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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 331/01)

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

OJ C 319, 29.10.2011

Past publications

OJ C 311, 22.10.2011

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

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 22 September 2011 — Kingdom of Belgium v Deutsche Post AG, DHL International, European Commission

(Case C-148/09 P) [1]

(Appeal — Action for annulment — State aid — Article 88(3) EC — Regulation (EC) No 659/1999 — Commission decision not to raise objections — Concept of 'doubts' — Services of general economic interest)

(2011/C 331/02)

Language of the case: German

Parties

Appellant: Kingdom of Belgium (represented by: C. Pochet and T. Materne, Agents, and J. Meyers, advocaat)

Other parties to the proceedings: Deutsche Post AG (represented by: T. Lübbig and J. Sedemund, Rechtsanwälte), DHL International (represented by: T. Lübbig and J. Sedemund, Rechtsanwälte), European Commission (B. Martenczuk and D. Grespan, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 10 February 2009 in Case T-388/03 *Deutsche Post and DHL International* v *Commission*, by which the Court annulled Commission Decision C(2003) 2508 final of 23 July 2003 not to raise objections, following the preliminary examination procedure provided for in Article 88(3) EC, to several measures adopted by the Belgian authorities in favour of La Poste SA — Compensation of net costs of services of general economic interest — Certain circumstances wrongly classified as evidence of serious difficulties necessitating the initiation of the formal investigation procedure — Inadmissible pleas taken into consideration — Breach of the principle of legal certainty

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Kingdom of Belgium and the European Commission to pay the costs.*

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[1] OJ C 167, 18.7.2009.

Judgment of the Court (First Chamber) of 22 September 2011 (reference for a preliminary ruling from the High Court of Justice (England and Wales) (Chancery Division)) — Interflora Inc, Interflora British Unit v Marks & Spencer plc, Flowers Direct Online Ltd

(Case C-323/09) [1]

(Trade marks — Keyword advertising on the internet — Selection by the advertiser of a keyword corresponding to a competitor's trade mark with a reputation — Directive 89/104/EEC — Article 5(1)(a) and (2) — Regulation (EC) No 40/94 — Article 9(1)(a) and (c) — Condition that one of the trade mark's functions be adversely affected — Detriment to the distinctive character of a trade mark with a reputation ('dilution') — Unfair advantage taken of the distinctive character or repute of that trade mark ('free-riding'))

(2011/C 331/03)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Interflora Inc, Interflora British Unit

Defendants: Marks & Spencer plc, Flowers Direct Online Ltd

Re:

Reference for a preliminary ruling — Interpretation of Article 5(1)(a) and (2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), Article

9(1)(a) and (c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and Articles 12(1), 13(1) and 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1) — Meaning of 'use' of a mark — Registration by a trader with a service provider which operates an Internet search engine of a sign identical to a trade mark in order to have displayed automatically on the screen, following the entry of that sign as a search term, the URL of that trader's website offering goods and services identical to those covered by the trade mark ('AdWords') — Flower delivery service

Operative part of the judgment

1. *Article 5(1)(a) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks and Article 9(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that the proprietor of a trade mark is entitled to prevent a competitor from advertising — on the basis of a keyword which is identical with the trade mark and which has been selected in an internet referencing service by the competitor without the proprietor's consent — goods or services identical with those for which that mark is registered, where that use is liable to have an adverse effect on one of the functions of the trade mark. Such use:*

   — *adversely affects the trade mark's function of indicating origin where the advertising displayed on the basis of that keyword does not enable reasonably well-informed and reasonably observant internet users, or enables them only with difficulty, to ascertain whether the goods or services concerned by the advertisement originate from the proprietor of the trade mark or an undertaking economically linked to that proprietor or, on the contrary, originate from a third party;*

   — *does not adversely affect, in the context of an internet referencing service having the characteristics of the service at issue in the main proceedings, the trade mark's advertising function; and*

   — *adversely affects the trade mark's investment function if it substantially interferes with the proprietor's use of its trade mark to acquire or preserve a reputation capable of attracting consumers and retaining their loyalty.*

2. *Article 5(2) of Directive 89/104 and Article 9(1)(c) of Regulation No 40/94 must be interpreted as meaning that the proprietor of a trade mark with a reputation is entitled to prevent a competitor from advertising on the basis of a keyword corresponding to that trade mark, which the competitor has, without the proprietor's consent, selected in an internet referencing service, where the competitor thereby takes unfair advantage of the distinctive character or repute of the trade mark (free-riding) or where the advertising is detrimental to that distinctive character (dilution) or to that repute (tarnishment).*

   Advertising on the basis of such a keyword is detrimental to the distinctive character of a trade mark with a reputation (dilution) if, for example, it contributes to turning that trade mark into a generic term.

   By contrast, the proprietor of a trade mark with a reputation is not entitled to prevent, inter alia, advertisements displayed by competitors on the basis of keywords corresponding to that trade mark, which put forward — without offering a mere imitation of the goods or services of the proprietor of that trade mark, without causing dilution or tarnishment and without, moreover, adversely affecting the functions of the trade mark with a reputation — an alternative to the goods or services of the proprietor of that mark.

([1]) OJ C 282, 21.11.2009.

Judgment of the Court (First Chamber) of 22 September 2011 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Budějovický Budvar, národní podnik v Anheuser-Busch Inc.

(Case C-482/09) ([1])

(Trade marks — Directive 89/104/EEC — Article 9(1) — Concept of acquiescence — Limitation in consequence of acquiescence — Starting point for limitation period — Prerequisites for the limitation period to run — Article 4(1)(a) — Registration of two identical marks designating identical goods — Functions of the trade mark — Honest concurrent use)

(2011/C 331/04)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Budějovický Budvar, národní podnik

Defendant: Anheuser-Busch Inc.

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Articles 4(1)(a) and 9(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Limitation in consequence of acquiescence — Concept of acquiescence — Concept of Community law? — Possibility of proceedings under relevant national law, including rules relating to honest concurrent use of two identical marks

Operative part of the judgment

1. *Acquiescence, within the meaning of Article 9(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, is a concept of European Union law and the proprietor of an earlier trade mark cannot be held to have acquiesced in the long and well-established honest use, of which he has long been aware, by a third party of a later trade mark which is identical with that of the proprietor if that proprietor was not in any position to oppose that use.*

2. *Registration of the earlier trade mark in the Member State concerned does not constitute a prerequisite for the running of the period of limitation in consequence of acquiescence prescribed in Article 9(1) of Directive 89/104. The prerequisites for the running of that period of limitation, which it is for the national court to determine, are, first, registration of the later trade mark in the Member State concerned, second, the application for registration of that mark being made in good faith, third, use of the later trade mark by its proprietor in the Member State where it has been registered and, fourth, knowledge by the proprietor of the earlier trade mark that the later trade mark has been registered and used after its registration.*

3. *Article 4(1)(a) of Directive 89/104 must be interpreted as meaning that the proprietor of an earlier trade mark cannot obtain the cancellation of an identical later trade mark designating identical goods where there has been a long period of honest concurrent use of those two trade marks where, in circumstances such as those in the main proceedings, that use neither has nor is liable to have an adverse effect on the essential function of the trade mark which is to guarantee to consumers the origin of the goods or services.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Fourth Chamber) of 22 September 2011 — European Commission v Kingdom of Spain

(Case C-90/10) ([1])

(Failure of a Member State to fulfil obligations — 'Habitats' directive — Conservation of natural habitats — Wild fauna and flora — Articles 4(4) and 6(1) and (2) — Establishment of priorities for special areas of conservation and of adequate protection thereof — Failure to ensure adequate legal protection of the special areas of conservation in the Canary Islands)

(2011/C 331/05)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, Agent)

Intervener in support of the defendant: Republic of Finland (represented by M. Pere, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 4(4) and Article 6(1) and (2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Sites of Community importance — Conservation measures — Macaronesian biogeographical region

Operative part of the judgment

The Court:

1. *Declares that*

   — *by failing to establish, in accordance with Article 4(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, conservation priorities in relation to the special areas of conservation corresponding to the sites of Community importance for the Macaronesian biogeographical region identified by the Commission Decision of 28 December 2001 adopting the list of sites of Community importance for the Macaronesian biogeographical region, pursuant to Council Directive 92/43/EEC (OJ 2002 L 5, p. 16), and*

   — *by failing to adopt and apply, in accordance with Article 6(1) and (2) of Directive 92/43/EEC, the appropriate conservation measures and a protection system to prevent the deterioration of habitats and significant disruption to species, ensuring the legal protection of the special areas of conservation corresponding to the sites referred to in Decision 2002/11/EC situated in Spanish territory,*

   the Kingdom of Spain has failed to fulfil its obligations under Article 4(4) and Article 6(1) and (2) of Directive 92/43/EEC;

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

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

([1]) OJ C 113, 1.5.2010.

