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<u>Notice No</u>	Contents	Page
IV <i>Notices</i>		
NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES		
Court of Justice of the European Union		
2012/C 165/01	Last publication of the Court of Justice of the European Union in the <i>Official Journal of the European Union</i> OJ C 157, 2.6.2012	1
V <i>Announcements</i>		
COURT PROCEEDINGS		
Court of Justice		
2012/C 165/02	Case C-443/09: Judgment of the Court (Third Chamber) of 19 April 2012 (reference for a preliminary ruling from the Tribunale Ordinario di Cosenza (Italy)) — CCIAA di Cosenza v Grillo Star Srl, in liquidation (Directive 2008/7/EC — Indirect taxes on the raising of capital — Articles 5(1)(c) and 6(1)(e) — Scope — Annual duty paid to local chambers of commerce, industry, crafts and agriculture)	2
2012/C 165/03	Case C-141/10: Judgment of the Court (Eighth Chamber) of 19 April 2012 — European Commission v Kingdom of the Netherlands (Failure of a Member State to fulfil obligations — Articles 39 EC to 42 EC — Freedom of movement of persons — Regulation (EEC) No 1408/71 — Social security of migrant workers — Refusal to pay certain benefits — Workers employed on drilling platforms in the Netherlands — Admissibility of the action)	2

EN

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(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2012/C 165/04	Case C-213/10: Judgment of the Court (First Chamber) of 19 April 2012 (reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania)) — F-Tex SIA v Lietuvos-Anglijos UAB 'Jadecloud-Vilma' (Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Article 3(1) — Concept of an action related to insolvency proceedings and closely connected with those proceedings — Regulation (EC) No 44/2001 — Article 1(1) and (2)(b) — Concepts of civil and commercial matters and of bankruptcy or winding-up — Action brought on the basis of an assignment, by a liquidator, of his right to have a transaction set aside)	3
2012/C 165/05	Case C-221/10 P: Judgment of the Court (Third Chamber) of 19 April 2012 — Artegodan GmbH v European Commission, Federal Republic of Germany (Appeals — Second paragraph of Article 288 EC — Non-contractual liability of the Union — Conditions — Sufficiently serious breach of a rule of law conferring rights on individuals — Decision withdrawing marketing authorisations for medicinal products for human use containing amfepramone)	3
2012/C 165/06	Case C-415/10: Judgment of the Court (Second Chamber) of 19 April 2012 (reference for a preliminary ruling from the Bundesarbeitsgericht (Germany)) — Galina Meister v Speech Design Carrier Systems GmbH (Directives 2000/43/EC, 2000/78/EC and 2006/54/EC — Equal treatment in employment and occupation — Worker showing that he meets the requirements listed in a job advertisement — Right of that worker to have access to information indicating whether the employer has recruited another applicant)	4
2012/C 165/07	Case C-461/10: Judgment of the Court (Third Chamber) of 19 April 2012 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB v Perfect Communication Sweden AB (Copyright and related rights — Processing of data by internet — Infringement of an exclusive right — Audio books made available via an FTP server via internet by an IP address supplied by an internet service provider — Injunction issued against the internet service provider ordering it to provide the name and address of the user of the IP address)	4
2012/C 165/08	Case C-523/10: Judgment of the Court (First Chamber) of 19 April 2012 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Wintersteiger AG v Products 4U Sondermaschinenbau GmbH (Regulation (EC) No 44/2001 — Jurisdiction and the enforcement of judgments in civil and commercial matters — Jurisdiction 'in matters relating to tort, delict or quasi-delict' — Determination of the place where the harmful event occurred or may occur — Website of a referencing service provider operating under a country-specific top-level domain of a Member State — Use, by an advertiser, of a keyword identical to a trade mark registered in another Member State)	5
2012/C 165/09	Case C-549/10 P: Judgment of the Court (Third Chamber) of 19 April 2012 — Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v European Commission (Appeal — Competition — Dominant position — Abuse — Market for machines for the collection of used beverage containers — Decision finding an infringement of Article 82 EC and Article 54 of the EEA Agreement — Exclusivity agreements, quantity commitments and loyalty rebates)	6
2012/C 165/10	Case C-121/11: Judgment of the Court (Third Chamber) of 19 April 2012 (reference for a preliminary ruling from the Conseil d'État (Belgium)) — Pro-Braine ASBL and Others v The Commune of Braine-le-Château (Directive 1999/31/EC — Landfill of waste — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Decision relating to the carrying on of operations at an authorised landfill site, in the absence of an Environmental Impact Assessment — Concept of 'consent')	6

