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COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 39/01)

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

OJ C 32, 4.2.2012

Past publications

OJ C 25, 28.1.2012

OJ C 13, 14.1.2012

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OJ C 370, 17.12.2011

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 15 December 2011 — European Commission v Kingdom of Spain

(Case C-560/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Projects for the widening and/or upgrading of the M-501 road in Spain — ZEP ES 0000056 'Encinares del río Alberche y río Cofio' ZEP ES0000056 — Proposed SCI ES310005 'Cuenca del río Guadarrama' and proposed SCI ES3110007 'Cuenca de los ríos Alberche y Cofio')

(2012/C 39/02)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillàn, D. Recchia and J.-B Laignelot, acting as Agents)

Defendant: Kingdom of Spain (represented by: M. Muñoz Pérez, acting as Agent)

Intervener in support of the defendant: Republic of Poland (represented by: K. Rokicka, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2(1), 3, 4(1) or 2, 5, 6(2), 8 and 9 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) and Article 6(3) and (4), read in conjunction with Articles 7 and 12(1)(b) and (d) 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), as interpreted by the judgments of the Court of Justice of 13 January 2005 in Case C-117/03 and 14 September 2006 in Case C-244/05 — Projects for the widening and/or upgrading of the M-501 road — ZEP ES 0000056 'Encinares del río Alberche y río Cofio' — Proposed SCI ES 310005 'Cuenca del río Guadarrama' and proposed SCI ES 3110007 'Cuenca de los ríos Alberche y Cofio'

Operative part of the judgment

The Court:

1. *Declares that, by failing to fulfil the requirements laid down:*

   — *by Articles 2(1), 3, 4(1) or (2), as the case may be, and 5 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, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road;*

   — *by Articles 6(2) and 8 of Directive 85/337, as amended by Directive 2003/35, as regards separate projects for widening and/or upgrading of section 2 and 4 of that road;*

   — *by Article 9 of Directive 85/337, as amended by Directive 2003/35, in relation to separate projects for widening and/or upgrading section 1, 2 and 4 of that road;*

   — *by Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 of that directive, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road, as regards special protection area 'Encinares del río Alberche y río Cofio'; and*

   — *by Article 12(1)(b) and (d) of that directive, in relation to separate projects for widening and/or upgrading section 1 of the M-501 road, as regards proposed site of Community importance ES3110005 'Cuenca del río Guadarrama', and sections 2 and 4 of that road, as regards proposed site of Community importance ES3110007 'Cuencas de los ríos Alberche y Cofio',*

   the Kingdom of Spain has failed to fulfil its obligations under those provisions.

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

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

([1]) OJ C 55, 7.3.2009.

Judgment of the Court (First Chamber) of 15 December 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Frisdranken Industrie Winters BV v Red Bull GmbH

(Case C-119/10) [1]

(Trade marks — Directive 89/104/EEC — Article 5(1)(b) — Filling of cans already bearing a sign similar to a trade mark — Service provided under an order from and on the instructions of another person — Action taken by trade-mark proprietor against the service provider)

(2012/C 39/03)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Frisdranken Industrie Winters BV

Defendant: Red Bull GmbH

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 5 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) — Right of the proprietor of a registered trade mark to oppose the unlawful use of its mark — Use of a sign — Filling of cans already bearing a sign as a service for and under an order from another person — Goods destined exclusively for export to countries outside the Benelux area or the European Union — Relevant public

Operative part of the judgment

Article 5(1)(b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that a service provider who, under an order from and on the instructions of another person, fills packaging which was supplied to it by the other person who, in advance, affixed to it a sign which is identical with, or similar to, a sign protected as a trade mark does not itself make use of the sign that is liable to be prohibited under that provision.

[1] OJ C 134, 22.5.2010.

Judgment of the Court (First Chamber) of 15 December 2011 (reference for a preliminary ruling from the Cour de cassation — France) — Rastelli Davide e C. Snc v Jean-Charles Hidoux, in his capacity as liquidator appointed by the court for the company Médiasucre international

(Case C-191/10) [1]

(Regulation (EC) No 1346/2000 — Insolvency proceedings — International jurisdiction — Extension of insolvency proceedings opened in respect of a company established in one Member State to a company whose registered office is in another Member State because the property of the two companies has been intermixed)

(2012/C 39/04)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Rastelli Davide e C. Snc

Defendant: Jean-Charles Hidoux, in his capacity as liquidator appointed by the court for the company Médiasucre international

Re:

Reference for a preliminary ruling — Cour de cassation — Interpretation of Article 3(1) and (2) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — International jurisdiction of the French courts to join to insolvency proceedings, opened in respect of a company established on the national territory, a company whose seat is in another Member State, because the property of the two companies has been intermixed — Notions of 'opening' and of 'joinder' in relation to insolvability proceedings — Determination of the centre of main interests

Operative part of the judgment

1. *Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings is to be interpreted as meaning that a court of a Member State that has opened main insolvency proceedings against a company, on the view that the centre of the debtor's main interests is situated in the territory of that Member State, can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State only if it is established that the centre of that second company's main interests is situated in the first Member State.*

2. *Regulation No 1346/2000 is to be interpreted as meaning that, where a company, whose registered office is situated within the territory of a Member State, is subject to an action that seeks to extend to it the effects of insolvency proceedings opened in another Member State against another company established within the territory of that other Member State, the mere finding that the property of those companies has been intermixed is not sufficient to establish that the centre of the main interests of the company concerned by the action is also situated in that other Member State. In order to reverse the presumption that this*

centre is the place of the registered office, it is necessary that an overall assessment of all the relevant factors allows it to be established, in a manner ascertainable by third parties, that the actual centre of management and supervision of the company concerned by the joinder action is situated in the Member State where the initial insolvency proceedings were opened.