Judgment of the Court (Third Chamber) of 22 September 2011 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Mesopotamia Broadcast A/S METV (C-244/10), Roj TV A/S (C-245/10) v Bundesrepublik Deutschland

(Joined Cases C-244/10 and C-245/10) ([1])

(Directive 89/552/EEC — Television broadcasting activities — Possibility for a Member State to prohibit on its territory the activities of a television broadcaster established in another Member State — Ground based on infringement of the principles of international understanding)

(2011/C 331/06)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicants: Mesopotamia Broadcast A/S METV (C-244/10), Roj TV A/S (C-245/10)

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Article 2a and 22a of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of 30 June 1997 (OJ 1997 L 202, p. 60) — Prohibition of an activity, opposed by the authorities of a Member State, of a television broadcaster established in another Member State for infringement of the principles of international understanding — Exclusion from the power of the recipient Member State of the ability to prevent, in its territory, television broadcasts from other Member States for reasons which fall within the fields coordinated by Directive 89/552/EEC — Admissibility of the infringement of the principles of international understanding as a ground for prohibition falling within the fields coordinated by that directive

Operative part of the judgment

Article 22a of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997, must be interpreted as meaning that facts such as those at issue in the disputes in the main proceedings, covered by a rule of national law prohibiting infringement of the principles of international understanding, must be regarded as being included in the concept of 'incitement to hatred on grounds of race, sex, religion or nationality'. That article does not preclude a Member State from adopting measures against a broadcaster established in another Member State, pursuant to a general law such as the Law governing the public law of associations (Gesetz zur Regelung des öffentlichen Vereinsrechts), of 5 August 1964, as amended by Paragraph 6 of the Law of 21 December 2007, on the ground that the activities and objectives of that broadcaster run counter to the prohibition of the infringement of the principles of international understanding, provided that those measures do not prevent retransmission per se on the territory of the receiving Member State of television broadcasts made by that broadcaster from another Member State, this being a matter to be determined by the national court.

(1) OJ C 234, 28.8.2010.

Judgment of the Court (Fourth Chamber) of 22 September 2011 (reference for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Republic of Lithuania) — Genovaitė Valčiukienė, Julija Pekelienė, Lietuvos žaliųjų judėjimas, Petras Girinskis, Laurynas Arimantas Lašas v Pakruojo rajono savivaldybė, Šiaulių visuomenės sveikatos centras, Šiaulių regiono aplinkos apsaugos departamentas

(Case C-295/10) (1)

(Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Plans which determine the use of small areas at local level — Article 3(3) — Documents relating to land planning at local level relating to only one subject of economic activity — Assessment under Directive 2001/42/EC precluded in national law — Member States' discretion — Article 3(5) — Link with Directive 85/337/EEC — Article 11(1) and (2) of Directive 2001/42/EC)

(2011/C 331/07)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicants: Genovaitė Valčiukienė, Julija Pekelienė, Lietuvos žaliųjų judėjimas, Petras Girinskis, Laurynas Arimantas Lašas

Defendants: Pakruojo rajono savivaldybė, Šiaulių visuomenės sveikatos centras, Šiaulių regiono aplinkos apsaugos departamentas

Intervener: Sofita UAB, Oltas UAB, Šiaulių apskrities viršininko administracija, Rimvydas Gasparavičius, Rimantas Pašakinskas

Re:

Reference for a preliminary ruling — Lietuvos vyriausiasis administracinis teismas — Interpretation of Articles 3 and 11 of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) and of 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) — Whether or not it is necessary to carry out an assessment under Directive 2001/42/EC after an assessment has been carried out under Directive 85/337/EEC — National legislation which provides that it is not necessary to carry out a strategic environmental impact assessment of documents relating to land planning at local level if those documents relate to only one subject of economic activity

Operative part of the judgment

1. *Article 3(5) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in conjunction with Article 3(3) thereof, must be interpreted as precluding national legislation, such as that in question in the main proceedings, which provides, in fairly general terms and without assessment of each case, that assessment under that directive is not to be carried out where mention is made, in the land planning documents applied to small areas of land at local level, of only one subject of economic activity.*

2. *Article 11(1) and (2) of Directive 2001/42 must be interpreted as meaning that an environmental assessment carried out under Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, does not dispense with the obligation to carry out such an assessment under Directive 2001/42. However, it is for the referring court to assess whether an assessment which has been carried out pursuant to Directive 85/337, as amended, may be considered to be the result of a coordinated or joint procedure and whether it already complies with all the requirements of Directive 2001/42. If that were to be the case, there would then no longer be an obligation to carry out a new assessment pursuant to Directive 2001/42.*

3. *Article 11(2) of Directive 2001/42 must be interpreted as not placing Member States under an obligation to provide, in national law, for joint or coordinated procedures in accordance with the requirements of Directive 2001/42 and Directive 85/337, as amended.*

([1]) OJ C 221, 14.8.2010.

Judgment of the Court (Second Chamber) of 22 September 2011 — Bell & Ross BV v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Klockgrossisten i Norden AB

(Case C-426/10 P) ([1])

(Appeal — Signed original application lodged out of time — Regularisable defect)

(2011/C 331/08)

Language of the case: French

Parties

Appellant: Bell & Ross BV (represented by: S. Guerlain, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent), Klockgrossisten i Norden AB

Re:

Appeal against the order of the General Court (Sixth Chamber) delivered on 18 June 2010 in Case T-51/10 *Bell & Ross* v *OHIM — Klockgrossisten i Norden*, whereby the General Court dismissed the action brought against the decision of the Third Board of Appeal of OHIM of 27 October 2009 (Case R 1267/2008-3) in invalidity proceedings between Klockgrossisten i Norden AB and Bell & Ross BV — Signed original application lodged out of time — Concepts of 'excusable error' and 'unforeseeable circumstances' — Principles of legitimate expectations and proportionality — Manifest inadmissibility

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bell & Ross BV to pay the costs.*

([1]) OJ C 346, 18.12.2010.

Reference for a preliminary ruling from the Budapest Municipal Court lodged on 27 July 2011 — Jőrös Erika v Aegon Magyarország Hitel Zrt.

(Case C-397/11)

(2011/C 331/09)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Jőrös Erika

Defendant: Aegon Magyarország Hitel Zrt.

Questions referred

1. Are the procedures of the national court consistent with Article 7(1) of Directive 93/13/EEC ([1]) if, having found that one of the contract's general terms relevant to the claim is unfair, the court examines its invalidity without the parties making a specific application in that regard?

2. Must the national court also proceed in accordance with question 1 in a case brought by a consumer where the determination of the invalidity of a general contract term on the ground of unfairness would ordinarily fall under the jurisdiction not of the local court but of a higher court, if the injured party were to bring a claim on that basis?

3. In the event that question 2 is answered in the affirmative, may the national court also examine the unfairness of a general contract term in proceedings at second instance if the proceedings at first instance did not examine this and new facts and evidence cannot generally be taken into consideration in appeal proceedings under national law?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Reference for a preliminary ruling from the Juzgado Mercantil de Barcelona (Spain) lodged on 8 August 2011 — Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

(Case C-415/11)

(2011/C 331/10)

Language of the case: Spanish

Referring court

Juzgado Mercantil de Barcelona

Parties to the main proceedings

Applicant: Mohamed Aziz

Defendant: Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)

Questions referred

1. Whether the system of levying execution, in reliance on judicial documents, on mortgaged or pledged property provided for in Article 695 et seq of the Ley de Enjuiciamiento Civil (Code of Civil Procedure), with its limitations regarding the grounds of objection available under Spanish procedural law, may be nothing more than a clear limitation of consumer protection since it involves, both formally and substantively, a clear impediment to the consumer's exercise of rights of action or judicial remedies of such a kind as to guarantee the effective protection of his rights.

2. This reference to the Court of Justice of the European Union is made so that the concept of disproportion can be expanded upon with regard to:

   (a) the use of acceleration clauses in contracts planned to last for a considerable time — in this case 33 years — for events of default occurring within a very limited specific period;

   (b) the setting of default interest rates — in this case exceeding 18 % — which are not consistent with the criteria for determining default interest in other consumer contracts (consumer credit), which, in other types of consumer contracts, might be regarded as unfair, and which, nevertheless, in contracts relating to immovable property, are not subject to any clear legal limit, even where they are applied not only to the instalments that have already fallen due but also to the totality of those that have become due as a result of acceleration;

   (c) the unilateral establishment by the lender of mechanisms for the calculation and determination of variable interest — both ordinary and default interest — which are linked to the possibility of mortgage enforcement and do not allow a debtor who is subject to enforcement to object to the quantification of the debt in the enforcement proceedings themselves but require him to resort to declaratory proceedings in which a final decision will not be given before enforcement has been completed or, at least, the debtor will have lost the property mortgaged or charged by way of guarantee — a matter of great importance when the loan is sought for the purchase of a dwelling and enforcement gives rise to eviction from the property.

Reference for a preliminary ruling from the Oberlandesgericht Innsbruck (Austria), lodged on 10 August 2011 — TEXDATA Software GmbH

(Case C-418/11)

(2011/C 331/11)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Party to the main proceedings

Appellant: TEXDATA Software GmbH

Question referred

Does European Union law, as it stands at present, and in particular:

1. the freedom of establishment laid down in Articles 49 TFEU and 54 TFEU;

2. the general legal principle (Article 6(3) TEU) of effective legal protection (principle of effectiveness);

3. the principle of the right to a fair hearing laid down in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union (Article 6(1) TEU) and in Article 6(2) of the ECHR (Article 6(1) TEU);

4. the principle of *non bis in idem* laid down in Article 50 of the Charter of Fundamental Rights of the European Union; or

5. the conditions governing penalties in the disclosure procedure laid down in Article 6 of Directive 68/151/EEC, (1) Article 60a of Directive 78/660/EEC (2) and Article 38(6) of Directive 83/349/EEC; (3)

preclude a national rule which, in the case where the statutory nine-month period for compiling and disclosing annual accounts to the relevant court maintaining the commercial register is exceeded,

— without a prior opportunity to state views on the existence of an obligation to disclose and on any potential obstacles to doing so, in particular without prior examination as to whether those annual accounts have in fact already been submitted to the court which maintains the register in the judicial district of which the principal place of business is situated; and

— without a prior individual request to the company or the bodies authorised to represent it to comply with the disclosure obligation,

requires that the court maintaining the commercial register impose immediately a minimum fine of EUR 700 on the company and on each of the bodies authorised to represent it, in the absence of the provision of proof to the contrary and pursuant to the fiction that the company and its bodies were culpable in failing to effect disclosure; and which requires, in the event of further failure for periods of two months, the further and immediate imposition in each case of further minimum fines of EUR 700 on the company and on each of the bodies authorised to represent it, again in the absence of the provision of proof to the contrary and pursuant to the fiction that the company and its bodies were culpable in failing to effect disclosure?

