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(2012/C 118/01)

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

OJ C 109, 14.4.2012

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 1 March 2012 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. Wąsiewicz spółka jawna v Dyrektor Izby Skarbowej w Poznaniu

(Case C-280/10) [1]

(VAT — Directive 2006/112/EC — Articles 9, 168, 169 and 178 — Deduction of input tax paid in respect of transactions conducted with a view to carrying out planned economic activity — Purchase of land by the partners of a partnership — Invoices drawn up prior to registration of the partnership seeking the deduction)

(2012/C 118/02)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Kopalnia Odkrywkowa Polski Trawertyn P. Granatowicz, M. Wąsiewicz spółka jawna

Defendant: Dyrektor Izby Skarbowej w Poznaniu

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Articles 9, 168 and 169 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Deduction of input tax paid in respect of transactions conducted with a view to carrying out planned economic activity but prior to registration of a partnership — Purchase of land by the future partners

Operative part of the judgment

1. *Articles 9, 168 and 169 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation which permits neither partners nor their partnership to exercise the right to deduct input VAT on investment costs incurred by those partners, before the creation and registration of the partnership, for the purposes of and with the view to its economic activity.*

2. *Articles 168 and 178(a) of Directive 2006/112 must be interpreted as precluding national legislation under which, in circumstances such as those at issue in the main proceedings, the input VAT paid cannot be deducted by a partnership when the invoice, drawn up before the registration and identification of the partnership for the purposes of value added tax, was issued in the name of the partners of that partnership.*

[1] OJ C 234, 28.8.2010.

Judgment of the Court (Sixth Chamber) of 1 March 2012 — European Commission v Hellenic Republic

(Case C-354/10) [1]

(Failure to fulfil obligations — State aid — Tax-exempt reserve fund — Incompatibility with the common market — Recovery — Failure to execute)

(2012/C 118/03)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: D. Triantafyllou and B. Stromsky, acting as Agents)

Defendant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the period prescribed, the measures necessary for recovery of the aid held unlawful and incompatible with the internal market by Article 1(1) (excepting the aid referred to in Article 1(2) and Articles 2 and 3) of the Commission decision of 18 July 2007 (C(2007) 3251) concerning the tax-exempt reserve fund (State aid C 37/2005)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the measures necessary for recovery, in accordance with Article 1(1) of Commission Decision 2008/723/EC of 18 July 2007 on State aid C 37/05 (ex NN 11/04) implemented by Greece — tax-exempt reserve fund, of the aid held unlawful and incompatible with the internal market, excepting the aid referred to in Article 1(2) and Articles 2 and 3 of that decision, the Hellenic Republic has failed to fulfil its obligations under Articles 4 to 6 of that decision;*

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

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Second Chamber) of 1 March 2012 (reference for a preliminary ruling from the Supreme Court of the United Kingdom) — Dermod Patrick O'Brien v Ministry of Justice, formerly Department for Constitutional Affairs

(Case C-393/10) ([1])

(Framework agreement on part-time work — Definition of 'part-time workers who have an employment contract or employment relationship' — Judges working part-time remunerated on a fee-paid basis — Refusal to grant a retirement pension)

(2012/C 118/04)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Dermod Patrick O'Brien

Defendant: Ministry of Justice, formerly Department for Constitutional Affairs

Re:

Reference for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9) — Meaning of 'part-time workers who have an employment contract or employment relationship' (clause 2.1 of the directive) — Part-time judges — Difference in treatment, as regards the right to an old-age pension, between full-time and part-time judges, or between different kinds of part-time judges

Operative part of the judgment

1. *European Union law must be interpreted as meaning that it is for the Member States to define the concept of 'workers who have an employment contract or an employment relationship' in Clause 2.1 of the Framework Agreement on part-time work concluded on 6 June 1997 which appears in the Annex to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 7 April 1998, and, in particular, to determine whether judges fall within that concept, subject to the condition that that does not lead to the arbitrary exclusion of that category of persons from the protection offered by Directive 97/81, as amended by Directive 98/23, and that agreement. An exclusion from that protection may be allowed only if the relationship between judges and the Ministry of Justice is, by its nature, substantially different from that between employers and their employees falling, according to national law, under the category of workers.*

2. *The Framework Agreement on part-time work concluded on 6 June 1997 which appears in the Annex to Directive 97/81, as amended by Directive 98/23, must be interpreted as meaning that it precludes, for the purpose of access to the retirement pension scheme, national law from establishing a distinction between full-time judges and part-time judges remunerated on a daily fee-paid basis, unless such a difference in treatment is justified by objective reasons, which is a matter for the referring court to determine.*

([1]) OJ C 274, 9.10.2010.

Judgment of the Court (Third Chamber) of 1 March 2012 (reference for a preliminary ruling from the Landgericht Hamburg — Germany) — Söll GmbH v Tetra GmbH

(Case C-420/10) ([1])

(Placing on the market of biocidal products — Directive 98/8/EC — Article 2(1)(a) — Concept of 'biocidal products' — Product causing flocculation of harmful organisms without destroying or deterring them or rendering them harmless)

(2012/C 118/05)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Söll GmbH

Defendant: Tetra GmbH

Re:

Reference for a preliminary ruling — Landgericht Hamburg — Interpretation of Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1) — Classification, as a 'biocidal product', of a product causing flocculation of harmful organisms, without destroying them, deterring them or rendering them harmless — Anti-algae agent containing the substance aluminium chlorohydrate — Concept of 'biocidal product'

Operative part of the judgment

The concept of 'biocidal products' set out in Article 2(1)(a) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market must be interpreted as including even products which act only by indirect means on the target harmful organisms, so long as they contain one or more active substances provoking a chemical or biological action which forms an integral part of a causal chain, the objective of which is to produce an inhibiting effect in relation to those organisms.

(1) OJ C 288, 23.10.2010

Judgment of the Court (Second Chamber) of 1 March 2012 (reference for a preliminary ruling from the Landgericht Gießen — Germany) — Criminal proceedings against Baris Akyüz

(Case C-467/10) (1)

(Directives 91/439/EEC and 2006/126/EC — Mutual recognition of driving licences — Refusal of a Member State to recognise, in respect of a person who does not satisfy the physical and mental requirements for driving under the laws of that Member State, the validity of a driving licence issued by another Member State)

(2012/C 118/06)

Language of the case: German

Referring court

Landgericht Gießen

Party to the main proceedings

Baris Akyüz

Re:

Reference for a preliminary ruling — Landgericht Gießen — Interpretation of Articles 1(2) and 8(4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1) and of Articles 2(1) and 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18) — Mutual recognition of driving licences — Refusal of a Member State to recognise, in respect of a person who does not meet the physical and mental requirements for driving under the laws of that Member State, the validity of a driving licence issued by another Member State

Operative part of the judgment

1. *The combined provisions of Articles 1(2) and 8(2) and (4) of Council Directive 91/439/EEC of 29 July 1991 on driving licences and those of Articles 2(1) and 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences must be interpreted as precluding legislation of a host Member State which allows that State to refuse to recognise, within its territory, a driving licence issued by another Member State in the case where the holder of that licence has not been made subject, by that host Member State, to any measure within the meaning of Article 8(4) of Directive 91/439 or the second subparagraph of Article 11(4) of Directive 2006/126 but the issue of a first driving licence in that State was refused to that person on the ground that he did not satisfy, under that State's legislation, the physical and mental requirements for the safe driving of a motor vehicle.*

2. *Those combined provisions must be interpreted as not precluding legislation of a host Member State which allows that State to refuse to recognise, within its territory, a driving licence issued in another Member State in the case where it is established, on the basis of indisputable information emanating from the issuing Member State, that the holder of the driving licence did not satisfy the normal residence condition laid down in Article 7(1)(b) of Directive 91/439 and in Article 7(1)(e) of Directive 2006/126 at the time when that licence was issued. In that respect, the fact that that information is conveyed, not directly but only indirectly, by the issuing Member State to the competent authorities of the host Member State in the form of a notification by third parties, is not, in itself, such as to preclude that information from being capable of being regarded as emanating from the issuing Member State, in so far as it comes from an authority of that Member State.*

   It is a matter for the referring court to determine whether information obtained in circumstances such as those in the dispute in the main proceedings can be classified as information emanating from the issuing Member State and, if necessary, to evaluate that information and to assess, taking into account all the facts of the dispute before it, whether it constitutes indisputable information demonstrating that the holder of the licence was not normally resident in the territory of that latter State at the time when his driving licence was issued.

(1) OJ C 328, 4.12.2010.

Judgment of the Court (Fifth Chamber) of 1 March 2012 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación para la Calidad de los Forjados (Ascafor), Asociación de Importadores y Distribuidores de Acero para la Construcción (Asidac) v Administración del Estado and Others

(Case C-484/10) [1]

(Free movement of goods — Quantitative restrictions and measures having equivalent effect — Directive 89/106/EEC — Construction products — Non-harmonised standards — Labels of quality — Requirements relating to certification bodies)

(2012/C 118/07)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Asociación para la Calidad de los Forjados (Ascafor), Asociación de Importadores y Distribuidores de Acero para la Construcción (Asidac)

Defendants: Administración del Estado, Calidad Siderúrgica SL, Colegio de Ingenieros Técnicos Industriales, Asociación Española de Normalización y Certificación (AENOR), Consejo General de Colegios Oficiales de Aparejadores y Arquitectos Técnicos, Asociación de Investigación de las Industrias de la Construcción (Aidico) Instituto Tecnológico de la Construcción, Asociación Nacional Española de Fabricantes de Hormigón Preparado (Anefhop), Ferrovial Agromán SA, Agrupación de Fabricantes de Cemento de España (Oficemen), Asociación de Aceros Corrugados Reglamentarios y su Tecnología y Calidad (Acerteq)

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Articles 28 and 30 EC (now Articles 34 and 36 TFEU) — Construction products — Products not covered by harmonisation measures such as those provided for by Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12) — Placing on the market made subject either to a superior quality certificate issued in accordance with methods satisfying detailed conditions equivalent to those imposed by the national authorities or to prior approval with regard to those conditions, even though obtained in the Member State of origin

Operative part of the judgment

Articles 34 TFEU and 36 TFEU must be interpreted as meaning that the requirements laid down in Article 81 of the structural concrete regulations (EHE-08) approved by Royal Decree No 1247/2008 of 18 July 2008, read in conjunction with Annex 19 to those regulations, for official recognition of certificates demonstrating the quality level of reinforcing steel for concrete granted in a Member State other than the Kingdom of Spain constitute a restriction on the free movement of goods. Such a restriction may be justified by the objective of the protection of human life and health, provided the requirements laid down are not higher than the minimum standards required for the use of reinforcing steel for concrete in Spain. In such a case, it is for the referring court to ascertain — where the entity granting the certificate of quality which must be officially recognised in Spain is an approved body within the meaning of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Council Directive 93/68/EEC of 22 July 1993 — which of those requirement go beyond what is necessary for the purposes of attaining the objective of the protection of human life and health.

