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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 89/01)

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

OJ C 80, 17.3.2012

Past publications

OJ C 73, 10.3.2012

OJ C 65, 3.3.2012

OJ C 58, 25.2.2012

OJ C 49, 18.2.2012

OJ C 39, 11.2.2012

OJ C 32, 4.2.2012

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Application for authorisation to serve a garnishee order brought on 19 December 2011 — Luigi Marcuccio v European Commission

(Case C-1/11 SA)

(2012/C 89/02)

Language of the case: Italian.

Parties

Applicant: Luigi Marcuccio (represented by G. Cipressa, avvocato)

Defendant: European Commission

Form of order sought

— lift the immunity enjoyed by the Commission and authorise him to serve a garnishee order, which may also be in the form, in so far as is legally possible, of an order for the attachment of the assets necessary to cover the claim relating to the debt owed to him by the European Commission, in accordance with the summary payment order issued by the Giudice di pace di Tricase on 1 February 2010;

— serve on the European Commission all necessary documents and, in general, do all this is required by law for the enforcement of the summary payment order and, in general, for the settlement of the claim;

— order the European Commission to pay the costs.

Pleas in law and main arguments

According to the applicant, the Commission owes him a sum by way of court expenses. The Commission has not yet paid that debt.

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 25 November 2011 — Steinel Vertrieb GmbH v Hauptzollamt Bielefeld

(Case C-595/11)

(2012/C 89/03)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Steinel Vertrieb GmbH

Defendant: Hauptzollamt Bielefeld

Question referred

Are

(a) Council Regulation (EC) No 1470/2001 ([1]) of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China

and

(b) Council Regulation (EC) No 1205/2007 ([2]) of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines to be interpreted as meaning that they also cover the compact fluorescent lamps with a twilight switch imported by the claimant and described in greater detail in the order?

([1]) OJ 2001 L 195, p. 8, as amended by Council Regulation (EC) No 1322/2006 of 1 September 2006 (OJ 2006 L 244, p. 1).
([2]) OJ 2007 L 272, p. 1.

Reference for a preliminary ruling from the Cour de cassation (Belgium) lodged on 23 December 2011 — Martin y Paz Diffusion SA v David Depuydt, Fabriek van Maroquinerie Gauquie SA

(Case C-661/11)

(2012/C 89/04)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Martin y Paz Diffusion SA

Defendants: David Depuydt, Fabriek van Maroquinerie Gauquie SA

Questions referred

1.1. Must Article 5(1) and Article 8(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks ([1]) be interpreted as meaning that the exclusive right conferred by the registered mark can definitively no longer be asserted by its proprietor against a third party, in respect of all goods covered by it at the time of registration:

— where, for an extended period, the proprietor has shared the use of that mark with that third party in a form of co-ownership for part of the goods covered?

— where, when that sharing was agreed, the proprietor gave the third party its irrevocable consent to use of that mark by the third party in respect of those goods?

1.2. Must those articles be interpreted as meaning that application of a national rule, such as that according to which the proprietor of a right cannot exercise that right in a wrongful or abusive manner, can lead to a definitive prohibition on the exercise of that exclusive right for part of the goods covered or as meaning that that application must be restricted to penalising the wrongful or abusive exercise of that right in another way?

2.1. Must Article 5(1) and Article 8(1) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks be interpreted as meaning that, where the proprietor of a registered mark ends its undertaking to a third party not to use that mark for certain goods and thus intends to recommence that use itself, the national court can none the less definitively prohibit it from recommencing that use of the mark on the ground that it amounts to unfair competition because of the resulting advantage to the proprietor of the publicity previously made for the mark by the third party and possible confusion in customers' minds, or must they be interpreted as meaning that the national court must adopt a different penalty which does not definitively prohibit the proprietor from recommencing use of the mark?

2.2. Must those articles be interpreted as meaning that a definitive prohibition on use by the proprietor is justified where the third party has, over a number of years, made investments in order to bring to the attention of the public the goods in respect of which the proprietor has authorised it to use the mark?

([1]) OJ 1989 L 40, p. 1.

Reference for a preliminary ruling from Curtea de Apel Oradea (Romania) lodged on 27 December 2011 — SC Scandic Distilleries SA v Direcția Generală de Administrare a Marilor Contribuabili

(Case C-663/11)

(2012/C 89/05)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Appellant: SC Scandic Distilleries SA

Respondent: Direcția Generală de Administrare a Marilor Contribuabili

Questions referred

1. Does the refusal of the Romanian tax authorities to grant a request for reimbursement of excise duty constitute an infringement of European Union law (Articles 7 and 22 of Directive 92/12/EEC, ([1]) and the preamble thereto) in the case where:

(a) the trader requesting reimbursement of excise duty furnished proof that all the technical conditions laid down in Romanian law governing the admissibility of requests for reimbursement were satisfied, and in particular those relating to: (i) proof of payment of excise duty in Romania; and (ii) proof that the products subject to excise duty were dispatched to another Member State;

(b) according to the requirements of Romanian tax law (Article 192^6 of the Tax Code, Paragraph 18^4 of the implementing provisions referred to in Government Decision No 44/2004, and Annex 11 to Title VII of the Tax Code), certain documents which had to accompany the request for reimbursement could be furnished only after the products subject to excise duty had been delivered in another Member State;

(c) Romanian tax law (Article 18^4(4) of the implementing provisions, which refers to Article 135 of the Code of Tax Procedure) provides for a general period of five years for each request for refund/reimbursement?

2. Must Article 22([2])(a) of Directive 92/12/EEC be interpreted as meaning that failure by a trader to request reimbursement of excise duty in the Member State in which that excise duty was paid, before the products subject to excise duty were delivered in the other Member State where the products are intended for consumption, entails forfeiture of the trader's right to obtain reimbursement of the excise duty paid?

3. If the answer to Question 2 is in the affirmative, does the decision on the forfeiture of the trader's right to obtain reimbursement of excise duty, which involves double taxation of the same products subject to excise duty (in the Member State in which the products subject to excise duty are initially released for consumption and in the Member State in which the products are intended for consumption), comply with the principle of fiscal neutrality?

4. If the answer to Question 2 is in the affirmative, can the extremely brief period between the date of payment of the excise duty on the products released for consumption in one Member State and the date of dispatch of the products subject to excise duty to another Member State in which they are intended for consumption be regarded as complying with the principles of equivalence and effectiveness? Is it relevant, in that regard, that the general period during which the refund/reimbursement of a tax, duty or charge can be requested in the Member State in question is significantly longer?

(1) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

Reference for a preliminary ruling from the Varnenski administrativen sad (Bulgaria) lodged on 27 December 2011 — Paltrade EOOD v Nachalnik na Mitnicheski punkt — Pristanishte Varna pri Mitnitsa Varna

(Case C-667/11)

(2012/C 89/06)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Paltrade EOOD

Defendant: Nachalnik na Mitnicheski punkt — Pristanishte Varna pri Mitnitsa Varna

Questions referred

1. Is the retroactive levy of an anti-dumping duty pursuant to Article 1 of Council Implementing Regulation (EU) No 723/2011 (1) of 18 July 2011 permissible, without a customs registration — except for the customs registration of the Single Administrative Document in the BIMIS system — taking place with the registration of the TARIC additional code which is mentioned in Article 2 of Council Regulation (EC) No 91/2009 (2) of 26 January 2009?

2. What is, in accordance with recital 18 of Regulation No 966/2010, (3) the appropriate amount for the retroactive levy of an anti-dumping duty during the execution of Regulation No 723/2011?

(1) Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ 2011 L 194, p. 6).

(2) Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1).

(3) Commission Regulation (EU) No 966/2010 of 27 October 2010 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China by imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ 2010 L 282, p. 29).

Appeal brought on 27 December 2011 by Aliance One International, Inc. formerly Agroexpansión, S.A., against the judgment of the General Court (Fourth Chamber) delivered on 12 October 2011 in Case T-38/05 Agroexpansión S.A. v European Commission

(Case C-668/11 P)

(2012/C 89/07)

Language of the case: Spanish

Parties

Appellant: Aliance One International, Inc, formerly Agroexpansión, S.A. (represented by: M. Odriozola and A. Vide, Abogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court in Case T-38/05 *Agroexpansión, S.A.* v *Commission*;

— reduce the amount of the fine imposed on it;

— order the Commission to pay the costs incurred at both instances.

Pleas in law and main arguments

1. The appellant considers that the Commission and the General Court misapplied Article 101(1) TFEU and Article 23(2) of Regulation 1/2003 ([1]) in finding Dimon joint and severally liable for the infringement committed by Agroexpansión. The appellant submits that the General Court infringed its rights of defence and Article 296 TFEU in establishing in its judgment (and thus *ex post facto*) the standard of proof applied by the Commission in its Decision. ([2]) Consequently, in treating other undertakings more favourably, the General Court infringed the principle of equal treatment laid down in Article 20 of the Charter of Fundamental Rights. Moreover, the General Court could not ignore the fact that, in its decision, the Commission did not adequately reason its arguments relating to the rebuttal of the presumption.

