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NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 13/01)

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

OJ C 6, 7.1.2012

Past publications

OJ C 370, 17.12.2011

OJ C 362, 10.12.2011

OJ C 355, 3.12.2011

OJ C 347, 26.11.2011

OJ C 340, 19.11.2011

OJ C 331, 12.11.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal lodged on 24 May 2011 by Massimo Campailla against the order of the General Court (Third Chamber) delivered on 14 March 2011 in Case T-429/09 Campailla v European Commission

(Case C-265/11 P)

(2012/C 13/02)

Language of the case: French

Parties

Appellant: Massimo Campailla (represented by: M. Campailla)

Other party to the proceedings: European Commission

By order of 6 October 2011, the Court (Fifth Chamber) declared the appeal inadmissible.

Appeal lodged on 31 May 2011 by Mariyus Noko Ngele against the order of the General Court (First Chamber) delivered on 25 March 2011 in Case T-15/10 European Commission v AT, AU, AW, AW

(Case C-272/11 P)

(2012/C 13/03)

Language of the case: French

Parties

Appellant: Mariyus Noko Ngele (represented by: F. Sabakunzi, avocat)

Other parties to the proceedings: European Commission, AT, AU, AV, AW

By order of 4 October 2011, the Court (Eighth Chamber) dismisses the appeal and orders Mr Noko Ngele to bear his own costs.

Reference for a preliminary ruling from the Tribunal de première instance de Namur (Belgium) lodged on 22 August 2011 — Cartiaux Service Plus SA v Belgian State

(Case C-432/11)

(2012/C 13/04)

Language of the case: French

Referring court

Tribunal de première instance de Namur

Parties to the main proceedings

Applicant: Cartiaux Service Plus SA

Defendant: Belgian State

By order of 9 November 2011, the President of the Court ordered that the case be removed from the Register.

Reference for a preliminary ruling from the Krajowa Izba Odwoławcza (Republic of Poland), lodged on 9 September 2011 — Praxis Sp. z o.o., ABC Direct Contact Sp. z o.o. v Poczta Polska S.A.

(Case C-465/11)

(2012/C 13/05)

Language of the case: Polish

Referring court

Krajowa Izba Odwoławcza

Parties to the main proceedings

Applicants: Praxis Sp. z o.o., ABC Direct Contact Sp. z o.o.

Defendant: Poczta Polska S.A.

Questions referred

1. Can Article 45(2)(d) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, ([1]) which states that '[a]ny economic operator may be excluded from participation in a contract where that economic operator. has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate', in conjunction with Articles 53(3) and 54(4) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, ([2]) be interpreted as meaning that it is possible to regard as culpable professional misconduct a situation in which the contracting authority concerned annulled, terminated or renounced a public contract with the economic operator concerned owing to circumstances for which that operator is responsible, where the annulment, termination or renouncement occurred in the three-year period before the procedure was initiated and the value of the non-performed part of the contract amounted to at least 5 % of the contract's value?

2. If Question 1 is answered in the negative — if a Member State is able to introduce grounds, other than those listed in Article 45 of Directive 2004/18/EC, for excluding economic operators from participation in a procedure for the award of a public contract, which it considers to be essential for the protection of the public interest, the legitimate interests of the contracting authorities and the maintenance of fair competition between economic operators, is it possible to consider consistent with that directive and the Treaty on the Functioning of the European Union a situation involving the exclusion of economic operators with which the contracting authority concerned annulled, terminated or renounced a public contract owing to circumstances for which that economic operator is responsible, where the annulment, termination or renouncement occurred in the three-year period before the procedure was initiated and the value of the non-performed part of the contract amounted to at least 5 % of the contract's value?

([1]) OJ 2004 L 134, p. 114.
([2]) OJ 2004 L 134, p. 1.

Reference for a preliminary ruling from the Gerechtshof Amsterdam (Netherlands) lodged on 23 September 2011 — D.F. Asbeek Brusse, K. De Man Garabito v Jahani BV

(Case C-488/11)

(2012/C 13/06)

Language of the case: Dutch

Referring court

Gerechtshof Amsterdam

Parties to the main proceedings

Applicants: Dirk Frederik Asbeek Brusse, Katarina De Man Garabito

Defendant: Jahani BV

Questions referred

1. Should a person who lets residential premises on a commercial basis and who lets a residential property to an individual be deemed to be a seller or supplier within the meaning of the Directive? ([1]) Does a tenancy agreement between a person who lets residential premises on a commercial basis and a person who rents such premises on a non-commercial basis fall within the scope of the Directive?

2. Does the fact that Article 6 of the Directive must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy, mean that, in a dispute between individuals, the national transposition measures with regard to unfair contractual terms are a matter of public policy, so that the national court is competent and obliged, both in first-instance proceedings and in appeal proceedings, of its own motion (and thus also outside the ambit of the grounds of complaint), to assess a contractual term against the national transposition measures and to find that term to be void if it comes to the conclusion that the term is unfair?

3. Is it compatible with the practical effect of Community law that the national court does not refrain from applying a penalty clause which must be deemed to be an unfair contractual term within the meaning of the Directive, but, by the application of national legislation, merely mitigates the penalty, in a case where an individual has invoked the mitigation powers of the court, but not the voidability of the term concerned?

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

Appeal brought on 26 September 2011 by Fuchshuber Agrarhandel GmbH against the order of the General Court (Second Chamber) delivered on 21 July 2011 in Case T-451/10 Fuchshuber Agrarhandel GmbH v Commission

(Case C-491/11 P)

(2012/C 13/07)

Language of the case: German

Parties

Appellant: Fuchshuber Agrarhandel GmbH (represented by: G. Lehner, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— conduct a hearing;

— order the European Commission to pay the appellant within 14 days the sum of EUR 2 623 282,31, together with interest of 6 % per annum on the sum of EUR 1 641 372,50 from 24 September 2007 and interest of 6 % per annum on the sum of EUR 981 909,81 from 16 October 2007;

— declare that the European Commission is obliged to compensate the appellant for any further losses in connection with lot KUK459 awarded on 3 September 2007 and lot KUK465 awarded on 17 September 2007;

— rule that the European Commission is to pay the appellant's costs to the appellant's lawyer within 14 days.