[1] OJ C 346, 18.12.2010.

Judgment of the Court (Third Chamber) of 1 March 2012 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Football Dataco Ltd and Others v Yahoo! UK Limited and Others

(Case C-604/10) [1]

(Directive 96/9/EC — Legal protection of databases — Copyright — Football league fixture lists)

(2012/C 118/08)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Football Dataco Ltd, Football Association Premier League Ltd, Football League Ltd, Scottish Premier League Ltd, Scottish Football League, PA Sport UK Ltd

Defendants: Yahoo! UK Ltd, Stan James (Abingdon) Ltd, Stan James plc, Enetpulse ApS

Re:

Reference for a preliminary ruling — Court of Appeal, United Kingdom — Interpretation of Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 2003 L 77, p. 20) — Concept of 'databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation' — Computerised catalogues of the football matches planned for the coming season

Operative part of the judgment

1. *Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that a 'database' within the meaning of Article 1(2) of that directive is protected by the copyright laid down by that directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine.*

   As a consequence:

   — *the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right;*

   — *it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and*

   — *the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection or arrangement of the data which that database contains.*

2. *Directive 96/9 must be interpreted as meaning that, subject to the transitional provision contained in Article 14(2) of that directive, it precludes national legislation which grants databases, as defined in Article 1(2) of the directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.*

([1]) OJ C 89, 19.3.2011.

Judgment of the Court (Grand Chamber) of 28 February 2012 (reference for a preliminary ruling from the Conseil d'État — Belgium) — Inter-Environnement Wallonie ASBL, Terre wallonne ASBL v Région wallonne

(Case C-41/11) ([1])

(Protection of the environment — Directive 2001/42/EC — Articles 2 and 3 — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Plan or programme — No prior environmental assessment — Annulment of a plan or programme — Possibility of maintaining the effects of the plan or programme — Conditions)

(2012/C 118/09)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Inter-Environnement Wallonie ASBL, Terre wallonne ASBL

Defendant: Région wallonne

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Assessment of the effects of certain plans and programmes on the environment — Protection of waters against pollution caused by nitrates from agricultural sources — Annulment of a national rule found to be contrary to Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Possibility of maintaining, for a short period, the effects of that rule

Operative part of the judgment

Where a national court has before it, on the basis of its national law, an action for annulment of a national measure constituting a 'plan' or 'programme' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment and it finds that the 'plan' or 'programme' was adopted in breach of the obligation laid down by that directive to carry out a prior environmental assessment, that court is obliged to take all the general or particular measures provided for by its national law in order to remedy the failure to carry out such an assessment, including the possible suspension or annulment of the contested 'plan' or 'programme'. However, in view of the specific circumstances of the main proceedings, the referring court can exceptionally be authorised to make use of its national provision empowering it to maintain certain effects of an annulled national measure in so far as:

— *that national measure is a measure which correctly transposes Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources;*

— *the adoption and entry into force of the new national measure containing the action programme within the meaning of Article 5 of that directive do not enable the adverse effects on the environment resulting from the annulment of the contested measure to be avoided;*

— *annulment of the contested measure would result in a legal vacuum in relation to the transposition of Directive 91/676 which would be more harmful to the environment, in the sense that the annulment would result in a lower level of protection of waters against pollution caused by nitrates from agricultural sources and would thereby run specifically counter to the fundamental objective of that directive; and*

— *the effects of such a measure are exceptionally maintained only for the period of time which is strictly necessary to adopt the measures enabling the irregularity which has been established to be remedied.*

([1]) OJ C 113, 9.4.2011.

Judgment of the Court (Seventh Chamber) of 28 February 2012 — European Commission v French Republic

(Case C-119/11) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/112/EC — Articles 99 and 110 — Value added tax — Reduced rate — Application of a reduced rate for admission to the first performances of concerts held in establishments providing refreshments during the performance)

(2012/C 118/10)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac and C. Soulay, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 99 and 110 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Application of a reduced rate of VAT of 2,10 % for admission to the first performances of concerts held in establishments providing refreshments during the performance — Prohibition on extending the scope of a derogation where such scope has previously been restricted

Operative part of the judgment

The Court:

1. *Declares that, by applying, since 1 January 2007, a reduced rate of VAT of 2,10 % for admission to the first performances of concerts held in establishments providing optional refreshments during the performance, the French Republic has failed to fulfil its obligations under Articles 99 and 110 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

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

[1] OJ C 145, 14.5.2011.

Judgment of the Court (Fifth Chamber) of 1 March 2012 (reference for a preliminary ruling from the Audiencia Provincial de Oviedo — Spain) — Ángel Lorenzo González Alonso v Nationale Nederlanden Vida Cia De Seguros y Reaseguros SAE

(Case C-166/11) [1]

(Consumer protection — Contracts negotiated away from business premises — Directive 85/577/EEC — Scope — Not included — Unit-linked insurance contracts)

(2012/C 118/11)

Language of the case: Spanish

Referring court

Audiencia Provincial de Oviedo

Parties to the main proceedings

Applicant: Ángel Lorenzo González Alonso

Defendant: Nationale Nederlanden Vida Cia De Seguros y Reaseguros SAE

Re:

Reference for a preliminary ruling — Audiencia Provincial de Oviedo — Interpretation of Article 3(2)(d) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31) — Contract, concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium invested in various products of the company itself

Operative part of the judgment

A contract concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company offering the contract falls outside the scope of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, in accordance with Article 3(2)(d) thereof.

[1] OJ C 173, 11.6.2011.

Appeal brought on 25 November 2011 by HGA Srl and Others against the judgment delivered by the General Court (Fourth Chamber) on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-630/11 P)

(2012/C 118/12)

Language of the case: Italian

Parties

Appellants: HGA Srl and Others (represented by: G. Dore, F. Ciulli and A. Vinci, avvocati)

Other parties to the proceedings: European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and Others

Form of order sought

— Set aside and/or vary the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08;

— Annul the Commission Decision of 3 July 2008 (State aid C1/2004 Italy — SG-Greffe (2008) D/204339) concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98'.

Pleas in law and main arguments

The appellants rely on six grounds of appeal.

By their first ground, the appellants allege, in particular, breach of essential procedural requirements, breach and misapplication of Articles 4, 6, 7 and 16 of Regulation (EC) No 659/1999, ([1]) breach of the principle of the protection of legitimate expectations and the principle of legal certainty and breach of Article 81 of the Rules of Procedure of the General Court. The Commission's decision is unlawful in that it was adopted after the adjustment of the classification of the aid without any measure whatsoever providing for such an adjustment. Moreover, the decision to initiate the procedure following the adjustment was communicated three and a half years after the Commission had received all the documentation concerning the aid. A plea based on that ground was put forward in the proceedings at first instance but the General Court omitted to give any ruling in that regard.

The second ground of appeal concerns breach of the principle of legal certainty and the principle of the protection of legitimate expectations and breach and misapplication of Article 4, 7, 10 and 16 of Regulation (EC) No 659/1999. The Commission's decision was adopted in breach of the prescribed time limits.

The third ground of appeal alleges breach of Article 108 TFEU and Articles 1, 7, 14 and 16 of Regulation (EC) No 659/1999. In support of this ground, the appellants submit that the Commission's decision is unlawful because the aid was never altered by the Regione in relation to what was provided for by Legge Regionale No 9/1998.

The fourth ground of appeal alleges breach and misapplication of the principle of the necessity of aid, the principle of the incentive effect and the principle of the protection of competition and the consequent infringement of Articles 7 and 14 of Regulation (EC) No 659/1999, breach and misapplication of Article 108 TFEU, defective reasoning and breach of Article 81 of the Rules of Procedure of the General Court. In the appellants' view, the Commission's decision is unlawful in that, in actual fact, the aid was characterised by the incentive effect, a fact which the Commission should have verified even if the applications for aid had been submitted after the work had started. The General Court failed to rule on that aspect of the case.

The fifth ground of appeal concerns the breach of the principles of legal certainty and the protection of legitimate expectations in another respect and breach of Article 14 of Regulation (EC) No 659/1999. The judgment under appeal is based on the incorrect assumption that the Community court could not assess the legitimate expectation on the part of the beneficiaries created by the national bodies.

The final ground of appeal concerns breach of the principle of impartiality and the principle of the protection of competition. The General Court held, incorrectly, that the Commission's conduct did not give rise to any unequal treatment in the contested decision, in so far as it declared that it was necessary to recover the aid granted to the appellants and, at the same time, declared that the incentive effect operated in relation to ten other undertakings which had started work after submitting an application, notwithstanding the fact that the application did not guarantee with any certainty that aid would be granted

([1]) OJ 1999 L 83, p. 1.

Appeal brought on 8 December 2011 by Regione autonoma della Sardegna against the judgment of the General Court (Fourth Chamber) delivered on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-631/11 P)

(2012/C 118/13)

Language of the case: Italian

Parties

Appellant: Regione autonoma della Sardegna (represented by: A. Fantozzi, avvocato)

Other parties to the proceedings: European Commission, Selene di Alessandra Cannas Sas and Others

Form of order sought

— Set aside and/or vary the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/085;

— Annul the Commission Decision of 3 July 2008 (State aid C1/2004 Italy — SG-Greffe (2008) D/204339) concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98'.

Pleas in law and main arguments

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

The first ground of appeal concerns breach of Article 107(3) TFEU. In particular, the appellant alleges breach and misapplication of the principle of the necessity of aid and of the principle of the incentive effect, as a result of an excessively formalistic approach, which is contrary to the principle that the substance must take precedence over the form, and failure to take account of specific details relating to issues of transitional law which characterise the case in question.

The second ground of appeal concerns breach of the principles of legal certainty and the protection of legitimate expectations and breach of Article 14 of Regulation (EC) No 659/1999. [1] The bases of this ground of appeal arise from the specific intertemporal circumstances of the case, which were disregarded in the judgment under appeal. The General Court went beyond what is prescribed by the relevant case-law, requiring of the economic operator a degree of diligence that is not possible in practice, given that the requirement that an application for aid be made before work commences is a Community rule which was introduced at exactly the same time as the facts of the case and, therefore, the undertaking could not have been aware of it at the time at which it made its decision.

[1] OJ 1999 L 83, p. 1.

Appeal brought on 8 December 2011 by Timsas Srl against the judgment of the General Court (Fourth Chamber) delivered on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-632/11 P)

(2012/C 118/14)

Language of the case: Italian

Parties

Appellant: Timsas Srl (represented by: D. Dodaro and S. Pinna, avvocati)

Other parties to the proceedings: European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and Others

Form of order sought

— Set aside the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 in so far as it rejects the appellant's complaint alleging failure to state reasons with regard to the assessment of the incentive effect of the aid at issue;

— Annul Commission Decision 2008/854/EC of 2 July 2008 concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98' C/104 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9);

— the European Commission to pay the costs of the appeal proceedings.