2. The appellant considers that there was an error in the application of the Guidelines on the method of setting fines, and of the principle that penalties are to be tailored to the individual and of the principle of proportionality in relation to the period during which Agroexpansión did not form part of the Dimon group. The appellant considers that, for the purposes of determining the amount of the fine imposed on Agroexpansión for the period prior to its joining the Dimon group, it was not appropriate to apply any adjustment factor to the basic amount of the fine imposed on Agroexpansión since, during that period, Agroexpansión was not a subsidiary of any multinational group. In the alternative, if the Court of Justice considers that a single fine should be imposed, the appellant submits that such a fine should be reduced in order to eliminate the disproportionate adjustment factor applied.

([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).

([2]) Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81 [EC] (Case COMP/C.38.238.B.2 — Raw tobacco — Spain).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Société ED et F Man Alcohols v Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

(Case C-669/11)

(2012/C 89/08)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société ED et F Man Alcohols

Defendant: Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Questions referred

1. Is the forfeiture, at a rate of ECU 12,08 per hectolitre of alcohol not exported within the time limit laid down, of the performance guarantee lodged by the successful tenderer with the intervention agencies holding the alcohol awarded, as provided for in Article 5(5) of Commission Regulation (EC) No 360/95 of 22 February 1995 ([1]) where the time limit for export is exceeded by the successful tenderer, and the forfeiture at the rate of 15 % in all cases and 0,33 % of the amount remaining per day of delay, of the export security provided for in Article 91(12) of Commission Regulation (EC) No 1623/2000 of 25 July 2000 ([2]) where there is delay of export of the alcohol awarded, administrative penalties or measures of a different kind?

2. Is the mere failure, by an operator to comply with the time limit for export of vinous alcohol held by the intervention agencies which was awarded to it by the Commission in the context of an invitation to tender procedure a failure which has or is likely to have the effect of prejudicing the general budget of the European Communities or budgets managed by them, within the meaning of Article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995? ([3])

3. As regards the possible combination of the provisions of the cross-sectoral Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 with those of the sectoral Commission Regulation (EC) No 360/95 of 22 February 1995:

   — In the event of a positive reply to the question referred to in paragraph 2, does the system of forfeiting the guarantee where export is delayed in the sectoral Commission Regulation of 22 February 1995 apply, to the exclusion of any other system of measures or of penalties laid down by European Union law? Or, on the contrary, is the system of measures and of administrative penalties laid down by Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995, alone applicable? Or indeed, must the provisions of the two regulations of 22 February 1995 and 18 December 1995 be combined to determine the measures and penalties to be applied and, if so, in what manner?

   — In the event of a negative reply to the question referred to in paragraph 2, do the provisions of cross-sectoral Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 prohibit forfeiture of the guarantee laid down by Article 5(5) of the sectoral Commission Regulation (EC) No 360/95 of 22 February 1995, on the ground that the cross-sectoral regulation of 18 December 1995, by laying down a condition relating to the existence of a financial prejudice for the Communities, prevents a measure or a penalty imposed by an earlier or subsequent regulation in the agricultural sector from being applied in the absence of such prejudice?

4. If, in view of the reply to the earlier questions, forfeiture of the guarantee constitutes a penalty applicable where the time limit for export is exceeded by the successful tenderer, is it necessary to apply retroactively and, if so, in accordance with what rules — for the purposes of calculating the amount of the guarantee to be forfeited for failure to comply with the time limit for export set for invitations to tender Nos 170/94 EC and 171/94 EC by Commission Regulation (EC) No 360/95 of 22 February 1995 as amended — the provisions of Article 91(12) of Commission Regulation (EC) No 1623/2000 of 25 July 2000, even though, first, the latter regulation neither explicitly amended nor repealed the provisions of Article 5 of Regulation (EC) No 360/95 which specifically govern invitations to tender Nos 170/94 EC and 171/94 EC, but only those of Commission Regulation (EC) No 377/93 of 12 February 1993 ([4]) which laid down the ordinary rules for invitations to tender relating to alcohol from distillation operations held by the intervention agencies and referred, as regards the rules for release of the performance guarantees lodged by the successful tenderers, to Commission Regulation (EEC) No 2220/85 of 22 July 1985 ([5]) from which the provisions of Article 5 of Commission Regulation (EC) No 360/95 of 22 February 1995 explicitly derogate, and even though, second, Regulation (EC) No 1623/2000 was drawn up after reform of the common organisation of the markets in wine in 1999, it substantially amended the invitations to tender system and the system of guarantees given in that context, both with regard to their purpose and their amount and the rules for their forfeiture and their release and, finally, it removed Brazil from the list of third countries to which the export, for exclusive use as motor fuel, of the alcohol awarded is authorised?

([1]) Commission Regulation (EC) No 360/95 of 22 February 1995 opening individual sales by invitation to tender for the export of vinous alcohol held by intervention agencies (OJ 1995 L 41, p. 14).
([2]) Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms (OJ 2000 L 194, p. 45).
([3]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).
([4]) Commission Regulation (EEC) No 377/93 of 12 February 1993 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies (OJ 1993 L 43, p. 6).
([5]) Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (OJ 1985 L 205, p. 5).

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer) v Société Vinifrance SA

(Case C-670/11)

(2012/C 89/09)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Defendant: Société Vinifrance SA

Questions referred

1. Where it is apparent that a producer who received Community storage aid for concentrated grape must in return for concluding a storage contract with the national intervention agency acquired from a fictional or non-existing company the grape must which he then had concentrated under his responsibility before storing it, can he be regarded as having the capacity of 'owner' of the concentrated grape must for the purposes of Article 2(2) of Commission Regulation (EEC) No 1059/83 of 29 April 1983? ([1]) Is Article 17 of that regulation applicable where the storage contract concluded with the national intervention agency contains a particularly serious flaw, relating in particular to the fact that the company which concluded the contract with the national intervention agency cannot be regarded as the owner of the stored products?

2. Where a sectoral regulation, such as Council Regulation (EEC) No 822/87 of 16 March 1987, ([2]) establishes a mechanism for Community aid without also laying down a system of sanctions in the event of a breach of its provisions, must Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 ([3]) be applied in the event of such a breach?

3. Where an economic operator has failed to fulfil the obligations defined by a sectoral Community regulation, such as Regulation No 1059/83, and to satisfy the conditions which that regulation lays down for entitlement to Community aid and where that sectoral regulation provides, as does Article 17 of the abovementioned regulation, for a system of measures or sanctions, does that system apply to the exclusion of any other system provided for in European Union law, even where the breach in question prejudices the financial interests of the European Union? Or, conversely, is the system of measures and administrative sanctions provided for in Regulation No 2988/95 alone applicable in the event of such a breach? Or are both regulations applicable?

4. If the sectoral regulation and Regulation No 2988/95 are both applicable, how must their provisions be combined for the purpose of determining the measures and sanctions to be implemented?

5. Where an economic operator has committed a number of breaches of European Union law and where some of those breaches fall within the scope of the system of measures or sanctions of a sectoral regulation, while others constitute irregularities within the meaning of Regulation No 2988/95, must the latter regulation alone be applied?

([1]) Commission Regulation (EEC) No 1059/83 of 29 April 1983 on storage contracts for table wine, grape must, concentrated grape must and rectified concentrated grape must (OJ 1983 L 116, p. 77).
([2]) Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1).
([3]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Société anonyme d'intérêt collectif agricole Unanimes

(Case C-671/11)

(2012/C 89/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Société anonyme d'intérêt collectif agricole Unanimes

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, ([1]) to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

— Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

— In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

— In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

(1) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Société anonyme d'intérêt collectif agricole Unanimes

(Case C-672/11)

(2012/C 89/11)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Société anonyme d'intérêt collectif agricole Unanimes

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, (1) to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

— Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

— In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

— In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

(1) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Organisation de producteurs Les Cimes

(Case C-673/11)

(2012/C 89/12)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Organisation de producteurs Les Cimes

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, [1] to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

   — Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

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[1] Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Société Agroprovence

(Case C-674/11)

(2012/C 89/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Société Agroprovence

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, [1] to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

   — Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

   — In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

— In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

(1) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Regalp SA

(Case C-675/11)

(2012/C 89/14)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Regalp SA

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, (1) to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

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— Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

— In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

— In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

(1) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 29 December 2011 — Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) v Coopérative des producteurs d'asperges de Montcalm (COPAM)

(Case C-676/11)

(2012/C 89/15)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Établissement national des produits de l'agriculture et de la mer (FranceAgriMer), successor in law to the Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR)

Defendant: Coopérative des producteurs d'asperges de Montcalm (COPAM)

Questions referred

1. How is the option, granted by Article 2(4) of Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, ([1]) to extend the scrutiny period 'for periods … preceding or following the 12-month period' which it defines, to be implemented by a Member State, having regard to, first, the need to protect the Communities' financial interests, and second, the principle of legal certainty and the necessity to not give the scrutiny authorities indefinite power?

2. In particular:

   — Must the period scrutinised, in all instances — if the scrutiny is not to be marred by an irregularity which the person scrutinised may rely on against the decision giving due effect to the results of the scrutiny — end during the twelve month period which precedes the 'scrutiny' period during which the scrutiny operations are carried out?