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Third Chamber) of 15 December 2011 (reference for a preliminary ruling from the Högsta förvaltningsdomstolen (formerly Regeringsrätten) — Sweden) — Försäkringskassan v Elisabeth Bergström

(Case C-257/10) ([1])

(Migrant workers — Social security — 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 — Regulation (EEC) No 1408/71 — National of a Member State who has been pursuing a professional activity in Switzerland — Return to country of origin)

(2012/C 39/05)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen (formerly Regeringsrätten)

Parties to the main proceedings

Applicant: Försäkringskassan

Defendant: Elisabeth Bergström

Re:

Reference for a preliminary ruling — Högsta förvaltningsdomstolen (formerly Regeringsrätten) — Interpretation of Articles 3(1) and 72 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2), as amended by Council Regulation (EEC) No 3427/89 of 30 October 1989 (OJ 1989 L 331, p. 1) and of the Agreement on the free movement of persons between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other (OJ 2002 L 114, p. 6) — Right to parental benefit (föräldrapenning) — National legislation making the right to an amount of family benefit higher than the basic guaranteed amount conditional upon completion of a period of affiliation with a sickness insurance scheme for a specified period — Amount of family benefit determined according to employment income earned in that Member State — Person who resides in a Member State (Sweden), but who has completed the entire reference period used for fixing the higher amount of family benefit as a member of a sickness insurance scheme in another State (Switzerland)

Operative part of the judgment

1. *Article 8(c) of the 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, signed at Luxembourg on 21 June 1999, and Article 72 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended by Regulation (EC) No 1386/2001 of the European Parliament and of the Council of 5 June 2001, must be interpreted as meaning that, where the legislation of a Member State makes the award of a family benefit — such as that at issue in the case before the referring court — conditional upon completion of periods of insurance, employment or self-employment, the institution of that Member State which is competent to make such an award must take into account for those purposes periods completed in their entirety in the Swiss Confederation.*

2. *Article 8(a) of that Agreement, and Article 3(1), Article 23(1) and (2) and Article 72 of Regulation No 1408/71, as amended by Regulation No 1386/2001, and paragraph 1 of point N of Annex VI thereto must be interpreted as meaning that, where the amount of a family benefit, such as that at issue in the case before the referring court, falls to be determined in accordance with the rules governing sickness benefit, that amount — awarded to a person who has completed in full the necessary employment periods for acquiring that right in the territory of the other Contracting Party — must be calculated by taking into account the income of a person who has comparable experience and qualifications and who is similarly employed in the Member State in which that benefit is sought.*

([1]) OJ C 195, 17.7.2010.

Judgment of the Court (Fourth Chamber) of 15 December 2011 (reference for a preliminary ruling from the Hof van Cassatie van België (Belgium)) — Jan Voogsgeerd v Navimer SA

(Case C-384/10) ([1])

(Rome Convention on the law applicable to contractual obligations — Contract of employment — Choice made by the parties — Mandatory rules of the law applicable in the absence of choice — Determination of that law — Employee carrying out his work in more than one Contracting State)

(2012/C 39/06)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Jan Voogsgeerd

Defendant: Navimer SA

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 6(2)(b) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) — Law applicable in the absence of choice — Contract of employment — Worker not habitually carrying out his work in one single country — Chief marine engineer

Operative part of the judgment

1. *Article 6(2) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that the national court seised of the case must first establish whether the employee, in the performance of his contract, habitually carries out his work in the same country, which is the country in which or from which, in the light of all the factors which characterise that activity, the employee performs the main part of his obligations towards his employer.*

2. *In the case where the national court takes the view that it cannot rule on the dispute before it under Article 6(2)(a) of that convention, Article 6(2)(b) of the Rome Convention must be interpreted as follows:*

   — *the concept of 'the place of business through which the employee was engaged' must be understood as referring exclusively to the place of business which engaged the employee and not to that with which the employee is connected by his actual employment;*

   — *the possession of legal personality does not constitute a requirement which must be fulfilled by the place of business of the employer within the meaning of that provision;*

   — *the place of business of an undertaking other than that which is formally referred to as the employer, with which that undertaking has connections, may be classified as a 'place of business', within the meaning of Article 6(2)(b) of that convention, if there are objective factors enabling an actual situation to be established which differs from that which appears from the terms of the contract, and even though the authority of the employer has not been formally transferred to that other undertaking.*

(1) OJ C 317, 20.11.2010.

Judgment of the Court (First Chamber) of 15 December 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt Hamburg-Hafen v Afasia Knits Deutschland GmbH

(Case C-409/10) (1)

(Common commercial policy — Preferential regime for the importation of products originating in the African, Caribbean and Pacific (ACP) States — Irregularities detected during an investigation carried out by the European Anti-Fraud Office (OLAF) in the exporting ACP State — Post-clearance recovery of the import duties)

(2012/C 39/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: Hauptzollamt Hamburg-Hafen

Respondent on a point of law: Afasia Knits Deutschland GmbH

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 32 of Protocol 1 to Annex V to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, concerning the definition of the concept of 'originating products' and methods of administrative cooperation (OJ 2000 L 317, p. 3), and Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Exportation of textiles made in China from Jamaica to the European Union — Subsequent verification of proofs of origin undertaken by OLAF and not by the customs authorities of the exporting country as laid down in Protocol 1 — Protection of the possible legitimate expectations of the importer

Operative part of the judgment

1. *Article 32 of Protocol 1 to Annex V to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 and approved on behalf of the Community by Council Decision 2003/159/EC of 19 December 2002, must be interpreted as meaning that the results of a subsequent verification as to the accuracy of the origin of goods as indicated on the EUR. 1 certificates issued by an ACP State and which consisted, for the most part, of an investigation conducted by the Commission, and more precisely by the European Anti-Fraud Office, in that State, and at its invitation, are binding on the authorities of the Member State into which the goods were imported, provided that — and this is a matter for the national court to establish — those authorities received a document unequivocally acknowledging that that ACP State endorsed those results.*

2. *Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that, in circumstances where the EUR. 1 certificates issued for the importation of goods into the European Union are cancelled on the ground that the issue of those certificates was marred by irregularities and that the preferential origin indicated on those certificates could not be confirmed during a subsequent verification, the importer cannot object to post-clearance recovery of the import duties by claiming that the possibility cannot be ruled out that, in reality, some of those goods have that preferential origin.*

([1]) OJ C 274, 9.10.2010.

Judgment of the Court (Third Chamber) of 15 December 2011 (reference for a preliminary ruling from the Corte suprema di cassazione — Italy) — Banca Antoniana Popolare Veneta SpA, incorporating Banca Nazionale dell'Agricoltura SpA v Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

(Case C-427/10) ([1])

(VAT — Recovery of VAT paid but not due — National legislation under which actions may be brought for the recovery of sums paid but not due, before different courts and subject to different time-limits, depending on whether the claimant is the recipient of the services or their supplier — Possibility for the recipient to claim a VAT refund from the supplier after the expiry of the time-limits within which the supplier is able to bring an action against the tax authority — Principle of effectiveness)

(2012/C 39/08)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Applicant: Banca Antoniana Popolare Veneta SpA, incorporating Banca Nazionale dell'Agricoltura SpA

Defendants: Ministero dell'Economia e delle Finanze, Agenzia delle Entrate

Re:

Reference for a preliminary ruling — Corte Suprema di Cassazione — Interpretation of Article 17(3) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Recovery of tax paid but not due — National legislation under which actions may be brought for recovery before different courts and subject to different time-limits, depending on whether the claimant is the recipient/client of the service on which VAT was paid (10 years) or the supplier/provider of that service (2 years) — Possibility for the recipient/client to claim reimbursement of the VAT from the supplier/provider after expiry of the period during which the latter may bring an action — Principles of tax neutrality, effectiveness and non-discrimination

Operative part of the judgment

The principle of effectiveness does not preclude national rules governing the recovery of sums paid but not due, under which the time-limits for a civil law action for recovery of sums paid but not due, brought by the recipient of services against the supplier, a taxable person for the purposes of VAT, are more generous than the specific time-limits for a fiscal law action for a tax refund, brought by the supplier against the tax authority, provided that it is possible for that taxable person effectively to claim reimbursement of the VAT from the tax authority. That condition is not satisfied where the application of such rules has the effect of totally depriving the taxable person of the right to obtain from the tax authority a refund of the VAT paid but not due, which the taxable person has himself had to pay back to the recipient of his services.