(1) First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English special edition 1968(I), p. 41).

(2) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11; amended version at OJ 2006 L 224, p. 1).

(3) Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ 1983 L 193, p. 1).

Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 16 August 2011 — Katja Ettwein v Finanzamt Konstanz

(Case C-425/11)

(2011/C 331/12)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Katja Ettwein

Defendant: Finanzamt Konstanz

Question referred

Are the provisions of the Agreement of 21 June 1999 (1) between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (BGBl. II 2001, 810 et seq.), which was passed as a Law by the Bundestag on 2 September (BGBl. II 2001, 810) and entered into force on 1 June ('the Agreement on free movement'), in particular Articles 1, 2, 11, 16 and 21 thereof and Articles 9, 13 and 15 of Annex I thereto, to be interpreted as precluding a rule under which spouses who live in Switzerland and are subject to taxation in the Federal Republic of Germany on their entire taxable income cannot be granted joint assessment, regard being had to the 'splitting' regime?

(1) Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Final Act — Joint Declarations — Information relating to the entry into force of the seven Agreements with the Swiss Confederation in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products, OJ 2002 L 114, p. 6.

Appeal brought on 18 August 2011 by Gosselin Group NV, formerly Gosselin World Wide Moving NV, against the judgment delivered by the General Court (Eighth Chamber) on 16 June 2011 in Joined Cases T-208/08 and T-209/08 Gosselin Group NV and Stichting Administratiekantoor Portielje v European Commission

(Case C-429/11 P)

(2011/C 331/13)

Language of the case: Dutch

Parties

Appellant: Gosselin Group NV, formerly Gosselin World Wide Moving NV, (represented by: F. Wijckmans and H. Burez, advocaten)

Other parties to the proceedings: European Commission and Stichting Administratiekantoor Portielje

Form of order sought

— Principally, (i) set aside the judgment under appeal (1) in so far as the General Court finds that the unlawful practices by their nature restrict competition and that there is no need to prove anti-competitive effects; and (ii) annul the Decision (2) (as amended and in so far as it relates to the appellant) since it contains no proof of the consequences in terms of competition law of the practices for which the appellant is held liable;

— in the alternative, (i) set aside the judgment under appeal in so far as the General Court finds that the Commission was entitled, exceptionally, to rely on the second alternative condition in paragraph 53 of the Guidelines on the effect on trade between States ([3]) without specifically determining the market within the meaning of paragraph 55 of those guidelines; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) since the Commission did not demonstrate to the requisite legal standard that the practices appreciably affect trade between States;

— in the further alternative, (i) set aside the judgment under appeal in so far as the General Court finds that the Commission was not obliged, either in the context of its assessment of the gravity of the infringement or in the context of mitigating circumstances, to take into account the fact that the appellant had not participated in the written price agreements or in the meetings; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) on the same grounds;

— in the further alternative, (i) set aside the judgment under appeal in so far as it applies a rate of 17 % of relevant sales without taking into account all 30 relevant circumstances, relying inter alia on a minimum threshold of 15 %; and (ii) annul the Decision (as amended and in so far as it relates to the appellant) on the same grounds;

— in the further alternative, (i) set aside the judgment under appeal in so far as it finds that the appellant's participation between 31 January 1992 and 30 October 1993 is not time-barred; (ii) annul the Decision (as amended and in so far as it relates to the appellant) in so far as the fine imposed the appellant is calculated on the basis of the appellant's participation between 31 January 1992 and 30 October 1993; and (iii) reduce the fine accordingly;

— order the European Commission to pay the costs in accordance with Article 69(2) of the Rules of Procedure.

Pleas in law and main arguments

In support of its appeal, Gosselin Group NV submits that the General Court infringed European Union law, erring in law in its characterisation of the facts which it established (cover quotes and commissions) as price agreements and market-sharing practices, and that, at the very least, the judgment under appeal is vitiated by a lack of reasoning in that regard.

In the alternative, Gosselin Group NV submits that the General Court:

— in its assessment of the appreciable effects of the practices at issue on trade between Member States, infringed the rule that the Commission must follow its own guidelines;

— in its assessment of the mitigating circumstances in the context of the calculation of the fine, infringed the principle of the personal nature of liability and also the rule that the Commission must follow its own guidelines;

— in the calculation of the basic amount of the fine, infringed the obligation to state reasons, the principle of the personal nature of liability and also the rule that the Commission must follow its own guidelines. Under the first limb, it is submitted that the General Court erred in its view that the Commission was entitled to rely on paragraph 23 of the Guidelines on setting fines. ([4]) Under the second limb it is submitted that the General Court erred in law in finding that there is a minimum rate of 15 % of the value of sales that is, by definition, the minimum starting point for a fine for serious restrictions of competition. Under the third limb, it is submitted that the General Court erred in law in finding that 17 % is equal or almost equal to 15 % and in concluding from that that all the relevant circumstances did not have to be taken into account;

— infringed Article 25 of Regulation No 1/2003 ([5]) by ruling that the participation of Gosselin Group NV in the practices at issue in the period from 31 November 1992 to 30 October 1993 is not time-barred.

([1]) Judgment of the General Court (Eighth Chamber) of 16 June 2011 in Joined Cases T-208/08 and T-209/08 *Gosselin Group NV and Stichting Administratiekantoor Portielje* v *European Commission* ('the judgment under appeal').

([2]) Commission Decision C(2008) 926 final of 11 March 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services) ('the Decision').

([3]) Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (OJ 2004 C 101, p. 81).

([4]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2).

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

Reference for a preliminary ruling from the Tribunalul Alba (Romania) lodged on 22 August 2011 — Corpul Național al Polițiștilor, acting on behalf of its members serving with the Alba Inspectorate of Police v Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR), Inspectoratul de Poliție al Județului Alba (IPJ)

(Case C-434/11)

(2011/C 331/14)

Language of the case: Romanian

Referring court

Tribunalul Alba

Parties to the main proceedings

Applicant: Corpul Național al Polițiștilor, acting on behalf of its members serving with the Alba Inspectorate of Police

Defendants: Ministerul Administrației și Internelor (MAI), Inspectoratul General al Poliției Române (IGPR), Inspectoratul de Poliție al Județului Alba (IPJ)

Question referred

Must the provisions of Articles 17(1), 20 and 21(1) of the Charter of Fundamental Rights of the European Union be interpreted as precluding reductions in remuneration such as those imposed by the Romanian State under Law No 118/2010 and Law No 285/2010?

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 26 August 2011 — Sandra Schüsslbauer, Martin Schüsslbauer, Maximilian Schüsslbauer v Iberia Lineas Aéreas de España SA

(Case C-436/11)

(2011/C 331/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Sandra Schüsslbauer, Martin Schüsslbauer, Maximilian Schüsslbauer

Defendant: Iberia Lineas Aéreas de España SA

Question referred

Does a passenger have a right to compensation under Article 7 of Regulation No 261/2004 ([1]) in the case where departure was delayed for a period of time less than the limits specified in Article 6(1) of that regulation, but arrival at the final destination was at least three hours later than the scheduled arrival time?

([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 Bundesgerichtshof (Germany) lodged on 26 August 2011 — Ekkerhard Schauß v Transportes Aéreos Portugueses SA

(Case C-437/11)

(2011/C 331/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ekkerhard Schauß

Defendant: Transportes Aéreos Portugueses SA

Question referred

Does a passenger have a right to compensation under Article 7 of Regulation (EC) No 261/2004 ([1]) in the case where departure was delayed for a period of time less than the limits specified in Article 6(1) of that regulation, but arrival at the final destination was at least three hours later than the scheduled arrival time?

([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).

Appeal brought on 26 August 2011 by the European Commission against the judgment delivered by the General Court (Eighth Chamber) on 16 June 2011 in Joined Cases T-208/08 and T-209/08 Gosselin Group NV and Stichting Administratiekantoor Portielje v European Commission

(Case C-440/11 P)

(2011/C 331/17)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: A. Bouquet, S. Noë and F. Ronkes Agerbeek, Agents)

Other parties to the proceedings: Gosselin Group NV, formerly Gosselin World Wide Moving NV, and Stichting Administratiekantoor Portielje

Form of order sought

— Set aside the judgment under appeal in so far as it annuls Decision C(2008) 926, as amended by Decision C(2009) 5810, in relation to Stichting Administratiekantoor Portielje;

— dismiss the action brought by Portielje;

— order Portielje to pay the costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

I. ***First plea in law: persons covered by Article 101 TFEU***

The General Court erred in law in its interpretation of 'undertaking' and the rules concerning the burden of proof regarding responsibility for participation in an infringement of Article 81 EC (now Article 101 TFEU). The General Court concentrated on the wrong issue in paragraphs 36 to 50 of the judgment under appeal, namely whether Portielje was an undertaking. What the General Court should have considered was whether the Commission had been right in proceeding in its decision on the assumption that Portielje was part of the undertaking that had committed the infringement. The principles laid down in Case C-97/08 P *Akzo Nobel and Others*, [1] including the presumption arising in the case of a 100 % shareholding, are fully applicable in that respect.