Pleas in law and main arguments

The judgment under appeal is flawed on the basis that it distorts the pleas in law relied on in the application; error of law and illogical and inconsistent reasoning. In particular, the appellant submits that the General Court failed to give reasons, even implicitly, for rejecting the complaint alleging manifest error on the part of the Commission in its assessment of the incentive effect of the aid. The General Court stated that 'it is necessary … only to consider whether the applicants have demonstrated, in the present case, the existence of circumstances such as to ensure the incentive effect of the scheme at issue, even where no application had been submitted before work had commenced on the projects in question', However, it did not state that the applicants had not demonstrated this and nor did it give any reason on the basis of which it would be possible to understand the ground for such a (wholly implicit) belief.

The statement at paragraph 227 of the judgment under appeal that the Commission was not under any obligation to assess the particular circumstances of the individual beneficiaries is insufficient and contradictory. It is impossible to understand how the applicants could substantiate their argument that there was an incentive effect other than by setting out their own individual circumstances: the Commission and the General Court, when the case was brought before it, should have devised a uniform principle enabling an objective assessment of the position of each person represented, which could be regarded as particular or specific to that person only in relation to specific facts, but which nevertheless lends itself to a general and abstract statement.

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

Appeal brought on 8 December 2011 by Grand Hotel Abi d'Oru SpA against the judgment delivered by the General Court (Fourth Chamber) on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-633/11 P)

(2012/C 118/15)

Language of the case: Italian

Parties

Appellant: Grand Hotel Abi d'Oru SpA (represented by: D. Dodaro and R. F. Masuri, avvocati)

Other parties to the proceedings: European Commission, Region autonoma della Sardegna, Selene di Alessandra Cannas Sas and others

Form of order sought

— Set aside the judgment of the General Court of the European Union of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 in so far as it:

(a) rejects the appellant's complaint alleging breach of the obligation to notify the adjustment decision laid down in Article 254(3) EC and Article 20(1) of Regulation (EC) No 659/1999 [1] (paragraphs 103 to 112 of the judgment);

(b) rejects the appellant's complaint alleging failure to state adequate reasons with regard to the assessment of the incentive effect of the aid at issue (paragraphs 136 to 145 and 218 to 228 of the judgment)

on the grounds of distortion of the pleas in law relied on in the application, error of law and illogical and inconsistent reasoning;

— annul Commission Decision 2008/854/EC of 2 July 2008 concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98' C/104 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9);

— order the European Commission to pay the costs of the appeal proceedings.

Pleas in law and main arguments

The judgment under appeal is defective as a result of misapplication of Article 254 EC and Regulation (EC) No 659/99 and illogical and inconsistent reasoning, in so far as it states that 'the adjustment decision was directed solely at the Italian Republic and not the beneficiaries of the scheme at issue. Consequently, Article 254(3) EC did not require the Commission to notify the adjustment decision to Grand Hotel Abi d'Oru' (paragraph 107 of the judgment). In the appellant's view, that reasoning is inconsistent with paragraphs 71 and 72 of the judgment under appeal.

The judgment under appeal fails to recognise the different functions of an adjustment decision and a decision to open a formal investigation, and the fact that the latter is a step in a procedure that has already been instigated requires, in the appellant's view, account to be taken of the parties who have in fact already participated in that procedure. The error made by the General Court in equating the adjustment decision to the decision to initiate the formal investigation procedure entailed an erroneous assessment of the scope of application of Article 20(1) of Regulation No 659/1999.

The judgment under appeal is flawed as a result of distortion of the pleas in law relied on in the application; errors of law and illogical and inconsistent reasoning in so far as the General Court failed to give reasons, even implicitly, for its rejection of the complaint alleging manifest error on the part of the Commission in its assessment of the incentive effect of the aid.

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

[1] OJ 1999 L 83, p. 1.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 27 January 2012 — Criminal proceedings against Vu Thang Dang

(Case C-39/12)

(2012/C 118/16)

Language of the case: German

Referring court

Bundesgerichtshof

Party to the main proceedings

Vu Thang Dang

Question referred

Are Articles 21 and 34 of Regulation (EC) No 810/2009, ([1]) which regulate the issue and annulment of a uniform visa, to be interpreted as precluding criminal liability, resulting from the application of national legislation, for the smuggling of foreign nationals in cases where, although they hold visas, the persons smuggled obtained those visas by deceiving the competent authorities of another Member State as to the true purpose of their journey?

([1]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1).

Reference for a preliminary ruling from the Østre Landsret (Denmark), lodged on 31 January 2012 — The Commissioners for Her Majesty's Revenue and Customs v Sunico ApS, M & B Holding ApS, Sunil Kumar Harwani

(Case C-49/12)

(2012/C 118/17)

Language of the case: Danish

Referring court

Østre Landsret (Denmark)

Parties to the main proceedings

Appellants: The Commissioners for Her Majesty's Revenue and Customs

Respondents: Sunico ApS, M & B Holding ApS, Sunil Kumar Harwani

Question referred

Must Article 1 of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters be interpreted as meaning that its scope extends to cover a case in which the authorities of a Member State bring a claim for damages against undertakings and natural persons resident in another Member State on the basis of an allegation — made pursuant to the national law of the first Member State — of a tortious conspiracy to defraud consisting in involvement in the withholding of VAT due to the first Member State?

([1]) OJ 2001 L 12, p. 1.

Appeal brought on 3 February 2012 by European Federation of Ink and Ink Cartridge Manufacturers (EFIM) against the judgment of the General Court (Fifth Chamber) delivered on 24 November 2011 in Case T-296/09 European Federation of Ink and Ink Cartridge Manufacturers (EFIM) v European Commission

(Case C-56/12 P)

(2012/C 118/18)

Language of the case: German

Parties

Appellant: European Federation of Ink and Ink Cartridge Manufacturers (EFIM) (represented by: D. Ehle, Rechtsanwalt)

Other parties to the proceedings: European Commission, Lexmark International Technology SA

Form of order sought

— Set aside the judgment of the General Court of 24 November 2011 in Case T-296/09 and determine the underlying dispute;

— allow the applications made at first instance and thus annul Commission Decision C(2009) 4125 of 20 May 2009 in a proceeding pursuant to Article 82 EC (Article 102 TFEU);

— order the Commission and Lexmark International Technology SA to pay the costs of the proceedings at first instance and of the present appeal.

Pleas in law and main arguments

The appellant puts forward five grounds of appeal against the judgment of the General Court of 24 November 2011. These relate to the legally erroneous denial in the Commission's decision of 20 May 2009 of the existence of European Union interest and the priority of a investigation procedure relating to the law on cartels.

First, the appellant submits that the General Court erred in law in failing to annul the Commission's decision in so far as that decision deemed it unlikely that it would be possible to establish proof of collective and individual market dominance on the part of inkjet printer manufacturers in relation to their secondary markets for ink cartridges and ink.

Second, the appellant complains that the General Court erred in law in ruling out the likelihood of establishing proof of a dominant position on the part of printer manufacturers on their markets for ink cartridges.

Third, according to the appellant, the General Court manifestly erred in law in its appraisal of the significance of the priority criterion that determines the decision to initiate an investigation. Consequently the General Court erred in law in failing to establish that, in the decision at issue, the Commission infringed its obligation to state the reasons for its decision, in the light of the assessment criteria of the significance, gravity and continuing nature of the infringement.

Fourth, the appellant submits that the judgment is wrong in law as regards the legal assessment of the Commission's appraising decision from the point of view of misuse of powers, in that the Commission's decision was not annulled even though — without giving reasons — it rejected the initiation of an investigation procedure on the pretext of complexity and disproportionate resources.

Finally, the judgment is incompatible with the Notice of 27 April 2004 on jurisdiction in complaint proceedings relating to cartels and on the principle of effective relief as part of the assessment of the European Union interest, as well as with the Commission's obligation to state reasons, culminating in the non-annulment of the Commission decision at issue, notwithstanding the fact that, in its assessment of the European Union interest, the Commission contradicts its own Notice of 27 April 2004 and fails to substantiate the proposition that adequate relief is provided by the national courts.

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 3 February 2012 — Fédération des maisons de repos privées de Belgique (Femarbel) ASBL v Commission communautaire commune

(Case C-57/12)

(2012/C 118/19)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicant: Fédération des maisons de repos privées de Belgique (Femarbel) ASBL

Defendant: Commission communautaire commune

Question referred

Must the healthcare services referred to in Article 2(2)(f) and the social services referred to in Article 2(2)(j) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market [1] be interpreted in such a way as to exclude from the scope of the Directive day-care centres within the meaning of the ordinance of the Commission communautaire commune of 24 April 2008 on establishments receiving or accommodating old people, in so far as they provide assistance and care appropriate to the loss of independence of old people, and likewise night-care centres within the meaning of the same ordinance, in so far as they provided health assistance and care that cannot be given to old people by their close relatives on a continuous basis?

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[1] OJ 2006 L 376, p. 36.

Action brought on 6 February 2012 — European Commission v Republic of Lithuania

(Case C-61/12)

(2012/C 118/20)

Language of the case: Lithuanian

Parties

Applicant: European Commission (represented by: A. Steiblytė, G. Wilms and G. Zavvos)

Defendant: Republic of Lithuania

Form of order sought

— declare that, by prohibiting the registration of passenger cars whose steering wheel is mounted on the right-hand side and/or requiring prior to registration that a steering wheel mounted on the right-hand side of a new passenger car or of a passenger car previously registered in another Member State be transferred to the left-hand side, the Republic of Lithuania has failed to fulfil its obligations under Council Directive 70/311/EEC [1] of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers, Directive 2007/46/EC [2] of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, and Article 34 of the Treaty on the Functioning of the European Union;

— order the Republic of Lithuania to pay the costs.

Pleas in law and main arguments

1. Under legal measures of the Republic of Lithuania it is not permitted to register new passenger cars with the steering equipment on the right-hand side, although such cars satisfy all the requirements laid down in Framework Directive 2007/46/EC and in the separate directives specified in Annex IV thereto. On 29 April 2009 Directive 2007/46/EC repealed and amended Directive 70/156/EEC. ([3]) The Member States had to transpose the provisions of Directive 2007/46/EC into national law before 29 April 2009.

2. Under Article 4(3) of Framework Directive 2007/46/EC, the competent institutions of a Member State must register a new passenger car if it satisfies the technical requirements laid down in that directive and the separate directives. Directive 2007/46/EC does not provide for the possibility to refuse to register a new passenger car by having regard to the side on which the steering equipment is mounted. This conclusion is also confirmed by the provisions of the separate Directive 70/311/EEC which are specified in Annex IV to the Framework Directive. Article 2a of Directive 70/311/EEC prohibits a Member State from refusing registration of a passenger car on grounds relating to its steering equipment if this equipment satisfies the requirements set out in that directive. It is not specified in the annexes to Directive 70/311/EEC on what side the steering equipment, including the steering wheel, has to be mounted, nor, all the more, is it specified that the side of the road on which the car is to be driven determines the side of the steering equipment in the car.