([1]) OJ C 288, 23.10.2010.

Judgment of the Court (Eighth Chamber) of 15 December 2011 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Niels Møller v Haderslev Kommune

(Case C-585/10) ([1])

(Integrated pollution prevention and control — Directive 96/61/EC — Annex I, subheading 6.6(c) — Installations for the intensive rearing of pigs with more than 750 places for sows — Inclusion or non-inclusion of places for gilts)

(2012/C 39/09)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Niels Møller

Defendant: Haderslev Kommune

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of subheading 6.6 of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) — Facilities intended for intensive poultry and pig farming having over 750 places for sows — Whether or not to include places for gilts (pigs after first heat which have not yet farrowed)

Operative part of the judgment

The expression 'places for sows', in subheading 6.6(c) of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it includes places for gilts (female pigs which have already been serviced, but have not yet farrowed).

(1) OJ C 38, 5.2.2011.

Judgment of the Court (Eighth Chamber) of 15 December 2011 — European Commission v French Republic

(Case C-624/10) (1)

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — Articles 168, 171, 193, 194, 204 and 214 — Legislation of a Member State obliging a seller or provider established outside the national territory to designate a tax representative and to identify him or herself for VAT purposes in that Member State — Legislation allowing deductible VAT paid by the seller or provider established outside the national territory to be offset against the VAT collected by him or her in the name and on behalf of his or her customers)

(2012/C 39/10)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Afonso, acting as Agent)

Defendant: French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 168, 171, 193, 194, 204 and 214 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation imposing the designation of a tax representative by a seller or provider established outside the national territory — Duty to identify oneself for VAT purposes — Nature and scope of the right to deduct

Operative part of the judgment

The Court:

1. *Declares that, by providing in Title IV of Administrative Instruction 3 A-9-06 No 105 of 23 June 2006 for an administrative concession derogating from a value added tax reverse charge scheme and necessitating, among other things, the designation of a tax representative by a seller or provider established outside of France, that the seller or provider identifies him or herself for value added tax purposes in France and the offsetting of deductible value added tax that he or she has paid against that which he or she has collected in the name and on behalf of his or her customers, the French Republic has failed to fulfil its obligations under Council Directive of 28 November 2006 on the common system of value added tax, and, in particular, Articles 168, 171, 193, 194, 204 and 214 thereof;*

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

(1) OJ C 72, 5.3.2011.

Action brought on 18 October 2011 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-530/11)

(2012/C 39/11)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Oliver, L. Armati, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to transpose fully and apply correctly Articles 3(7) and 4(4) of Directive 2003/35/EC (1) of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EC (2) and 96/61/EC (3), the United Kingdom has failed to fulfil its obligations under that Directive;

— order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

According to Articles 3(7) and 4(4) of Directive 2003/35/EC of the European Parliament and the Council, judicial proceedings relating to environmental matters must not be prohibitively expensive. This implements Article 9(4) of the Aarhus convention on access to information, public participation in decision-making and access to justice in environmental matters which has been concluded by the Union and most of the Member States.

The Commission claims that the United Kingdom has failed to transpose these provisions in all three of its jurisdictions (England and Wales, Scotland and Northern Ireland).

On an analysis of the rules and practice applicable in those jurisdictions and an examination of the concept of 'prohibitively expensive' proceedings, the Commission also maintains that the United Kingdom has failed to apply those provisions correctly.

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

(2) 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 L 175, p. 40

(3) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control OJ L 257, p. 26

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 9 November 2011 — Société d'Exportation de Produits Agricoles SA (SEPA) v Hauptzollamt Hamburg-Jonas

(Case C-562/11)

(2012/C 39/12)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Société d'Exportation de Produits Agricoles SA (SEPA)

Defendant: Hauptzollamt Hamburg-Jonas

Question referred

Must a penalty be imposed on an exporter who makes a request for a refund, providing a correct explanation of the facts relevant to the grant of the export refund, although no right to a refund actually exists in relation to the relevant exportation? [1]

(1) Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) as amended by Commission Regulation No 495/97 of 18 March (OJ 1997 L 77, p. 12)

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 14 November 2011 — Iberdrola, S.A. and Gas Natural SDG, S.A. v Spanish State, Hidroeléctrica del Cantábrico, S.A. and Endesa, S.A.

(Case C-566/11)

(2012/C 39/13)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: Iberdrola, SA and Gas Natural SDG, S.A.

Other parties: Spanish State, Hidroeléctrica del Cantábrico, S.A. and Endesa

Question referred

May Article 10 of Directive 2003/87/EC [1] of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

(1) OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 14 November 2011 — Gas Natural SDG, S.A. v Endesa, S.A., Iberdrola, S.A., Hidroeléctrica del Cantábrico, S.A. and Spanish State

(Case C-567/11)

(2012/C 39/14)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Gas Natural SDG, S.A.

Other parties: Endesa, S.A., Iberdrola, S.A., Hidroeléctrica del Cantábrico, S.A. and Spanish State

Question referred

May Article 10 of Directive 2003/87/EC [1] of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

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(1) OJ 2003 L 275, p. 32.

Appeal brought on 15 November 2011 by ClientEarth against the order of the General Court (Sixth Chamber) delivered on 6 September 2011 in Case T-452/10: ClientEarth, supported by Kingdom of Denmark, Republic of Finland and Kingdom of Sweden, v Council of the European Union

(Case C-573/11 P)

(2012/C 39/15)

Language of the case: English

Parties

Appellant: ClientEarth (represented by: P. Kirch, avocat)

Other parties to the proceedings: Kingdom of Denmark, Republic of Finland, Kingdom of Sweden, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— set aside the General Court's order of 6 September 2011 in Case T-452/10

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

Pleas in law and main arguments

The appellant submits that the General Court erred in law in its interpretation of the concepts of 'independence' and 'third party' in the context of the application of the first, third and fourth paragraphs of Article 19 of the Statute of the Court of Justice and Article 43(1) of the Rules of Procedure.