II. ***Second plea in law: rebuttal of the presumption of decisive influence***

A. ***First part***

The General Court made a manifest error of assessment of the evidence in determining that the personal links between Portielje and Gosselin involved only half of Portielje's management, at least in so far as the General Court intended thereby to suggest that the managers in question could not have had any decisive influence on Portielje's policy. After all, together, the persons concerned had sufficient votes on the management board to be able to determine Portielje's policy.

B. ***Second part***

In any event the General Court erred in law in determining that, notwithstanding the personal links, Portielje had rebutted the presumption developed in the case-law with regard to a 100 % shareholding since it had not taken any formal management decisions during the relevant period. The General Court's assessment is incompatible with the functional nature of the concept of an undertaking and with the principles laid down in *Akzo Nobel and Others*.

C. ***Third part***

The General Court also erred in law in finding that Portielje had rebutted the presumption arising in the case of a 100 % shareholding since there had been no general meeting of Gosselin during the relevant period. The General Court's assessment in this regard also is incompatible with the functional nature of the concept of an undertaking and with the principles laid down in *Akzo Nobel and Others*.

[1] C-97/08 P *Akzo Nobel and Others* [2009] ECR I-8237.

Appeal brought on 26 August 2011 by the European Commission against the judgment delivered by the General Court (Eighth Chamber) on 16 June 2011 in Case T-210/08 Verhuizingen Coppens NV v European Commission

(Case C-441/11 P)

(2011/C 331/18)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: A. Bouquet, S. Noë and F. Ronkes Agerbeek, Agents)

Other party to the proceedings: Verhuizingen Coppens NV

Form of order sought

— Set aside the judgment of the General Court of the European Union of 16 June 2011 in Case T-210/08 *Verhuizingen Coppens* v *Commission*;

— dismiss the application for annulment or annul only Article 1(i) of Decision C(2008) 926 final relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services) in so far as it holds Verhuizingen Coppens NV liable for the agreement on commissions;

— set the level of the fine at such amount as the Court of Justice considers appropriate;

— order Verhuizingen Coppens NV to pay the costs of the appeal and such proportion of the costs of the proceedings before the General Court as the Court of Justice considers appropriate.

Pleas in law and main arguments

The Commission takes the view that the General Court infringed the law, in particular Articles 263 TFEU and 264 TFEU and the principle of proportionality, by annulling in its entirety the Commission's decision holding Coppens liable for a single continuous infringement consisting, during the relevant period, of an agreement on commissions and an agreement on cover quotes, on the grounds that it had not been proved that Coppens was or must have been aware of the agreements on commissions. Moreover, in the interests of the proper administration of justice and the effective enforcement of the European Union's competition rules the General Court could have annulled the decision at issue only in so far as Coppens was held liable for the agreement on commissions, since annulment of the whole decision means that Coppens' participation in the agreement on cover quotes remains unpunished, unless the Commission adopts a further decision relating to that part of the original infringement. That could, however, lead to an undesirable duplication of administrative and judicial proceedings and might even contravene the principle *ne bis in idem*.

Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāta Adminsitratīvo (Republic of Latvia) lodged on 1 September 2011 — Gunārs Pusts v Lauku atbalsta dienests

(Case C-454/11)

(2011/C 331/19)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Gunārs Pusts

Defendant: Lauku atbalsta dienests

Questions referred

1. Are the European Union rules governing repayment of aid to be understood to mean that payment of the aid may be considered undue in cases where, although the beneficiary of the aid continued to fulfil the undertakings, he did not comply with the established payment application procedure?

2. Is a rule under which the undertakings made by the aid beneficiary are suspended, without giving the beneficiary of the aid the opportunity to be heard and where that suspension is deduced solely from the fact that an application has not been submitted, compatible with European Union law governing repayment of aid?

3. Is a rule under which, where it is no longer possible to carry out a control *in situ* (because a year has elapsed) and where it is therefore deduced that the undertakings made by the beneficiary have been suspended, that beneficiary must repay the entire amount of the aid funds already paid during the commitment period, even if those funds have been granted and paid for several years, compatible with European Union law governing repayment of aid?

Reference for a preliminary ruling from the Landgericht Bremen (Germany) lodged on 2 September 2011 — Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts, Nürnberger Allgemeine Versicherungs-AG, Krones AG v Samskip GmbH

(Case C-456/11)

(2011/C 331/20)

Language of the case: German

Referring court

Landgericht Bremen

Parties to the main proceedings

Applicant: Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts, Nürnberger Allgemeine Versicherungs-AG, Krones AG

Defendant: Samskip GmbH

Questions referred

1. Are Articles 32 and 33 of Brussels I ([1]) to be interpreted as meaning that the term 'judgment' also covers in principle those judgments which are restricted to the finding that the procedural requirements for admissibility are not satisfied (so-called 'procedural judgments')?

2. Are Articles 32 and 33 of Brussels I to be interpreted as meaning that the term 'judgment' also covers a final judgment by which a court is found to have no international jurisdiction by virtue of an agreement conferring jurisdiction?

3. In the light of the case-law of the Court of Justice on the principle of further effects (Case C-145/86 *Hoffmann* v *Krieg* [1988] ECR 645), are Articles 32 and 33 of Brussels I to be interpreted to the effect that each Member State is required to recognise the judgments of a court or tribunal of another Member State on the effectiveness of an agreement conferring jurisdiction between the parties, where the finding as to the effectiveness of the agreement conferring jurisdiction has become final under the national law of the first court, even where that decision forms part of a judgment on a procedural matter dismissing the action?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Tribunalul Dâmbovița — Secția civilă (Romania) lodged on 5 September 2011 — Victor Cozman v Teatrul Municipal Târgoviște

(Case C-462/11)

(2011/C 331/21)

Language of the case: Romanian

Referring court

Tribunalul Dâmbovița

Parties to the main proceedings

Applicant: Victor Cozman

Defendant: Teatrul Municipal Târgoviște

Questions referred

1. Must Article 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms be interpreted as allowing the salaries of staff paid from public funds to be reduced by 25 %, pursuant to Article 1(1) of Law No 118/2010 laying down certain measures necessary to restore budgetary balance?

2. If the answer is in the affirmative, is entitlement to salary an absolute right which the State may not make subject to any limitations?

Appeal brought on 14 September 2011 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the order of the General Court (First Chamber) delivered on 22 June 2011 in Case T-409/09: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-469/11 P)

(2011/C 331/22)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, Δικηγόρος)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside the Order of the General Court in case T-409/09,

— reject in its entirety the Plea of Inadmissibility submitted by the Commission,

— refer to the General Court the case in order to Judge the substance of the case,

— order the Commission to pay the Appellant's legal and other costs including those incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The appellant submits that the contested order should be set aside on the following grounds:

— The General Court erred in law by not applying the provision of article 102(2) of the Rules of Procedure which refers to the extension on account of distance by a single period of 10 days to cases arriving to establish the non-contractual liability of the European Institutions.

— The General Court, by not applying the provisions of article 102(2), infringed the principles of equal treatment and legal certainty.

— The General Court erred in law by accepting that the limitation period began to run as from the time the Commission's decision to reject the appellant's tender was communicated to the appellant.

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 14 September 2011 — SIA 'Garkalns' v Rīgas dome

(Case C-470/11)

(2011/C 331/23)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Appellant: SIA 'Garkalns'

Respondent: Rīgas dome

Question referred

Must Article 49 EC and the related obligation of transparency be interpreted as meaning that the use, in a law that has been enacted publicly and in advance, of an imprecise legal concept such as 'substantial impairment of the interests of the State and of the residents of the administrative area concerned' — a concept which has to be defined in each individual case in which it applies with the help of interpretative guidelines but which at the same time allows a degree of flexibility in the assessment of restrictions on the freedom to provide services — is compatible with the permissible restrictions on that freedom?

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 14 September 2011 — SIA 'Cido Grupa' v Valsts ieņēmumu dienests

(Case C-471/11)

(2011/C 331/24)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: SIA 'Cido Grupa'

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Is the third subparagraph of Article 6(3) of Commission Regulation (EC) No 60/2004 [1] laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to be interpreted as meaning that, where an operator has been found to be in possession of an individual surplus of a product which may be classed as sugar within the meaning of Article 4, No 1, of the regulation, that operator is required to pay the State Treasury a sum which is calculated on the basis of the quantity of white sugar (Combined Nomenclature code 1701 99 10) corresponding to the sugar content of the product found in the operator's possession, and not on the basis of the quantity of the actual product found in its possession (for example, sugar syrup)?

2. In the calculation of that payment, are the highest import duty rates applicable to white sugar to be applied instead of those applicable to the actual product found in the operator's possession?

[1] OJ 2004 L 9, p. 8.

