Aquitaine* v *Commission*;

— by the payment made by Arkema SA of the full amount of the fine imposed on the appellants and their subsidiaries by the decision in Case COMP/F/38.645, the Commission received what was due to it and consequently can no longer claim anything from the appellants.

Action brought on 6 September 2011 — Oster Weinkellerei v OHIM — Viñedos Emiliana (Igama)

(Case T-474/11)

(2011/C 319/51)

Language in which the application was lodged: German

Parties

Applicant: Andreas Oster Weinkellerei KG (Cochem, Germany) (represented by: N. Schindler, lawyer)

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

Other party to the proceedings before the Board of Appeal: Viñedos Emiliana, SA (Santiago, Chile)

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 22 June 2011 in Case R 637/2010-2;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to bear its own costs and pay the applicant's costs;

— In the alternative, stay the proceedings until delivery of a legally binding decision in the invalidity proceedings pending before OHIM concerning filing reference 000005716 C.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'Igama' for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Viñedos Emiliana, SA.

Mark or sign cited in opposition: Word mark 'GAMMA' for goods in Class 33.

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, since there is no likelihood of confusion between the marks at issue.

Appeal brought on 8 September 2011 by European Commission against the judgment of the Civil Service Tribunal of 28 June 2011 in Case F-55/10, AS v Commission

(Case T-476/11 P)

(2011/C 319/52)

Language of the case: French

Parties

Appellant: European Commission (represented by J. Currall and B. Eggers, Agents)

Other party to the proceedings: AS (Brussels, Belgium)

Form of order sought by the appellant

— Annulment of the judgment of the Civil Service Tribunal of 28 June 2011 in Case F-55/10 *AS* v *Commission*;

— Order for costs in accordance with the law.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four plea(s) in law.

1. First plea in law, alleging an error of law in that the applicant was held to have an interest in the annulment of the decision rejecting her candidature. The Commission submits:

   — First branch: breach of Union law by failure to have regard to the judgment of 9 December 2010 in Case T-526/08 P *Commission* v *Strack* in so far as the CST acknowledged the right of the person concerned to seek the annulment of the decision rejecting her application for the post at issue despite the fact that she did not ask for annulment of the appointment decision, whereas those two decisions are inseparable;

   — Second branch: error in the legal characterisation of the facts in so far as an interest in bringing proceedings was acknowledged in the abstract, without all the evidence having been specifically examined;

   — Third branch: wrongful refusal to take account of certain information taken from the medical file which demonstrates that the applicant had no interest in bringing proceedings in this case.

2. Second plea in law, alleging, first, breach of Union law when interpreting and applying the rule of correspondence between the complaint and the action in referring to the judgment of the CST of 1 July 2010 in Case F-45/07 *Mandt* v *Parliament* and in taking the view that the new plea alleging breach of the Staff Regulations of Officials of the European Union was admissible despite the fact that it was not raised in the complaint and that it was 'substantively' different from the single plea alleging breach of the notice of vacancy put forward in the complaint and, second, breach of Article 91(2) of those Regulations in taking the view that the 'cause of action' is correctly defined as 'challenge by the applicant to the substantive legality of the contested measure or, in the alternative, to its formal legality', which would strip the pre-litigation procedure of all meaning and would no longer serve the purpose of that procedure which is to facilitate an amicable settlement between the person concerned and the appointing authority.

3. Third plea in law, alleging breach of Article 7(1) of the Staff Regulations of Officials and an error in the statement of reasons in so far as the CST interpreted Article 7(1) of those Regulations as granting an absolute right to every official to have access to all posts in his grade. The CST thereby misconstrued the scope of Article 7(1) of the Staff Regulations and of Article 10 of Annex XIII to the Staff Regulations and the explanations given by the Commission regarding the interest of the service.

4. Fourth plea alleging breach of Union law in that the sum of EUR 3 000 was granted by way of compensation for non-material damage whereas the plea alleging breach of Article 7 of the Staff Regulations was not only inadmissible but also unfounded.

Action brought on 6 September 2011 — Spain v Commission

(Case T-481/11)

(2011/C 319/53)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González)

Defendant: European Commission

Form of order sought

— annul the fifth indent of Point D of Part 2(VI) of Annex I to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors and,

— order the Commission 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 breach of the principle of hierarchy of norms

   — The applicant submits that the contested regulation is contrary to the provisions of Article 113(2)(a) of the Council Regulation of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([1]).