Pleas in law and main arguments

The appeal is directed against an order of the General Court, by which it dismissed, due to lack of any foundation in law, an action for damages in respect of the loss allegedly incurred by the applicant and appellant because the Commission did not check the conditions for the implementation of standing invitations to tender for the resale on the Community market of cereals, in this case maize, held by the Hungarian intervention agency.

The General Court's interpretation of the law, according to which the Commission cannot be accused of any unlawful conduct, is incorrect as the case-law [1] cited by the General Court cannot be applied to the present case.

Contrary to the interpretation of the General Court, it follows from the relevant provisions [2] that standing invitations to tender for the resale of cereals held by the intervention agencies of the Member States are to be managed by the Commission. In doing so, the Commission has both the competence to take decisions and a duty to conduct checks. [3] There was no discretion on the part of those intervention agencies.

The Commission's duty to conduct checks serves not only to protect the financial interests of the European Union, but also to protect the interests of individual market participants. Regulation No 884/2006 [4] sets out in specific terms the duty to conduct checks, to the effect that all intervention stores are to be checked at least once a year by the paying agencies in respect of proper conservation and the integrity of intervention stocks and a copy of the inspection reports must then be sent to the Commission. Those provisions were grossly disregarded in the present case.

The Commission's failure to exercise its powers of inspection prior to the invitation to tender at issue in the present case thus constitutes an aggravated and serious breach of duty.

In addition, the General Court made procedural errors in that it classified the statement of facts provided by the present appellant as incorrect without any taking of evidence and without a hearing.

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[1] Judgment of the Court of 1 January 2001 in Case C-247/98 *Commission* v *Greece* and judgment of the General Court of 13 November 2008 in Case T-224/04 *Italy* v *Commission*.

[2] In particular Articles 6 and 24 of Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals (OJ 2003 L 270, p. 78).

[3] Article 37 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

[4] Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States (OJ 2006 L 171, p. 35).

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Administrative Court) (Austria) lodged on 30 September 2011 — ÖBB-Personenverkehr AG v Schienen-Control Kommission and Bundesministerin für Verkehr, Innovation und Technologie

(Case C-509/11)

(2012/C 13/08)

Language of the case: German

Referring court

Verwaltungsgerichtshof (Administrative Court)

Parties to the main proceedings

Applicant: ÖBB-Personenverkehr AG

Defendants: 1. Schienen-Control Kommission

2. Bundesministerin für Verkehr, Innovation und Technologie

Questions referred

1. Is the first subparagraph of Article 30(1) of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ 2007 L 315, p. 14, to be interpreted as meaning that the national body designated responsible for the enforcement of that regulation may prescribe,

with binding effect on a railway undertaking whose compensation terms do not conform to the criteria laid down in Article 17 of that regulation, the specific content of the compensation scheme to be used by that railway undertaking although national law permits that body only to declare such compensation terms null and void?

2. Is Article 17 of Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations, OJ 2007 L 315, p. 14, to be interpreted as meaning that a railway undertaking may exclude its obligation to pay compensation of the ticket price in cases of force majeure, either through application by analogy of the grounds for exclusion provided for in Regulations (EC) No 261/2004, (EU) No 1177/2010 and (EU) No 181/2011 or by taking into account the exclusions from liability provided for in Article 32(2) of the Uniform Rules concerning the contract for international carriage of passengers and luggage by rail (CIV, Annex I to the Regulation) also for cases of compensation for the ticket price?

Reference for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 13 October 2011 — Laurence Prinz v Region Hannover

(Case C-523/11)

(2012/C 13/09)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Laurence Prinz

Defendant: Region Hannover

Question referred

Does it constitute a restriction of the right to freedom of movement and residence conferred on citizens of the European Union by Articles 20 and 21 TFEU, which is not justified under Community law, if pursuant to the Bundesausbildungsförderungsgesetz, a German national, who has her permanent residence in Germany and attends an education establishment in a Member State of the European Union, is only awarded an education grant for attending that education establishment abroad for one year because when she commenced her stay abroad she had not already had her permanent residence in Germany for at least three years?

Reference for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 20 October 2011 — Novartis Pharma GmbH v Apozyt GmbH

(Case C-535/11)

(2012/C 13/10)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Claimant: Novartis Pharma GmbH

Defendant: Apozyt GmbH

Question referred

Does the term 'developed' in the introductory sentence of the Annex to Regulation (EC) No 726/2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency [1] extend to processes in which portions only of a medicinal product which has been developed and produced on a ready-to-use basis in accordance with the above procedures are drawn off into another container, after being prescribed and ordered at the time concerned by a doctor, if as a result of the process the composition of the medicinal product is not modified, and therefore in particular to the production of pre-filled syringes which have been filled with a medicinal product which is authorised under the regulation?

[1] OJ 2004 L 136, p. 1.

Reference for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 20 October 2011 — Bundeswettbewerbsbehörde v Donau Chemie AG and Others

(Case C-536/11)

(2012/C 13/11)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Applicant: Bundeswettbewerbsbehörde

Defendants: Donau Chemie AG, Donauchem GmbH, DC Druck-Chemie Süd GmbH & Co KG, Brenntag Austria Holding GmbH, Brenntag CEE GmbH, Ashland-Südchemie-Kernfest GmbH, Ashland Südchemie Hantos GmbH.