GENERAL COURT

Judgment of the General Court of 27 September 2011 — 3F v Commission

(Case T-30/03 RENV) [1]

(State aid — Fiscal aid granted by the Danish authorities — Seafarers employed on board vessels registered in the Danish International Register — Commission decision not to raise objections — Action for annulment — Serious difficulties)

(2011/C 331/25)

Language of the case: English

Parties

Applicant: 3F, formerly Specialarbejderforbundet i Danmark (SID) (Copenhagen, Denmark) (represented by: P. Bentley QC and A. Worsøe, lawyer, and subsequently by Mr. Bentley and P. Torbøl, lawyer)

Defendant: European Commission (represented by: H. van Vliet and N. Khan, acting as Agents)

Intervening party on behalf of the defendant: Kingdom of Denmark (represented by V. Pasternak Jørgensen and C. Vang, acting as Agents)

Re:

APPLICATION for annulment of Commission Decision C(2002) 4370 final of 13 November 2002 not to raise objections to the Danish fiscal measures applicable to seafarers employed on board vessels registered in the Danish International Register.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders 3F, formerly Specialarbejderforbundet i Danmark (SID), to bear its own costs and pay the costs incurred by the European Commission before the Court of Justice and the General Court;*

3. *Orders the Kingdom of Denmark to bear its own costs incurred before the Court of Justice and the General Court.*

[1] OJ C 70, 22.3.2003.

Judgment of the General Court of 27 September 2011 — Gul Ahmed Textile Mills v Council

(Case T-199/04) [1]

(Dumping — Imports of cotton bed linen originating in Pakistan — Injury — Causal link)

(2011/C 331/26)

Language of the case: English

Parties

Applicant: Gul Ahmed Textile Mills Ltd (Karachi, Pakistan) (represented by: L. Ruessmann, lawyer, with an address for service in Luxembourg (Luxembourg))

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

Intervener in support of the defendant: European Commission (represented by T. Scharf and K. Talabér-Ritz, Agents)

Re:

Application for annulment of Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (OJ 2004 L 66, p. 1), in so far as it concerns the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan in so far as it concerns Gul Ahmed Textile Mills Ltd;*

2. *Orders the Council of the European Union to bear its own costs and pay those incurred by Gul Ahmed Textile Mills;*

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

[1] OJ C 217, 28.8.2004.

Judgment of the General Court of 28 September 2011 — Greece v Commission

(Case T-352/05) [1]

(EAGGF — Guarantee section — Expenditure excluded from Community financing — Specific measures for certain agricultural products in favour of the minor islands of the Aegean Sea — Fruit and vegetables — Raw tobacco — Goat and sheepmeat — Non-compliance with the payment deadlines — Proportionality — Increase in the flat-rate correction for recurrent weaknesses)

(2011/C 331/27)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented initially by: G. Kanellopoulos and S. Charitaki, later by: I Chalkias and S. Papaïoannou, Agents)

Defendant: European Commission (represented by: H. Tserepa-Lacombe and L. Visaggio, Agents, assisted by N. Korogiannakis, lawyer)

Re:

Annulment of Commission Decision 2005/579/EC of 20 July 2005 disallowing from Community financing certain expenditure incurred by the Member States under the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section (OJ 2005 L 199, p. 84) in so far as it excludes certain expenditure carried out by the Hellenic Republic in the context of Specific measures for certain agricultural products in favour of the minor islands of the Aegean Sea and in the fruit and vegetables, raw tobacco and goat and sheepmeat sectors.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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[1] OJ C 296, 26.11.2005.

Judgment of the General Court of 29 September 2011 — Poland v Commission

(Case T-4/06) [1]

(Agriculture — Act of Accession 2003 — Regulation (EC) No 1260/2001 — Regulation (EC) No 1686/2005 — Regulation (EC) No 1193/2009 — 2004/2005 marketing year — Additional levy — Setting of two coefficients — Competence — Legal basis — Empowering measure — Obligation to give reasons — Compliance with essential procedural requirements)

(2011/C 331/28)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented: initially by J. Pietras, later by E. Osśiecka-Tamecka, later by: T. Nowakowski, later by M. Dowgielewicz, B. Majczyna and P. Rosniak and finally, by: B. Majczyna, M. Szpunnar and D. Krawczyk, Agents)

Defendant: European Commission (represented: initially by A. Szmytkowska, C. Cattabriga and F. Erlbacher, later, by: A. Szmytkowska and P. Rossi, Agents)

Re:

Annulment of Article 2 of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271, p. 12), as amended by Article 3 of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Article 2 of Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/05 marketing year (OJ 2005 L 271, p. 12), as amended by Article 3 of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1);*

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

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[1] OJ C 74, 25.3.2006.

Judgment of the General Court of 29 September 2011 — Ryanair v Commission

(Case T-442/07) [1]

(State aid — Aviation sector — Aid granted by the Italian authorities to Alitalia, Air One and Meridiana — Action for failure to act — Failure by the Commission to define its position — Obligation to act)

(2011/C 331/29)

Language of the case: English

Parties

Applicant: Ryanair Ltd (Dublin, Ireland) (represented by: E. Vahida and I.-G. Metaxas-Maragkidis, lawyers)

Defendant: European Commission (represented by: L. Flynn, S. Noë and E. Righini, Agents)

Intervener in support of the defendant: Air One SpA (Chieti, Italy) (represented by: M. Merola, C. Santacroce and G. Belotti, lawyers)

Re:

Application for a declaration that the Commission failed to act in unlawfully failing to define its position on the applicant's complaints concerning, first, aid allegedly granted by the Italian Republic to Alitalia, Air One and Meridiana and, second, an alleged infringement of competition law

Operative part of the judgment

The Court:

1. *Declares that the Commission of the European Communities failed to fulfil its obligations under the EC Treaty by failing to adopt a decision in respect of (i) the transfer of the 100 Alitalia employees, complained of in the letter of 16 June 2006 sent to the Commission by Ryanair Ltd, (ii) the compensation granted following the attacks of 11 September, complained of in the letters of 3 November and 13 December 2005 sent to the Commission by Ryanair, and (iii) the reductions in airport charges at hub airports, from which Alitalia, in particular, is claimed to have benefited, complained of in those letters of 3 November and 13 December 2005;*

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

3. *Orders each of the parties, including Air One SpA, to bear its own costs.*

([1]) OJ C 37, 9.2.2008.

Judgment of the General Court of 29 September 2011 — adidas v OHIM — Patrick Holding (Representation of a shoe with two stripes)

(Case T-479/08) ([1])

(Community trade mark — Opposition proceedings — Application for a Community figurative mark representing a shoe with two stripes on the side — Earlier national trade mark representing a shoe with three stripes on the side — Relative ground for refusal — Failure to substantiate the earlier right — Failure to translate elements essential to substantiating the registration of the earlier trade mark — Rule 16(3), Rule 17(2) and Rule 20(2) of Regulation (EC) No 2868/95)

(2011/C 331/30)

Language of the case: English

Parties

Applicant: adidas AG (Herzogenaurach, Germany) (represented by: V. von Bomhard, A. Renck, and I. Fowler, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Patrick Holding ApS (Fredensborg, Denmark) (represented by: J. Løge and T. Meedom, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 August 2008 (Case R 849/2007-2) relating to opposition proceedings between adidas AG and Patrick Holding ApS.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 6, 10.1.2009.

Judgment of the General Court of 27 September 2011 — Perusahaan Otomobil Nasional v OHIM — Proton Motor Fuel Cell (PM PROTON MOTOR)

(Case T-581/08) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark PM PROTON MOTOR — Earlier national, Benelux and Community word and figurative marks PROTON — Relative grounds for refusal — No likelihood of confusion — Lack of similarity between the goods and services — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Article 8(5) of Regulation No 40/94 (now Article 8(5) of Regulation No 207/2009))

(2011/C 331/31)

Language of the case: English

Parties

Applicant: Perusahaan Otomobil Nasional Sdn Bhd (Shah Alam, Selangor Darul Ehsan, Malaysia) (represented by: J. Blind, C. Kleiner and S. Ziegler, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Proton Motor Fuel Cell GmbH (Puchheim, Germany) (represented by: C. Sedlmeir, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 9 October 2008 (Case R 1675/2007-1) concerning opposition proceedings between Perusahaan Otomobil Nasional Sdn Bhd and Proton Motor Fuel Cell GmbH.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Perusahaan Otomobil Nasional Sdn Bhd to pay the costs.*

([1]) OJ C 69, 21.3.2009.

Judgment of the General Court of 27 September 2011 — El Jirari Bouzekri v OHIM — Nike International (NC NICKOL)

(Case T-207/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark NC NICKOL — Earlier Community figurative mark NIKE — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(5) of Regulation No 40/94)

(2011/C 331/32)

Language of the case: English

Parties

Applicant: Mustapha El Jirari Bouzekri (Malaga, Spain) (represented by: E. Ragot, lawyer)

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

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 25 February 2009 (Case R 554/2008-2) relating to opposition proceedings between Nike International Ltd and Mustapha El Jirari Bouzekri.

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 25 February 2009 (Case R 554/2008-2).*

2. *Orders OHIM to bear its own costs and to pay those incurred by Mustapha El Jirari Bouzekri. Nike International shall pay its own costs.*

([1]) OJ C 167, 18.7.2009.