   — In the event of a positive reply to the preceding question, how must the option, expressly provided for by the regulation, to extend the period of scrutiny for periods 'following the 12-month period' be understood?

   — In the event of a negative reply to the first question, must the scrutiny period nevertheless — if the scrutiny is not to be marred by an irregularity which the scrutinised person may rely on against the decision giving due effect to the results of the scrutiny — include a twelve month period which ends during the scrutiny period preceding that during which the scrutiny was carried out, or, on the contrary, may the scrutiny cover only a period which ends before the beginning of the preceding scrutiny period?

([1]) Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 29 December 2011 — SNC Doux Élevage and Société Coopérative Agricole UKL-ARREE v Ministère de l'Agriculture, de l'alimentation, de la pêche, de la ruralité et de l'aménagement du territoire and Comité interprofessionnel de la dinde française (CIDEF)

(Case C-677/11)

(2012/C 89/16)

Language of the case: French

Referring court

Conseil d'Etat, France

Parties to the main proceedings

Applicants: SNC Doux Élevage, Société Coopérative Agricole UKL-ARREE

Defendants: Ministère de l'Agriculture, de l'alimentation, de la pêche, de la ruralité et de l'aménagement du territoire, Comité interprofessionnel de la dinde française (CIDEF)

Question referred

Must Article 107 of the Treaty on the Functioning of the European Union, read in the light of Case C-345/02 *Pearle BV and Others*, be interpreted as meaning that a decision by which a national authority extends to all the traders in a sector an agreement which, like the agreement made within the Comité interprofessionnel de la dinde française (CIDEF), introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement certain activities — publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels — is, in view of the nature of the activities in question, the methods by which they are financed and the conditions of their implementation, related to State aid?

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 27 December 2011 — Bundeswettbewerbsbehörde v Schenker & Co AG and Others

(Case C-681/11)

(2012/C 89/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellants: Bundeswettbewerbsbehörde, Bundeskartellanwalt

Respondents: Schenker & Co AG, ABX Logistics (Austria) GmbH, Logwin Invest Austria GmbH, Logwin Road + Rail Austria GmbH, Alpentrans Spedition und Transport GmbH, Kapeller Internationale Spedition GmbH, Johann Strauss GmbH, Wildenhofer Spedition und Transport GmbH, DHL Express (Austria) GmbH, G. Englmayer Spedition GmbH, Internationale Spedition Schneckenreither Gesellschaft mbH, Leopold Schöffl GmbH & Co KG, Express-Interfracht Internationale Spedition GmbH, Rail Cargo, A. Ferstl Speditionsgesellschaft mbH, Spedition, Lagerei und Beförderung von Gütern mit Kraftfahrzeugen Alois Herbst GmbH & Co KG, Johann Huber Spedition und Transportgesellschaft mbH, Keimelmayr Speditions- u. Transport GmbH, 'Spedpack'-Speditions- und Verpackungsgesellschaft mbH, Thomas Spedition GmbH, Koch Spedition

GmbH, Maximilian Schludermann, in his capacity as insolvency administrator for the assets of Kubicargo Spedition GmbH, Kühne + Nagel GmbH, Lagermax Internationale Spedition Gesellschaft mbH, Morawa Transport GmbH, Johann Ogris Internationale Transport- und Speditions GmbH, Traussnig Spedition GmbH, Treu SpeditionsgesmbH, Spedition Anton Wagner GmbH, Gebrüder Weiss GmbH, Marehard u. Wuger Internat. Speditions- u. Logistik GmbH

Questions referred

1. May breaches of Article 101 TFEU committed by an undertaking be penalised by means of a fine in the case where the undertaking erred with regard to the lawfulness of its conduct and that error is unobjectionable?

If Question 1 is answered in the negative:

1a. Is an error with regard to the lawfulness of conduct unobjectionable in the case where the undertaking acts in accordance with advice given by a legal adviser experienced in matters of competition law and the erroneous nature of the advice was neither obvious nor capable of being identified through the scrutiny which the undertaking could be expected to exercise?

1b. Is an error with regard to the lawfulness of conduct unobjectionable in the case where the undertaking has expectations as to the correctness of a decision taken by a national competition authority which examined the conduct under review solely on the basis of national competition law and found it to be permissible?

2. Are the national competition authorities competent to declare that an undertaking participated in a cartel which infringes European Union competition law in a case where no fine is to be imposed on the undertaking on the ground that it has requested to be heard as a cooperative witness?

Reference for a preliminary ruling from the Tribunal da Relação de Lisboa (Portugal) lodged on 3 January 2012 — Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência

(Case C-1/12)

(2012/C 89/18)

Language of the case: Portuguese

Referring court

Tribunal da Relação de Lisboa

Parties to the main proceedings

Applicant: Ordem dos Técnicos Oficiais de Contas

Defendant: Autoridade da Concorrência

Questions referred

1. Must an institution such as the Ordem dos Técnicos Oficiais de Contas (OTOC) be regarded in its entirety as an association of undertakings for the purposes of applying the Community competition law rules (training market)? If so, is the present Article 101(2) TFEU to be interpreted as also rendering subject to those rules an entity which, like the OTOC, lays down binding rules of general application and does so in compliance with legal requirements concerning mandatory training of chartered accountants with a view to providing citizens with a quality service that can be relied on?

2. If an entity such as the OTOC is required by law to implement a mandatory training system for its members, may the present Article 101 TFEU be interpreted as allowing the possibility of challenging the setting up of a training system legally imposed by the OTOC and by the Regulation governing that system, in so far as the latter strictly confines itself to giving effect to the legal requirement? Or, on the contrary, does this matter fall outside the scope of Article 101 and must it be examined under the present Article 56 et seq. TFEU?

3. Having regard to the fact that the *Wouters* [1] judgment, and similar judgments, were concerned with rules having an impact on the economic activity of the professional members of the professional association in question, do Articles 101 and 102 TFEU preclude rules on the training of chartered accountants which have no direct influence on their economic activity?

4. In the light of Union competition law (in the training market), may a professional association impose the requirement, for the practice of the profession, of particular training provided only by it?

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[1] Case C-309/99 *Wouters* [2002] ECR I-1577

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 2 January 2012 — Syndicat OP 84 v Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) venant aux droits de l'ONIFLHOR

(Case C-3/12)

(2012/C 89/19)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Syndicat OP 84

Respondent: Office national interprofessionnel des fruits, des légumes, des vins et de l'horticulture (VINIFLHOR) venant aux droits de l'ONIFLHOR

Questions referred

1. Must the 'scrutiny period' from 1 July of one year to 30 June of the following year, as referred to in Article 2(4) of Council Regulation No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the EAGGF, [1] be understood as the period during which the authorities responsible for the scrutiny must inform the producer organisation of the planned inspection, and commence and complete the scrutiny procedure in its entirety on-site and on paper and communicate the results of that scrutiny, or must it be understood as the period during which only some of those procedural steps have to be carried out?

2. Where the conduct or the shortcomings of the producer organisation make it impossible to carry out effectively an inspection initiated during one scrutiny period, may the authorities — despite the absence of express provision to that effect in [Regulation No 4045/89] — carry out the scrutiny procedure during the subsequent scrutiny period, without causing the procedure to be vitiated by a defect which the organisation under scrutiny could rely on against the decision setting out the inferences to be drawn from the findings of that inspection?

3. If the previous question falls to be answered in the negative, may the authorities, where the conduct or the shortcomings of the producer organisation make an effective scrutiny impossible, require repayment of the financial assistance received? Does such a measure constitute one of the penalties for which provision may be made pursuant to Article 6 of [Regulation No 4045/89]?

[1] Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC (OJ 1989 L 388, p. 18).

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 9 January 2012 — Colloseum Holding AG v Levi Strauss & Co.

(Case C-12/12)

(2012/C 89/20)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Colloseum Holding AG

Defendant: Levi Strauss & Co.

Questions referred

Is Article 15(1) of Regulation (EC) No 40/94 [1] to be interpreted as meaning that:

1. a trade mark which is part of a composite mark and has become distinctive only as a result of the use of the composite mark can be used in such a way as to preserve the rights attached to it if the composite mark alone is used?

2. a trade mark is being used in such a way as to preserve the rights attached to it if it is used only together with another mark, the public sees independent signs in the two marks and, in addition, both marks are registered together as a trade mark?

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Appeal brought on 13 January 2012 by Dashiqiao Sanqiang Refractory Materials Co. Ltd against the judgment of the General Court (First Chamber) delivered on 16 December 2011 in Case T-423/09 Dashqiao Sanqiang Refractory Materials Co. Ltd v Council

(Case C-15/12 P)

(2012/C 89/21)

Language of the case: French

Parties

Appellant: Dashiqiao Sanqiang Refractory Materials Co. Ltd (represented by: J.-F. Bellis and R. Luff, avocats)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

— Declare this appeal admissible and well founded;

— Annul the judgment of the General Court of the European Union of 16 December 2011 in Case T-423/09 *Dashiqiao Sanqiang Refractory Materials Co. Ltd* v *Council* and rule on the dispute which forms its subject-matter;

— Uphold the claims submitted at first instance and, accordingly, annul the antidumping duty imposed on the appellant under Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China, [1] in so far as the antidumping duty which it sets exceeds that which would be applicable if it had been determined on the basis of the method applied during the initial investigation to take account of the non-refund of the Chinese VAT on export in accordance with Article 2(10) of the basic regulation; [2]

— Order the Council to pay the costs of both instances.