3. Where a passenger car satisfies all the requirements of the directives referred to, there is no reason that could enable Member States in which the traffic drives on the right-hand side of the road to demand that the steering wheel be transferred to the left-hand side in order for the car to be registered. With a view to ensuring road safety, adaptation, pursuant to the Framework Directive and the separate directives, of a car with the steering wheel on the right-hand side to traffic on the right-hand side of the road does not require transfer of the steering wheel to the left-hand side.

4. It is also not permitted under the legal measures of the Republic of Lithuania to register passenger cars previously registered in another Member State whose steering equipment is on the right-hand side. It is to be noted that in the legal measures of the Republic of Lithuania no distinction is drawn according to whether previously such a car was registered in a Member State in which the traffic drives on the left-hand side of the road or in a Member State where the traffic drives on the right-hand side of the road.

5. Article 34 TFEU, which prohibits quantitative restrictions on trade and all measures having equivalent effect, is applicable to such prohibitions. On the basis of settled case-law of the Court of Justice, legal measures of the Member States which are capable of hindering, directly or indirectly, actually or potentially, trade within the European Union are to be considered measures having an effect equivalent to quantitative restrictions on trade.

6. The prohibition applied in the Republic of Lithuania preventing the registration of passenger cars with the steering equipment on the right-hand side, where those cars were previously registered in another Member State, has an effect equivalent to quantitative restrictions under Article 34 TFEU, because goods of another State (passenger cars manufactured and registered in another Member State) cannot be exploited in the Lithuanian market unless their steering equipment is transferred to the other side. The refusal to register cars with the steering wheel on the right-hand side compels the owners of such cars to carry out the comparatively expensive transfer of the steering equipment and discourages the import of such cars into the Republic of Lithuania.

7. The refusal in the Republic of Lithuania to register passenger cars with the steering wheel on the right-hand side is not an appropriate means of ensuring road safety. In the Commission's view, a car with the steering wheel on the right-hand side does not give rise to road-safety problems, but the driver must get accustomed to driving a car with the steering equipment on the right-hand side on the right-hand side of the road so that the driving of such a car does not give rise to danger for other road users. The Commission would wish to draw the Court of Justice's attention to the incoherence of the Republic of Lithuania's position: persons on occasion driving passenger cars with the steering wheel on the right-hand side (for example tourists), who are not accustomed to the particular circumstances of traffic on the right-hand side of the road, give rise to a greater threat to road safety than drivers permanently driving such cars on the right-hand side of the road. Over time, drivers permanently driving passenger cars with the steering wheel on the right-hand side get accustomed to traffic driving on the right-hand side of the road and do not give rise to any threat to road safety.

([1]) Council Directive 70/311/EEC of 8 June 1970 on the approximation of the laws of the Member States relating to the steering equipment for motor vehicles and their trailers (OJ, English Special Edition 1970 (II), p. 375).

([2]) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ 2007 L 263, p. 1).

([3]) Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers (OJ, English Special Edition 1970 (I), p. 96).

Reference for a preliminary ruling from the Administrativen Sad — Varna (Bulgaria) lodged on 7 February 2012 — Galin Kostov v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' -grad Varna pri Tsentralno upravlenie na Natsionalna agentsia za prihodite

(Case C-62/12)

(2012/C 118/21)

Language of the case: Bulgarian

Referring court

Administrativen Sad — Varna

Parties to the main proceedings

Applicant: Galin Kostov

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' -grad Varna pri Tsentralno upravlenie na Natsionalna agentsia za prihodite

Question referred

Is a natural person who is registered for VAT by reason of his activity as a private bailiff to be regarded as a taxable person within the meaning of Article 9(1) of Directive 2006/112 [1] and required, pursuant to Article 193 of Directive 2006/112, to pay VAT in respect of a service which he has provided on an occasional basis and not in connection with his activity as a private bailiff?

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

Action brought on 7 February 2012 — European Commission v Council of the European Union

(Case C-63/12)

(2012/C 118/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Currall, J.-P. Keppenne and D. Martin, agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Decision 2011/866/EU of 19 December 2011 concerning the Commission's proposal for a Council Regulation adjusting with effect from 1 July 2011 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto; [1]

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

Pleas in law and main arguments

The Commission raises two grounds of complaint in relation to Annex XI to the Staff Regulations.

The first ground of complaint concerns the Council's refusal to adopt the adjustment of the remuneration and pensions of officials and other servants, as proposed by the Commission on 24 November 2011, thereby infringing the method governing that adjustment for a period of eight years ending on 31 December 2012. By that ground of complaint, the Commission's primary plea in law claims that the Council has misused its power and exceeded the limits of that power, and its alternative plea in law is that the Council has infringed the conditions for the application of Article 10 of Annex XI to the Staff Regulations. The primary plea in law concerns the fact that the Council has in fact itself applied Article 10, but in breach of the required institutional conditions; the Council has thereby infringed, first, Article 65 of the Staff Regulations and, second, Articles 3 and 10 of Annex XI. By the alternative plea in law, the Commission argues that, in any event, the substantive conditions for the application of Article 10 were not met in 2011, as is clear moreover from the two economic reports which the Commission submitted to the Council at the latter's request. The Commission also considers that Council failed properly to state reasons for its decision.

The second ground of complaint concerns the Council's refusal to adjust the correction coefficients which must be applied to the remuneration and pensions, according to the various places of employment or residence of the persons concerned. The first plea in law within that complaint is that that refusal is contrary to Article 64 of the Staff Regulations and Articles 1 and 3 of Annex XI to the Staff Regulations. The Commission's second plea in law is that that refusal lacks any statement of reasons, contrary to the second paragraph of Article 296 TFEU.

[1] OJ 2011 L 341, p.54

Action brought on 9 February 2012 — Council of the European Union v European Commission

(Case C-66/12)

(2012/C 118/23)

Language of the case: French

Parties

Applicant: Council of the European Union (represented by: M. Bauer and J. Herrmann, agents)

Defendant: European Commission

Form of order sought

— primarily, annul, under Article 263 TFEU, the communication from the Commission, COM(2011) 829 final of 24 November 2011, in so far as the Commission thereby refused definitively to submit appropriate proposals to the European Parliament and the Council on the basis of Article 10 of Annex XI to the Staff Regulations and also annul, under Article 263 TFEU, the Commission's proposal for a Council Regulation adjusting, with effect from 1 July 2011, the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto, and

— alternatively, find established, under Article 265 TFEU, an infringement of the Treaties by reason of the fact that the defendant has failed to submit appropriate proposals to the European Parliament and the Council on the basis of Article 10 of Annex XI to the Staff Regulations;

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the first head of claim seeking the annulment of the communication from the Commission dated 24 November 2011, the Council relies on a single plea in law claiming an infringement of Article 10 of Annex XI to the Staff Regulations, read together with the second sentence of Article 13(2) TEU and Article 241 TFEU. The Council maintains that the Commission's conclusion that there is no serious and sudden deterioration in the economic and social situation within the European Union is vitiated by several errors: the Commission failed to take into account all the relevant and available objective data and erred in its assessment of some of the data on which it based its analysis. Given that, in accordance with the judgment of 24 November 2010 in Case C-40/10 (paragraph 79), 'it cannot be considered that the exercise of the powers conferred on the Commission by [Article 10 of Annex XI] constitutes a mere option for that institution', those errors in the legal characterisation of the facts, which are manifest errors of assessment, have vitiated by illegality the refusal by the Commission to submit appropriate proposals on the basis of that article. By that refusal, the Commission is also in breach of its duty of sincere cooperation (Article 13(2) TEU).

The second head of claim seeks the annulment of the proposal for a regulation adjusting the remuneration and pensions of officials in accordance with the 'normal method' established by Article 3 of Annex XI of the Staff Regulations. The Council claims that that proposal constitutes an act having legal effects, because, according to paragraph 71 of the judgment in Case C-40/10, 'the Council is not entitled to rely, in the context of Article 3, on a discretion going beyond the criteria laid down in that article'. By choosing to submit a proposal based on the application of the 'normal method' instead of a proposal based on the exception clause in Article 10 of Annex XI, the Commission has deprived the European Parliament and the Council of the possibility of exercising their discretion as to the criteria of that exception clause. That choice is tainted by the same errors as the Commission's conclusion in the communication of 24 November 2011 that there is no serious and sudden deterioration in the economic and social situation within the European Union. Further, the Council claims that by submitting the proposal for the adjustment of remuneration in accordance with the 'normal method', the Commission is also in breach of its duty of sincere cooperation (Article 13(2) TEU).

Finally, the Council claims, alternatively, that, in the event that the communication from the Commission dated 24 November 2011 should not be regarded by the Court of Justice as a definition by the Commission of its position within the meaning of the second paragraph of Article 265 TFEU, the Commission is in breach of its obligation under Article 241 TFEU, read together with Article 10 of Annex XI to the Staff Regulations as interpreted by the Court of Justice in Case C-40/10 (paragraph 79), to submit a proposal on that basis.

Action brought on 9 February 2012 — European Commission v Kingdom of Spain

(Case C-67/12)

(2012/C 118/24)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: K. Herrmann and I. Galindo Martin, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Articles 3, 7 and 8 of Directive 2002/91/EC [1] of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, and in any event, by failing to communicate them to the Commission, the Kingdom of Spain has failed to fulfil its obligations under those articles, in conjunction with Article 29 of Directive 2010/31/EU [2] of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

1. Article 15 of Directive 2002/91/EC provides that the Member States are to adopt the provisions necessary to comply with the directive at the latest on 4 January 2006.

2. The Commission states that the Kingdom of Spain has yet to adopt the necessary provisions referred to in Articles 3, 7 and 8 of Directive 2002/91/EC or, in any event, has failed to communicate them to it.

([1]) OJ 2003 L 1, p. 65.
([2]) OJ 2010 L 153, p. 13.

Reference for a preliminary ruling from the Qorti Kostituzzjonali (Malta) lodged on 10 February 2012 — Vodafone Malta Limited and Mobisle Communications Limited vs L-Avukat Ġenerali, Il-Kontrollur tad-Dwana, Il-Ministru tal-Finanzi, and L-Awtorità ta' Malta dwar il-Komunikazzjoni

(Case C-71/12)

(2012/C 118/25)

Language of the case: Maltese

Referring court

Qorti Kostituzzjonali

Parties to the main proceedings

Applicants: Vodafone Malta Limited, Mobisle Communications Limited

Defendants: L-Avukat Ġenerali, Il-Kontrollur tad-Dwana, Il-Ministru tal-Finanzi, L-Awtorità ta' Malta dwar il-Komunikazzjoni

Questions referred

Do the provisions of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), and in particular its Articles 12 and/or 13, prohibit the Member States from imposing a fiscal burden on mobile telecommunications operators ('the operators') that is:

(a) a duty, called an excise duty, introduced through national legislation;

(b) calculated as a percentage on the charges levied by mobile telephony operators on their users for the services provided to them by these operators, with the exception of those services exempted by law;

(c) paid to the mobile telephony operators by their users on an individual basis, and this amount is subsequently passed on to the Comptroller of Customs by all operators offering mobile telephony services, which amount is payable only by the operators and not by other undertakings, including those providing other electronic communications networks and services?

Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Ahmed Ettaghi

(Case C-73/12)

(2012/C 118/26)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Ahmed Ettaghi

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC ([1]) preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

([1]) OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Abd Aziz Tam

(Case C-74/12)

(2012/C 118/27)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Abd Aziz Tam

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC [1] preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

[1] OJ 2008 L 348, p. 98.

Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Majali Abdel

(Case C-75/12)

(2012/C 118/28)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Majali Abdel

Questions referred

1. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC [1] preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?

2. In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?

3. Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

[1] OJ 2008 L 348, p. 98.

Appeal brought on 14 February 2012 by Deutsche Post AG against the judgment of the General Court (Eighth Chamber) delivered on 8 December 2011 in Case T-421/07 Deutsche Post AG v Commission

(Case C-77/12 P)

(2012/C 118/29)

Language of the case: German

Parties

Appellant: Deutsche Post AG (represented by: J. Sedemund und T. Lübbig, Rechtsanwälte)

Other parties to the proceedings: European Commission, UPS Europe NV/SA, UPS Deutschland Inc. & Co. OHG

Form of order sought

— Set aside the judgment of the General Court (Eighth Chamber) of 8 December 2011 in Case T-421/07 in its entirety;

— Order the European Commission to pay the costs.

Pleas in law and main arguments

In the present appeal, the central question is whether and under which conditions a Commission decision to initiate the formal investigation procedure under Article 108(2) TFEU and Article 4(4) of Regulation 659/1999/EC constitutes a decision which may be challenged under the fourth paragraph of Article 263 TFEU. In particular, the question arises whether such a decision to initiate the procedure produces autonomous binding legal effects over and above a previous decision to initiate the procedure which allegedly dealt with the same aid measures.

The General Court denied that such an action is admissible, in essence, on the basis that the 2007 decision to initiate the procedure in Case 36/07 (ex NN 25/07) — which is challenged in the present case — concerns the same measures which had already formed the subject-matter of a 1999 decision to initiate the procedure in Case C 61/99 (ex NN 153/96) prior to the contested decision to initiate the procedure. The fact that in the investigation procedure which preceded the formal main investigation procedure in the present case the Commission had already five years earlier issued a negative decision within the meaning of Article 7(5) of Regulation 659/1999/EC has no influence on this assessment, as that negative decision closed the previous investigation procedure only in part.

The appellant relies on four grounds of appeal:

1. In the judgment under appeal, the General Court failed to recognise that the contested 2007 decision to initiate the procedure produced autonomous legal effects as that decision to initiate the procedure related to aid measures which went far beyond those to which the Commission objected in its 1999 decision to initiate the procedure. Furthermore, the main investigation procedure opened in 1999 was entirely closed by a 2002 negative decision (2002/753/EC); thus the 1999 decision to initiate the procedure could not have any further legal effects. In denying the admissibility of the application in question, the General Court infringed the fourth paragraph of Article 263 TFEU, since every decision which has autonomous legal effects must, under this provision, be open to review.

2. Second, the General Court erred in law by misconstruing the scope of the Commission's infringement of the principles of the protection of legitimate expectations, legal certainty and sound administration and their effects on the present investigation procedure. The General Court did not consider it to be an error in law that the Commission — without making it sufficiently clear to the Federal Government and the appellant — did not subsequently consider the formal investigation procedure which was opened in 1999 to be exhaustively closed and reopened that procedure five years after its formal closure.

3. Third, the fact that the General Court denied the appellant in the present case any direct legal remedy against the 2007 decision to initiate the procedure constitutes a refusal of judicial protection, which directly contravenes the appellant's fundamental right to effective judicial protection under Article 6(1) TEU together with Article 47(1) of the Charter of Fundamental Rights and Article 6(3) TEU together with the first sentence of Article 6(1) the European Convention on Human Rights.

4. Fourth, as regards the last two points set out above, which were not mentioned at all in the judgment under appeal, the General Court neglected to give at least a few explanations in the grounds of its judgment. This omission by the General Court infringes its obligation to state reasons in judgments which stems from the principle of the rule of law.

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 20 February 2012 — Landsbanki Islands HF v Kepler Capital Markets SA, Frédéric Giraux

(Case C-85/12)

(2012/C 118/30)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Landsbanki Islands HF

Defendants: Kepler Capital Markets SA, Frédéric Giraux

Questions referred

1. Must Articles 3 and 9 of Directive 2001/24/EC on the reorganisation and winding up of credit institutions [1] be interpreted as meaning that reorganisation or winding-up measures in regard to a financial establishment, such as those under Icelandic Law No 44/2009 of 15 April 2009, are to be regarded as measures adopted by a administrative or judicial authority for the purposes of those articles?

2. Must Article 32 of Directive 2001/24/EC be interpreted as precluding a national provision, such as Article 98 of the Icelandic law of 20 December 2002, which prohibited or suspended any legal action against a financial establishment as from the entry into force of a moratorium, from having effect in regard to interim protective measures adopted in another Member State prior to the declaration of the moratorium?

[1] Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

Reference for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 17 February 2012 — Skatteverket v PFC Clinic AB

(Case C-91/12)

(2012/C 118/31)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Appellant: Skatteverket

Respondent: PFC Clinic AB

Questions referred

1. Is Article 132(1)(b) and (c) of the VAT Directive [1] to be interpreted as meaning that the stated exemption from taxation covers services such as those at issue in the present case and which consist of:

   (a) cosmetic surgery,

   (b) cosmetic treatments?

2. Does it affect that assessment if the surgery or treatments are carried out with the purpose of preventing or treating sicknesses, physical impairments or injuries?

3. If due account is to be taken of the purpose, can the patient's understanding of the purpose of the intervention be taken into consideration?

4. Is it of any importance to the assessment whether the intervention is carried out by licensed medical professionals, or that such professionals decide on its purpose?

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

Action brought on 21 February 2012 — European Commission v Federal Republic of Germany

(Case C-95/12)

(2012/C 118/32)

Language of the case: German

Parties

Applicant: European Commission (represented by: E. Montaguti and G. Braun, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt all the measures necessary to comply with the judgment of the Court of Justice of the European Union in Case C-112/05 *Commission* v *Germany* [2007] ECR I-8995 regarding the incompatibility with European Union law of provisions of the VW-Gesetz, the Federal Republic of Germany has failed to meet its obligations under Article 260(2) TFEU;

— order the Federal Republic of Germany to make a daily penalty payment in the amount of EUR 282 725,10 and a lump sum daily payment of EUR 31 114,72, payable to the own resources account of the European Union;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The judgment of the Court of Justice in Case C-112/05 *Commission* v *Germany* was delivered on 23 October 2007. In that case, the Commission essentially submitted that three provisions of the VW-Gesetz could deter direct investment and thus restricted the free movement of capital within the meaning of Article 56 EC in that they (i), in derogation from the general law, capped the voting rights of every shareholder at 20 % of Volkswagen's share capital, (ii) required a majority of over 80 % of the shares represented for resolutions of the general assembly, which, according to the general law, require only a majority of 75 % and (iii) allowed, in derogation from the general law, the Federal State and the Land of Lower Saxony each to appoint two representatives to Volkswagen's supervisory board.

It transpires from the judgment of the Court of Justice referred to above that each of the three of the provisions of the VW-Gesetz complained of, taken individually, was found to infringe the free movement of capital.

The law adopted by the Federal Republic of Germany, which, in the latter's opinion, has transposed the judgment of the Court of Justice, still requires, however, a majority of over 80 % of the shares represented for resolutions of the general assembly of the Volkswagen AG, which, according to the Aktiengesetz (German company law), require only a majority of 75 %. The Federal Republic of Germany justifies this with reference to the operative part of the judgment in Case C-112/05, pursuant to which that provision only constitutes a legal infringement when taken in conjunction with the other two provisions. Taken individually, however, that provision does not constitute an infringement of the free movement of capital.

In the Commission's view, the wording of the operative part of the judgment does not rule out the unlawfulness of the three contested provisions, taken individually. When implementing a judgment, it is not just the operative part thereof which needs to be taken into account, but also the grounds for the decision. In the context of the present case, it appears particularly far-fetched on the part of the Federal Republic of Germany to try to justify its failure to fully implement the judgment of the Court of Justice exclusively on the basis of the three words 'in conjunction with' in the operative part of the judgment. Such an interpretation does not only ignore the overall grounds for the judgment, but also the case-law of the Court of Justice on so-called 'Golden Shares'.

Accordingly, the Commission regards itself once again as required to bring the case before the Court of Justice in accordance with Article 260(2) TFEU. The amount of the financial sanctions was determined on the basis of the Commission's communication of 1 September 2011 on the updating of data for the calculation of lump sum and penalty payments. [1]

[1] OJ 2011 C 12, p. 1

GENERAL COURT

Judgment of the General Court of 7 March 2012 — British Aggregates v Commission

(Case T-210/02 RENV) [1]

(State aid — Environmental tax on aggregates in the United Kingdom — Commission decision not to raise objections — Advantage — Selective nature)

(2012/C 118/33)

Language of the case: English

Parties

Applicant: British Aggregates Association (Lanark, United Kingdom) (represented by: C. Pouncey, J. Coombes, Solicitors, and L. Van den Hende, lawyer)

Defendant: European Commission (represented by: M. Afonso, J. Flett and B. Martenczuk, Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by: T. Harris, and subsequently by S. Ossowski, acting as Agents, and by M. Hall and G. Facenna, Barristers)

Re:

Application for partial annulment of Commission Decision C(2002) 1478 final of 24 April 2002 on State aid file N 863/01 — United Kingdom/Aggregates Levy.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2002) 1478 final of 24 April 2002 on State aid file N 863/01 — United Kingdom/Aggregates Levy, save as regards the exemption for Northern Ireland;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by the British Aggregates Association before the Court of Justice and the General Court;*

3. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs incurred before the Court of Justice and the General Court.*

[1] OJ C 219, 14.9.2002.

Judgment of the General Court of 6 March 2012 — UPM-Kymmene v Commission

(Case T-53/06) [1]

(Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Duration of the infringement — Single and continuous infringement — Fines — Gravity of the infringement — Mitigating circumstances — Undertaking playing a passive role — Proportionality)

(2012/C 118/34)

Language of the case: English

Parties

Applicant: UPM-Kymmene Oyj (Helsinki, Finland) (represented initially by: B. Amory, E. Friedel and F. Bimont, subsequently by B. Amory, E. Friedel, F. Bimont and F. Amato, and finally by B. Amory, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, Agent, and by M. Gray, Barrister)

Re:

Application for annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags).

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) in so far as it holds UPM-Kymmene Oyj liable for the single and continuous infringement referred to in Article 1(1) thereof, in respect of the period prior to 10 October 1995;*

2. *Sets the amount of the fine imposed by Article 2(j) of that decision at EUR 50.7 million;*

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

4. *Orders the European Commission and UPM-Kymmene each to bear their own costs.*

[1] OJ C 86, 8.4.2006.