<u>Notice No</u>	Contents (continued)	Page
2012/C 165/11	Case C-297/11: Judgment of the Court (Sixth Chamber) of 19 April 2012 — European Commission v Hellenic Republic (Failure of a Member State to fulfil obligations — Directive 2000/60/EC — European Union water policy — River basin management plan — Publication — Public information and consultation — Failure to notify the Commission)	7
2012/C 165/12	Case C-31/12: Reference for a preliminary ruling from the Sąd Rejonowy w Zakopanem (Poland), lodged on 23 January 2012 — Criminal proceedings against Wojciech Ziemiński and Andrzej Kozak	7
2012/C 165/13	Case C-68/12: Reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovak Republic), lodged on 10 February 2012 — Slovenská sporiteľňa, a.s. v Protimonopolný úrad Slovenskej republiky	7
2012/C 165/14	Case C-70/12 P: Appeal brought on 10 February 2012 by Quinn Barlo Ltd, Quinn Plastics NV, Quinn Plastics GmbH against the judgment of the General Court (Third Chamber) delivered on 30 November 2011 in Case T-208/06: Quinn Barlo Ltd, Quinn Plastics NV, Quinn Plastics GmbH v European Commission	8
2012/C 165/15	Case C-120/12 P: Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-62/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	9
2012/C 165/16	Case C-121/12 P: Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-109/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	10
2012/C 165/17	Case C-122/12 P: Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-152/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)	10
2012/C 165/18	Case C-131/12: Reference for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 9 March 2012 — Google Spain, S.L., Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González	11
2012/C 165/19	Case C-140/12: Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 19 March 2012 — Pensionsversicherungsanstalt v Peter Brey	12
2012/C 165/20	Case C-143/12: Action brought on 23 March 2012 — European Commission v French Republic ...	12
2012/C 165/21	Case C-149/12 P: Appeal brought on 27 March 2012 by Xeda International SA, Pace International LLC against the judgment of the General Court (Fifth Chamber) delivered on 19 January 2012 in Case T-71/10: Xeda International SA, Pace International LLC v European Commission	13
2012/C 165/22	Case C-153/12: Reference for a preliminary ruling from the Administrativen sad — Varna (Bulgaria), lodged on 30 March 2012 — Sani Treid EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite	14