Pleas in law and main arguments

The appellant raises three pleas in law in support of its appeal, challenging the rejection by the General Court of its second plea for annulment alleging infringement by the Council and the Commission of Article 11(9) of the basic antidumping regulation.

By its first plea in law, the appellant submits that the General Court errs in law inasmuch as it refuses to rule on the question of which method of comparison between the export price and the normal value had been applied in the initial investigation and therefore could not validly conclude that there was no change of methodology for the purposes of Article 11(9) of the basic regulation in the review investigation. In reality, there was a radical change in method of comparison between the initial investigation, when the comparison was made on a 'VAT excluded' basis, and the review, when the comparison was made on a 'VAT included' basis. Application of the latter methodology led to a higher dumping margin than that which would have resulted from application of the methodology used in the initial investigation.

By its second plea in law, the appellant argues that the General Court errs in law inasmuch as it considers that the institutions are bound no longer to apply the method of comparison between the export price and the normal value applied in the initial investigation if that leads to an adjustment not authorised under Article 2(10)(b) of the basic regulation, thus confusing the concepts of 'adjustment' and 'method of comparison'.

By its third plea in law, the appellant submits that the General Court errs in law inasmuch as it concludes that the difference in the rate of refund of VAT on export between the period covered by the initial investigation and that covered by the review constitutes a change in circumstances which justifies a change in methodology, whereas it was not proven that that difference rendered the method of comparison used in the initial investigation inapplicable. Since the exception on the ground of a 'change in circumstances' is to be interpreted strictly, the reasoning in paragraphs 62 to 64 of the judgment under appeal clearly does not meet that rigorous requirement.

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[1] OJ 2009 L 240, p. 7.

[2] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 16 January 2012 — Efir OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

(Case C-19/12)

(2012/C 89/22)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Efir OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' Plovdiv

Questions referred

1. Must Article 62(1) and (2) of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax be interpreted as meaning that the concept of a chargeable event relates to both taxable and exempt transactions?

2. Should Question 1 be answered in the negative: Is a national provision such as that applicable in the main proceedings, under which a chargeable event also occurs at the time of an exempt transaction, permissible?

3. Do Articles 62 and 63 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax 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.

Appeal brought on 24 January 2012 by Idromacchine Srl and Others against the judgment delivered by the General Court (Fourth Chamber) on 8 November 2011 in Case T-88/09 Idromacchine Srl and Others v Commission

(Case C-34/12 P)

(2012/C 89/23)

Language of the case: Italian

Parties

Appellants: Idromacchine Srl, Alessandro Capuzzo, Roberto Capuzzo (represented by: W. Viscardini and G. Donà, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside in part the judgment of the General Court (Fourth Chamber) of 8 November 2011 in Case T-88/09 in so far as it:

  — failed to recognise that Idromacchine suffered material damage;

  — recognised that Idromacchine suffered only negligible non-material damage;

  — failed to recognise that Messrs Capuzzo suffered non-material damage;

  — accordingly, grant the forms of order sought by the appellants at first instance.

— Order the European Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

The appellants claim that the General Court erred in law in the following respects:

I. Manifest error, apparent from the documents before the Court, in finding that a declaration that the damaging factual allegations relied on by Idromacchine were false could not constitute the subject matter of the proceedings;

II. Inadequate and, in any event, incorrect statement of reasons with regard to the rejection of the complaints alleging breach of the duty to exercise due care and of the rights of the defence;

III. Manifest distortion, apparent from the documents before the Court, of the facts and evidence with regard to material damage — Breach of the rules governing the burden of proof — Defective reasoning;

IV. Breach of the duty to state reasons, of the principle of proportionality and non-discrimination and denial of justice with regard to the criteria for quantifying the non-material damage which it is acknowledged Idromacchine suffered;

V. Breach of the principle of non-discrimination, failure to state reasons, manifest substantive inaccuracy, apparent from the documents before the Court, as regards the failure to recognise that compensation should be awarded for the non-material damage suffered by Messrs Capuzzo.

Appeal brought on 25 January 2012 by Plásticos Españoles, S.A. (ASPLA) against the judgment delivered by the General Court (Fourth Chamber) on 16 November 2011 in Case T-76/06 ASPLA v Commission

(Case C-35/12 P)

(2012/C 89/24)

Language of the case: Spanish

Parties

Appellant: Plásticos Españoles, S.A. (ASPLA) (represented by: E. Garayar Gutiérrez and M. Troncoso Ferrer, abogados)

Other party to the proceedings: European Commission

Form of order sought

— Declare the present appeal admissible.

— Set aside the judgment of the General Court of the European Union of 16 November 2011 in Case T-76/06 *ASPLA* v *Commission*

— Alternatively, substantially reduce the amount of the fine imposed by the Commission and upheld by the General Court of the European Union, while having regard to the requirements of the principles of proportionality, equal treatment and non-discrimination.

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

Grounds of appeal and main arguments

1. ***First ground of appeal***: (i) infringement of Article 101 of the Treaty on the Functioning of the European Union (TFEU) and of the case-law of the Court of Justice on that provision and on the concept of a 'single and continuous' infringement and (ii) infringement of the rules of procedure in relation to the burden of proof and the taking of evidence.

   The judgment under appeal contains errors of assessment concerning the evidence adduced by the Commission for the purposes of applying the concept of a single and continuous infringement to ASPLA, both in terms of (i) ASPLA's alleged participation in the infringements in the open mouth bags and block bags sectors and (ii) ASPLA's knowledge of the unlawful conduct in sub-groups in which it did not participate and of whether such conduct formed part of a 'general collusive scheme'.

2. ***Second ground of appeal***: the General Court erred in law in finding that ASPLA was out of time in advancing the argument that incorrect sales figures were used when the financial penalty imposed on it was being determined. Alternatively, that argument directly concerns a matter of public policy which on account of the General Court's lack of assessment also amounts to an error of law.

   As regards the main plea, the appellant submits that the General Court's error lies in the fact that the argument in question is not a new plea in law but rather supplements an existing one, and also in the fact that the sales figures for the Grupo Armando Álvares were used in preference to those for ASPLA in order to calculate the penalty.

   As regards the alternative plea, the appellant submits that the General Court erred in law by failing to assess properly the scope of the Commission's duty to give reasons regarding the method of calculating the basic amount of the fine imposed on ASPLA.

Appeal brought on 25 January 2012 by Armando Álvarez, S.A. against the judgment of the General Court (Fourth Chamber) delivered on 16 November 2011 in Case T-78/06 Álvarez v Commission

(Case C-36/12 P)

(2012/C 89/25)

Language of the case: Spanish

Parties

Appellant: Armando Álvarez, S.A (represented by: E. Garayar Gutiérrez and M. Troncoso Ferrer, abogados)

Other party to the proceedings: European Commission

Form of order sought

— Declare the present appeal admissible.

— Set aside the judgment of the General Court of the European Union of 16 November 2011 in Case T-78/06 *Álvarez* v *Commission* and, consequently, annul Commission Decision C(2005) 4634 final of 30 November 2005 in Case COMP/F/38.354 in so far as liability is attributed to Armando Álvarez, S.A.

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

Grounds of appeal and main arguments

1. ***Main ground of appeal***, alleging an error of law and infringement of the rights of the defence in the analysis of whether liability for the infringement could be attributed to the appellant.

   The General Court attributed liability for the infringement to Armando Álvarez as a direct participant in the cartel, thereby upholding not only fresh pleas in law, but also grounds for attributing liability to Armando Álvarez different from the ground established in the contested decision. In addition, the General Court rejected the arguments in the application, holding that they were insufficient to rebut the presumption that Armando Álvarez exercised actual control over its subsidiary. However, since there was no presumption, in the Commission's decision, to the effect that the appellant exercised actual control over the subsidiary, it was not for the appellant to rebut such a presumption, but rather the burden of proof rested entirely upon the Commission.

   In so doing, the General Court misapplied the concepts of participation in an infringement and the attribution of such participation, and infringed the appellant's rights of defence.

2. ***Alternative ground of appeal***, alleging failure to provide reasons in relation to the arguments that Armando Álvarez lacked actual control over Aspla.

   Alternatively, if liability must be attributed to Armando Álvarez directly for infringement of Article 101 TFEU, and the presumption of parent-subsidiary liability applied, *quod non*, the General Court simply held that the arguments relied on by Armando Álvarez did not call in question its liability, without assessing the arguments actually put forward in the application for annulment. Consequently, the appellant submits that there is a clear failure to state reasons in the judgment under appeal.