Other parties to the proceedings: Bundeskartellanwalt, Verband Druck & Medientechnik

Questions referred

1. Does European Union law, in particular in the light of the judgment of the Court of Justice of 14 June 2011 in Case C-360/09 *Pfleiderer*, preclude a provision of national antitrust law which, (inter alia) in proceedings involving the application of Article 101 or Article 102 TFEU in conjunction with Regulation 1/2003/EC, ([1]) makes the grant of access to documents before the cartel court to third persons who are not parties to the proceedings, so as to enable them to prepare actions for damages against cartel participants, subject, without exception, to the condition that all the parties to the proceedings must give their consent, and which does not allow the court to weigh on a case-by-case basis the interests protected by European Union law with a view to determining the conditions under which access to the file is to be permitted or refused?

If the answer to Question 1 is in the negative:

2. Does European Union law preclude such a national provision where, although the latter applies in the same way to purely national antitrust proceedings and, moreover, does not contain any special rules in respect of documents made available by applicants for leniency, comparable national provisions applicable to other types of proceedings, in particular contentious and non-contentious civil and criminal proceedings, allow access to documents before the court even without the consent of the parties, provided that the third person who is not party to the proceedings adduces prima facie evidence to show that he has a legal interest in obtaining access to the file and that such access is not precluded in the case in question by the overriding interests of another person or overriding public interests?

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

Reference for a preliminary ruling from the Højesteret (Denmark) lodged on 26 October 2011 — Dansk Jurist- og Økonomforbund (DJØF — Danish Union of jurists and economists) acting on behalf of Erik Toftgaard v Indenrigs- og Sundhedsministeriet

(Case C-546/11)

(2012/C 13/12)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Dansk Jurist- og Økonomforbund (DJØF — Danish Union of jurists and economists) acting on behalf of Erik Toftgaard

Defendant: Indenrigs- og Sundhedsministeriet

Questions referred

1. Is Article 6(2) of the Employment Directive ([1]) to be interpreted as meaning that Member States may provide only that the fixing of age limits for access or entitlement to benefits under occupational social security schemes does not constitute discrimination in so far as those social security schemes relate to retirement or invalidity benefits?

2. Is Article 6(2) to be interpreted as meaning that the possibility of fixing age limits concerns only access to the scheme, or is the provision to be interpreted as meaning that the possibility of fixing age limits also concerns entitlement to the payment of benefits under the scheme?

3. If question 1 is answered in the negative:

   Can the expression 'occupational social security schemes' in Article 6(2) include a scheme such as the 'rådighedsløn' (availability pay) as referred to in section 32(1) of the Danish Law on Civil Servants (Tjenestemandslov), under which a civil servant may, as special protection in the event of redundancy due to the abolition of his post, retain his current salary for three years and continue to be credited for years of pensionable service, provided he remains available for assignment to another suitable post?

4. Is Article 6(1) of the Employment Directive to be interpreted as meaning that it does not preclude a national provision such as section 32(4)(2) of the Tjenestemandslov, under which an availability salary is not paid to a civil servant who has reached the age at which the State retirement pension becomes payable, if his job has been abolished?

([1]) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Action brought on 28 October 2011 — European Commission v Italian Republic

(Case C-547/11)

(2012/C 13/13)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Stromsky and D. Grespan, Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that:

— by failing to take, within the prescribed period, all the measures necessary to recover the State aid declared unlawful and incompatible with the internal market by Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia, respectively implemented by France, Ireland and Italy ('Decision 2006/323'), the Italian Republic has failed to fulfil its obligations under Articles 5 and 6 of that decision and under the Treaty on the Functioning of the European Union; and

— by failing to take, within the prescribed period, all the measures necessary to recover the State aid declared unlawful and incompatible with the internal market by Commission Decision 2007/375/EC of 7 February 2007 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia, implemented by France, Ireland and Italy respectively ('Decision 2007/375'), the Italian Republic has failed to fulfil its obligations under Articles 4 and 6 of that decision and under the Treaty on the Functioning of the European Union;

— order Italy to pay the costs.

Pleas in law and main arguments

The period for implementing Decision 2006/323 expired on 8 February 2006. The period for implementing Decision 2007/375 expired on 8 June 2007.

To date, the Italian Republic has not yet undertaken the full recovery of the aid declared unlawful by the decisions in question or informed the Commission that recovery has taken place. Moreover, the legal difficulties relied on by Italy as justification for the delay in implementing those decisions are not such as to make recovery absolutely impossible in accordance with the case-law of the Court.

The Commission complains next that, in breach of the obligation under the decisions in question to communicate information, Italy was late in informing it of the progress of the national procedures for implementing the decisions.

Reference for a preliminary ruling from the Varhoven Administrativen Sad (Bulgaria) lodged on 2 November 2011 — Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite v Orfey Balgaria EOOD

(Case C-549/11)

(2012/C 13/14)

Language of the case: Bulgarian

Referring court

Varhoven Administrativen Sad

Parties to the main proceedings

Applicant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Defendant: Orfey Balgaria EOOD

Questions referred

1. Is Article 63 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax to be interpreted as meaning that it does not permit a derogation where the chargeable event relating to the performance of work for the construction of certain individual properties in a building occurs before the actual performance of the construction work and that that (chargeable event) is linked to the time of the occurrence of the chargeable event relating to the transaction to be performed in return, which consists in the establishment of a building right relating to other properties in that building, which also forms the consideration for the construction work?

2. Is national legislation which provides that, whenever the consideration is fully or partly expressed as goods and services, the taxable amount for the transaction is the open market value of the goods or services supplied, compatible with Articles 73 and 80 of Directive 2006/112?

3. Is Article 65 of Directive 2006/112 to be interpreted as meaning that it does not permit VAT to be charged on the value of a payment on account in cases where the payment is not made in the form of money, or is that provision to be interpreted broadly, the assumption being that VAT is also chargeable in such cases and that it is to be charged at the level of the financial equivalent of the transaction performed in return?

4. If, in the third question, the second variant given is correct, can the building right established in the present case be regarded, in view of the specific circumstances, as a payment on account within the meaning of Article 65 of Directive 2006/112?