<u>Notice No</u>	Contents (continued)	Page
2012/C 165/23	Case C-162/12: Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy), lodged on 2 April 2012 — Airport Shuttle Express scarl and Giovanni Panarisi v Comune di Grottaferrata	14
2012/C 165/24	Case C-163/12: Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 2 April 2012 — Società Cooperativa Autonoleggio Piccola arl and Gianpaolo Vivani v Comune di Grottaferrata	15
General Court		
2012/C 165/25	Case T-329/05: Judgment of the General Court of 25 April 2012 — Movimondo Onlus v Commission (Arbitration clause — Framework agreement between ECHO and humanitarian organisations — Grant agreements — Suspension of payments)	16
2012/C 165/26	Case T-554/08: Judgment of the General Court of 24 April 2012 — Evropaïki Dynamiki v Commission (Public service contracts — Call for tenders — Provision of business, technical and project consultancy services for European Union computer applications in the customs, excise and taxation areas — Rejection of a tender — Decision to award the contract to another tenderer — Action for annulment — Inadmissibility — Claim in damages — Selection and award criteria — Duty to state the reasons on which a decision is based — Manifest error of assessment)	16
2012/C 165/27	Case T-49/09: Judgment of the General Court of 19 April 2012 — Evropaïki Dynamiki v Commission (Public service contracts — Community tendering procedure — Provision of services relating to the maintenance and development of the information systems of the Directorate-General for Regional Policy — Rejection of a tender — Action for annulment — Equal treatment — Obligation to state reasons — Infringement of essential procedural requirements — Manifest error of assessment — Non-contractual liability)	16
2012/C 165/28	Case T-162/09: Judgment of the General Court of 19 April 2012 — Würth and Fasteners v Council (Actions for annulment — Dumping — No individual concern — Inadmissibility)	17
2012/C 165/29	Case T-37/10: Judgment of the General Court of 27 April 2012 — De Nicola v EIB (Appeal — Civil service — Staff of the EIB — Appraisal — Promotion — Appraisal and promotion in respect of 2006 — Decision of the Appeals Committee — Scope of the review — Sickness insurance — Refusal to bear medical costs — Claim for compensation)	17
2012/C 165/30	Case T-166/10: Judgment of the General Court of 24 April 2012 — Samskip Multimodal Container Logistics v Commission (Action for annulment — Decision awarding Community financial assistance to improve the environmental performance of the freight transport system — Marco Polo II programme — Termination of the grant agreement and definitive abandonment of the project — No longer any interest in bringing proceedings — No need to adjudicate)	18

<u>Notice No</u>	Contents (continued)	Page
2012/C 165/31	Case T-509/10: Judgment of the General Court of 25 April 2012 — Manufacturing Support & Procurement Kala Naft v Council (Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Freezing assets — Action for annulment — Admissibility — Power of the Council — Misuse of power — Entry into force — Non-retroactivity — Obligation to state the reasons on which the decision is based — Rights of the defence — Right to effective judicial protection — Error of law — Concept of support for nuclear proliferation — Error of assessment)	18
2012/C 165/32	Case T-326/11: Judgment of the General Court of 25 April 2012 — Brainlab v OHIM (BrainLAB) (Community trade mark — Community word mark BrainLAB — Failure to apply for renewal of the registration of the trade mark — Removal of the trade mark from the register on expiry of registration — Application for restitutio in integrum — Article 81 of Regulation (EC) No 207/2009)	19
2012/C 165/33	Case T-328/11: Judgment of the General Court of 24 April 2012 — Leifheit v OHIM (EcoPerfect) (Community trade mark — Application for Community word mark EcoPerfect — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)	19
2012/C 165/34	Case T-196/11: Action brought on 12 April 2012 — AX v Council	19
2012/C 165/35	Case T-113/12: Action brought on 5 March 2012 — Bial — Portela v OHIM — Probiotal (PROBIAL)	20
2012/C 165/36	Case T-114/12: Action brought on 8 March 2012 — Bode Chemie v OHIM — Laros (sterilina)	21
2012/C 165/37	Case T-119/12: Action brought on 5 March 2012 — USFSPEI and Loescher v Council	21
2012/C 165/38	Case T-120/12: Action brought on 9 March 2012 — Shahid Beheshti University v Council	22
2012/C 165/39	Case T-122/12: Action brought on 19 March 2012 — ActionSportGames v OHIM	23
2012/C 165/40	Case T-127/12: Action brought on 22 March 2012 — Free v OHIM — Noble Gaming (FREE-VOLUTION TM)	23
2012/C 165/41	Case T-131/12: Action brought on 23 March 2012 — Spa Monopole v OHIM — Orly International (SPARITUAL)	24
2012/C 165/42	Case T-132/12: Action brought on 23 March 2012 — Scooters India v OHIM — Brandconcern (LAMBRETTA)	24
2012/C 165/43	Case T-133/12: Action brought on 26 March 2012 — Ben Ali v Council	25
2012/C 165/44	Case T-139/12: Action brought on 28 March 2012 — Wehmeyer v OHIM — Cluett, Peabody (Fairfield)	25