Judgment of the General Court of 29 September 2011 — New Yorker SHK Jeans v OHIM — Vallis K. — Vallis A. (FISHBONE)

(Case T-415/09) ([1])

(Community trade mark — Opposition proceedings — Application for registration of the Community word mark FISHBONE — Earlier national figurative mark FISHBONE BEACHWEAR — Relative ground for refusal — Partial refusal of registration — Genuine use of the earlier mark — Consideration of additional evidence — Statement of reasons — Proof of genuine use — Likelihood of confusion — Article 42(2) and (3) and Article 76(2) of Regulation (EC) No 207/2009 — Second sentence of Rule 22(2) of Regulation (EC) No 2868/95 — Article 75 of Regulation No 207/2009 — First subparagraph and second subparagraph, heading (a), of Article 15(1) and Article 42(2), (3) and (5) of Regulation No 207/2009 — Article 8(1)(b) of Regulation No 207/2009)

(2011/C 331/33)

Language of the case: English

Parties

Applicant: New Yorker SHK Jeans GmbH & Co. KG, formerly New Yorker SHK Jeans GmbH (Kiel, Germany) (represented by: V. Spitz, A. Gaul, T. Golda and S. Kirschstein-Freund, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Vallis K. — Vallis A. & Co. OE (Athens, Greece) (represented by: M. Kilimiri, V. von Bomhard, A.W. Renck, lawyers, and H.J. O'Neill, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 July 2009 (Case R 1051/2008-1), concerning opposition proceedings between Vallis K. — Vallis A. & Co. OE and New Yorker SHK Jeans GmbH & Co. KG

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders New Yorker SHK Jeans GmbH & Co. KG to pay the costs.*

([1]) OJ C 297, 5.12.2009.

Judgment of the General Court of 29 September 2011 — Procter & Gamble Manufacturing Cologne v OHIM — Natura Cosméticos (NATURAVIVA)

(Case T-107/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark NATURAVIVA — Earlier Community word mark VIVA — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 — No similarity of the signs)

(2011/C 331/34)

Language of the case: English

Parties

Applicant: Procter & Gamble Manufacturing Cologne GmbH (Cologne, Germany) (represented by: K. Sandberg, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Natura Cosméticos, SA (São Paulo, Brazil) (represented by: C. Bercial Arias, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 November 2009 (Case R 1558/2008-2) concerning opposition proceedings between Procter & Gamble Manufacturing Cologne GmbH and Natura Cosméticos, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Procter & Gamble Manufacturing Cologne GmbH to pay the costs.*

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[1] OJ C 134, 22.5.2010.

Judgment of the General Court of 29 September 2011 — Telefónica O2 Germany v OHIM — Loopia (LOOPIA)

(Case T-150/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark LOOPIA — Earlier Community word marks LOOP and LOOPY — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 331/35)

Language of the case: English

Parties

Applicant: Telefónica O2 Germany GmbH & Co. OHG (Munich, Germany) (represented by: A. Fottner and M. Müller, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Loopia AB (Västerås, Sweden) (represented by: P. Håkon-Schmidt and N. Ringen, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 January 2010 (Case R 1812/2008-1), concerning opposition proceedings between Telefónica O2 Germany GmbH & Co. OHG and Loopia AB.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 January 2010 (Case R 1812/2008-1);*

2. *Orders OHIM to bear its own costs and to pay the costs of Telefónica O2 Germany GmbH & Co. OHG;*

3. *Orders OHIM to pay the costs necessarily incurred by Telefónica O2 Germany for the purposes of the proceedings before the First Board of Appeal of OHIM;*

4. *Orders Loopia AB to bear its own costs.*

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[1] OJ C 148, 5.6.2010.

Judgment of the General Court of 28 September 2011 — Nike International v OHIM — Deichmann (VICTORY RED)

(Case T-356/10) [1]

(Community trade mark — Opposition proceedings — Application for registration of the Community word mark VICTORY RED — Earlier international and national word marks Victory — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 331/36)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: Deichmann SE (Essen, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 May 2010 (Case R 1309/2009-2) concerning opposition proceedings between Deichmann SE and Nike International Ltd.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

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

([1]) OJ C 288, 23.10.2010.

Judgment of the General Court of 27 September 2011 — Brighton Collectibles v OHIM — Felmar (BRIGHTON)

(Case T-403/10) ([1])

(Community trade mark — Opposition procedure — Application for Community word mark 'BRIGHTON' — National word and figurative marks 'BRIGHTON' and earlier signs 'BRIGHTON' — Relative grounds for refusal — Article 8(1)(b) and 8(2)(c) of Regulation (EC) No 207/2009 — Article 8(1)(b) and 8(4) of Regulation No 207/2009)

(2011/C 331/37)

Language of the case: French

Parties

Applicants: Brighton Collectibles, Inc. (Dover, Delaware, USA) (represented by: R. Delorey, lawyer)

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: Felmar (Paris, France) (represented by: D. Monégier du Sorbier, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 30 June 2010 (Case R 408/2009-4) concerning an opposition procedure between Brighton Collectibles Inc. and Felmar.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Brighton Collectibles Inc. to bear its own costs and to pay the costs of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders Felmar to bear its own costs.*

([1]) OJ C 328, 4.12.2010.

Order of the General Court of 13 September 2011 — CEVA v Commission

(Case T-224/09) ([1])

(Action for annulment — Specific programme for research and technological development on energy, environment and sustainable development — Protop project — Subsidy contract — Demand for recovery of payments made on account pursuant to a contract for the financing of research — Sub-contracting — Enforcement order — Act not subject to review — Inadmissibility)

(2011/C 331/38)

Language of the case: French

Parties

Applicant: Centre d'étude et de valorisation des algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: European Commission (represented by: V. Joris, Agent, assisted by E. Bouttier, lawyer)

Re:

Annulment of the enforcement order decision adopted by the Commission on 6 April 2009 by which the Commission called upon the applicant to refund all the payments made on account within the framework of a subsidy contract relating to a research project falling within the specific programme for research, technological development and demonstration on 'Energy, environment and sustainable development'.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Centre d'étude et de valorisation des algues SA (CEVA) is ordered to pay the costs.*

([1]) OJ C 205, 29.8.2009.

Order of the General Court of 14 September 2011 — Regione Puglia v Commission

(Case T-84/10) ([1])

(Action for annulment — ERDF — Decision incorporating reduction of financial assistance — Regional entity — Lack of direct concern — Inadmissibility)

(2011/C 331/39)

Language of the case: Italian

Parties

Applicant: Regione Puglia (Bari, Italy) (represented by: F. Brunelli and A. Aloia, lawyers)

Defendant: European Commission (represented by: C. Cattabriga and A. Steiblytė, agents)

Re:

Action for partial annulment of Commission Decision C(2009) 10350 of 22 December 2009, incorporating a reduction in the European Regional Development Fund (ERDF) assistance granted in application of Commission Decision C(2000) 2349 of 8 August 2000, incorporating approval of the operational programme POR Puglia for the period 2000-2006, on the basis of Objective No 1.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Regione Puglia will bear its own costs and those incurred by the European Commission, including the costs related to the interlocutory proceedings.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 14 September 2011 — Regione Puglia v Commission

(Case T-223/10) ([1])

(ERDF — Reduction of financial assistance — Withdrawal of the contested debit note — Cessation of existence of the dispute — No need to adjudicate)

(2011/C 331/40)

Language of the case: Italian

Parties

Applicant: Regione Puglia (Bari, Italy) (represented by: F. Brunelli and A. Aloia, lawyers)

Defendant: European Commission (represented by: L. Prete and A. Steiblytė, agents)

Re:

Action for annulment of debit note No 3241001630 of 26 February 2010 concerning Commission Decision C(2009) 10350 of 22 December 2009, incorporating a reduction in the European Regional Development Fund (ERDF) assistance granted in application of Commission Decision C(2000) 2349 of 8 August 2000, incorporating approval of the operational programme POR Puglia for the period 2000-2006, on the basis of Objective No 1.

Operative part of the order

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

2. *Each party shall bear its own costs relating to the present proceedings and the Regione Puglia shall bear the costs relating to the interlocutory proceedings.*

([1]) OJ C 179, 3.7.2010.

Order of the General Court of 14 September 2011 — Italy v Commission

(Case T-239/10) ([1])

(ERDF — Reduction of financial assistance — Withdrawal of the contested debit note — Cessation of existence of the dispute — No need to adjudicate)

(2011/C 331/41)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: European Commission (represented by: L. Prete and A. Steiblytė, agents)

Re:

Action for annulment of debit note No 3241001630 of 26 February 2010 concerning Commission Decision C(2009) 10350 of 22 December 2009, incorporating a reduction in the European Regional Development Fund (ERDF) assistance granted in application of Commission Decision C(2000) 2349 of 8 August 2000, incorporating approval of the operational programme POR Puglia for the period 2000-2006, on the basis of Objective No 1.

Operative part of the order

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

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

([1]) OJ C 195, 17.7.2010.

Order of the General Court of 13 September 2011 — ara v OHIM

(Case T-397/10) ([1])

(Community trade mark — Opposition procedure — Failure to submit the statement of grounds of appeal to the Board of Appeal within the prescribed time-limit Decision of the Board of Appeal rejecting an application of the full re-establishment of the applicant's rights — Action manifestly lacking a legal basis)

(2011/C 331/42)

Language of the case: German

Parties

Applicant: ara AG (Langenfeld, Germany) (represented by: M. Gail, 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: Allrounder SARL (Sarrebourg, France)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 June 2010 (Case R 1543/2009-1) concerning the applicant's application for full re-establishment of the its rights

Operative part of the order

1. *The application is dismissed as manifestly lacking a legal basis.*

2. *ara AG is ordered to pay the costs.*

([1]) OJ C 301, 6.11.2010.