5. Do Articles 63, 65 and 73 of Directive 2006/112 have direct effect?

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

Reference for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on 2 November 2011 — ET 'PIGI — P. Dimova' — P. Dimova v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-550/11)

(2012/C 13/15)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: ET 'PIGI — P. Dimova'

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Questions referred

1. In which cases is it to be assumed that there is a theft of property duly proved or confirmed within the meaning of Article 185(2) of Directive 2006/112 (1), and is it necessary in that regard that the identity of the perpetrator has been established and that that person has already been finally convicted?

2. Depending on the answer to the first question: does the expression 'theft of property duly proved or confirmed' within the meaning of Article 185(2) of Directive 2006/112 cover a situation such as that in the main proceedings, in which a pre-litigation procedure for theft was initiated against person or persons unknown, a fact that is not disputed by the revenue collection department and on the basis of which it has been assumed that there is a shortfall?

3. In the light of Article 185(2) of Directive 2006/112, are national legal provisions such as those laid down in Articles 79(3) and 80(2) of the Law on VAT and a tax practice such as that adopted in the main proceedings permissible, under which the input tax deduction made on the acquisition of goods which are subsequently stolen must be adjusted, if it is assumed that the State has not made use of the power afforded to it to provide expressly for adjustments to the input tax deducted in the case of theft?

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

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 7 November 2011 — SIA 'Kurcums metal' v Valsts ieņēmumu dienests

(Case C-558/11)

(2012/C 13/16)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Appellant: SIA 'Kurcums metal'

Respondent: Valsts ieņēmumu dienests

Questions referred

1. Are cables made of polypropylene and steel thread such as those at issue in the present case included under subheading 5607 49 11 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 (1) of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

2. Is it necessary, in order to classify cables such as those at issue in the present case, to apply Rule 3(b) of the General Rules for the interpretation of the Combined Nomenclature in Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

3. If the composite cables, made of polypropylene and steel thread, whose maximum transversal section exceeds 3 mm, like those at issue in this case, are nevertheless included under subheading 7312 90 98 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, are such cables also covered by Article 1 of Council Regulation (EC) No 1601/2001 (2) of 2 August 2001 imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey?

4. Are corrugated clips with rounded tips connected by means of a pin included in subheading 7317 00 90 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff?

(1) OJ 1987 L 256, p. 1.
(2) OJ 2001 L 211, p. 1.

Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departaments (Republic of Latvia) lodged on 9 November 2011 — SIA Forvards V v Valsts ieņēmumu dienests

(Case C-563/11)

(2012/C 13/17)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāta

Parties to the main proceedings

Applicant: SIA Forvards V

Defendant: Valsts ieņēmumu dienests

Questions referred

1. Must Article 17(2)(a) of the Sixth Directive (1) be interpreted as meaning that the right to deduct value added tax paid when goods are purchased can be denied to a taxable person who fulfils all the essential requirements for deduction of value added tax, without any abusive conduct on his part having been demonstrated, when the other party to the transactions was not able to effect the supply of the goods for factual or legal reasons (the other party to the transaction is fictitious or the person responsible for it denies the existence of any economic activity or of a specific transaction and that person has no capacity to fulfil the contract)?

2. May a refusal to recognise the right to deduct value added tax be based as such on the circumstance that the other party to the transaction (the person indicated on the invoice) is considered fictitious (that is to say, his transaction does not relate to an economic activity)? Can the right to deduct input tax also be denied where no abusive practice on the part of the applicant for deduction of the input tax has been ascertained?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1)

GENERAL COURT

Judgment of the General Court of 23 November 2011 — Jones and Others v Commission

(Case T-320/07) [1]

(ECSC Treaty — Supply of coal intended for the United Kingdom electricity generation industry — Rejection of a complaint alleging discriminatory pricing — Commission's competence to apply Article 4(b) CS following expiry of the ECSC Treaty, on the basis of Regulation (EC) No 1/2003 — Assessment of Community interest — Obligations in relation to the investigation of a complaint — Manifest error of assessment)

(2012/C 13/18)

Language of the case: English

Parties

Applicants: Daphne Jones (Neath, United Kingdom), Glen Jones (Neath), and Fforch-Y-Garon Coal Co. Ltd (Neath) (represented by: D. Jeffreys and S. Llewellyn Jones, Solicitors)

Defendant: European Commission (represented by: V. Di Bucci and J. Samnadda, acting as Agents)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland, (represented: initially by E. Jenkinson, subsequently by C. Gibbs and V. Jackson, and, finally, by S. Hathaway, acting as Agents, and by J. Flynn QC); E.ON UK plc (Coventry, United Kingdom) (represented by P. Lomas, Solicitor); and International Power plc (London, United Kingdom) (represented by D. Anderson QC, M. Chamberlain, Barrister, S. Lister and D. Harrison, Solicitors)

Re:

Application for annulment of Commission Decision SG-Greffe (2007) D/203626 of 18 June 2007, pursuant to Article 7 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 [EC] and 82 [EC] (OJ 2004 L 123, p. 18), rejecting the applicants' complaint concerning infringements of the ECSC Treaty (Case COMP/37.037-SWSMA).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Commission to pay, in addition to its own costs, the costs of Mr Glen Jones and of Mrs Daphne Jones, as well as those of Fforch-Y-Garon Coal Co. Ltd.*

3. *Orders the United Kingdom of Great Britain and Northern Ireland, E.ON UK plc and International Power plc each to bear their own costs.*

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[1] OJ C 247, 20.10.2007.