<u>Notice No</u>	Contents (continued)	Page
2012/C 165/45	Case T-140/12: Action brought on 28 March 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA	26
2012/C 165/46	Case T-141/12: Action brought on 26 March 2012 — Pro-Duo v OHIM — El Corte Inglés (GO!)	26
2012/C 165/47	Case T-142/12: Action brought on 30 March 2012 — Aventis Pharmaceuticals v OHIM — Fasel (CULTRA)	27
2012/C 165/48	Case T-143/12: Action brought on 30 March 2012 — Germany v Commission	27
2012/C 165/49	Case T-145/12: Action brought on 29 March 2012 — Bayerische Motoren Werke v OHIM (ECO PRO)	29
2012/C 165/50	Case T-147/12: Action brought on 30 March 2012 — Wünsche Handelsgesellschaft International v Commission	29
2012/C 165/51	Case T-152/12: Action brought on 4 April 2012 — Deutsche Post v Commission	30
2012/C 165/52	Case T-155/12: Action brought on 2 April 2012 — Schulze v OHIM — NKL (Klassiklotterie)	31
2012/C 165/53	Case T-156/12: Action brought on 5 April 2012 — Sweet Tec v OHIM (Shape of an oval)	32
2012/C 165/54	Case T-164/12: Action brought on 10 April 2012 — Alstom and Others v Commission	32
2012/C 165/55	Case T-168/12: Action brought on 13 April 2012 — Georgias and Others v Council and Commission	33
2012/C 165/56	Case T-169/12: Action brought on 10 April 2012 — CHEMK and KF v Council	34



IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 165/01)

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

OJ C 157, 2.6.2012

Past publications

OJ C 151, 26.5.2012

OJ C 138, 12.5.2012

OJ C 133, 5.5.2012

OJ C 126, 28.4.2012

OJ C 118, 21.4.2012

OJ C 109, 14.4.2012

These texts are available on:
EUR-Lex: <http://eur-lex.europa.eu>

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 19 April 2012 (reference for a preliminary ruling from the Tribunale Ordinario di Cosenza (Italy)) — CCIAA di Cosenza v Grillo Star Srl, in liquidation

(Case C-443/09) ⁽¹⁾

(Directive 2008/7/EC — Indirect taxes on the raising of capital — Articles 5(1)(c) and 6(1)(e) — Scope — Annual duty paid to local chambers of commerce, industry, crafts and agriculture)

(2012/C 165/02)

Language of the case: Italian

Referring court

Tribunale Ordinario di Cosenza

Parties to the main proceedings

Applicant: CCIAA di Cosenza

Defendant: Grillo Star Srl, in liquidation

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Cosenza — Interpretation of Articles 5(1)(c) and 6(1)(e) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital — Annual duty payable on account of registration in the register of companies maintained by the local chambers of commerce — Annual duty determined on a flat-rate basis — Concept of ‘duties in the form of fees or dues’

Operative part of the judgment

Article 5(1)(c) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital must be interpreted as not precluding a duty, such as that at issue in the main proceedings, payable annually by all undertakings on account of their registration in the register of undertakings, even if that registration has constituent

effect for capital companies and even if the duty is also payable by those companies for the period during which they only carry on activities preparatory to operating a business.

⁽¹⁾ OJ C 51, 27.2.2010.

Judgment of the Court (Eighth Chamber) of 19 April 2012 — European Commission v Kingdom of the Netherlands

(Case C-141/10) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Articles 39 EC to 42 EC — Freedom of movement of persons — Regulation (EEC) No 1408/71 — Social security of migrant workers — Refusal to pay certain benefits — Workers employed on drilling platforms in the Netherlands — Admissibility of the action)

(2012/C 165/03)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: V. Kreuzschitz and M. van Beek, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels, acting as Agent)

Intervener in support of the form of order sought by the applicant: Portuguese Republic (represented by: L. Inez Fernandes and E. Silveira, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3(1) and 13(2)(a) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2) and of Articles 45 TFEU to 48 TFEU — Refusal to pay certain benefits to workers living in the Member States of the European Union who are employed on drilling platforms in the Kingdom of the Netherlands

Operative part of the judgment

The Court:

1. Dismisses the action as inadmissible;
2. Orders the European Commission to pay the costs;
3. Orders the Portuguese Republic to bear its own costs.