Appeal brought on 26 January 2012 by Saupiquet against the judgment of the General Court (Fifth Chamber) delivered on 24 November 2011 in Case T-131/10 *Saupiquet v Commission*

(Case C-37/12 P)

(2012/C 89/26)

Language of the case: French

Parties

Appellant: Saupiquet SAS (represented by: R. Ledru, avocat)

Other party to the proceedings: European Commission

Form of order sought

— Annul in its entirety the judgment of the General Court of the European Union of 24 November 2011 in Case T-131/10 *Saupiquet* v *Commission*;

— Grant in their entirety the forms of order sought in the present appeal and those sought at first instance by the undertaking Saupiquet;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant alleges, firstly, infringement by the General Court of the fundamental principles of equal treatment and non-discrimination and, in consequence, of Articles 2 and 9 of the Treaty on European Union, Article 8 of the Treaty on the Functioning of the European Union and Articles 20 and 21 of the Charter of Fundamental Rights.

Secondly, the appellant alleges that the General Court infringed Article 3 of the Treaty on the Functioning of the European Union, conferring power and, in particular, exclusive responsibility on the Union in respect of customs matters.

Thirdly, the appellant alleges infringement of Articles 247 and 247a of the Community Customs Code. ([1])

Fourthly and lastly, the appellant alleges infringement of Article 7 of Council Regulation No 975/2003. ([2])

In fact, contrary to the findings of the General Court, it follows from the combined application of the texts referred to above that the Commission must be held liable for the negative consequences of the closure of customs offices on Sundays in certain Member States and must take the measures necessary to remedy those consequences.

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

([2]) Council Regulation (EC) No 975/2003 of 5 June 2003 opening and providing for the administration of a tariff quota for imports of canned tuna covered by CN codes 1604 14 11, 1604 14 18 and 1604 20 70 (OJ 2003 L 141, p. 1).

Appeal brought on 27 January 2012 by Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH, against the judgment of the General Court (Fourth Chamber) delivered on 16 November 2011 in Case T-79/06, Sachsa Verpackung v Commission

(Case C-40/12 P)

(2012/C 89/27)

Language of the case: French

Parties

Appellant: Gascogne Sack Deutschland GmbH, formerly Sachsa Verpackung GmbH (represented by: F. Puel and L. François-Martin, avocats)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of 16 November 2011 delivered by the Fourth Chamber of the General Court of the European Union in Case T-79/06 … and refer the case back to the General Court for judgment as may be required by the Court, including judgment on the financial consequences for the appellant of the time in excess of a reasonable period which has expired;

— reduce the amount of the fine to take account of the financial consequences for the appellant of the time in excess of a reasonable period which has expired;

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

Grounds of appeal and main arguments

The appellant relies on four grounds in support of its appeal.

By its first ground, the appellant submits that the General Court erred in law by failing to draw the conclusions from the entry into force of the [amended provisions] of the Treaty on European Union on 1 December 2009, and in particular of [amended] Article 6 thereof, which confers the same legal value on the Charter of Fundamental Rights of the European Union as the Treaties.

By its second ground, the appellant submits that the General court failed to provide sufficient grounds for its decision with regard to the application of Article 23(2) of Regulation No 1/2003 [1] or of Article 15 of Regulation No 17. [2]

By its third ground, the appellant submits that the General Court has failed to exercise its powers of review and has failed properly to review the grounds and the reasoning of the Commission concerning the impact of the practice on the market.

By its fourth ground, the appellant submits, in the alternative, that the General Court has failed to comply with the procedure, by breaching the principle of the right to fair legal process within a reasonable period enshrined in Article 6 ECHR and the principle of effective judicial protection. That ground leads the appellant to seek to have the judgment under appeal set aside and, in the alternative, to reduce the amount of the fine to take account of the financial consequences for the appellant of the time in excess of a reasonable period which has elapsed.

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

[2] Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles [81 EC] and [82 EC] (OJ, English Special Edition, 1959-1962, p. 87).

Action brought on 2 February 2012 — European Commission v Ireland

(Case C-55/12)

(2012/C 89/28)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal, W. Mölls, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that by granting excise duty relief for the fuel used by disabled people for motor vehicles without respecting the minimum levels of taxation prescribed by Council Directive 2003/96/EC [1] Ireland has failed to fulfil its obligations under that Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The Commission submits that, by maintaining the exemption from excise duty of motor fuels used by disabled people, Ireland is in breach of its obligations under the directive.

[1] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity
OJ L 283, p. 51

Appeal brought on 6 February 2012 by Groupe Gascogne SA against the judgment of the General Court (Fourth Chamber) delivered on 16 November 2011 in Case T-72/06 Groupe Gascogne v Commission

(Case C-58/12 P)

(2012/C 89/29)

Language of the case: French

Parties

Appellant: Groupe Gascogne SA (represented by: P. Hubert and E. Durand, avocats)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment under appeal inasmuch as it dismissed the action brought by Groupe Gascogne SA for the annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.354 – Industrial bags) and ordered Groupe Gascogne SA to pay the costs;

— Set aside the judgment under appeal inasmuch as it upheld the penalty imposed on Groupe Gascogne SA by the contested decision;

— refer the case back to the General Court for judgment as may be required by the Court or directly set the penalty at an amount:

  — not exceeding 10 % of the combined turnover of the companies Sachsa and Groupe Gascogne S.A., the only undertakings implicated in the present proceedings;

  — and/or taking into account the fact that the duration of the proceedings before the General Court was manifestly excessive;

— order the defendant, the European Commission, to pay the costs of both sets of proceedings in their entirety.

Grounds of appeal and main arguments

By the first ground of appeal, Groupe Gascogne SA submits that the General Court erred in law by refusing to examine the impact of the changes in the European Union legal order when the Treaty of Lisbon entered into force on 1 December 2009, in particular with regard to the consequences for the present case of applying the provisions of Article 48 of the Charter of Fundamental Rights of the European Union, safeguarding Groupe Gascogne SA's presumption of innocence.

By the second ground of appeal, Groupe Gascogne SA submits that the General Court infringed Article 101 of the Treaty on the Functioning of the European Union and Article 48 of the Charter of Fundamental Rights of the European Union (i) by incorrectly attributing joint and several liability to Groupe Gascogne SA for the practices engaged in by Sachsa as from 1 January 1994 solely on the basis that Groupe Gascogne SA held 100 % of Sachsa's share capital, and (ii) by upholding the contested decision inasmuch as the latter held Groupe Gascogne SA jointly and severally liable, as to EUR 9.90 million, for the payment of the fine imposed on Sachsa.

By the third ground of appeal — submitted in the alternative — Groupe Gascogne SA submits that the General Court erred in law by misconstruing the concept of 'undertaking' within the meaning of Article 101 of the Treaty on the Functioning of the European Union and, in consequence, by ascertaining compliance with the ceiling of 10 % of turnover, laid down by Article 23(2) of Regulation (EC) No 1/2003, ([1]) en relación con el volumen de negocios consolidado de Grupo Gascogne, cuando debería haberse basado — en la medida en que la sociedad Groupe Gascogne pueda ser considerada conjunta y solidariamente responsable de la infracción reprochada a Sachsa — exclusivamente en el volumen de negocios social acumulado de las sociedades Groupe Gascogne y Sachsa, al no haber expuesto las razones por las que las otras filiales de Gropue Gascogne deberían ser incluidas en la «empresa» responsable de las supuestas prácticas de Sachsa contrarias a la competencia.

Lastly, by the fourth and final ground of appeal — also submitted in the alternative — Groupe Gascogne SA submits that the General Court has infringed Article 47 of the Charter of Fundamental Rights of the European Union, in that its case was not dealt with within a reasonable time.

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

GENERAL COURT

Judgment of the General Court of 13 February 2012 — Budapesti Erőmű v Commission

(Joined Cases T-80/06 and T-182/09) [1]

(State aid — Wholesale electricity market — Favourable terms granted by a Hungarian public undertaking to certain power generators under power purchase agreements — Decision to initiate the procedure laid down in Article 88(2) EC — Decision declaring the aid incompatible with the common market and ordering its recovery — New aid — Private investor test)

(2012/C 89/30)

Language of the case: English

Parties

Applicant: Budapesti Erőmű Zrt (Budapest (Hungary)) (represented, in Cases T-80/06 and T-182/09, by M. Powell, C. Arhold and K. Struckmann, lawyers, and also, in Case T-182/09, by A. Hegyi, lawyer)

Defendant: European Commission (represented, in Cases T-80/06 and T-182/09, by N. Khan, L. Flynn and K. Talabér-Ritz, and also, in Case T-80/06, by V. Di Bucci, acting as Agents)

Re:

Application, in Case T-80/06, for annulment of the Commission's decision, notified to Hungary by letter of 9 November 2005, to initiate the procedure laid down in Article 88(2) EC in relation to State aid C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs, and, in Case T-182/09, for annulment of Commission Decision 2009/609/EC of 4 June 2008 on the State aid C 41/05 awarded by Hungary through Power Purchase Agreements (OJ 2009 L 225, p. 53).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Budapesti Erőmű Zrt to pay the costs.*

[1] OJ C 108, 6.5.2006.

Judgment of the General Court of 14 February 2012 — Italy v Commission

(Case T-267/06) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Financial corrections — Fruit and vegetables — Public storage of beef and veal)

(2012/C 89/31)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello, Avvocato dello Stato)

Defendant: European Commission (represented by: C. Cattabriga and F. Jimeno Fernández, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Partial annulment of Commission Decision 2006/554/EC of 27 July 2006 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2006 L 218, p. 12), in so far as it excludes certain expenditure incurred by the Italian Republic in the fruit and vegetable sector and in the public storage of beef and veal sector.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Italian Republic to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 281, 18.11.2006.