2. Second plea in law, alleging a misuse of powers

   — It is alleged in this regard that the Commission, by adopting the contested measure, acted with the main purpose of achieving an end other than that stated, since it departed from the applicable standard adopted by the United Nations Economic Commission for Europe (UN/ECE).

3. Third plea in law, alleging infringement of the duty to state reasons

   — It is alleged in this regard that the contested measure has unclear reasoning, which justifies a decision contrary to that finally adopted.

4. Fourth plea in law, alleging breach of the principle of equal treatment

   — It is alleged in this regard that the contested measure makes the marketing of citrus fruit subject to conditions that are more stringent than for other fruit and vegetables, without justification.

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

   — It is alleged in this regard that the contested measure imposes a more stringent labelling condition on the basis of flawed reasoning that cannot justify the decision finally adopted.

([1]) OJ L 299, 16.11.2007, p. 1/49; last amended by Commission Regulation (EU) No 513/2010 of 15 June 2010 (OJ L 150, 16.6.2010, p. 40) and Regulation (EU) No 1234/2010 of the European Parliament and of the Council of 15 December 2010 (OJ L 346, 30.12.2010, p. 11).

Action brought on 5 September 2011 — Agrucon and Others v Commission

(Case T-482/11)

(2011/C 319/54)

Language of the case: English

Parties

Applicants: Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon) (Madrid, Spain), Associazione Italiana Industrie Prodotti Alimentari (AIIPA) (Milan, Italy), Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav) (Napoli, Italy), Campil-Agro-Industrial do Campo do Tejo, Ld[a] (Cartaxo, Portugal), Evropaïka Trofima AE (Larissa, Greece), FIT — Fomento da Indústria do Tomate, SA (Águas de Moura, Portugal), Konservopoïia Oporokipeftikon Filippos AE (Veria, Greece), Panellinia Enosi Konsepvopoion (Athens, Greece), Elliniki Etairia Konservon AE ('KYKNOS') (Nafplio, Greece), Anonymos Viomichaniki Etaireia Konservon D. Nomikos (Marousi, Greece), Italagro — Indústria de Transformação de Produtos Alimentares, SA (Castanheira do Ribatejo, Portugal), Kopais Anonymi Viomichaniki Kai Emporiki Etairia Trofimon & Poton (Kopais ABEE) (Maroussi, Greece), Serraïki Konservopoïia Oporokipeftikon Serko AE (Serres, Greece), Sociedade de Industrialização de Produtos Agrícolas — Sopragol, SA (Mora, Portugal), Sugalidal — Indústrias de Alimentação, SA (Benavente, Portugal), Sutol — Indústrias Alimentares, Ld[a] (Alcácer do Sal, Portugal), Zanae Zýmai Artopoiías Níkoglou AE Viomichanía Empório Trofímon (Thessaloniki, Greece) (represented by: J. da Cruz Vilaça, S. Estima Martins and S. Carvalho de Sousa, lawyers)

Defendant: European Commission

Form of order sought

— Annul the provisions of Article 50(3) and Article 60(7) of Commission Regulation No 543/2011 ([1]);

— Order that the present case and case T-454/10 be joined, for the purposes of the oral procedure and of the final judgment, or, at least, for the purposes of the oral procedure; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Commission Regulation No 543/2011 breaches Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), as:

   — It wrongly states that investments and actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support; and

   — It wrongly included the so-called non-'genuine processing activities' (which apparently cover preparation and post-genuine processing) in the value of marketed production of products intended for processing, as the Single CMO Regulation establishes that the provisions on producer organisations, namely the granting of aid, shall apply only to products covered by the common market organisation for fruit and vegetables.

2. Second plea in law, alleging that by granting to producer organisations aid that covers industrial operations performed over fruit and vegetables intended for processing, also carried out by private industries, Commission Regulation No 543/2011 breaches the principle of non-discrimination which prohibits treating comparable situations differently, unless such treatment is objectively justified.