Judgment of the General Court of 6 March 2012 — FLS Plast v Commission

(Case T-64/06) ([1])

(Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Joint and several liability — Principle of ne bis in idem)

(2012/C 118/35)

Language of the case: English

Parties

Applicant: FLS Plast A/S (Valby, Denmark) (represented initially by: K. Lasok QC and subsequently by M. Thill-Tayara, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre, Agent, and by M. Gray, Barrister)

Re:

Application for the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) in so far as it holds FLS Plast A/S liable for the single and continuous infringement referred to in Article 1(1) thereof, for the period from 31 December 1990 to 31 December 1991;*

2. *Sets the amount for payment of which FLS Plast is held jointly and severally liable under Article 2(f) of Decision C(2005) 4634 at EUR 14.45 million;*

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

4. *Orders the European Commission and FLS Plast each to bear their own costs.*

([1]) OJ C 96, 22.4.2006.

Judgment of the General Court of 6 March 2012 — FLSmidth v Commission

(Case T-65/06) ([1])

(Competition — Agreements, decisions and concerted practices — Plastic industrial bags sector — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Duration of the infringement — Fines — Gravity of the infringement — Mitigating circumstances — Cooperation during the administrative procedure — Proportionality — Joint and several liability)

(2012/C 118/36)

Language of the case: English

Parties

Applicant: FLSmidth & Co. A/S (Valby, Denmark) (represented by: J.-E. Svensson, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre, Agent, and by M. Gray, Barrister)

Re:

Application for the partial annulment of Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2005) 4634 final of 30 November 2005 relating to a proceeding pursuant to Article 81 [EC] (Case COMP/F/38.354 — Industrial bags) in so far as it holds FLSmidth & Co. A/S liable for the single and continuous infringement referred to in Article 1(1) thereof, for the period from 31 December 1990 to 31 December 1991;*

2. *Sets the amount for payment of which FLSmidth & Co. is held jointly and severally liable under Article 2(f) of Decision C(2005) 4634 at EUR 14.45 million;*

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

4. *Orders the European Commission and FLSmidth & Co. each to bear their own costs.*

([1]) OJ C 96, 22.4.2006.

Judgment of the General Court of 6 March 2012 — Commission v Liotti

(Case T-167/09 P) [1]

(Appeal — Civil service — Officials — Reports procedure — Career Development Report — 2006 appraisal procedure — General Implementing Provisions — Application of the appraisal standards consistently and through consultation)

(2012/C 118/37)

Language of the case: French

Parties

Appellant: European Commission (represented by: B. Eggers and K. Herrmann, Agents)

Other party to the proceedings: Amerigo Liotti (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Re:

Appeal brought against the judgment of the European Union Civil Service Tribunal (First Chamber) of 17 February 2009 in Case F-38/08 *Liotti* v *Commission* [2009] ECR-SC I-A-I-0000 and II-A-1-0000 and for that judgment to be set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to bear its own costs and to pay those incurred by Mr Amerigo Liotti in the present proceedings.*

[1] OJ C 167, 18.7.2009.

Judgment of the General Court of 2 March 2012 — Kingdom of the Netherlands and ING Groep v Commission

(Cases T-29/10 and T-33/10) [1]

(State aid — Financial sector — Aid designed to remedy a serious disturbance in the economy of a Member State — Capital injection with repayment or share conversion options conferred on the aid recipient — Amendment to the repayment terms during the administrative procedure — Decision declaring the aid compatible with the common market — Concept of State aid — Advantage — Private investor test — Necessary and proportionate relationship between the amount of aid and the extent of measures intended to ensure compatibility of the aid)

(2012/C 118/38)

Language of the case: Dutch and English

Parties

Applicants: Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries and M. de Ree, Agents, assisted by P. Glazener, lawyer) (Case T-29/10); and ING Groep NV (Amsterdam, Netherlands) (represented initially by: O. Brouwer, M. Knapen and J. Blockx, lawyers, and subsequently by O. Brouwer, J. Blockx and M. O'Regan, Solicitor) (Case T-33/10)

Defendant: European Commission (represented by: H. van Vliet, L. Flynn and S. Noë, Agents)

Intervener in support of the applicants in Case T-33/10: De Nederlandsche Bank NV (Amsterdam, Netherlands) (represented initially by: B. Nijs and G. van der Klis, subsequently by G. van der Klis, M. Petite and S. Verschuur and, lastly, by M. Petite and S. Verschuur, lawyers)

Re:

Applications for the partial annulment of Commission Decision 2010/608/EC of 18 November 2009 on State aid C 10/09 (ex N 138/09) implemented by the Netherlands for ING's Illiquid Assets Back Facility and Restructuring Plan (OJ 2010 L 274, p. 139).

Operative part of the judgment

The Court:

1. *Joins Cases T-29/10 and T-33/10 for the purposes of the present judgment.*

2. *Annuls the first paragraph of Article 2 of Commission decision 2010/608/EC of 18 November 2009 on State aid C 10/09 (ex N 138/09) implemented by the Netherlands for ING's Illiquid Assets Back-up Facility and Restructuring Plan, the second paragraph of Article 2 of that decision and Annex II to that decision.*

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

[1] OJ C 80, 27.3.2010.

Judgment of the General Court of 8 March 2012 — Iberdrola v Commission

(Case T-221/10) [1]

(Action for annulment — State aid — Aid schemes allowing for the tax amortisation of financial goodwill for foreign shareholding acquisitions — Decision declaring the aid scheme incompatible with the common market and not ordering the recovery of aid — Act entailing implementing measures — Lack of individual concern — Inadmissibility)

(2012/C 118/39)

Language of the case: Spanish

Parties

Applicant: Iberdrola, SA (Bilbao, Spain) (represented by: J. Ruiz Calzado, M. Núñez-Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission (represented by: R. Lyal and C. Urraca Caviedes, Agents)

Re:

Application for annulment of Article 1(1) of Commission Decision 2011/5/EC of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 7, p. 48).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Iberdrola, SA to pay the costs.*

([1]) OJ C 179, 3.7.2010.

Judgment of the General Court of 6 March 2012 — Spain v Commission

(Case T-230/10) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from financing — Fruit and vegetables — Obligation to justify expenditure — Conditions for recognition of producer organisations)

(2012/C 118/40)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented initially by M. Muñoz Pérez and A. Rubio González, and subsequently by Rubio González, lawyers)

Defendant: European Commission (represented by: F. Jimeno Fernández, Agent)

Re:

Application for partial annulment of Commission Decision 2010/152/EU of 11 March 2010 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2010 L 63, p. 7), in so far as it excludes certain expenditure incurred by the Kingdom of Spain in the fruit and vegetables sector.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 209, 31.7.2010.

Judgment of the General Court of 8 March 2012 — Arrieta D. Gross v OHIM — International Biocentric Foundation and Others (BIODANZA)

(Case T-298/10) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark BIODANZA — Earlier national word mark BIODANZA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Death of the trade mark applicant before adoption of the decision of the Board of Appeal — Admissibility of the response — Absence of genuine use of the earlier trade mark — Article 42(2) and (3) of Regulation No 207/2009 — Proceedings before the Board of Appeal — Rights of defence — Article 75 of Regulation No 207/2009)

(2012/C 118/41)

Language of the case: English

Parties

Applicant: Christina Arrieta D. Gross (Hamburg, Germany) (represented by: J.-P. Ewert, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Rolando Mario Toro Araneda (Santiago de Chile, Chile)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 April 2010 (Case R 1149/2009-2), relating to opposition proceedings between Christina Arrieta D. Gross and Rolando Mario Toro Araneda.

Operative part of the judgment

The Court:

1. *Grants leave to the International Biocentric Foundation Ltd, Gabriela Cedilia Toro Acuña and Hilda Pilar Toro Acuña, Rolando Patricio Toro Acuña, Maria Verónica Toro Acuña, Ricardo Marcela Toro Durán and German Toro Gonzalez, Claudia Danae Toro Sanchez, Rodrigo Paulo Toro Sanchez, Mariela Paula Toro Sanchez, Viviana Luz Toro Matuk, Morgana Fonteles Toro, Anna Laura Toro Sant'ana, Joana Castoldi Toro Araneda and Claudete Sant'ana to intervene before the General Court;*

2. *Dismisses the action;*

3. *Orders Christina Arrieta D. Gross to pay the costs.*

([1]) OJ C 260, 25.9.2010.

Judgment of the General Court of 6 March 2012 — ThyssenKrupp Steel Europe v OHIM (Highprotect)

(Case T-565/10) [1]

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

(2012/C 118/42)

Language of the case: German

Parties

Applicant: ThyssenKrupp Steel Europe AG (Duisbourg, Germany) (represented by: U. Ulrich, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 September 2010 (Decision R 1038/2010-1), concerning an application for registration of the word mark Highprotect as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ThyssenKrupp Steel Europe AG to pay the costs.*

[1] OJ C 55, 19.2.2011.

Order of the General Court of 17 February 2012 — Dagher v Council

(Case T-218/11) [1]

(Common foreign and security policy — Restrictive measures adopted having regard to the situation in Côte d'Ivoire — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate — Non-contractual liability)

(2012/C 118/43)

Language of the case: French

Parties

Applicant: Habib Roland Dagher (Abidjan, Côte d'Ivoire) (represented by: J.-Y. Dupeux and F. Dressen, lawyers)

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

Intervener in support of the form of order sought by the defendant: European Commission (represented by: A. Bordes and M. Konstantinides, acting as Agents)

Re:

Firstly, annulment of Council Decision 2011/71/CFSP of 31 January 2011, amending Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 28, p. 60) and of Council Implementing Regulation (EU) No 85/2011 of 31 January 2011, implementing Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ L 28, p. 32), in so far as the applicant's name has been placed on the list of persons and entities to which those restrictive measures apply and, secondly, a claim for damages

Operative part of the order

1. *There is no further need to adjudicate on the application for annulment of Council Decision 2011/71/CFSP of 31 January 2011, amending Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire and of Council Implementing Regulation (EU) No 85/2011 of 31 January 2011, implementing Council Regulation (EC) No 560/2005 of 12 April 2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire.*

2. *The claim for damages is dismissed.*

3. *The Council of the European Union shall pay the costs relating to the application for annulment.*

4. *The applicant shall pay the costs relating to the claim for damages.*

5. *The European Commission shall bear its own costs.*

[1] OJ C 179, 18.6.2011.

Action brought on 8 February 2012 — Hellenic Republic v Commission

(Case T-52/12)

(2012/C 118/44)

Language of the case: Greek

Parties

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

Defendant: European Commission

Form of order sought

— annul or amend the Commission decision of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009;

— order the Commission to pay the costs.

Pleas in law and main arguments

By its action, the Hellenic Republic seeks the annulment of the Commission decision of 7 December 2011 'concerning State aid C 3/2010 and compensation payments made by the Organismos Ellinikon Georgikon Asfaliseon (Greek Agricultural Insurance Organisation) (ELGA) in 2008 and 2009', notified under number C(2011) 7260 final.