(¹) OJ C 161, 19.6.2010.

Judgment of the Court (First Chamber) of 19 April 2012
(reference for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania)) — F-Tex SIA v Lietuvos-Anglijos UAB ‘Jadecloud-Vilma’

(Case C-213/10) (¹)

(Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Article 3(1) — Concept of an action related to insolvency proceedings and closely connected with those proceedings — Regulation (EC) No 44/2001 — Article 1(1) and (2)(b) — Concepts of civil and commercial matters and of bankruptcy or winding-up — Action brought on the basis of an assignment, by a liquidator, of his right to have a transaction set aside)

(2012/C 165/04)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: F-Tex SIA

Defendant: Lietuvos-Anglijos UAB ‘Jadecloud-Vilma’

Re:

Reference for a preliminary ruling — Lietuvos Aukščiausiasis Teismas — Interpretation of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) and of Articles 1(2)(b) and 2(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — International jurisdiction to decide an *actio Pauliana* directly and closely connected with insolvency proceedings — Conflict of jurisdiction between the court in which the insolvency proceedings are taking place and the court of the defendant’s domicile — *Actio Pauliana* brought after the opening of insolvency proceedings, by the sole creditor of the company in liquidation, in a Member State other than that in which the insolvency proceedings are taking place, following the assignment by the liquidator to the creditor of the company’s claims against third parties

Operative part of the judgment

Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action brought against a third party by an applicant acting on the basis of an assignment of claims which has been granted by a liquidator appointed in insolvency proceedings and the subject-matter of which is the right to have a transaction set aside that the liquidator derives from the national law applicable to those proceedings is covered by the concept of civil and commercial matters within the meaning of that provision.

(¹) OJ C 195, 17.7.2010.

Judgment of the Court (Third Chamber) of 19 April 2012
— Artegodan GmbH v European Commission, Federal Republic of Germany

(Case C-221/10 P) (¹)

(Appeals — Second paragraph of Article 288 EC — Non-contractual liability of the Union — Conditions — Sufficiently serious breach of a rule of law conferring rights on individuals — Decision withdrawing marketing authorisations for medicinal products for human use containing amfepramone)

(2012/C 165/05)

Language of the case: German

Parties

Appellant: Artegodan GmbH (represented by: U. Reese, Rechtsanwalt)

Other parties to the proceedings: European Commission (represented by: B. Stromsky and M. Heller, acting as Agents), Federal Republic of Germany

Re:

Appeal against the judgment of the General Court (Sixth Chamber) of 3 March 2010 in Case T-429/05 *Artegodan v Commission*, in which the General Court dismissed an action for compensation under Article 235 EC and the second paragraph of Article 288 EC, seeking compensation for the damage allegedly suffered by the applicant on account of the adoption of Commission Decision C(2000) 453 of 9 March 2000, concerning the withdrawal of marketing authorisations for medicinal products for human use containing amfepramone — Infringement of the second paragraph of Article 288 EC — Erroneous assessment of the criteria as to the existence of a sufficiently serious breach of EU law

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders *Artegodan GmbH* to pay the costs.

(¹) OJ C 195, 17.7.2010.

**Judgment of the Court (Second Chamber) of 19 April 2012
(reference for a preliminary ruling from the
Bundesarbeitsgericht (Germany)) — Galina Meister v
Speech Design Carrier Systems GmbH**

(Case C-415/10) (¹)

**(Directives 2000/43/EC, 2000/78/EC and 2006/54/EC —
Equal treatment in employment and occupation — Worker
showing that he meets the requirements listed in a job adver-
tisement — Right of that worker to have access to
information indicating whether the employer has recruited
another applicant)**

(2012/C 165/06)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Galina Meister

Defendant: Speech Design Carrier Systems GmbH

Re:

Reference for a preliminary ruling — Bundesarbeitsgericht — Interpretation of Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23), Article 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Equal treatment in the area of employment and work — Burden of proof — Right of a person whose application for a job in a private company was unsuccessful to receive full information concerning the selection procedure in order to be able to prove discrimination

Operative part of the judgment

Article 8(1) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 10(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general

framework for equal treatment in employment and occupation and Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as not entitling a worker who claims plausibly that he meets the requirements listed in a job advertisement and whose application was rejected to have access to information indicating whether the employer engaged another applicant at the end of the recruitment process.