Order of the General Court of 9 September 2011 — Biodes v OHIM — Manasul Internacional (BIESUL)

(Case T-597/10) ([1])

(Community trade mark — Opposition proceedings — Revocation of the decision of the Board of Appeal — Cessation of existence of dispute — No need to adjudicate)

(2011/C 331/43)

Language of the case: Spanish

Parties

Applicant: Biodes, SL (Madrid, Spain) (represented by: E. Manresa Medina, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Manasul Internacional, SL

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 September 2010 (Case R 1519/2009-1) concerning opposition proceedings between Manasul Internacional, SL and Biodes, SL.

Operative part of the order

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

2. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs)(OHIM) shall bear the costs.*

([1]) OJ C 80, 12.3.2011.

Order of the General Court of 9 September 2011 — Biodes v OHIM — Manasul Internacional (LINEASUL)

(Case T-598/10) ([1])

(Community trade mark — Opposition proceedings — Revocation of the decision of the Board of Appeal — Cessation of existence of dispute — No need to adjudicate)

(2011/C 331/44)

Language of the case: Spanish

Parties

Applicant: Biodes SL (Madrid, Spain) (represented by: E. Manresa Medina, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Manasul Internacional, SL (Ponferrada, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 September 2010 (Case R 1520/2009-1) concerning opposition proceedings between Manasul Internacional, SL and Biodes, SL.

Operative part of the order

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

2. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) shall pay the costs.*

([1]) OJ C 80, 12.3.2011.

Action brought on 23 June 2011 — Republic of Bulgaria v Commission

(Case T-335/11)

(2011/C 331/45)

Language of the case: Bulgarian

Parties

Applicant: Republic of Bulgaria (represented by: Tsvetko Ivanov and Elina Petranova)

Defendant: European Commission

Re:

Application for annulment of the Commission Implementing Decision of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) [notified under document C(2011) 2517]

Forms of order sought

The applicant claims that the court should:

— annul the Commission Implementing Decision of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) [notified under document C(2011) 2517 ([1])] in so far as it concerns the Republic of Bulgaria, or, in the alternative,

— reduce the correction, applied to expenses pursuant to the single area payment scheme under the EAGF from 10 % to 5 %, and reduce the correction under EAFRD Axis 2 ('Improving the environment and the countryside') of the rural development programme, from 10 % to 5 %, and

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. **First plea, claiming infringement of Article 31 of Regulation (EC) No 1290/2005** ([2])

First, the Republic of Bulgaria argues that the Commission has not demonstrated any infringement of EU legislation by Bulgaria. In the contested decision, the Commission proposed financial corrections of 10 % for expenses under the single area payment scheme and Axis 2 ('Improving the environment and the countryside') of the rural development programme, on the ground of alleged weaknesses in the functioning of the LPIS-GIS, making it impossible to carry out a 'key' control, such impossibility evidencing serious defects in the control system, entailing a major risk of significant losses for the fund. A correction of 5 % has also been proposed in respect of complements to direct payments, on the ground of the said weaknesses in the functioning of the LPIS-GIS. The applicant produces evidence that administrative cross checks and on-the-spot checks took place, disproving the Commission's allegations.

Secondly, the applicant argues that, as regards the amounts excluded from financing, neither the nature nor the gravity of the infringement of the relevant legislation were correctly assessed by the Commission. In that context, the applicant argues that a 'key' control even more rigorous than that required by the relevant legislation was carried out, and that the Commission's conclusion that there was no such control does not reflect the actual state of control systems in the Republic of Bulgaria.

Thirdly, the applicant argues that the risk of loss arising to the EU budget has not been correctly assessed. It argues that the Commission erred on the subject of the financial consequences of the infringement of EU legislation, basing its reasoning on the final report of the conciliation body in Case 10/BG/442, where it is expressly stated that the Bulgarian authorities monitored permanent pastures on-the-spot 100 %.

2. **Second plea, claiming infringement of the principle of proportionality**

According to the applicant, which bases its argument on Article 31(2) of Regulation No 1290/2005 and the requirement of the General Court that the amount of the correction must be clearly linked to possible loss to the Union, the percentage of the financial correction must be proportionate to the irrregularities found and the risk for the EU budget. The corrections imposed in this case exceed the limits of what is appropriate and necessary for achieving the aim pursued by the clearance procedure, and must therefore be reduced.

3. **Third plea, claiming infringement of the principle of legal certainty**

The applicant argues that the Commission has infringed the principle of legal certainty by disregarding the guidelines which it itself set out in Document VI/5530/97. ([3]) Having regard to the fact that the Bulgarian authorities carried out a key control, the Commission should, on the basis of the above-mentioned document, have determined the financial corrections at 5 % instead of 10 % in respect of expenses under the single area payment scheme and Axis 2 ('Improving the environment and the countryside') of the rural development programme.

Moreover, the applicant considers that the provisions relied on by the Commission in order to posit three rules which, it claims, were not complied with by the Republic of Bulgaria burdens Member States with certain obligations which are different from those set out in the official communication. Not only were two of the three rules not provided for in the regulations in question, but nor were there any well-defined assessment criteria for their implementation. Nor were there any well-defined assessment criteria for the implementation of the third rule. The Republic of Bulgaria argues that it has complied with the requirements of Regulation No 796/2004. ([4])

4. **Fourth plea, claiming infringement of Article 296(2) TFEU**

The contested decision has the effect of excluding from EU financing expenses incurred by the Republic of Bulgaria amounting to EUR 24 543 106,87. According to the applicant, given that the decision adopted is to its detriment, it has a major interest in obtaining from the European Commission duly reasoned explanations as to why financial corrections were imposed. The applicant maintains that the Commission has not set out sufficiently clearly and unequivocally why it imposed financial corrections, and has therefore failed to fulfil its obligation to state reasons for the contested decision in relation to the applicant.

([1]) OJ 2011 L 102, p. 33

([2]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

([3]) Document No VI/5330/97 of the Commission of 23 December 1997, headed 'Guidelines regarding the calculation of the financial consequences on preparation of the decision for clearance of the EAGGF Guarantee accounts'.

([4]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 19 August 2011 — Scandic Distilleries v OHMI — Bürgerbräu, August Röhm & Söhne (BÜRGER)

(Case T-460/11)

(2011/C 331/46)

Language in which the application was lodged: English

Parties

Applicant: Scandic Distilleries SA (Bihor, Romania) (represented by: Á. László, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bürgerbräu, August Röhm & Söhne KG (Bad Reichenhall, Germany)

Form of order sought

— Alter 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 1962/2010-2 and render the registration of the trade mark application as a Community trade mark with regard to all goods and services concerned;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'BÜRGER ORIGINAL PREMIUM PILS TRADITIONAL BREWED QUALITY REGISTERED TRADEMARK SIEBENBURGEN', for goods and services in classes 32 and 35 — Community trade mark application No 8359663

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

Mark or sign cited in opposition: Community trade mark registration No 1234061 of the word mark 'Bürgerbräu', for goods and services in classes 21, 32 and 42

Decision of the Opposition Division: Partially upheld the opposition

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 wrongly established the existence of likelihood of confusion

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Action brought on 23 August 2011 — Ellinika Nafpigia and Hoern Beteiligungs Gesellschaft mit beschränkter Haftung v Commission

(Case T-466/11)

(2011/C 331/47)

Language of the case: Greek

Parties

Applicants: Ellinika Nafpigia AE (Skaramagka, Greece) and Hoern Beteiligungs GmbH (Kiel, Germany) (represented by: K. Khrisogonos and A. Mitsis, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2010) 8274 final of 1 December 2010 relating to State aid CR 16/2004 (ex NN 29/2004, CP 71/2002 and CP 133/2005) — which constitutes a measure implementing Decision C(2008) 3118 final of 2 July 2008 (OJ 2009 L 225, p. 104) concerning recovery of State aid ('the recovery decision') — as supplemented, defined and elucidated by the documents and other material on the file;

— order the Commission to pay the applicants' costs;

— in the alternative, interpret, in a binding manner *erga omnes* and in particular as against the Commission, Decision C(2010) 8274 final of 1 December 2010, as supplemented by the documents and other material on the file, with the meaning defined more specifically in the application, in such a way that it is compatible with Article 17 of the recovery decision upon which the contested decision is founded, with Article 346 TFEU, pursuant to which the contested decision was adopted, with the principles of certitude and of legal certainty and with the rights to freedom of establishment, to freedom to provide services, to freedom to carry on a business and to property, which are infringed by the current interpretation and application of the contested decision by the Commission and the Greek authorities.

Pleas in law and main arguments

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

By the first plea for annulment, the applicants submit that the Commission has infringed Article 17 of the recovery decision, since the contested decision affects the military activities of Ellinika Nafpigia AE (Hellenic Shipyards; 'HSY') in so far as it requires HSY to sell all of its assets which are today not absolutely necessary, but are nevertheless partly or relatively necessary or can become absolutely necessary in the future for HSY's military activities.

By the second plea for annulment, the applicants submit that the contested decision is being misinterpreted — applying Article 346 TFEU incorrectly — as meaning that HSY's military activities encompass only the current orders of the Greek Navy and not every non-commercial activity of HSY, such as future orders of the Navy or of Greek or other armed forces and any other activity for the construction, supply or repair of defence material.

By the third plea for annulment, the applicants assert that the contested decision, in breach of the principles of certitude and legal certainty, leaves substantial ambiguities as regards its personal, temporal and material scope, while at the same time it confers a very wide discretion on its implementing bodies, in such a way that it is interpreted as laying down obligations and prohibitions that are not envisaged in the recovery decision, are imposed on persons not liable, are imprecise and inapplicable, or go beyond what is reasonable as determined by the protection of fundamental rights and freedoms. Furthermore, the applicants consider that the contested decision, in breach of the principles of certitude and legal certainty, is partly incapable of implementation since it imposes measures which, *de facto* and/or *de jure*, cannot be implemented in their entirety or in part, while the six-month time-limit imposed for its implementation was also unfeasible and unrealistic from the beginning.