Action brought on 18 November 2011 — European Commission v Grand Duchy of Luxembourg

(Case C-576/11)

(2012/C 39/16)

Language of the case: French

Parties

Applicant: European Commission (represented by: O. Beynet and B. Simon, acting as Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that, by not taking all necessary measures to comply with the judgment delivered by the Court of Justice on 23 November 2006 in Case C-425/05, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 260(1) of the Treaty on the Functioning of the European Union;

— Order the Grand Duchy of Luxemburg to pay to the Commission the proposed penalty payment of EUR 11 340 for each day of delay in compliance with the judgment of 23 November 2006 in Case C-452/05, running from the date of delivery of the judgment in the present case until the date upon which the judgment in Case C-452/05 has been complied with;

— Order the Grand Duchy of Luxembourg to pay the Commission a daily lump sum of EUR 1 248, running from the date of delivery of the judgment of 23 November 2006 in Case C-452/05 until the date of delivery of the judgment in the present case, or until the date upon which the judgment in Case C-452/05 has been complied with, if it is implemented earlier;

— Order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

In support of its action, the Commission argues that, as is clear from examining the information communicated by the Luxembourg authorities, Luxembourg has not, to date, fully complied with the judgment of the Court almost five years after that judgment was delivered. Luxembourg has not complied with the provisions of either Article 5(4) or Article 5(2). Six waste water treatment plants serving agglomerations with a population equivalent of over 10 000 are still not compliant with the requirements laid down by Directive 97/221/EEC [1].

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(1) Council Directive of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40)

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 21 November 2011 — Tarragona Power S.L. v Gas Natural SDG, S.A., Spanish State, Hidroeléctrica del Cantábrico, S.A. and Endesa, S.A.

(Case C-580/11)

(2012/C 39/17)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Tarragona Power S.L.

Other parties: Gas Natural SDG, S.A., Spanish State, Hidroeléctrica del Cantábrico, S.A. and Endesa, S.A.

Question referred

May Article 10 of Directive 2003/87/EC [1] of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

[1] OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 25 November 2011 — Gas Natural SDG, S.A., Bizcaia Energia, SL v Spanish State, Endesa, S.A., Hidroeléctrica del Cantábrico, S.A. and Iberdrola, S.A.

(Case C-591/11)

(2012/C 39/18)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: Gas Natural SDG, S.A., Bizcaia Energia, SL

Other parties: Spanish State, Endesa, S.A., Hidroeléctrica del Cantábrico, S.A. and Iberdrola, S.A.

Question referred

May Article 10 of Directive 2003/87/EC [1] of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

[1] OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Juridiction de Proximité de Chartres (France) lodged on 25 November 2011 — Hervé Fontaine v Mutuelle Générale de l'Education Nationale

(Case C-603/11)

(2012/C 39/19)

Language of the case: French

Referring court

Juridiction de Proximité de Chartres

Parties to the main proceedings

Applicant: Hervé Fontaine

Defendant: Mutuelle Générale de l'Education Nationale

Question referred

Do Articles 101 and 102 of the Treaty on the Functioning of the European Union — signed at Lisbon on 13 December 2007 and which entered into force in France on 1 December 2009 — preclude national legislation such as that arising from Article L 112-1 of the French Code de la Mutualité (the Code governing mutual companies), in so far as the interpretation of that legislation would prohibit mutual companies providing supplementary health insurance from varying their benefits according to the conditions for issuing certificates and the services provided, whereas such a restriction is not imposed on other companies also providing supplementary health insurance whether governed by the Code des Assurances (the Insurance Code) or the Code de la Sécurité Sociale (the Social Security Code)?

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 2 December 2011 — Bahía de Bizcaia Electricidad, S.L. v Gas Natural SDG, S.A., Endesa, S.A., Hidroeléctrica del Cantábrico, S.A. and Spanish State

(Case C-620/11)

(2012/C 39/20)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Bahía de Bizcaia Electricidad, S.L.

Other parties: Gas Natural SDG, S.A., Endesa, S.A., Hidroeléctrica del Cantábrico, S.A. and Spanish State

Question referred

May Article 10 of Directive 2003/87/EC [1] of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

(1) OJ 2003 L 275, p. 32.

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 5 December 2011 — Société Geodis Calberson GE v FranceAgriMer

(Case C-623/11)

(2012/C 39/21)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Appellant: Société Geodis Calberson GE

Respondent: FranceAgriMer

Question referred

The proceedings are stayed … until the Court of Justice of the European Union shall have given its ruling on the question whether the provisions of Article 16 of Commission Regulation (EC) No 111/1999 [1] of 18 January 1999 are to be interpreted as conferring on the Court of Justice of the European Union jurisdiction to rule on disputes relating to the conditions under which the intervention agency designated for receiving the tenders submitted during a tendering procedure for the free supply of agricultural products to Russia makes the payment owed to the successful tenderer and releases the supply security lodged by that tenderer in favour of that agency, in particular, actions for compensation for damage suffered as a result of misconduct by the intervention agency while carrying out those transactions.

(1) Commission Regulation (EC) No 111/1999 of 18 January 1999 laying down general rules for the application of Council Regulation (EC) No 2802/98 on a programme to supply agricultural products to the Russian Federation (OJ 1999 L 14, p. 3).

Summary for the Appeal brought on 6 December 2011 by Polyelectrolyte Producers Group, SNF SAS against the order of the General Court (Seventh Chamber, Extended Composition) delivered on 21 September 2011 in Case T-1/10: Polyelectrolyte Producers Group, SNF SAS v European Chemicals Agency (ECHA), European Commission, Kingdom of the Netherlands

(Case C-626/11 P)

(2012/C 39/22)

Language of the case: English

Parties

Appellants: Polyelectrolyte Producers Group, SNF SAS (represented by: K. Van Maldegem, avocat, R. Cana, avocat)

Other parties to the proceedings: European Chemicals Agency (ECHA), European Commission, Kingdom of the Netherlands

Form of order sought

The applicants claim that the Court should:

— set aside the Order of the General Court in Case T-1/10; and

— annul the decision of the European Chemicals Agency ('ECHA') to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation (EC) No 1907/2006 [1] concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals in accordance with Article 59 of Regulation 1907/2006; or

— alternatively, refer the case back to the General Court to rule on the Appellants' Application for annulment; and

— order the Respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment in respect of the decision of ECHA to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation l907/2006 in accordance with Article 59 of Regulation l907/2006, the General Court breached Union law. In particular, the Appellants contend that the General Court committed a number of errors in its interpretation of the facts and of the legal framework as applicable to the Appellants' situation. That resulted in it making a number of errors in law, in particular:

— In holding that identification of a substance as a Substance of Very High Concern ('SVHC') by the ECHA Member State Committee in accordance with Article 59(8) of Regulation 1907/2006 is not a decision intended to produce legal effects vis-à-vis third parties before the publication of that decision on the Candidate list of SVHC in accordance with Article 59(10) Regulation 1907/2006;

For these reasons the Appellants claim that the judgment of the General Court in Case T-1/10 should be set aside and the decision of ECHA to identify acrylamide as a substance meeting the criteria set out in Article 57 of Regulation l907/2006 in accordance with Article 59 of Regulation l907/2006, should be annulled.