By the first plea for annulment, the applicant submits that the Commission misinterpreted and misapplied the provisions of Articles 107(1) and 108 TFEU in conjunction with the provisions of Law No 1790/1988, ([1]) which govern ELGA, and that it assessed the facts incorrectly, because all the payments in 2009 (EUR 415 019 452) constituted genuine compensation for damage to crop production and livestock as a result of adverse weather conditions occurring in 2007 and 2008, which ELGA, as a sui generis social insurance body, had to make good in the context of the compulsory insurance scheme covering agricultural production.

By the second plea for annulment, the applicant pleads an error as regards the assessment of the facts and an infringement of essential procedural requirements because the Commission, incorrectly assessing the facts and stating defective and/or insufficient reasons, reached the conclusion that the payments in 2009 constitute unlawful State aid, since they are not justified by the nature and general scheme of ELGA's system of compulsory insurance, they constituted an economic advantage for their recipients and they threatened to distort competition and to affect trade between Member States.

By the third plea for annulment, the applicant pleads misinterpretation and misapplication of Articles 107 and 108 TFEU and the infringement of essential procedural requirements, because the Commission unlawfully, and in any event with a deficient statement of reasons, also included in the financial amounts that it is necessary to recover as unlawful State aid the EUR 186 011 000,60 which corresponded to the compulsory insurance contributions paid by the farmers themselves in 2008 and 2009 within the framework of the compulsory insurance scheme to ELGA and which did not constitute unlawful State aid but private resources, so that that sum had to be deducted from the final sum to be recovered.

By the fourth plea for annulment, the applicant pleads misinterpretation and misapplication by the Commission of Article 107(3)(b) TFEU and wrongful exercise of the discretion that is available to the Commission in the area of State aid, since in any event the payments in 2009 had to be regarded as compatible with the common market because of the manifest seriousness of the economic disturbance in the entire Greek economy and the entry into force of a provision of primary European Union law cannot depend upon the entry into force of a Commission communication such as the Temporary Community Framework.

By the fifth plea for annulment, the applicant submits that by the contested decision the Commission in any event infringed Articles 39, 107(3)(b) and 296 TFEU and the general principles of equal treatment, of proportionality, of the protection of legitimate expectations, of economic freedom and of the rules of competition, because of the unjustifiable and unreasoned exception and failure to apply immediately from 17 December 2008 the Temporary Community Framework — as in force for all other undertakings, in all other sectors of the Community economy — to undertakings specialised in primary agricultural production.

By the sixth plea for annulment, the applicant submits that by the contested decision the Commission carried out an erroneous assessment and calculation of the sums to be recovered, since it failed to deduct the *de minimis* aid as provided for in Regulations No 1860/2004 ([2]) and No 1535/2007 ([3]) 'relating to the application of Articles 107 and 108 TFEU to *de minimis* aid in the sector of agricultural production'.

By the seventh plea for annulment, the applicant submits that the Commission misinterpreted and misapplied the Guidelines for State aid in the agriculture and forestry sector 2007-2013 and wrongfully exercised its discretion — at the same time stating defective and contradictory reasons — in finding that the compensation granted in 2008 for damage to crop production caused by bears with an aid intensity of 100 % was compatible with the common market only at the rate of 80 %.

([1]) Law No 1790/1988 concerning 'the organisation and operation of the Greek Agricultural Insurance Organisation and other provisions' (FEK A 134/20.06.1988).

([2]) Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors.

([3]) Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the sector of agricultural production.

Action brought on 10 February 2012 — Planet v Commission

(Case T-59/12)

(2012/C 118/45)

Language of the case: Greek

Parties

Applicant: Planet A.E. public limited consultancy company (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the delayed payment by the Commission of the last instalment of the funds payable to the applicant in respect of the work contract 'Collaboration Environment for Strategic Innovation (Laboranova)', amounting to EUR 20 665,17, constitutes a breach of its contractual obligations and order the Commission to pay to the applicant the sum of EUR 20 665,17, in respect of the expenses incurred by the applicant in the fourth reference period of the Laboranova work, with interest from 12 October 2011;

— declare that the applicant is not obliged to repay to the Commission the advance payment amounting to EUR 39 657,30 for the P4 period of the Laboranova work;

— order the Commission to pay to the applicant the sum of EUR 30 000,00, as compensation for the damage to the applicant's professional reputation which was caused by the Commission's breach of professional confidentiality, with compensatory interest from 6 October 2011 until delivery of the judgment in this case and with late payment interest from the delivery of the judgment in these proceedings until full payment; and

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

By this action, the applicant combines two actions.

First, an action in respect of the Commission's liability under contract No 035262 for the implementation of the work 'Collaboration Environment for Strategic Innovation (Laboranova)', under Article 272 TFEU. In particular, the applicant maintains that, although it fully and properly fulfilled its contractual obligations, the Commission, without any justification and contrary to the terms of the abovementioned contract and the principle of good faith, rejected the applicant's expenses for the period P4 and suspended payment to the applicant. Consequently, the applicant maintains that the Commission is obliged to pay it the sum of EUR 20 665,17 with, as provided in clause II 28(7) of Annex II to the Contract, interest from 12 October 2011, and that the Commission is not entitled to seek from Planet repayment of the advance payment for the period P4, amounting to EUR 39 657,30.

Second, an action in respect of the Commission's non-contractual liability, pursuant to the second subparagraph of Article 340 TFEU. In particular, the applicant maintains that the Commission, by communicating to the coordinator of the work the existence of a financial audit in respect of the applicant, blatantly disregarded the rules in relation to protection of professional confidentiality, and consequently damaged the applicant's professional reputation. Accordingly, the applicant seeks compensation for the non-material harm suffered by it with interest (compensatory interest for the period from the date of the illegal communication until delivery of the judgment in this case and until full payment of the due compensation); expressly without prejudice to compensation for the material damage caused by the abovementioned unlawful conduct of the Commission.

Appeal brought on 16 February 2012 by Guido Strack against the order of the Civil Service Tribunal of 7 December 2011 in Case F-44/05 RENV Strack v Commission

(Case T-65/12 P)

(2012/C 118/46)

Language of the case: German

Parties

Appellant: Guido Strack (Cologne, Germany) (represented by H. Tettenborn, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— set aside in its entirety the order of the Civil Service Tribunal of the European Union (Second Chamber) of 7 December 2011 in Case F-44/05 RENV;

— order the defendant, pursuant to the form of order applied for under paragraph 1 of Section A.4 of his written submission of 21 February 2011 in Case F-44/05 RENV, the reasoning being stated in paragraphs 78 to 85 of that written submission, to pay damages to the applicant of at least EUR 2 500 on account of the excessive duration of the proceedings, in accordance with Article 6 ECHR;

— order the Commission to bear the entire costs of the present appeal proceedings.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on four grounds.

1. First ground, alleging infringement of the right of access to his lawful judge, Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 47(2) of the Charter of Fundamental Rights of the European Union (Charter) and Article 4(4) of Annex I to the Statute of the Court of Justice of the European Union

   The appellant argues in this connection that the case was first assigned to another chamber of the Civil Service Tribunal and that there was no legal basis for the second assignment undertaken thereafter.

2. Second ground, alleging infringement of Article 8(2) of Annex I to the Statute of the Court of Justice and Article 73 of the Rules of Procedure of the Civil Service Tribunal

The appellant argues in this connection that no separate referral order was possible with regard to the form of order he sought in the main proceedings not in the application but only in a later written submission because it was not independent or separable.

3. Third ground, alleging infringement of Article 8(2) of Annex I to the Statute of the Court of Justice and Article 73 of the Rules of Procedure of the Civil Service Tribunal

The appellant also claims that the legal dispute derives from his employment relationship, meaning that according to Article 1 of Annex I to the Statute of the Court of Justice the Civil Service Tribunal has jurisdiction.

4. Fourth ground, alleging infringement of Article 6(1) ECHR and Article 47 of the Charter

The appellant claims finally that by its method of proceeding the Civil Service Tribunal infringed his right to be heard and the principle of adversary proceedings and treated him unfairly.

Action brought on 16 February 2012 — Mecafer v Commission

(Case T-74/12)

(2012/C 118/47)

Language of the case: English

Parties

Applicant: Mecafer SA (Valence, France) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

— Declare the application admissible;

— Partially annul Article 1 of Commission Decision C(2011) 8804 final, of 6 December 2011, insofar as it only grants a partial refund of the anti-dumping duties paid by the applicant and unlawfully retains additional amounts of refunds of anti-dumping duties legitimately due to the applicant;

— Order maintenance in force of the contested decision until the European Commission has adopted measures necessary to comply with any judgment of the Court; and

— Order the defendant to pay the legal costs and expenses of the procedure.

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 the defendant committed a manifest error of assessment in applying an appropriate and reasonable unrelated EU importer profit margin, thereby failing to establish a reliable export price for the purpose of calculating the correct anti-dumping refund amount leading to infringements of Articles 2(9) and 18(3) of Council Regulation (EC) No 1225/2009. [1]

2. Second plea in law, alleging that the defendant committed a manifest error of assessment by deducting anti-dumping duties as a cost in the calculation of the export price thereby failing to establish a reliable dumping margin for the purpose of calculating the correct anti-dumping refund amount and in doing so violated Articles 2(9), 2(11) and 11(10) of Council Regulation (EC) No 1225/2009.

3. Third plea in law, alleging that the defendant failed to inform it of the necessary requirements for satisfying Article 11(10) of Council Regulation (EC) No 1225/2009 in a prompt and adequate manner thereby committing violations of the rights of defence enshrined in EU general law as well as the principle of sound administration also established in EU general law and also Article 41 of the Charter of Fundamental Rights of the European Union.

[1] Council Regulation (EC) 1225/2009 on Protection Against Dumped Imports From Countries not Members of the European Community, OJ 2009 L 343, p. 51.

Action brought on 16 February 2012 — Nu Air Polska v Commission

(Case T-75/12)

(2012/C 118/48)

Language of the case: English

Parties

Applicant: Nu Air Polska sp. z o.o. (Warszawa, Poland) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

— Declare the application admissible;

— Partially annul Article 1 of Commission Decision K(2011) 8826, Article 1 of Commission Decision C(2011) 8803 and Article 1 of Commission Decision K(2011) 8801, all three decisions being dated 6 December 2011, insofar as they only grant a partial refund of the anti-dumping duties paid by the applicant and unlawfully retain additional amounts of refunds of anti-dumping duties legitimately due to the applicant;

— Order maintenance in force of the contested decisions until the European Commission has adopted measures necessary to comply with any judgment of the Court; and

— Order the defendant to pay the legal costs and expenses of the procedure.

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 the defendant committed a manifest error of assessment in applying an appropriate and reasonable unrelated EU importer profit margin, thereby failing to establish a reliable export price for the purpose of calculating the correct anti-dumping refund amount leading to infringements of Articles 2(9) and 18(3) of Council Regulation (EC) No 1225/2009. ([1])

2. Second plea in law, alleging that the defendant committed a manifest error of assessment by deducting anti-dumping duties as a cost in the calculation of the export price thereby failing to establish a reliable dumping margin for the purpose of calculating the correct anti-dumping refund amount and in doing so violated Articles 2(9), 2(11) and 11(10) of Council Regulation (EC) No 1225/2009.