By the fourth plea for annulment, the applicants contend that the contested decision imposes obligations and prohibitions on HSY and its shareholders in a way that infringes their fundamental rights of freedom of establishment, of freedom to provide services, of freedom to carry on a business and to property, partly without a legal basis therefor and, in any event, going beyond what is necessary to achieve the objective of recovery.

Action brought on 5 September 2011 — Sepro Europe v Commission

(Case T-483/11)

(2011/C 331/48)

Language of the case: English

Parties

Applicant: Sepro Europe Ltd (Harrogate, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission

Form of order sought

— Declare the application admissible and well-founded;

— Annul Commission Decision 2011/328/EU [1];

— Order the defendant to pay the costs of the proceedings; and

— Take such other or further measures as justice may require.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant committed manifest errors of appraisal, as it erred as a matter of law in justifying Commission Decision 2011/328/EU on the grounds of the alleged concerns regarding (i) worker exposure and (ii) environmental exposure.

2. Second plea in law, alleging that the defendant violated the due process and the right of defence, as well as the principle of sound administration, as it wrongly took into account the alleged concern regarding isomer ratio which was only identified as a critical concern for the first time during the resubmission and at a very late stage of the procedure. As a result, the applicant was not given an opportunity to address the issue. Moreover, the defendant failed to take into consideration the proposal from the applicant for amendment.

3. Third plea in law, alleging that Commission Decision 2011/328/EU is unlawful because it is disproportionate. Even if it were accepted that there are concerns which deserve further attention, the measure in question is disproportionate in the way it approaches the alleged worker exposure and environmental exposure concerns.

4. Fourth plea in law, alleging that Commission Decision 2011/328/EU is unlawful because it is inadequately reasoned, as the defendant failed to provide any evidence or reasoning to justify its disagreement with the amendment proposed by the applicant, thus affecting the calculation of estimated worker exposure levels, as well as with the use of high technology glasshouses.

[1] Commission Implementing Decision of 1 June 2011 concerning the non-inclusion of flurprimidol in Annex I to Council Directive 91/414/EEC (notified under document C(2011) 3733) (OJ 2011 L 153, p. 192)

Action brought on 12 September 2011 — Akzo Nobel and Akcros Chemicals v Commission

(Case T-485/11)

(2011/C 331/49)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, The Netherlands) and Akcros Chemicals Ltd (Warwickshire, United Kingdom) (represented by: C. Swaak and R. Wesseling, lawyers)

Defendant: European Commission

Form of order sought

— Annul in whole or in part Commission Decision of 30 June 2011 amending Decision C(2009) 8682 final 11 November 2009, relating to a proceeding under Article 81 of the EC Treaty (now Article 101 TFEU) and Article 53 of the EEA Agreement (Case COMP/38.589 — Heat Stabilisers), to the extent it was addressed to the applicants;

— In the alternative, reduce the fine imposed by Article 1, paragraphs 2), 4), 19) and 21) of Commission Decision of 30 June 2011; and

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

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 the defendant wrongly attributed joint and several liability to the applicants and companies of the Elementis group and wrongly applied the concept of joint and several liability in holding the applicants liable for the share of the fine of the companies pertaining to Elementis group.

2. Second plea in law, alleging that the defendant wrongly amended the 2009 Decision to the detriment of the applicants (while an action for annulment of the 2009 Decision is pending) in violation of the principles of legal certainty and legitimate expectations.

3. Third plea in law, alleging that the defendant wrongly amended the 2009 Decision without the adoption of a new supplementary statement of objections, thereby violating the applicants' rights of deference and in particular the right to be heard.

Action brought on 9 September 2011 — Sarc v Commission

(Case T-488/11)

(2011/C 331/50)

Language of the case: English

Parties

Applicant: Scheepsbouwkundig Advies- en Rekencentrum (Sarc) BV (Bussum, Netherlands) (represented by: H. Speyart, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission decision C(2011) 642 final of 10 May 2011 given in the State aid proceedings NN 68/2010 declaring that the aid granted does not constitute State aid; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that the Commission failed, where it should have done so, to open the formal investigation procedure within the meaning of Article 108(2) TFEU;

2. Second plea in law, alleging

   — that the Commission, in a further submission, failed to associate SARC in its preliminary assessment in a sufficient manner;

3. Third plea in law, alleging

   — that the Commission misapplied Article 107 (1) TFEU;

4. Fourth plea in law, alleging

   — that the Commission failed, where it should have done so, to order the Dutch authorities to submit an evaluation, or to commission an independent evaluation;

5. Fifth plea in law, alleging

   — that the Commission failed to reason its decision to the required standard.

Action brought on 15 September 2011 — Bena Properties v Council

(Case T-490/11)

(2011/C 331/51)

Language of the case: French

Parties

Applicant: Bena Properties Co. SA (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul (i) Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, in so far as those measures concern the applicant, and (ii) the subsequent Implementing Decisions 2011/302/CFSP of 23 May 2011 and 2011/367/CFSP of 23 June 2011 in so far as they include its name in the list of persons and entities referred to in Articles 3 and 4 of Decision 2011/273/CFSP;

— annul Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria and the subsequent measures implementing it (Implementing Regulation (EU) No 504/2011 of 23 May 2011 and corrigendum to Implementing Regulation (EU) No 504/2011 published on 24 June 2011), in so far as those measures concern the applicant;

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law, which are in essence identical or similar to those relied on in Case T-433/11, *Makhlouf* v *Council*. ([1])

([1]) OJ C 290, 1.10.2011, p. 14.

Appeal brought on 19 September 2011 by Luigi Marcuccio against the order of the Civil Service Tribunal of 30 June 2011 in Case F-14/10, Marcuccio v Commission

(Case T-491/11 P)

(2011/C 331/52)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Annul in its entirety and without exception the order under appeal.

— Allow in its entirety and without any exception whatsoever the relief sought at first instance.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation both to the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal of 30 June 2011 dismissing as manifestly lacking any foundation in law an action seeking an order that the Commission pay compensation to the appellant for the material and non-material damage suffered by the appellant as a result of the purportedly unreasonably lengthy duration of the procedure for recognising partial permanent invalidity.

The appellant relies on five grounds in support of the appeal.

1. First ground, alleging error of law, including on the grounds of failure to state reasons and breach of the duty to carry out proper investigations, by failing quite simply in all cases to have regard to the fact that a European Union institution incurs liability in tort where it infringes the obligation it is under to give reasons for each of its decisions and by declaring the plea relied on by the appellant in that regard irrelevant.

2. Second ground, alleging incorrect and unreasonable interpretation and application of the concept of the duty to state reasons.

3. Third ground, alleging absolute failure to state reasons, including on the grounds of failure to carry out investigations, and procedural errors in that the Tribunal failed to declare that the Commission's defence was clearly out of time and thus inadmissible.

4. Fourth ground, alleging breach of Article 44 of the Rules of Procedure of the Civil Service Tribunal and breach of the appellant's right to a fair hearing and the rights of the defence.

5. Fifth ground, alleging incorrect and unreasonable interpretation and application of Article 94 of the Rules of Procedure of the Civil Service Tribunal.

Action brought on 16 September 2011 — Missir Mamachi di Lusignano and Others v Commission

(Case T-494/11)

(2011/C 331/53)

Language of the case: Italian

Parties

Applicants: Livo Missir Mamachi di Lusignano (Kerkhove-Avelgem, Belgium), Anne Jeanne Cécile Magdalena Maria Sintobin (Brussels, Belgium), Stefano Missir Mamachi di Lusignano (Shanghai, China), Maria Letizia Missir Mamachi di Lusignano (Brussels, Belgium), Alessandro Missir Mamachi di Lusignano (heirs) (Rabat, Morocco) (represented by: F. Di Gianni, R. Antonimi and G. Coppo, lawyers)

Defendant: European Commission

Form of order sought

— Order the Commission to pay compensation for the non-material damage suffered by the applicants as a result of the murder of Alessandro Missir Mamachi di Lusignano and his wife, Ariane Lagasse de Locht;

— Order the Commission to pay compensatory interest and late payment interest accrued,

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

Pleas in law and main arguments

By the first plea in law, the Court is requested to order the Commission to pay compensation for the non-material damage unjustly suffered by the applicants as a result of the murder of Alessandro Missir Mamachi di Lusignano, former Commission official, and his wife, Ariane Lagasse de Locht. The applicants submit that the European Union has incurred non-contractual liability because the Commission negligently failed to ensure that the apartment made available to the murdered official and his family was equipped with appropriate and effective security devices suitable for the purposes of ensuring their safety. In support of their requests, the applicants rely on the conclusions reached in the judgment of the Civil Service Tribunal of 12 May 2011 in Case F-50/09.

In the alternative, on account of the totally exceptional nature of the case, the applicants submit that the Commission is liable for the damage caused on the grounds of unlawful conduct.

Order of the General Court of 14 September 2011 — Condé v Council

(Case T-210/10) [1]

(2011/C 331/54)

Language of the case: French

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

[1] OJ C 234, 28.8.2010.

Order of the General Court of 14 September 2011 — Camara v Council

(Case T-295/10) [1]

(2011/C 331/55)

Language of the case: French

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

[1] OJ C 234, 28.8.2010.

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