([1]) 1 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC
OJ L 396, p. 1

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 14 December 2011 — E.ON Generación, S.L., Iberdrola, S.A., and Spanish State

(Case C-640/11)

(2012/C 39/23)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellants: E.ON Generación, S.L., Iberdrola, S.A., and Spanish State

Question referred

May Article 10 of Directive 2003/87/EC ([1]) of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC be interpreted as not preventing application of national legislative measures of the kind under review in these proceedings, the purpose and effect of which are to reduce remuneration for the activity of electricity production by an amount equivalent to the value of the greenhouse gas emission allowances allocated free of charge during the relevant period?

([1]) OJ 2003 L 275, p. 32.

GENERAL COURT

Order of the General Court of 12 December 2011 — Traxdata France v OHIM — Ritrax (TRAXDATA, TEAM TRAXDATA)

(Case T-365/07) [1]

(Trade mark — Action for annulment — Applicant's failure to proceed — No need to adjudicate)

(2012/C 39/24)

Language of the case: English

Parties

Applicant: Traxdata France SARL (Paris, France) (represented initially by F. Valentin, B. Amaudric du Chaffaut and G. Courtois, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Ritrax Corporation Ltd (London, United Kingdom) (represented by: M.H. Blair, M.J. Gilbert, S.S. Malynicz and C.A.N. Balme, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 May 2007 (Joined Cases R 1337/2005-1, R 1338/2005-1, R 1339/2005-1 and R 1340/2005-1), concerning invalidity proceedings between Ritrax Corporation Ltd and Traxdata France SARL.

Operative part of the order

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

2. *Traxdata France SARL is ordered to pay the costs.*

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[1] OJ C 283, 24.11.2007.

Order of the General Court of 15 December 2011 — Gebr. Heller Maschinenfabrik v OHIM

(Case T-431/07) [1]

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

(2012/C 39/25)

Language of the case: German

Parties

Applicant: Gebr. Heller Maschinenfabrik GmbH (Nürtingen, Germany) (represented by: W. Keßler and S. Baur, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Manuel Fernández Martinez (Elche, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 11 September 2007 (Case R 974/2006-2), concerning opposition proceedings between Manuel Fernández Martinez and Gebr. Heller Maschinenfabrik GmbH.

Operative part of the order

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

2. *The applicant shall pay the costs.*

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[1] OJ C 37, 9.2.2008.

Order of the General Court of 7 December 2011 — Ahouma v Council

(Case T-138/11) [1]

(Death of the applicant — No need to adjudicate)

(2012/C 39/26)

Language of the case: French

Parties

Applicant: Brouha Nathanaël Ahouma (Abidjan, Côte d'Ivoire) (represented by: G. Collard, lawyer)

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

Re:

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

Operative part of the order

1. *There is no further need to adjudicate.*

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

3. *There is no need to adjudicate on the applications for leave to intervene made by the European Commission and the Republic of Côte d'Ivoire.*

(1) OJ C 130, 30.4.2011.

Order of the General Court of 7 December 2011 — Fellah v Council

(Case T-255/11) (1)

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

(2012/C 39/27)

Language of the case: French

Parties

Applicant(s): Zakaria Fellah (New York, USA) (represented by: G. Collard, lawyer)

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

Re:

Application for annulment of Council Decision 2011/221/CFSP of 6 April 2011 amending Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 93, p. 20) and of Council Regulation (EU) No 330/2011 of 6 April 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 93, p. 10).

Operative part of the order

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

2. *The Council of the European Union is ordered to pay the costs.*

3. *There is no need to adjudicate on the application to intervene made by the European Commission.*

(1) OJ C 211, 16.7.2011.

Order of the General Court of 7 December 2011 — VE (*) v Commission

(Case T-274/11 P) (1)

(Appeal — Civil service — Contractual agents — Expatriation allowance — Conditions imposed by Article 4 of Annex VII to the Staff Regulations — Notion of habitual residence — Distortion of the facts — Appeal clearly inadmissible in part and clearly unfounded in part)

(2012/C 39/28)

Language of the case: French

Parties

Appellant(s): VE (*) (represented by L. Vogel, lawyer)

Other party/parties to the proceedings: European Commission (represented by D. Martin and B. Eggers, Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 15 March 2011 in Case F-28/10 *VE (*) v Commission* [2011] ECR-SC I-A-I-0000 and II-A-1-0000, seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *VE (*) will bear his own costs and will pay those incurred by the European Commission on the appeal.*

(1) OJ C 232, 6.8.2011.

Order of the General Court of 12 December 2011 — AO v Commission

(Case T-365/11 P) (1)

(Appeal — Civil service — Officials — Time-limit for appeal — Late submission — Signed original of the appeal lodged out of time — Unforeseeable circumstances — Article 43(6) of Rules of Procedure of the General Court — Appeal manifestly inadmissible)

(2012/C 39/29)

Language of the case: English

Parties

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

Other party to the procedure: European Commission (represented by: J. Currall and J. Baquero Cruz, Agents)

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

Re:

Appeal against the order of the European Union Civil Service Tribunal (First Chamber) of 4 April 2011 in Case F-45/10 *AO* v *Commission* (not yet published in the ECR) seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *AO shall bear his own costs and those incurred by the European Commission.*

([1]) OJ C 282, 24.9.2011.

Order of the President of the General Court of 12 December 2011 — Preparados Alimenticios del Sur v Commission

(Case T-402/11 R)

(Application for interim measures — Claim for remission of import duties of some food products — Decision to refer the documents in the case to the national authorities — Applications for interim measures — Inadmissibility — No urgency)

(2012/C 39/30)

Language of the case: Spanish

Parties

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

Defendant(s): European Commission (represented by: J. Baquero Cruz and L. Bouyon, Agents)

Re:

Applications for interim measures, including suspension of operation of the letter of the Commission of 29 June 2011 informing the applicant of the reference to the Spanish authorities of the documents in the case relating to its claim for remission of import duties, so that those authorities can rule on that claim.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 12 December 2011 — Akhras v Council

(Case T-579/11 R)

(Interim measures — Common foreign and security policy — Restrictive measures against Syria — Freezing of funds and economic resources — Application for suspension of operation and provisional measures — Lack of urgency — Lack of serious and irreparable harm)

(2012/C 39/31)

Language of the case: English

Parties

Applicant: Tarif Akhras (Homs, Syria) (represented by: S. Ashley and S. Millar, Solicitors, D. Wyatt QC and R. Blakeley, Barrister)