Judgment of the General Court of 23 November 2011 — Sison v Council

(Case T-341/07) [1]

(Common foreign and security policy — Restrictive measures against certain persons and entities with a view to combating terrorism — Common Position 2001/931/CFSP and Regulation (EC) No 2580/2001 — Actions for annulment — Adaptation of heads of claim — Judicial review — Statement of reasons — Conditions for implementation of a Community measure freezing funds)

(2012/C 13/19)

Language of the case: English

Parties

Applicant: Jose Maria Sison (Utrecht, Netherlands) (represented by: J. Fermon, A. Comte, H. Schultz, D. Gürses and W. Kaleck, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop, E. Finnegan and R. Szostak, Agents)

Interveners in support of the defendant: Kingdom of the Netherlands (represented by by C. Wissels, M. de Mol, Y. de Vries, M. Noort, J. Langer and M. Bulterman,, acting as Agents); United Kingdom of Great Britain and Northern Ireland (represented by S. Behzadi Spencer and I. Rao, acting as Agents), and European Commission (represented initially by P. Aalto and S. Boelaert, and subsequently by S. Boelaert and P. Van Nuffel, acting as Agents)

Re:

Following the judgment of the General Court of 30 September 2009 in Case T-341/07 Sison v Council [2009] ECR II–3625, application for compensation for damage allegedly sustained by the applicant as a result of the restrictive measures taken against him with a view to combating terrorism

Operative part of the judgment

The Court:

1. *Dismisses the action for compensation;*

2. *Orders the Council of the European Union to pay, so far as the costs relating to the action for annulment are concerned, the costs incurred by Jose Maria Sison in addition to its own costs;*

3. *Orders Mr Sison to pay, so far as the costs relating to the action for compensation are concerned, the costs incurred by the Council in addition to his own costs;*

4. *Orders the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the Commission to bear their own costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the General Court of 23 November 2011 — Dennekamp v Parliament

(Case T-82/09) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme — Refusal to grant access — Exception relating to the protection of privacy and the integrity of the individual — Article 8(b) of Regulation (EC) No 45/2001 — Transfer of personal data)

(2012/C 13/20)

Language of the case: English

Parties

Applicant: Gert-Jan Dennekamp (Giethoorn, Netherlands) (represented by: O. Brouwer, A. Stoffer and T. Oeyen, lawyers)

Defendant: European Parliament (represented initially by N. Lorenz, H. Krück and D. Moore, and subsequently by N. Lorenz and D. Moore, Agents)

Interveners in support of the applicant: Kingdom of Denmark (represented by: B. Weis Fogh, J. Bering Liisberg and S. Juul Jørgensen, Agents); Republic of Finland (represented by: J. Heliskoski and H. Leppo, Agents); and European Data Protection Supervisor (EDPS) (represented initially by H. Hijmans and H. Kranenborg, and subsequently by H. Kranenborg and I. Chatelier, Agents)

Re:

Application for annulment of Decision A(2008) 22050 of the European Parliament of 17 December 2008 refusing to grant the applicant access to certain documents relating to the affiliation of certain Members of the European Parliament to the additional pension scheme.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Gert-Jan Dennekamp to bear his own costs and to pay the costs incurred by the European Parliament;*

3. *Orders the Kingdom of Denmark, the Republic of Finland and the European Data Protection Supervisor (EDPS) to bear their own costs.*

([1]) OJ C 102, 1.5.2009.

Judgment of the General Court of 24 November 2011 — EFIM v Commission

(Case T-296/09) ([1])

(Competition — Concerted practice — Abuse of a dominant position — Markets for ink cartridges — Decision rejecting a complaint — No Community interest)

(2012/C 13/21)

Language of the case: German

Parties

Applicant: European Federation of Ink and Ink Cartridge Manufacturers (EFIM) (Cologne, Germany) (represented by: D. Ehle, lawyer)

Defendant: European Commission (represented by: A. Antoniadis and A. Biolan, Agents, and W. Berg, lawyer)

Intervener in support of the defendant: Lexmark International Technology SA (Meyrin, Switzerland) (represented by: R. Snelders, lawyer, and G. Eclair-Heath, Solicitor)

Re:

Application for annulment of Commission Decision C(2009) 4125 of 20 May 2009 rejecting complaint COMP/C-3/39.391 concerning purported infringements of Articles 81 EC and 82 EC by Hewlett-Packard, Lexmark, Canon and Epson in the market for ink cartridges.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders European Federation of Ink and Ink Cartridge Manufacturers (EFIM) to bear its own costs and to pay the costs incurred by the European Commission;*

3. *Orders Lexmark International Technology SA to bear its own costs.*

([1]) OJ C 256, 24.10.2009.

Judgment of the General Court of 23 November 2011 — bpost v Commission

(Case T-514/09) ([1])

(Public service contracts — Tendering procedure of the PO — Daily transport and delivery of the Official Journal, books, other periodicals and publications — Rejection of the tender of a tenderer and decision to award the contract to another tenderer — Award criteria — Obligation to state the reasons on which the decision is based — Manifest error of assessment — Non-contractual liability)

(2012/C 13/22)

Language of the case: English

Parties

Applicant: bpost NV van publiek recht, formerly De Post NV van publiek recht (Brussels, Belgium) (represented by: R. Martens, B. Schutyser and A. Van Vaerenbergh, lawyers)

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

Re:

Application, first, for the annulment of the decision of the Publications Office of the European Union, communicated by letter of 17 December 2009, to reject the tender submitted by the applicant under invitation to tender No 10234 'Daily transport and delivery of the Official Journal, books, other periodicals and publications' (OJ 2009/S 176-253034) and award the contract to the successful tenderer, and, second, for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders bpost NV van publiek recht to pay the costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 51, 27.2.2010.

Judgment of the General Court of 23 November 2011 — Geemarc Telecom v OHIM — Audioline (AMPLIDECT)

(Case T-59/10) ([1])

(Community trade mark — Invalidity proceedings — Community word mark AMPLIDECT — Absolute grounds for refusal — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Descriptive character — No distinctive character — Acquisition of distinctive character through use — Evidence)

(2012/C 13/23)

Language of the case: English

Parties

Applicant: Geemarc Telecom International Ltd (Wanchai, Hong Kong) (represented by: G. Farrington, Solicitor)

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: Audioline GmbH (Neuss, Germany) (represented by: U. Blumenröder, P. Lübbe and B. Allekotte, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 November 2009 (Case R 913/2009-2), relating to invalidity proceedings between Audioline GmbH and Geemarc Telecom International Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Geemarc Telecom International Ltd to pay the costs.*

([1]) OJ C 100, 17.4.2010.