Judgment of the General Court of 14 February 2012 — Germany v Commission

(Case T-59/09) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to an infringement procedure which has been closed — Documents originating from a Member State — Grant of access — Prior agreement of the Member State)

(2012/C 89/32)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, B. Klein and A. Wiedmann, Agents)

Defendant: European Commission (represented by: B. Smulders, P. Costa de Oliveira and F. Hoffmeister, Agents)

Interveners in support of the applicant: Kingdom of Spain (represented: initially by M. Muñoz Pérez, and subsequently by S. Centeno Huerta, Agents); and Republic of Poland (represented: initially by M. Dowgielewicz, and subsequently by M. Szpunar and B. Majczyna, Agents)

Interveners in support of the defendant: Kingdom of Denmark (represented: initially by J. Bering Liisberg and B. Weis Fogh, and subsequently by S. Juul Jørgensen and C. Vang, Agents); Republic of Finland (represented by: J. Heliskoski, Agent); and Kingdom of Sweden (represented by: K. Petkovska, A. Falk and S. Johannesson, Agents)

Re:

Application for annulment of Commission Decision SG.E.3/RG/mbp D(2008) 10067 of 5 December 2008 granting some citizens access to certain documents submitted by the Federal Republic of Germany in infringement procedure No 2005/4569.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the Federal Republic of Germany to bear its own costs and those of the European Commission.*

3. *Orders the Kingdom of Denmark, the Kingdom of Spain, the Republic of Finland, the Republic of Poland and the Kingdom of Sweden to bear their own costs.*

([1]) OJ C 113, 16.5.2009.

Judgment of the General Court of (Fourth Chamber) of 14 February 2012 — Electrolux and Whirlpool v Commission

(Joined Cases T-115/09 and T-116/09) ([1])

(State aid — Restructuring aid for a manufacturer of large home appliances notified by the French Republic — Decision declaring the aid compatible with the common market subject to conditions — Manifest errors of assessment — Guidelines on State aid for rescuing and restructuring firms in difficulty)

(2012/C 89/33)

Language of the case: English

Parties

Applicants: Electrolux AB (Stockholm, Sweden) (represented by: F. Wijckmans and H. Burez, lawyers) (Case T-115/09); and Whirlpool Europe BV (Breda, Netherlands) (represented: initially by F. Tuytschaever and B. Bellen, and subsequently by H. Burez and F. Wijckmans, lawyers)

Defendant: European Commission (represented by: L. Flynn and C. Giolito, Agents)

Interveners in support of the defendant: French Republic (represented: initially by G. de Bergues and A.-L. Vendrolini, and subsequently by G. de Bergues and J. Gstalter, Agents); Fagor France SA (Rueil-Malmaison, France) (represented by J. Derenne and A. Müller-Rappard, lawyers)

Re:

Annulment of the Commission Decision of 21 October 2008 on State aid C 44/2007 (ex N 460/2007) which France is planning to implement for FagorBrandt (OJ 2009 L 160, p. 11.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision 2009/485/EC of 21 October 2008 on State aid No C 44/07 (ex N 460/07) which France is planning to implement for FagorBrandt;*

2. *Orders the European Commission to bear its own costs and to pay those of Electrolux AB and Whirlpool Europe BV;*

3. *Orders the French Republic and Fagor France SA to bear their own costs.*

([1]) OJ C 113, 16.5.2009.

Judgment of the General Court of 10 February 2012 — Verenigde Douaneagenten v Commission

(Case T-32/11) ([1])

(Customs union — Imports of raw cane sugar from the Netherlands Antilles — Post-clearance recovery of import duties — Request for remission of import duties — Article 220(2)(b) and Article 239 of Regulation (EEC) No 2913/92 — Infringement of essential procedural requirements)

(2012/C 89/34)

Language of the case: Dutch

Parties

Applicant: Verenigde Douaneagenten BV (Rotterdam, Netherlands) (represented by: J. van der Meché and S. Moolenaar, lawyers)

Defendant: European Commission (represented by: L. Bouyon and B. Burggraaf, acting as Agents)

Re:

Application for annulment of Commission Decision C(2010) 6754 final of 1 October 2010 finding that there should be post-clearance recovery of import duties and that remission of those duties is not justified in a particular case (REC 02/09).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2010) 6754 final of 1 October 2010 in so far as it determines that the remission of import duties in the sum of EUR 531 985,59, pursuant to Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, is not justified;*

2. *Dismisses the remainder of the action;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 103, 2.4.2011.

Judgment of the General Court of 14 February 2012 — Peeters Landbouwmachines v OHIM — Fors MW (BIGAB)

(Case T-33/11) ([1])

(Community trade mark — Invalidity proceedings — Community word mark BIGAB — Absolute ground for refusal — No bad faith — Article 52(1)(b) of Regulation (EC) No 207/2009)

(2012/C 89/35)

Language of the case: English

Parties

Applicant: Peeters Landbouwmachines BV (Etten-Leur, Netherlands) (represented by: P. Claassen, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: AS Fors MW (Saue, Estonia) (represented by M. Nielsen and J. Hansen, lawyers), intervener before the General Court

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 November 2010 (Case R 210/2010-1), relating to invalidity proceedings between Peeters Landbouwmachines BV and AS Fors MW.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Peeters Landbouwmachines BV to pay the costs.*

([1]) OJ C 80, 12.3.2011.

Order of the General Court of 26 January 2012 — Mojo Concerts and Amsterdam Music Dome Exploitatie v Commission

(Case T-90/09) ([1])

(State aid — Action for annulment — Investment of the Gemeente Rotterdam in the Ahoy' complex — Decision finding that there was no State aid — Applicants not individually concerned — Inadmissibility)

(2012/C 89/36)

Language of the case: Dutch

Parties

Applicants: Mojo Concerts BV (Delft, Netherlands) and Amsterdam Music Dome Exploitatie BV (Delft, Netherlands) (represented by: S. Beeston, Solicitor)

Defendant: European Commission (represented by: H. van Vliet and K. Gross, Agents)

Interveners in support of the defendant: Kingdom of the Netherlands (represented by: M. Noort, C. Wissels, M. de Grave, Y. de Vries and J. Langer, agents); Gemeente Rotterdam (Netherlands) (represented by: J. Feenstra and J. Fanoy, lawyers); and Ahoy' Rotterdam NV (Rotterdam) (represented initially by M. van der Woude and E. Offers, and subsequently by M. Maas-Cooymans, lawyers)

Re:

Application for annulment of Commission Decision C(2008) 6018 final of 21 October 2008 on the investment made by the Gemeente Rotterdam in the Ahoy' complex (State aid C 4/2008 (ex N 97/2007, ex CP 91/2007)).

Operative part of the order

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Mojo Concerts BV and Amsterdam Music Dome Exploitatie BV to bear their own costs and to pay those incurred by the European Commission, the Gemeente Rotterdam and Ahoy' Rotterdam NV;*

3. *Orders the Kingdom of the Netherlands to bear its own costs.*

([1]) OJ C 102, 1.5.2009.

Order of the General Court of 31 January 2012 — Ayadi v Commission

(Case T-527/09) [1]

(Common foreign and security policy — Restrictive measures directed against persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban — Regulation (EC) No 881/2002 — Removal of the interested party from the list of persons and entities concerned — Action for annulment — No need to adjudicate)

(2012/C 89/37)

Language of the case: English

Parties

Applicant: Chafiq Ayadi (Dublin (Ireland)) (represented by: initially B. Emmerson QC, S. Cox, Barrister, and H. Miller, Solicitor, and subsequently by E. Grieves, Barrister, and H. Miller)

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

Intervener in support of the defendant: Council of the European Union (represented by: E. Finnegan and R. Szostak, acting as Agents)

Re:

APPLICATION for annulment of Commission Regulation (EC) No 954/2009 of 13 October 2009 amending for the 114th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2009 L 269, p. 20), in so far as that act concerns the applicant

Operative part of the order

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

2. *The European Commission, in addition to bearing its own costs, shall pay those incurred by Mr Chafiq Ayadi and shall be required to refund to the cashier of the General Court the sums advanced by way of legal aid.*

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

[1] OJ C 148, 5.6.2010.

Order of the General Court of 3 February 2012 — Ecologistas en Acción-CODA v Commission

(Case T-359/10) [1]

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Documents concerning the development plan for the Cabanyal quarter in Valenica (Spain) — Documents originating from a Member State — Refusal of access — Exception relating to protection of the purpose of inspections, investigations and audits — Exception relating to the protection of court proceedings and legal advice — Environmental information — Regulation (EC) No 1367/2006 — Action clearly without legal foundation)

(2012/C 89/38)

Language of the case: Spanish

Parties

Applicant: Ecologistas en Acción-CODA (Madrid, Spain) (represented by: J. Ramos Segerra, lawyer)

Defendant: European Commission (represented by: I. Martínez del Peral and P. Costa de Oliveira, agents)

Intervener in support of the defendant: Kingdom of Spain (represented initially by: M. Muño Pérez, thereafter by S. Centeno Huerta, lawyers)

Re:

Application for annulment of the Commission decision of 30 June 2010 refusing the applicant access to certain documents concerning the investigation conducted by the Spanish authorities into the file EU-PILOT 724/09/02 ENVI relating to the special plan for the protection and renovation of the Cabanyal quarter of the city of Valencia (Spain).