Defendant: Council of the European Union (represented by: M. Bishop and M.-M. Joséphidès, acting as Agents)

Re:

In essence, application for provisional measures and suspension of operation of Council Decision 2011/522/CFSP of 2 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 228, p. 16), Council Regulation (EU) No 878/2011 of 2 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 228, p. 1), Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 247, p. 17), and Council Regulation (EU) No 1011/2011 of 13 October 2011 amending Regulation (EU) No 442/2011 (OJ 2011 L 269, p. 18), in so far as those texts refer to the applicant

Operative part of the order

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

2. *Costs are reserved.*

Appeal brought on 22 November 2011 by Christos Michail against the judgment of the Civil Service Tribunal of 13 September 2011 in Case F-100/09 Michail v Commission

(Case T-597/11 P)

(2012/C 39/32)

Language of the case: Greek

Parties

Appellant: Christos Michails (Brussels, Belgium) (represented by C. Meidani, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the General Court should:

— hold the appeal to be admissible and well founded;

— set aside the decision of the Civil Service Tribunal of 13 September 2011 in Case F-100/09 *Michail* v *Commission*;

— order payment to the applicant of damages for the non-material damage suffered by him, amounting to EUR 30 000;

— make an order as to costs as laid down by law.

Pleas in law and main arguments

The appellant claims that the judgment under appeal erred in its ruling on his application, by which he sought the annulment of the Commission's refusal of the request made by him for assistance under Article 24 of the Staff Regulations and of the Commission's rejection dated 14.9.2009 of his complaint made under Article 90(2) of the Staff Regulations.

In particular, the appellant claims an infringement of his procedural rights and an infringement of Community law since, first, the Civil Service Tribunal ('the Tribunal'), erring in its assessment of the evidence, erred by entirely failing to examine whether evidence had been unlawfully taken into account when the Commission proceeded to change his employment status without adopting the administrative act necessary for that change. Second, the appellant claims that the Tribunal did not observe the principles which govern the taking of evidence and the burden of proof since notwithstanding the fact that the appellant produced the document which proved his unlawful transfer, the Tribunal did not request, as required under Article 55 of the Tribunal's Rules of Procedure, from the Commission at any stage of the proceedings the production of evidence which would refute the above position. Third, the appellant claims that the Tribunal did not examine the reality of his employment status as that is revealed in the Sysper and Sysper 2 systems and on what legal basis the representation of him to be found there was supported in order to rule on whether that constitutes psychological harassment of him and falsification of evidence

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Action brought on 2 December 2011 — Garner CAD Technic and Others v Commission

(Case T-614/11)

(2012/C 39/33)

Language of the case: German

Parties

Applicants: Garner CAD Technic GmbH (Weßling, Germany), GCT Design Organisation GmbH (Weßling), SG Aerospace GmbH (Weßling) (represented by: R. Zehetmeier-Müller, M. Schweda, C. Wünschmann, F. Loose, I. Dörr and J. Eggers, lawyers)

Defendant: European Commission

Form of order sought

— annul the decision of the European Commission of 26 January 2011, C(2011) 275, on State aid C 7/2010 (ex CP 250/2009 and NN 5/2010) implemented by Germany 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty') (OJ 2011 L 235, p. 26);

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely in essence on the following pleas in law:

1. First plea in law, alleging infringement of Article 107(1) TFEU: the provision enabling the fiscal carry forward of losses is not State aid

   The applicants submit in this connection inter alia that the provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the German Körperschaftsteuergesetz (KStG) (Law on corporation tax) does not have the selective effect required by Article 107(1) TFEU as it does not favour certain undertakings or the production of certain goods. In addition, the applicants take the view that the provision enabling the fiscal carry forward of losses does not constitute an exception to the reference system under German tax law of the fundamentally unrestricted carry forward of losses and the transfer of losses between different tax periods, but helps to give effect to that reference system.

2. Second plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity as there is no differentiation between economic operators who are in a comparable factual and legal position as regards the objective pursued

   The applicants submit in that regard that the provision enabling the fiscal carry forward of losses favours all undertakings which have the legal form of a corporation under the same conditions and without any scope for discretion. The applicants take the view that the provision enabling the fiscal carry forward of losses is a general fiscal policy measure, which for that reason is not subject to the prohibition on aid.

3. Third plea in law, alleging infringement of Article 107(1) TFEU: the provision enabling the fiscal carry forward of losses is justified on the basis of the general scheme of the German tax system

   In this connection the applicants submit that even if the Commission's view were to be accepted and it were to be assumed that the provision enabling the fiscal carry forward of losses is selective in nature, the selectivity would be justified on the constitutional principles of taxation according to ability to pay, the prevention of excessive taxation and respect for the principle of proportionality.

4. Fourth plea in law, alleging infringement of Article 107(1) TFEU: there are no subsidies from State resources to the applicants

   The applicants submit that there have been no subsidies from State resources to them. In that regard they submit inter alia that the provision enabling the fiscal carry forward of losses does not confer a new financial advantage on the loss-bearing corporation, but merely maintains an already existing financial position, which is established according to the principle of the unrestricted carry forward of losses and the transfer of losses between different tax periods.

5. Fifth plea in law, alleging manifest errors of assessment on the basis of insufficient consideration of the position under German tax law

   The applicants submit in that regard inter alia that the Commission failed to have regard to the relevant provisions of German tax law and that the contested decision therefore contains serious errors.

Action brought on 2 December 2011 — CB v Commission

(Case T-619/11)

(2012/C 39/34)

Language of the case: German

Parties

Applicant: CB (Germany) (represented by: T. Hackemann and H. Horstkotte, lawyers)

Defendant(s): European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 26 January 2011, C(2011) 275, as corrected by C(2011) 2608, in the procedure on State aid C 7/2010 (ex CP 250/2009 and NN 5/2010) implemented by Germany 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty');

— in the alternative, annul the decision at least in so far as it does not provide for an exception to the recovery order, based on the principle of the protection of legitimate expectations, in favour of undertakings like the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on the following pleas in law:

1. First plea in law, alleging infringement of Article 107(1) TFEU: the deduction of losses is not an aid granted through State resources

   With regard to this plea, the applicant submits that Paragraph 8c(1) of the German Körperschaftsteuergesetz (KStG) (Law on corporation tax) infringes the principle of net profit or loss and the ability-to-pay principle and that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty merely prevents an unconstitutional intervention in the assets of taxable persons in cases covered by that provision. For that reason the applicant takes the view that the Community law definition of State aid is not fulfilled.