3. Third plea in law, alleging that by granting to producer organisations aid that covers industrial operations performed over fruit and vegetables intended for processing, also carried out by private industries, Commission Regulation No 543/2011 breaches the principle of proportionality in so far as it exceeds what would be necessary to achieve a hypothetical objective of the Common Agricultural Policy related to the vertical integration of producer organisations.

([1]) Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1)

Action brought on 8 September 2011 — Skyhawke Technologies v OHIM — British Sky Broadcasting et Sky IP (SKYCADDIE)

(Case T-484/11)

(2011/C 319/55)

Language in which the application was lodged: English

Parties

Applicant: Skyhawke Technologies, LLC (USA) (represented by: K. Gilbert and M. Blair, Solicitors)

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

Other parties to the proceedings before the Board of Appeal: British Sky Broadcasting Group plc (Isleworth, United Kingdom) and Sky IP International Ltd (Isleworth, United Kingdom)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2011 in case R 501/2010-4; and

— Order the defendant and the other parties to the procedure to bear their own costs and pay the costs of the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SKYCADDIE', for goods and services in classes 9, 25, 28 and 41 — Community trade mark application No 4264685

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

Mark or sign cited in opposition: Community trade mark registration No 3203411 of the word mark 'SKY', for goods and services in classes 9, 16, 18, 25, 28, 35, 38, 41 and 42; United Kingdom trade mark registration No 2302176B of the word mark 'SKY', for goods and services in classes 9, 28, 36, 41, 42, 43 and 45; Community trade mark registration No 3166337 of the figurative mark in black and white 'SKY', for goods and services in classes 9, 16, 18, 25, 28, 35, 38, 41 and 42; United Kingdom trade mark registration No 2044507A of the word mark 'SKY', for goods in classes 18, 25 and 28; United Kingdom trade mark registration No 2197682 of the figurative mark in black and white 'SKY', for goods and services in classes 9, 16, 18, 25, 28, 35, 38, 41 and 42; United Kingdom well-known mark 'SKY', for goods and services in classes 9, 16, 28, 38 and 41; United Kingdom non-registered mark 'SKY', for goods and services in classes 9, 16, 28, 38 and 41;

Decision of the Opposition Division: Upheld the opposition and rejected the Community trade mark application in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to appreciate that there were sufficient visual, aural and conceptual differences between the marks particularly with respect to its analysis of the conceptual meanings of the marks; and (ii) to properly take into consideration the level of attention of the average consumer of the category of goods concerned.

Order of the General Court of 6 September 2011 — BP Aromatics v Commission

(Case T-429/07) ([1])

(2011/C 319/56)

Language of the case: English

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

([1]) OJ C 37, 9.2.2008.

Order of the General Court of 3 August 2011 — Uspaskich v Parliament

(Case T-507/10) ([1])

(2011/C 319/57)

Language of the case: Lithuanian

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

([1]) OJ C 13, 15.1.2011, Corrigendum OJ C 72, 5.3.2011.

Order of the General Court of 6 September 2011 — BFA v Council

(Case T-120/11) ([1])

(2011/C 319/58)

Language of the case: French

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

([1]) OJ C 130, 30.4.2011.

Order of the General Court of 2 September 2011 — Versus Bank v Council

(Case T-121/11) ([1])

(2011/C 319/59)

Language of the case: French

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

([1]) OJ C 130, 30.4.2011.

Order of the General Court of 6 September 2011 — Yao N'Dré v Council

(Case T-122/11) ([1])

(2011/C 319/60)

Language of the case: French

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

([1]) OJ C 130, 30.4.2011.

Order of the General Court of 6 September 2011 — Seka Yapo and Others v Council

(Case T-192/11) ([1])

(2011/C 319/61)

Language of the case: French

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

([1]) OJ C 152, 21.5.2011.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 13 July 2011 — ZZ v European Commission

(Case F-67/11)

(2011/C 319/62)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision rejecting the applicant's request relating to the defendant's compliance with the judgment of the Civil Service Tribunal of 9 June 2010 in Case F-56/09 and to the compensation for the harm which the applicant claims to have suffered.