Operative part of the order

1. *The action is dismissed.*

2. *Ecologistas en Acción-CODA is ordered to pay its own costs and those incurred by the European Commission.*

3. *The Kingdom of Spain shall bear its own costs.*

[1] OJ C 288, 23.10.2010.

Order of the General Court of 10 February 2012 — AG v Parliament

(Case T-98/11 P) [1]

(Appeal — Civil service — Officials — Dismissal at the end of the probationary period — Time-limit for bringing action — Lateness — Appeal clearly unfounded)

(2012/C 89/39)

Language of the case: French

Parties

Appellant: AG (Brussels, Belgium) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Other party to the proceedings: European Parliament (represented by: S. Seyr and V. Montebello-Demogeot, agents)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) of 16 December 2010 in Case F-25/10 *AG* v *Parliament*, not yet reported in the ECR, seeking to have that order set aside.

Operative part of the order

1. *The appeal as dismissed as clearly unfounded.*
2. *AG is ordered to pay, apart from its own costs, the costs incurred by the European Parliament.*

[1] OJ C 120, 16.4.2011.

Order of the General Court of 25 January 2012 — MasterCard and Others v European Commission

(Case T-330/11) [1]

(Actions for annulment — Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a study of the costs and benefits to merchants of accepting different payment methods — Documents drawn up by a third party — Implied refusal of access — Interest in bringing proceedings — Express decision adopted after the bringing of the action — No need to adjudicate)

(2012/C 89/40)

Language of the case: English

Parties

Applicants: MasterCard Inc. (Wilmington, Delaware, United States), MasterCard International, Inc. (Wilmington), MasterCard Europe (Waterloo, Belgium) (represented by: B. Amory, V. Brophy and S. McInnes, lawyers)

Defendant: European Commission (represented by: F. Clotuche-Duvieusart and V. Bottka, acting as Agents)

Re:

Action for annulment of the implied decision of the Commission to refuse the applicants access to certain documents drawn up by a third party relating to a study of the 'costs and benefits to merchants of accepting different payment methods'

Operative part of the order

1. *There is no need to adjudicate on the action.*
2. *The European Commission is ordered to pay the costs.*

[1] OJ C 238, 13.8.2011.

Order of the General Court of 17 January 2012 — Afriqiyah Airways v Council

(Case T-436/11) [1]

(Common foreign and security policy — Restrictive measures taken in view of the situation in Libya — Removal from the list of persons and entities concerned — Action for annulment — No need to adjudicate)

(2012/C 89/41)

Language of the case: French

Parties

Applicant: Afriqiyah Airways (Tripoli, Libya) (represented by: B. Sarfati, lawyer)

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

Re:

Application for annulment of Council Implementing Decision 2011/300/CFSP of 23 May 2011 implementing Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya (OJ 2011 L 136, p. 85) in so far as it concerns the applicant

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*
2. *Each party shall bear its own costs.*

[1] OJ C 290, 1.10.2011.

Action brought on 3 January 2012 — Olive Line International v OHIM — Carapelli Firenze (Maestro de Oliva)

(Case T-4/12)

(2012/C 89/42)

Language in which the application was lodged: Spanish

Parties

Applicant: Olive Line International, SL (Madrid, Spain) (represented by: M. Aznar Alonso, lawyer)

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

Other party to the proceedings before the Board of Appeal: Carapelli Firenze SpA (Tavarnelle Val di Pesa (Florence), Italy)

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and find that the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2011 in Case R 1612/2010-2 is inconsistent with Council Regulation No 40/94 on the Community trade mark (now Regulation No 297/2009), in so far as that decision annulled the decision of the Opposition Division of OHIM of 20 July 2010 in opposition proceedings No B 1344995, and rejected the application to register as a Community trade mark international mark No 938.133 for part of the goods in Classes 29 and 30 in respect of which registration was sought;

— order the defendant, and where appropriate the intervener, to pay all the costs of the proceedings, including those incurred in the opposition and appeal proceedings before OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative mark with the word element 'Maestro de Oliva' for goods in Classes 29 and 30

Proprietor of the mark or sign cited in the opposition proceedings: Carapelli Firenze SPA

Mark or sign cited in opposition: national word mark 'MAESTRO' for goods in Classes 29 and 30

Decision of the Opposition Division: opposition rejected

Decision of the Board of Appeal: appeal upheld and application rejected in relation to part of the goods in respect of which registration was sought

Pleas in law: Infringement of Article 15(1)(a) and related articles of Regulation No 207/2009, since the use made by the defendant of the opposing mark constitutes a deliberate change in the original concept of the mark represented by the opposing mark and, therefore, substantially alters the distinctive character of the mark 'MAESTRO', and infringement of Article 8(1)(b) of Regulation No 207/2009, since there is no likelihood of confusion between the conflicting marks.

Action brought on 9 January 2012 — Andechser Molkerei Scheitz v Commission

(Case T-13/12)

(2012/C 89/43)

Language of the case: German

Parties

Applicant: Andechser Molkerei Scheitz GmbH (Andechs, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EU) No 1131/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides, in so far as it authorises steviol glycosides extracted from the leaves of the Stevia rebaudiana Bertoni plant for use only as food additives and not as plant-based food ingredients of agricultural origin or as natural flavouring preparations;

— In essence, declare that the European Union is obliged to compensate the applicant for the damage arising from the fact that Commission Regulation (EU) No 1131/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council authorises steviol glycosides extracted from the leaves of the Stevia rebaudiana Bertoni plant for use only as food additives and not as plant-based food ingredients of agricultural origin or as natural flavouring preparations, and other undertakings therefore use steviol glycosides in the production of their conventional milk-based products, thereby forcing the applicant out of the market, while the applicant, as an organic dairy and producer of organic products, is prevented by the provisions of Regulation (EC) No 834/2007 and Regulation No 889/2008 from using steviol glycosides as food additives, even where these are obtained by extraction from organically cultivated stevia leaves using the procedure approved under European Union law in respect of organic products.

Pleas in law and main arguments

The applicant challenges Commission Regulation (EU) No 1131/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides, ([1]) in so far as it authorises steviol glycosides extracted from the leaves of the Stevia rebaudiana Bertoni plant for use only as food additives and not as plant-based food ingredients of agricultural origin or as natural flavouring preparations.

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

1. First plea in law, alleging infringement of the *non ultra vires* rule

— The applicant submits, first, that the Commission has — wrongly — treated steviol glycosides extracted from the leaves of the Stevia rebaudiana Bertoni plant as a food additive, and thus exceeded the powers conferred on it in adopting the regulation at issue. Steviol glycosides are a sophisticated choice owing to their taste. Accordingly they are not used as food additives for a technological purpose in accordance with Article 3(2) of Regulation (EC) No 1333/2008, ([2]) but exclusively for the purpose of imparting flavour and/or taste within the meaning of recital 5 in the preamble to that regulation. Steviol glycosides should therefore be categorised as plant-based food ingredients or natural flavouring preparations. Consequently the Commission acted *ultra vires*.

2. Second plea in law, alleging infringement of the fundamental right to equal treatment

— Secondly, the applicant alleges infringement of its fundamental right to equal treatment in the sense that arbitrary decisions are prohibited; as an organic dairy, it is prevented from producing and marketing organic yoghurt with organic steviol glycosides, whereas its competitors, who produce yoghurts in conventional agriculture, are permitted to use steviol glycosides. The use of organic steviol glycosides as a food additive is prohibited under Article 19(2)(b) of Regulation (EC) No 834/2007, ([3]) according to which only food additives which have been authorised for organic products may be used in production. No such authorisation was forthcoming either in Article 27(1)(a) of Regulation (EC) No 889/2008 ([4]) or as a result of inclusion in the positive list in Section A of Annex VIII to that regulation. By approving steviol glycosides as food additives only, the Commission therefore unlawfully interfered in the market to the benefit of producers of conventional products, thereby impeding competition.

3. Third plea in law, alleging infringement of the fundamental right to the protection of property and of the freedom to exercise an economic activity

— Thirdly, the applicant alleges infringement of its fundamental right to the protection of property and of its freedom to exercise an economic activity.

4. Fourth plea in law, alleging a failure to state reasons

— The reasons given for Regulation No 1131/2011 are, moreover, insufficient, as no explanation is given in the recitals in the preamble as to why steviol glycosides, which serve only to impart flavour, to sweeten and to add a slightly tart taste, are treated as food additives.

([1]) Commission Regulation (EU) No 1131/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides (OJ 2011 L 295, p. 205).

([2]) Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ 2008 L 354, p. 16).

([3]) Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

([4]) Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1).