2. Second plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity in the absence of an exception to the relevant reference system

   The applicant submits in that regard, that the relevant reference system is the general rules on the deduction of losses for corporations (Paragraph 10d of the German Law on Income Tax in conjunction with Paragraph 8(1) of the KStG and Paragraph 10a of the German Law on Trade Tax) and that Paragraph 8c of the KStG is merely an exception to that relevant reference system, which is in turn limited inter alia by the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty.

3. Third plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity as there is no differentiation between economic operators who are in a comparable factual and legal position as regards the objective pursued

   The applicant submits in this connection inter alia that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty benefits all taxable undertakings and does not favour either particular areas of business and sectors or undertakings of a particular size.

4. Fourth plea in law, alleging infringement of Article 107(1) TFEU: Absence of selectivity due to justification on the basis of the nature and general scheme of the tax system

   The applicant submits in that regard, that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty is based on tax system specific reasons which comply with principles of constitutional law, such as taxation according to ability to pay, the prevention of excessive taxation and respect for the principle of proportionality.

5. Fifth plea in law, alleging infringement of Article 107(1) TFEU: Manifest errors of assessment on the basis of insufficient consideration of the position under German tax law

   The applicant submits in that regard, that the Commission failed to have regard to the provisions of German tax law on deduction of losses.

6. Sixth plea in law, alleging that there is a legitimate expectation under EU law

   The applicant submits in this connection that the tax privileges in question upon acquisitions of interests together with deductions of losses were raised by the Commission for the first time in a formal investigation procedure and that this is an extraordinary situation as the question whether a measure may constitute State aid could only arise on the basis of a legal simplification of a provision (Paragraph 8(4) of the KStG) which is undisputedly in conformity with the provisions on State aid. The relevance to State aid of that simplification of the law was not discernible to either the German legislature or undertakings which had been competently advised.

Action brought on 2 December 2011 — GFKL Financial Services v Commission

(Case T-620/11)

(2012/C 39/35)

Language of the case: German

Parties

Applicant: GFKL Financial Services AG (Essen, Germany) (represented by: M. Schweda, S. Schultes-Schnitzlein, J. Eggers and M. Knebelsberger, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 26 January 2011, C(2011) 275, on State aid C 7/2010 (ex CP 250/2009 and NN 5/2010) implemented by Germany 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty') (OJ 2011 L 235, p. 26);

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on the following pleas in law:

1. First plea in law, alleging infringement of Article 107(1) TFEU: the provision enabling the fiscal carry forward of losses is not a selective measure

   — The applicant takes the view that the defendant based its decision on an incorrect understanding of German corporation tax law. In particular, it determined the relevant reference system incorrectly. It incorrectly assumed that exception in the Paragraph 8c(1) of the German Körperschaftsteuergesetz (KStG) (Law on corporation tax), according to which losses which may on the whole be carried forward are extinguished in particular cases of acquisitions of interests, are part of the reference system. In fact, that provision is a departure from the reference system. The reference system consists of the general possibility of carrying forward losses to subsequent fiscal periods. That follows not least from the (constitutional) principle of net profit or loss.

   — The provision enabling the fiscal carry forward of losses is in addition, according to the applicant, a general fiscal policy measure which does not confer a selective advantage because it does not favour certain undertakings or the production of certain goods and does not therefore differentiate between economic operators who are in a comparable factual and legal position as regards the aim of the tax system.

   — The provision enabling the fiscal carry forward of losses is after all also justified on the basis of the general scheme of the German tax system because it helps to give effect to fundamental principles of German corporation tax law (inter alia the principle of transfer of losses between different tax periods), which arise directly from the German Basic Law.

2. Second plea in law, alleging infringement of Article 107(1) TFEU: there are no subsidies from State resources

   In this connection the applicant submits that there are no subsidies from State resources for the purposes of Article 107(1) TFEU in the carry forward of losses maintained by the provision, as that provision does not confer a financial advantage, but merely maintains a company's already existing financial position

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

   The applicant submits in that regard, that the contested decision infringes essential procedural requirements. The applicant takes the view that there is no comprehensible reason for the reference system used as a basis by the defendant. In addition, the multitude of errors the defendant made in it assessment of the underlying German corporation tax law means as a whole that the basic reasons are no longer discernible. The applicant submits that the contested decision does not make it possible to discern the factual and legal circumstances on which the defendant bases its view that the provision enabling the fiscal carry forward of losses constitutes State aid.

4. Infringement of the principle of the protection of legitimate expectations

   In this connection the applicant submits that the contested decision in also unlawful in so far as it orders the immediate and effective recovery of the (putative) aid without allowing Germany to take into account the existing justified legitimate expectation on the part of beneficiaries that the benefit would continue to exist. The contested decision to that extent infringes the unwritten principle of the protection of legitimate expectations under EU law.

Action brought on 5 December 2011 — SinnLeffers v Commission

(Case T-621/11)

(2012/C 39/36)

Language of the case: German

Parties

Applicant: SinnLeffers GmbH (Hagen, Germany) (represented by: C. Rupp and H. Wunderlich, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 26 January 2011, C(2011) 275 final, in the procedure on State aid C 7/2010 (ex CP 250/2009 and ex NN 5/2010) implemented by Germany 'KStG, Sanierungsklausel' ('Law on corporation tax, provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty');

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 107(1) TFEU due to absence of selectivity of the measure

   — Misjudgement of the relevant reference system: the applicant submits in this connection that the Commission took the wrong reference system as its basis in determining the selectivity of the provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the German Körperschaftsteuergesetz (KStG) (Law on corporation tax). The applicant takes the view that it follows from the use of the principle of net profit or loss as the applicable reference system, that the provision enabling the fiscal carry forward of losses is not an exception to the reference system, but rather that it restores the reference system.

   — Failure to have regard to the fact that general rules are not selective: the applicant submits in that regard that the provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the KStG is also not selective having regard to the fact that the rule in that statute is of general validity.

   — Failure to have regard to the justification for the provision enabling the fiscal carry forward of losses on the basis of the nature and general scheme of the German corporation tax system: the applicant submits in this connection that the provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the KStG is in any event justified on the basis of the nature and general scheme of the German corporation tax system with reference to the applicable reference system of the principle of net profit or loss as the expression of the ability-to-pay principle.

2. Second plea in law, alleging infringement of superior law — infringement of the principle of legitimate expectations

   The applicant submits in that regard inter alia, that the Commission did not at any time before the initiation of a formal investigation procedure against the provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the KStG express doubts relating to State aid law in respect of the original provision in Paragraph 8(4)(3) of the KStG or comparable provisions of other Member States. On the basis of that conduct on the part of the Commission in the past, the applicant was not in a position, even applying the greatest of care on the part of a prudent and alert economic operator, to foresee the contested decision. The applicant should therefore have been able to rely on the correctness of the new provision enabling the fiscal carry forward of losses in Paragraph 8c(1a) of the KStG.