3. Third plea in law, alleging that the defendant failed to inform it of the necessary requirements for satisfying Article 11(10) of Council Regulation (EC) No 1225/2009 in a prompt and adequate manner thereby committing violations of the rights of defence enshrined in EU general law as well as the principle of sound administration also established in EU general law and also Article 41 of the Charter of Fundamental Rights of the European Union.

([1]) Council Regulation (EC) 1225/2009 on Protection Against Dumped Imports From Countries not Members of the European Community, OJ 2009 L 343, p. 51.

Action brought on 15 February 2012 — Nu Air Compressors and Tools v Commission

(Case T-76/12)

(2012/C 118/49)

Language of the case: English

Parties

Applicant: Nu Air Compressors and Tools SpA (Robassomero, Italy) (represented by: R. MacLean, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Article 1 of Commission Decision C(2011) 8824 final and Article 1 of Commission Decision C(2011) 8812 final, both dated 6th December 2011, insofar as they only grant partial refunds of the anti-dumping duties paid by the applicant on imports of Chinese-made compressors applied under Council Regulation (EC) 261/2008 of 17 March 2008 imposing a definitive anti-dumping duty on certain compressors originating in the People's Republic of China ([1]);

— Maintain in force contested Decisions until the European Commission has adopted measures necessary to comply with any judgment of the General Court, given in the present case; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging

— that the European Commission committed a manifest error of assessment in applying an appropriate and reasonable unrelated EU importer profit margin, thereby failing to establish a reliable export price for the purpose of calculating the correct anti-dumping refund amounts leading to infringements of Articles 2(9) and 18(3) of the Basic Anti-Dumping Regulation ([2]).

2. Second plea in law, alleging

— that the European Commission committed a manifest error of assessment by deducting anti-dumping duties as a cost in the calculation of the export price thereby failing to establish a reliable dumping margin for the purpose of calculating the correct anti-dumping refund amounts and in doing so violated Articles 2(9), 2(11) and 11(10) of the Basic Anti-Dumping Regulation.

3. Third plea in law, alleging

— that the European Commission failed to inform the applicant of the necessary requirements for satisfying Article 11(10) of the Basic Anti-Dumping Regulation in a prompt and adequate manner thereby violating its rights of defence, as well as the principle of sound administration established in EU law and provided for in Article 41 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law, alleging

— that in a result, the European Commission unlawfully retained additional amounts of refunds of EU anti-dumping duties legitimately due to the applicant through the above-mentioned infringements of EU law.

(1) OJ L 81, 20.03.2008, p. 1
(2) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51)

Action brought on 15 February 2012 — Beco v Commission

(Case T-81/12)

(2012/C 118/50)

Language of the case: German

Parties

Applicant: Beco Metallteile-Handels GmbH (Spaichingen, Germany) (represented by: T. Pfeiffer, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 13 December 2011 (Az. K(2011) 9112 final);

— order the Commission to pay the costs, pursuant to Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of its action, the applicant claims that its application for a refund of anti-dumping duties, which was refused by the Commission's decision of 13 December 2011, was, contrary to the Commission's view, not lodged out of time and was therefore admissible.

The applicant states in this respect that the application was lodged within the 6-month period, in accordance with Article 11(8) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community. (1) According to the wording of Article 11(8) of Regulation No 384/96, the application for a refund is subject to the condition that the duties determined have been paid by the applicant for a refund. Contrary to the view of the Commission, the 6-month period laid down in Article 11(8) of Regulation No 384/96 cannot expire before the application for a refund is admissible.

Furthermore, in accordance with the Commission notice concerning the reimbursement of anti-dumping duties of 29 May 2002, (2) applications for refunds can 'only be submitted in respect of transactions for which anti-dumping duties have been fully paid' (point 2.1(b)). That notice also states expressly that an importer may apply for a refund only if he 'can demonstrate that he has paid anti-dumping duties either directly or indirectly for a specific importation' (point 2.2(a)).

The applicant further claims that the decision of 13 December 2011 infringes the applicant's legitimate expectation based on the Commission notice of 29 May 2002 as well as the principle of good faith.

The applicant further submits that the decision of 13 December 2011 infringes the principle of legal certainty.

(1) 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).
(2) Commission notice concerning the reimbursement of anti-dumping duties (2002/C 127/06) of 29 May 2002 (OJ 2002 C 127, p. 10).

Action brought on 20 February 2012 — Chico's Brands Investments v OHIM — Artsana (CHICO'S)

(Case T-83/12)

(2012/C 118/51)

Language in which the application was lodged: English

Parties

Applicant: Chico's Brands Investments, Inc. (Fort Myers, United States) (represented by: T. Holman, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Artsana SpA (Grandate, Italy)

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 27 October 2011 in case R 2084/2010-1;

— Order the defendant to pay to the applicant, the applicant's costs of and occasioned by this appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CHICO'S', for goods and services in classes 25 and 35 — Community trade mark application No 1585579

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: Italian trade mark registration No 420865 of the figurative mark 'chicco', for among others goods in class 25; Italian trade mark registration No 846672/380042 of the figurative mark 'chicco', for among others goods in class 25; International trade mark registration No 763084 of the figurative mark 'chicco', for among others goods in class 25

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 15(1)(a), 42(2) and (3) of Council Regulation No 207/2009, as the Board of Appeal erred in concluding that the opponent's evidence proved genuine use of the earlier mark in Italy. Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in concluding that there was a likelihood of confusion between the CTM application and the earlier mark.

Action brought on 21 February 2012 — Lilleborg v OHIM — Hardford (Pierre Robert)

(Case T-85/12)

(2012/C 118/52)

Language in which the application was lodged: English

Parties

Applicant: Lilleborg AS (Oslo, Norway) (represented by: E. Ullberg and M. Plogell, lawyers)

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

Other party to the proceedings before the Board of Appeal: Hardford AB (Limhamn, Sweden)

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 7 December 2011 in case R 2462/2010-1, and consequently order OHIM to evaluate the proof of existence, validity and scope of the earlier mark that the applicant has submitted;

— Or, alternatively, alter the decision of the First Board of Appeal by a decision of its own and refuse the registration of Community trade mark No 8541849 'Pierre Robert'; and

— Order the defendant to pay the costs of the proceedings, including those incurred in the proceedings before the Opposition Division and the First Board of Appeal of OHIM.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'Pierre Robert', for goods and services in classes 3, 5 and 44 — Community trade mark application No 8541849

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

Mark or sign cited in opposition: Swedish trade mark registration No 164251 of the word mark 'PIERRE ROBERT', for goods in class 3

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Rule 50(1) of Commission Regulation No 2868/95 and Articles 76, 8 and 8(2)(c) of Council Regulation No 207/2009, as the Board of Appeal: (i) has neglected its right to examine the facts of its own motion, and take into consideration facts that are apparently likely to affect the outcome of the opposition; (ii) erred in law when it did not consider that 'PIERRE ROBERT' is a well known mark; (iii) failed when not considering the evidence, Annex 1, which was submitted in connection with the filing of the opposition; and (iv) failed when not accepting the certificate from the Swedish Patent and Registration Office filed before the decision of the opposition division.

Action brought on 21 February 2012 — Robert Group v OHIM — Hardford (Pierre Robert)

(Case T-86/12)

(2012/C 118/53)

Language in which the application was lodged: English

Parties

Applicant: Pierre Robert Group AS (Oslo, Norway) (represented by: E. Ullberg and M. Plogell, lawyers)

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

Other party to the proceedings before the Board of Appeal: Hardford AB (Limhamn, Sweden)

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 7 December 2011 in case R 2463/2010-1, and consequently order OHIM to evaluate the proof of existence, validity and scope of the earlier mark that the applicant has submitted;

— Or, alternatively, alter the decision of the First Board of Appeal by a decision of its own and refuse the registration of Community trade mark No 8541849 'Pierre Robert'; and

— Order the defendant to pay the costs of the proceedings, including those incurred in the proceedings before the Opposition Division and the First Board of Appeal of OHIM.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'Pierre Robert', for goods and services in classes 3, 5 and 44 — Community trade mark application No 8541849

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

Mark or sign cited in opposition: Swedish trade mark registration No 166274 of the figurative mark 'Pierre Robert', for goods in classes 3, 5 and 25

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Rule 50(1) of Commission Regulation No 2868/95 and Articles 76, 8 and 8(2)(c) of Council Regulation No 207/2009, as the Board of Appeal: (i) has neglected its right to examine the facts of its own motion, and take into consideration facts that are apparently likely to affect the outcome of the opposition; (ii) erred in law when it did not consider that 'Pierre Robert' is a well known mark; (iii) failed when not considering the evidence, Annex 1, which was submitted in connection with the filing of the opposition; and (iv) failed when not accepting the certificate from the Swedish Patent and Registration Office filed before the decision of the opposition division.

Action brought on 27 February 2012 — Elegant Target Development and Others v Council

(Case T-90/12)

(2012/C 118/54)

Language of the case: English

Parties

Applicants: Elegant Target Development Ltd (Hong Kong, China); Eternal Expert Ltd (Hong Kong); Giant King Ltd (Hong Kong); Golden Charter Development Ltd (Hong Kong); Golden Summit Investments Ltd (Hong Kong); Golden Wagon Development Ltd (Hong Kong); Grand Trinity Ltd (Hong Kong); Great Equity Investments Ltd (Hong Kong); Great Prospect International Ltd (Hong Kong); Harvest Supreme Ltd (Hong Kong); Key Charter Development Ltd (Hong Kong); King Prosper Investments Ltd (Hong Kong); Master Supreme International Ltd (Hong Kong); Metro Supreme International Ltd (Hong Kong); Modern Elegant Development Ltd (Hong Kong); Prosper Metro Investments Ltd (Hong Kong); Silver Universe International Ltd (Hong Kong); and Sparkle Brilliant Development Ltd (Hong Kong) (represented by: F. Randolph, M. Lester, Barristers, and M. Taher, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul Council Decision 2011/783/CFSP [1] and Council Implementing Regulation (EU) No 1245/2011 [2], in so far as the names of the applicants were added to the list of persons and entities to which restrictive measures apply;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to give adequate or sufficient reasons for the inclusion of the names of the applicants in the list of persons and entities to which restrictive measures apply.

2. Second plea in law, alleging that the defendant failed to fulfil the criteria for listing, and/or committed a manifest error of assessment in determining that those criteria were satisfied in relation to the applicants and/or included the applicants without an adequate legal basis for doing so.

3. Third plea in law, alleging that the defendant failed to safeguard the applicants' rights of defence and right to effective judicial review.

4. Fourth plea in law, alleging that the defendant infringed, without justification or proportion, the applicants' fundamental rights, including their right to protection of their property, business, and reputation.

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[1] Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71)

[2] 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)

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