Form of order sought

— Annul the decision rejecting the request of 28 February 2011;

— Annul, *quatenus opus est*, the note of 24 June 2011;

— Declare that the European Commission has unlawfully failed to adopt the measures necessary for compliance with paragraph 2 of the operative part of the judgment of the Civil Service Tribunal of the European Union of 9 June 2010 in Case F-56/09, with particular reference to the destruction of the photographs referred to in that paragraph and the provision to the applicant of information relating to the destruction;

— Order the European Commission to pay to the applicant the sum of EUR 2 831 by way of compensation for the damage caused to the applicant to date as a result of the failure to adopt all the measures necessary for compliance with the judgment of 9 June 2010, together with interest on that sum at the rate of 10 % per annum, with annual capitalisation, from tomorrow until the date on which the sum of EUR 2 831 is received by the applicant;

— Order the European Commission to pay to the applicant the sum of EUR 12 per day for each additional day of failure on the part of the Commission to adopt all the measures necessary for compliance with the judgment of 9 June 2010, from tomorrow until the 180th day following 4 March 2011, together with interest on the sum of EUR 12 per day at the rate of 10 % per annum, with annual capitalisation, from the 181st day following 4 March 2011 until the date on which the sum of EUR 12 per day is received by the applicant;

— Order the European Commission to pay to the applicant the sum of EUR 15 per day for each additional day of failure on the part of the Commission to adopt all the measures necessary for compliance with the judgment of 9 June 2010, from the 181st day following 4 March 2011 until the 270th day following 4 March 2011, together with interest on the sum of EUR 15 per day at the rate of 10 % per annum, with annual capitalisation, from the 271st day following 4 March 2011 until the date on which the sum of EUR 15 per day is received by the applicant;

— Order the European Commission to pay to the applicant the sum of EUR 18 per day for each additional day of failure on the part of the Commission to adopt all the measures necessary for compliance with the judgment of 9 June 2010, from the 271st day until the 360th day following 4 March 2011, together with interest on the sum of EUR 18 per day at the rate of 10 % per annum, with annual capitalisation, from the 361st day following 4 March 2011 until the date on which the sum of EUR 18 per day is received by the applicant;

— Order the European Commission to pay to the applicant the sum of EUR 25 per day for each additional day of failure on the part of the Commission to adopt all the measures necessary for compliance with the judgment of 9 June 2010, from the 361st day following 4 March 2011 ad infinitum, to be paid periodically to the applicant at the end of every 360-day period from the 361st day following 4 March 2011;

— Order the European Commission to pay the costs.

Action brought on 1 August 2011 — ZZ v European Commission

(Case F-76/11)

(2011/C 319/63)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: R. Guarino, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision rejecting the applicant's request to be granted the expatriation allowance.

Form of order sought

— Annul the decision of 29 April 2011;

— Declare, accordingly, that the applicant is entitled to the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations;

— Order the Commission to pay that allowance with effect from 16 August 2010, the date of the applicant's entry into service, together with compensatory interest, in respect of each monthly salary, until actual payment.

— Order the Commission to pay the costs.

Action brought on 1st August 2011 — ZZ v European Central Bank

(Case F-78/11)

(2011/C 319/64)

Language of the case: English

Parties

Applicant: ZZ (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

The subject matter and description of the proceedings

The annulment of the decision terminating the Appellant's contract due to a disciplinary proceeding concluded with the issuing of a written reprimand.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the ECB Executive Board's decision of 20 May 2011, received on 23 May 2011, terminating the Appellant's contract with effect on 31 October 2011;

— compensate the Appellant's material prejudice as from 31 October 2011;

— compensate the Appellant's moral prejudice evaluated at 10 000 euros;

— order the Defendant to pay the costs.

Action brought on 3 August 2011 — ZZ v European Centre for Disease Prevention and Control

(Case F-80/11)

(2011/C 319/65)

Language of the case: French

Parties

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

Defendant: European Centre for Disease Prevention and Control

Subject-matter and description of the proceedings

Application for annulment of the decision to terminate the applicant's contract on disciplinary grounds and for payment of a sum by way of compensation for the material and non-material damage claimed to have been suffered.

Form of order sought

— Annul the decision of the authority authorised to conclude the contracts of 11 October 2010 to terminate the applicant's contract early, with two months' notice, expiring on 11 December 2010;

— Order the defendant to pay the costs and to pay the sum of EUR 300 000 by way of compensation for the material and non-material damage suffered by the applicant.

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