Action brought on 12 December 2011 — Hellenic Republic v Commission

(Case T-632/11)

(2012/C 39/37)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias and S. Papaioannou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— uphold the action;

— annul in whole or in part the Commission implementing decision of 14 October 2011 on 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) 7105 and published at OJ L 270, p. 33, on 15 October 2011, or in the alternative modify it in accordance with the matters that have been more specifically set out;

— order the Commission to pay the costs.

Pleas in law and main arguments

By its action, the Hellenic Republic seeks the annulment of the Commission implementing decision of 14 October 2011 on 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) 7105 and published at OJ L 270, p. 33, on 15 October 2011, in so far as it concerns financial corrections imposed on the Hellenic Republic in the context of the single payment scheme and in the context of the schemes for the restructuring and conversion of vineyards, distillation and assistance for particular uses of must.

In relation to the correction in the context of the single payment scheme, the applicant asserts, first, that the application of flat-rate corrections in the context of the single payment scheme is unlawful because (a) the imposition of flat-rate corrections in the first year of application of the CAP infringes the general principle of equity and of cooperation and (b) there is no valid legal basis for the application of the old guidelines in Document VI/5530/1997 to the new CAP and to the single payment scheme or, in the alternative, the application of the old guidelines to the new CAP seriously infringes the principle of proportionality.

Second, the applicant states that the Commission's assessment that the criteria for allocation of the national reserve were not consistent with the provisions of Article 42 of Regulation No 1782/2003 ([1]) and Article 21 of Regulation No 795/2004 ([2]) is based on an erroneous interpretation of those provisions and on an erroneous assessment of the facts.

Third, the applicant submits in connection with the flat-rate 10 % correction imposed that the matters found by the Commission in relation to the national criteria for allocating a national reserve, to the non-inclusion of all the forage areas in the calculation of the reference areas/amounts and to the calculation of the regional average do not constitute infringements of Regulation No 1290/2005 and the Commission is imposing financial corrections pursuant to that regulation unlawfully. In any event, the applicant submits that the Commission interpreted and applied incorrectly Article 31 of Regulation No 1290/2005 ([3]) and the guidelines in Document VI/5530/1997 because (a) the criticisms which the Commission relies upon in relation to the criteria for allocation of the national reserve, even if assumed to be correct, did not lead to the payment of sums to persons not entitled and did not create the risk of loss for the EAGF and (b) the criticisms in questions are not linked to the failure to apply a key control and therefore do not justify the imposition of a flat-rate correction of 10 %.

In relation to the correction in the wine sector, the applicant submits that the Commission assessed the facts incorrectly in relation to the following specific points: the vineyard register, distillation and assistance for the use of must, the mandatory distillation of by-products and vineyard restructuring and conversion. Those points clearly do not justify a 10 % correction under the guiding principles for financial corrections in the clearance procedure, a correction which is clearly disproportionate in relation to the deficiencies which were recorded in the accounting system.

([1]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001.

([2]) Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of the single payment scheme provided for in 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.

([3]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

Action brought on 15 December 2011 — Cham v Council of the European Union

(Case T-649/11)

(2012/C 39/38)

Language of the case: French

Parties

Applicant: Cham Holding Co. SA (Damascus, Syria) (represented by: E. Ruchat, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— declare the applicant's action to be admissible, and consequently:

— annul Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria and Council Regulation (EU) No 950/2011 of 23 September 2011 amending Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria, in so far as those measures relate to the applicant, in that they add its name to the list of entities covered by Article 5 of Regulation (EU) No 442/2011 of 9 May 2011 and Articles 3 and 4 of Decision 2011/273/CFSP of 9 May 2011;

— 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 which are essentially identical or similar to those relied on in Case T-433/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 290, p. 14.

Action brought on 16 December 2011 — Syriatel Mobile Telecom v Council

(Case T-651/11)

(2012/C 39/39)

Language of the case: French

Parties

Applicant: Syriatel Mobile Telecom (Joint Stock Company) (Damascus, Syria) (represented by: J. Pujol, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the applicant's action admissible and well-founded;

— consequently, annul Decision 2011/628/CFSP, and Regulation (EU) No 950/2011 (EU) and the subsequent measures implementing it, in so far as they relate to 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 six pleas in law.

1. First plea in law alleging an absence of a legal basis for Decision 2011/628/CFSP ([1]) due to the repeal of Decision 2011/273/CFSP ([2]) by Decision 2011/782/CFSP. ([3])

2. Second plea in law alleging an absence of a legal basis for Regulation No 950/2011 ([4]) due to the repeal of Decision 2011/273/CFSP.

3. Third plea in law alleging that the contested measures are in breach of the rights of the defence and in particular the right to effective judicial protection provided for in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 215 TFEU and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law alleging that the defendant failed to fulfil its obligation to state reasons, since the reasons provided do not satisfy the obligation imposed on the institutions of the European Union by Article 6 of the ECHR, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law alleging that the contested measures impose unwarranted and unjustified restrictions on the applicant's fundamental rights and in particular its property rights, provided for in Article 1 of the Additional Protocol to the ECHR and in Article 17 of the Charter of Fundamental Rights of the European Union, and the right to respect for its reputation, provided for in Articles 8 and 10(2) of the ECHR.

6. Sixth plea in law alleging an adverse effect on competition within the European Union in that the adopted measures will result in a distortion of the normal operation of the telecommunications market within the European Union and thereby adversely affect competition between European operators and in trade between the Member States.

([1]) Council Decision 2011/628/CFSP of 23 September 2011 amending Decision 2011/273/CFSP concerning restrictive measures against Syria (OJ 2011 L 247, p. 17).
([2]) Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria (OJ 2011 L 121, p. 11).
([3]) Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP (OJ 2011 L 319, p. 56).
([4]) Council Regulation (EU) No 950/2011 of 23 September 2011 amending Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria (OJ 2011 L 247, p. 3).

Order of the General Court of 12 December 2011 — Truvo Belgium v OHIM — AOL (TRUVO and Truvo)

(Joined Cases T-528/10, T-69/11 and T-77/11) ([1])

(2012/C 39/40)

Language of the case: English

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

([1]) OJ C 30, 29.1.2011, OJ C 89, 19.3.2011 and OJ C 95, 26.3.2011.

Order of the General Court of 15 December 2011 — Westfälisch-Lippischer Sparkassen- und Giroverband v Commission

(Case T-22/11) ([1])

(2012/C 39/41)

Language of the case: German

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

([1]) OJ C 72, 5.3.2011.

Order of the General Court of 15 December 2011 — Rheinischer Sparkassen- und Giroverband v Commission

(Case T-27/11) ([1])

(2012/C 39/42)

Language of the case: German

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

([1]) OJ C 72, 5.3.2011.

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