Action brought on 16 January 2012 — Hagenmeyer and Hahn v Commission

(Case T-17/12)

(2012/C 89/44)

Language of the case: German

Parties

Applicants: Moritz Hagenmeyer (Hamburg, Germany) and Andreas Hahn (Hanover, Germany) (represented by: T. Teufer, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the part of Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk (OJ 2011 L 299, p. 1) concerning the applicant's claim 'Regular consumption of significant amounts of water can reduce the risk of development of dehydration and of concomitant decrease of performance';

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

Pleas in law and main arguments

Pursuant to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, ([1]) health claims made on foods are prohibited in so far as they are not authorised by the Commission in accordance with that regulation and have not been added to the list of permissible claims.

This action has been brought against Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk, ([2]) in so far as that regulation rejected the applicants' application to have added to the list of permissible claims its claim regarding the reduction of a disease risk, namely 'regular consumption of significant amounts of water can reduce the risk of development of dehydration and of concomitant decrease of performance'.

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

1. First plea in law: The dispensability of the naming of a 'risk factor'

The applicants claim, first of all, that the defendant declared it mandatory that a 'risk factor' be named in the application, although no such obligation results from Regulation No 1924/2006.

2. Second plea in law: Failure to take account of the actual naming of a 'risk factor' in the application.

The applicants allege that the defendant overlooked the fact that the applicants actually named a 'risk factor' in the wording of the health claim which they made.

3. Third plea in law: Infringement of the principle of proportionality

The applicants submit that, on the whole, Regulation No 1170/2011 is disproportionate.

4. Fourth plea in law: Absence of a sufficient legal basis

In the view of the applicants, the contested regulation lacks a sufficient legal basis, since it is based on Article 17, in conjunction with Article 14(1)(a) and Article 10(1), of Regulation No 1924/2006, which infringe European Union law and, in particular, the principle of proportionality.

5. Fifth plea in law: Inadmissible legislative act

The applicants submits that the defendant infringed essential procedural requirements in that, instead of issuing a decision, as provided for in Regulation No 1924/2006, it issued a regulation.

6. Sixth plea in law: Infringement of the division of competences

The applicants claim, in this regard, that the division of competences, provided for in Regulation No 1924/2006, between the defendant, the European food safety authority and the German Federal Office for consumer protection and food security, was not respected by the defendant in the procedure.

7. Seventh plea in law: Failure to adopt a decision within the time-limit prescribed

The applicants claim that the defendant failed to respect the imperative time-limits laid down in Regulation No 1924/2006 in relation to the forwarding of the application for authorisation, the issuing of the scientific opinion, and the issuing of the decision on whether the claim was to be authorised.

8. Eighth plea in law: Inadequate consideration of the submissions

The applicants submit that the defendant infringed essential procedural requirements since, in its decision on whether to authorise the claim, it failed to take account of a significant part of the applicants' submissions and those of third parties involved in the procedure.

9. Ninth plea in law: Erroneous grounds

Finally, the applicants claim that the defendant did not sufficiently comply with its obligation under Article 296(2) TFEU to provide the grounds on which its decision was based.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

([2]) Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk (OJ 2011 L 299, p. 1).

Action brought on 17 January 2012 — Alfacam and Others v Parliament

(Case T-21/12)

(2012/C 89/45)

Language of the case: French

Parties

Applicants: Alfacam (Lint, Belgium); Via Storia (Schiltigheim, France); DB Video Productions (Aartselaar, Belgium); IEC (Rennes, France); and European Broadcast Partners (EUBROPA) (Aartselaar) (represented by: B. Pierart, lawyer)

Defendant: European Parliament

Form of order sought

— Annul the decision adopted by the European Parliament on 18 November 2011 which awards to the Belgian company WATCH TV S.A. the contract EP/DGCOMM/AV/11/11 lot 1 Provision of video, radio and multimedia services — Services to be provided to the European Parliament in Brussels;

— accordingly, annul the decision adopted by the European Parliament which did not accept the tender of the first four applicants, acting within the framework of the consortium EUROPEAN BROACAST PARTNERS, that tender ranking second for the contract EP/DGCOMM/AV/11/11 lot 1 Provision of video, radio and multimedia services — Services to be provided to the European Parliament in Brussels;

— order the European Parliament to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on a sole plea alleging infringement of Article 94 of the Financial Regulation, ([1]) in so far as the tenderer's tender contained false declarations, so that that tenderer should have been excluded from the award of the contract.

([1]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

Action brought on 19 January 2012 — IDT Biologika v Commission

(Case T-30/12)

(2012/C 89/46)

Language of the case: German

Parties

Applicant: IDT Biologika GmbH (Dessau-Roßlau, Germany) (represented by: R. Gross and T. Kroupa, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Delegation of the European Union to the Republic of Serbia of 5 October 2011 rejecting the tender submitted in respect of Lot No 1 by IDT Biologika GmbH in response to the call for tenders, reference EuropeAid/130686/C/SUP/RS Re-launch LOT 1, for the supply of a rabies vaccine to the beneficiary Ministry of Agriculture, Forestry and Water Supply of the Republic of Serbia, and awarding the contract in question to a consortium of various companies led by 'Biovet a. s.';

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of its action the applicant alleges infringement of Article 252(3) of Regulation (EC) No 2342/2002 ([1]) as the applicant takes the view that the successful tender does not fulfil the technical requirements specified in the tender documents with regard to the requisite non-virulence to humans of the vaccine offered and with regard to the requisite authorisations and should not therefore have been taken into account.

Furthermore, the taking into account of the successful tender of the consortium led by 'Biovet a. s.' constitutes discrimination as regards price comparison since the applicant's tender alone satisfies all the actual requirements made with regard to the technical specifications in respect of the award procedure at issue and is therefore the only tender in the procedure which is in order.

([1]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 23 January 2012 — Pips v OHIM — s.Oliver Bernd Freier (ISABELLA OLIVER)

(Case T-38/12)

(2012/C 89/47)

Language in which the application was lodged: English

Parties

Applicant: Pips BV (Amsterdam, Netherlands) (represented by: J.A.K. van den Berg, lawyer)

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

Other party to the proceedings before the Board of Appeal: s.Oliver Bernd Freier GmbH & Co. KG (Rottendorf, Germany)

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 20 October 2011 in case R 2420/2010-1;

— Allow the Community trade mark application No 7024961 for the word mark 'ISABELLA OLIVER', for all the goods and services subject to the proceedings before the First Board of Appeal; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ISABELLA OLIVER', for goods and services in classes 3, 4, 12, 14, 16, 18, 20, 21, 24 and 25 — Community trade mark application No 7024961

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

Mark or sign cited in opposition: Community trade mark application No 6819908 of the word mark 'S.Oliver', for goods in classes 4, 16, 20, 21 and 24; Community trade mark registration No 4504569 of the figurative mark 's.Oliver', for goods and services in classes 3, 6, 9, 14, 18, 20, 25, 28 and 35; German trade mark registration No 30734710.9 of the word mark 'S.Oliver', for goods in classes 10, 12 and 21; Community trade mark registration No 181875 of the word mark 'S.Oliver', for goods in classes 3, 6, 9, 14, 18, 20, 25 and 26; International trade mark registration No 959255 of the word mark 'S.Oliver', for goods in classes 10, 12 and 21

Decision of the Opposition Division: Partially rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 76 of Council Regulation No 207/2009, as the Board of Appeal; (i) made an assessment of the similarity of the marks on the basis of facts/circumstances not provided by the parties, as a consequence of which the conclusion with regard to the similarity of signs is erroneous; and (ii) incorrectly applied the principles formulated by the ECJ in relation to overall assessment of likelihood of confusion.

Action brought on 12 February 2012 — CF Sharp Shipping Agencies Pte v Council

(Case T-53/12)

(2012/C 89/48)

Language of the case: English

Parties

Applicant: CF Sharp Shipping Agencies Pte Ltd (Singapore, Singapore) (represented by: S. Drury, Solicitor, K. Adamantopoulos and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 1245/2011 ([1]) and Council Regulation (EU) No 961/2010 ([2]) *ab initio* and with immediate effect insofar as it concerns applicant's inclusion in Annex VIII to Council Regulation (EU) No 961/2010; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that by stating that the applicant is an Islamic Republic of Iran Shipping Lines front company, owned or controlled by the latter, the defendant has manifestly misstated the facts and committed a manifest error in the application of Article 16 (2) (d) of Council Regulation (EU) No 961/2010 by including the applicant in Annex VIII to the said Regulation.

2. Second plea in law, alleging that the defendant has infringed its obligations to give reasons contained in Article 296 TFEU and Article 36 (3) of Council Regulation (EU) No 961/2010.

3. Third plea in law, alleging the defendant's failure to state reasons has resulted in the infringement of the applicant's rights of defence, in particular the right to be heard and the right to an effective judicial review.

([1]) Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11)

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

Order of the General Court of 7 February 2012 — Prym and Others v Commission

(Case T-454/07) ([1])

(2012/C 89/49)

Language of the case: German

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

([1]) OJ C 51, 23.2.2008.

Order of the General Court of 9 February 2012 — Germany v Commission

(Case T-500/11) ([1])

(2012/C 89/50)

Language of the case: German

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

([1]) OJ C 355, 3.12.2011.

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