Judgment of the General Court of 24 November 2011 — Saupiquet v Commission

(Case T-131/10) ([1])

(Customs duty — Repayment of import duties — Canned tuna originating in Thailand — Tariff quota — Opening date — Sunday — Exhaustion of quota — Article 239 of the Community Customs Code — Articles 308a to 308c of Regulation (EEC) No 2454/93 — Regulation (EC) No 975/2003)

(2012/C 13/24)

Language of the case: French

Parties

Applicant: Saupiquet (Courbevoie, France) (represented by: R. Ledru, lawyer)

Defendant: European Commission (represented by: B.-R. Killmann and L. Bouyon, Agents)

Re:

Application for annulment of Commission Decision C(2009) 10005 final of 16 December 2009 finding that the repayment to the applicant of import duties on cans of tuna originating in Thailand is not justified.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Saupiquet to pay the costs.*

([1]) OJ C 148, 5.6.2010.

Judgment of the General Court of 23 November 2011 — Monster Cable Products v OHIM — Live Nation (Music) UK (MONSTER ROCK)

(Case T-216/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark MONSTER ROCK — Earlier national mark MONSTERS OF ROCK — Relative ground for refusal — Likelihood of confusion — Similarity of the goods — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 13/25)

Language of the case: English

Parties

Applicant: Monster Cable Products, Inc. (Brisbane, California, United States) (represented by: W. Baron von der Osten-Sacken, O. Günzel and A. Wenninger-Lenz, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Live Nation (Music) UK Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister, S. Britton and J. Summers, Solicitors)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 24 February 2010 (Case R 216/2009-1), concerning opposition proceedings between Live Nation (Music) UK Ltd and Monster Cable Products, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Monster Cable Products, Inc. to pay the costs.*

([1]) OJ C 195, 17.7.2010.

Judgment of the General Court of 22 November 2011 — mPAY24 v OHIM — Ultra (MPAY24)

(Case T-275/10) ([1])

(Community trade mark — Invalidity proceedings — Community word mark MPAY24 — Absolute grounds for refusal — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Correction of the decision by the Board of Appeal — Non-existent act — Rule 53 of Regulation (EC) No 2868/95)

(2012/C 13/26)

Language of the case: English

Parties

Applicant: mPAY24 GmbH (Vienna, Austria) (represented by: H.-G. Zeiner and S. Di Natale, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Ultra d.o.o. Proizvodnja elektronskih naprav (Zagorje ob Savi, Slovenia)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 22 March 2010 (Case R 1102/2008-1) concerning invalidity proceedings between Ultra d.o.o. Proizvodnja elektronskih naprav and mPAY24 GmbH.

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 22 March 2010 (Case R 1102/2008-1);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Judgment of the General Court of 22 November 2011 — Sports Warehouse v OHIM (TENNIS WAREHOUSE)

(Case T-290/10) ([1])

(Community trade mark — Application for Community word mark TENNIS WAREHOUSE — Absolute ground for refusal — Descriptive character — Distinctive character — Obligation to state reasons — Article 7(1)(b) and (c) and Article 75 of Regulation (EC) No 207/2009)

(2012/C 13/27)

Language of the case: German

Parties

Applicant: Sports Warehouse GmbH (Schutterwald, Germany) (represented by: M. Douglas, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially S. Schäffner and subsequently R. Pethke, Agents)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 April 2010 (Case R 1259/2009-1) concerning an application for registration of the word sign TENNIS WAREHOUSE as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sports Warehosue GmbH to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Judgment of the General Court of 23 November 2011 — Pukka Luggage v OHIM — Azpiroz Arruti (PUKKA)

(Case T-483/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark PUKKA — Opposition by the proprietor of Community and national figurative marks featuring the word element pukas — Article 8(1)(b) of Regulation (EC) No 207/2009 — Partial refusal to register)

(2012/C 13/28)

Language of the case: English

Parties

Applicant: The Pukka Luggage Company Ltd (London, United Kingdom) (represented by: K. Gilbert and M. Blair, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM: Jesús Miguel Azpiroz Arruti (San Sebastián, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 July 2010 (Case R 1175/2008-4), concerning opposition proceedings between Jesús Miguel Azpiroz Arruti and The Pukka Luggage Company Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders The Pukka Luggage Company Ltd to pay the costs.*

([1]) OJ C 328, 4.12.2010.

Judgment of the General Court of 22 November 2011 — LG Electronics v OHIM (DIRECT DRIVE)

(Case T-561/10) ([1])

(Community trade mark — Application for Community word mark DIRECT DRIVE — Absolute grounds for refusal — Descriptive character and lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2012/C 13/29)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, South Korea) (represented by: M. Graf, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 22 September 2010 (Case R 1027/2010-2), relating to an application for registration of the word sign DIRECT DRIVE as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LG Electronics, Inc. to pay the costs.*

([1]) OJ C 38, 5.2.2011.

Order of the General Court of 14 November 2011 — Apple v OHIM — Iphone Media (IPH IPHONE)

(Case T-448/10) ([1])

(Community trade mark — Partial refusal of registration — Withdrawal of the application for registration — No need to adjudicate)

(2012/C 13/30)

Language of the case: English

Parties

Applicant: Apple Inc. (California, United States) (represented by: M. Engelman, Barrister and J. Olsen, Solicitor)

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 intervening before the General Court: Iphone Media SA (Seville, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 July 2010 (Case R 1084/2009-4) relating to opposition proceedings between Apple Inc and Iphone Media SA.

Operative part of the order

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

2. *The applicant shall bear its own costs and pay those incurred by the defendant.*

([1]) OJ C 328, 4.12.2010.

Order of the President of the General Court of 18 November 2011 — EMA v Commission

(Case T-116/11 R)

(Application for Interim measures — Research and technological development programme — Decision ending the participation in a project — Debit note — Application for suspension of operation of a measure — Lack of urgency)

(2012/C 13/31)

Language of the case: Italian

Parties

Applicant: Association médicale européenne (EMA) (Brussels, Belgium) (represented by: A.Franchi, L. Picciano and N. di Castelnuovo)

Defendant: European Commission (represented initially by S. Delaude and N. Bambara, then S. Delaude and F. Moro, Agents, and D. Gullo, lawyer)

Re:

Application for suspension of operation of the Commission decision of 5 November 2010 terminating the contracts concluded for two research projects and the debit note of 13 December 2010 informing the applicant of the establishment of debts in the execution of those contracts.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 30 September 2011 — Genebre v OHIM — General Electric (GE)

(Case T-520/11)

(2012/C 13/32)

Language in which the application was lodged: Spanish

Parties

Applicant: Genebre, SA (Hospitalet de Llobregat, Spain) (represented by: D. Pellisé Urquiza, lawyer)

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

Other party to the proceedings before the Board of Appeal: General Electric Company (Schenectady, United States of America)

Form of order sought

— Declare the application admissible;

— Annul the decision of the Fourth Board of Appeal of OHIM of 26 July 2011 in Case R 20/2009-4;

— Order that Community trade mark No 5 006 325 be granted in respect of all the goods and services for which registration was sought.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Figurative mark 'GE' for goods in Classes 6, 7, 9, 11 and 17.

Proprietor of the mark or sign cited in the opposition proceedings: General Electric Company.

Mark or sign cited in opposition: National and Community word marks 'GE' and Community figurative mark 'GE' for goods and services in Classes 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 25, 28, 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal upheld.

Plea in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, since there is no likelihood of confusion between the marks at issue and General Electric Company has not produced sufficient evidence to show that its marks had been put to genuine use.

Action brought on 28 September 2011 — Otero González v OHIM — Apli-Agipa (APLI-AGIPA)

(Case T-522/11)

(2012/C 13/33)

Language in which the application was lodged: Spanish

Parties

Applicant: José Luis Otero González (Barcelona, Spain) (represented by: S. Correa, lawyer)

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

Other party to the proceedings before the Board of Appeal: Apli-Agipa SAS (Dormans, France)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 July 2011 in Case R 1454/2010-2 in relation to the partial granting of the application for the following goods 'photographs, adhesives (glues) for stationery or household purposes; paint brushes, typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks';

— refuse Community trade mark application No 5676382 'APLI-AGIPA' in respect of all the goods granted in Class 16;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Apli-Agipa SAS.

Community trade mark concerned: Word mark 'APLI-AGIPA' for goods in Class 16.

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

Mark or sign cited in opposition: Spanish word mark 'AGIPA' and Spanish figurative mark that contains the word element 'a-agipa', both for goods in Class 16.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal upheld in part.

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

Action brought on 13 October 2011 — Deutsche Bank v OHIM (Leistung aus Leidenschaft)

(Case T-539/11)

(2012/C 13/34)

Language of the case: German

Parties

Applicant: Deutsche Bank AG (Frankfurt am Main, Germany) (represented by R. Lange, T. Götting and G. Hild, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2011 in Case R 188/2011-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Leistung aus Leidenschaft' for services in Classes 35, 36 and 38

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009 as the Community trade mark concerned has distinctive character

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Action brought on 31 October 2011 — Atlas v OHIM — Couleurs de Tollens-Agora (ARTIS)

(Case T-558/11)

(2012/C 13/35)

Language in which the application was lodged: Polish

Parties

Applicant: Atlas sp. z o.o. (Łódź, Republic of Poland) (represented by: R. Rumpel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Couleurs de Tollens-Agora S.a.s. (Clichy, France)

Form of order sought

The applicant claims that the Court should:

— declare the action well founded;

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 July 2011, served on the applicant on 7 September 2011, in Case R 1253/2010-1;

— in the alternative, amend the contested decision by granting registration of the mark 'ARTIS';

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Atlas sp. z o.o.

Community trade mark concerned: word mark 'ARTIS' for goods in Classes 2 and 17 — application No 6158761

Proprietor of the mark or sign cited in the opposition proceedings: Couleurs de Tollens-Agora S.a.s.

Mark or sign cited in opposition: French word mark 'ARTIS' registered under No 93 484 880 for goods in Classes 1 and 19

Decision of the Opposition Division: opposition upheld

Decision of the Board of Appeal: appeal dismissed

Pleas in law: infringement of Article 8(1)(b) of Regulation No 207/2009 [1] with regard to establishing the similarity of the trade marks and the likelihood of confusion on the part of consumers

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 21 October 2011 — BytyOKD v Commission

(Case T-559/11)

(2012/C 13/36)

Language of the case: Czech

Parties

Applicant: Sdružení nájemníků BytyOKD.cz (Ostrava, Czech Republic) (represented by: R. Pelikán, lawyer)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2011) 4927 final of 13 July 2011, State aid No SA.25076 (2011/NN) — Czech Republic: Privatisation of OKD a.s. to Karbon Invest a.s.;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, arguing that the Commission infringed Article 108(3) TFEU by not initiating the formal procedure under Article 108(2) even though in the preliminary examination it had, in the applicant's opinion, encountered serious difficulties in assessing the compatibility with the common market of the measure of the Czech Republic under investigation. The defendant thereby deprived the applicant of the procedural rights which it would have been guaranteed in the formal procedure by Article 108(2) TFEU.

Action brought on 28 October 2011 — Kronofrance and Kronoply v Commission

(Case T-560/11)

(2012/C 13/37)

Language of the case: German

Parties

Applicants: Kronofrance SAS (Sully sur Loire, France), Kronoply GmbH (Heiligengrabe, Germany) (represented by: R. Nierer and L. Gordalla, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Commission's decision of 23 March 2011 (C 28/2005), which declared the State aid that Germany had implemented in favour of Glunz AG and OSB Deutschland GmbH, in the amount of EUR 69 797 988, to be compatible with the internal market within the meaning of Article 107(3)(a) TFEU;

— order the Commission to bear its own costs and to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the TFEU Treaty or the EC Treaty or of a rule of law which has to be applied when it is implemented

   In the first plea the applicants submit that the Commission did not comply with the rules in the Multisectoral framework on regional aid for large investment projects (OJ 1998 C 107, p. 7) ('the Multisectoral framework') in that it

   — did not determine a maximum allowable aid intensity as required, in the applicants' opinion, by point 3.1 of the Multisectoral framework;

   — established the annual growth rates for chipboards in accordance with point 7.8 of the Multisectoral framework on the basis of incorrect periods and thus arrived at an excessively high competition factor;

   — combined different competition factors in respect of the same project and therefore departed from the legal framework of point 3.10 of the Multisectoral framework.

2. Second plea in law, alleging misuse of powers

   In the second plea the applicants submit that the Commission misused its powers in assessing the aid as it did not adhere to the requirements which it itself had established.

Action brought on 28 October 2011 — Symbio Gruppe v OHIM — ADA Cosmetic (SYMBIOTIC CARE)

(Case T-562/11)

(2012/C 13/38)

Language in which the application was lodged: German

Parties

Applicant: Symbio Gruppe GmbH & Co. KG (Herborn, Germany) (represented by: A. Schulz and C. Onken, lawyers)

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

Other party to the proceedings before the Board of Appeal: ADA Cosmetic GmbH (Kehl, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 August 2011 in Case R 2121/2010-4;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: ADA Cosmetic GmbH.

Community trade mark concerned: International Registration of a figurative mark containing the word element 'SYMBIOTIC CARE' for goods in Classes 3, 5, 29 and 30.

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

Mark or sign cited in opposition: Word and figurative marks 'SYMBIOFLOR' and 'SYMBIOLACT', international registration of the word mark 'SYMBIOFEM' and figurative mark 'SYMBIOVITAL' for goods in Classes 1, 3, 5, 29 and 32.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, since there is a likelihood of confusion between the marks at issue, and infringement of Article 75 of Regulation No 207/2009, since the Board of Appeal disregarded the fact that the trade marks on which the opposition was based form a family of marks.

Action brought on 26 October 2011 — Kokomarina v OHIM — Euro Shoe Unie (interdit de me gronder I D M G)

(Case T-568/11)

(2012/C 13/39)

Language in which the application was lodged: French

Parties

Applicant: Kokomarina (Concarneau, France) (represented by: C. Charrière-Bournazel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Euro Shoe Unie NV (Beringen, Belgium)

Form of order sought

The applicant claims that the General Court should:

— declare Kokomarina's action to be admissible;

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 July 2011 in Case R 1814/2010-1;

— dismiss the opposition brought by EURO SHOE UNIE NV against the application for registration as a Community trade mark of Kokomarina's mark 'I D M G — interdit de me gronder'.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Figurative mark containing the verbal element 'interdit de me gronder I D M G' for goods in class 25.

Proprietor of the mark or sign cited in the opposition proceedings: Euro Shoe Unie NV.

Mark or sign cited in opposition: Benelux word mark 'DMG' for goods in Classes 18, 25 and 35.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Lack of use of the opposed mark and no likelihood of confusion.

Action brought on 7 November 2011 — Oetker Nahrungsmittel v OHIM (La qualité est la meilleure des recettes)

(Case T-570/11)

(2012/C 13/40)

Language of the case: German

Parties

Applicant: Dr. August Oetker Nahrungsmittel KG (Bielefeld, Germany) (represented by: F. Graf von Stosch, lawyer)

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

Form of order sought

— Annul the decision of the Grand Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 July 2011 in Case R 1798/2010-G;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'La qualité est la meilleure des recettes' for goods in Classes 16, 29, 30 and 32.

Decision of the Examiner: Partial refusal of the application.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Articles 7(1)(b) and 7(3) of Regulation No 207/2009, since the Community trade mark concerned is distinctive.

Action brought on 7 November 2011 — El Corte Inglés v OHIM

(Case T-571/11)

(2012/C 13/41)

Language in which the application was lodged: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: E. Seijo Veiguela, lawyer, and J. L. Rivas Zurdo, lawyer)

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

Other party to the proceedings before the Board of Appeal: Groupe Chez Gerard Restaurants Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 July 2011 in Case R 1946/2010-1;

— Order the defendant and, where appropriate, the other party to the proceedings to pay the costs, if that other party appears and contests the action.

Pleas in law and main arguments

Applicant for a Community trade mark: Groupe Chez Gerard Restaurants Ltd.

Community trade mark concerned: Word mark 'CLUB GOURMET' for goods in Classes 16, 21, 29, 30, 32 and 33.

Proprietor of the mark or sign cited in the opposition proceedings: Applicant.

Mark or sign cited in opposition: National figurative mark 'CLUB DEL GOURMET, EN … El Corte Inglés', applications for the national word mark 'EL SITIO DEL GOURMET' and for the national and Community trade marks 'CLUB DEL GOURMET' for services in Class 35.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) and Article 8(3) of Regulation No 207/2009 as there is a likelihood of confusion between the trade marks at issue.

Order of the General Court of 15 November 2011 — Pieno žvaigždės v OHIM — Fattoria Scaldasole (Iogurt.)

(Case T-135/10) [1]

(2012/C 13/42)

Language of the case: English

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

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[1] OJ C 134, 22.5.2010.

EN

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