Nevertheless, it cannot be ruled out that a defendant's refusal to grant any access to information may be one of the factors to take into account in the context of establishing facts from which it may be presumed that there has been direct or indirect discrimination. It is for the referring court to determine whether that is the case in the main proceedings, taking into account all the circumstances of the case before it.

(¹) OJ C 301, 6.11.2010.

**Judgment of the Court (Third Chamber) of 19 April 2012
(reference for a preliminary ruling from the Högsta
domstolen — Sweden) — Bonnier Audio AB, Earbooks
AB, Norstedts Förlagsgrupp AB, Piratförlaget AB,
Storyside AB v Perfect Communication Sweden AB**

(Case C-461/10) (¹)

**(Copyright and related rights — Processing of data by
internet — Infringement of an exclusive right — Audio
books made available via an FTP server via internet by an
IP address supplied by an internet service provider —
Injunction issued against the internet service provider
ordering it to provide the name and address of the user of
the IP address)**

(2012/C 165/07)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Bonnier Audio AB, Earbooks AB, Norstedts Förlagsgrupp AB, Piratförlaget AB, Storyside AB

Defendant: Perfect Communication Sweden AB

Re:

Reference for a preliminary ruling — Högsta domstolen — Interpretation of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Intellectual property — Exclusive right held by publishing companies to make audio books available to the public — Alleged infringement of that right in that those audio books were made accessible via an FTP (File transfer protocol) server, an internet file-sharing program — Order that the internet service provider which provides the internet link to the server by allocating it an IP address supply to the copyright owner information regarding the names and addresses of persons registered as users of that IP address during a given period

Operative part of the judgment

Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC must be interpreted as not precluding the application of national legislation based on Article 8 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights which, in order to identify an internet subscriber or user, permits an internet service provider in civil proceedings to be ordered to give a copyright holder or its representative information on the subscriber to whom the internet service provider provided an IP address which was allegedly used in an infringement, since that legislation does not fall within the material scope of Directive 2006/24;

It is irrelevant to the main proceedings that the Member State concerned has not yet transposed Directive 2006/24, despite the period for doing so having expired;

Directives 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) and 2004/48 must be interpreted as not precluding national legislation such as that at issue in the main proceedings insofar as that legislation enables the national court seised of an application for an order for disclosure of personal data, made by a person who is entitled to act, to weigh the conflicting interests involved, on the basis of the facts of each case and taking due account of the requirements of the principle of proportionality.

⁽¹⁾ OJ C 317, 20.11.2010.

Judgment of the Court (First Chamber) of 19 April 2012 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Wintersteiger AG v Products 4U Sondermaschinenbau GmbH

(Case C-523/10) ⁽¹⁾

(Regulation (EC) No 44/2001 — Jurisdiction and the enforcement of judgments in civil and commercial matters — Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ — Determination of the place where the harmful event occurred or may occur — Website of a referencing service provider operating under a country-specific top-level domain of a Member State — Use, by an advertiser, of a keyword identical to a trade mark registered in another Member State)

(2012/C 165/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Wintersteiger AG

Defendant: Products 4U Sondermaschinenbau GmbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Determination of jurisdiction in respect of an action seeking to prohibit the registration of a sign identical to a trade mark with a service provider operating an internet search engine in order that, following the entry of that sign as a search term (‘AdWord’), the screen automatically displays advertising for goods or services identical with or similar to those for which the trade mark at issue is registered — Situation in which the trade mark is protected in a first Member State and the said display of advertising functions only at the top-level domain of that search engine specific to another Member State, while being accessible from the first Member State and in the official language of that latter State — Criteria for determining the ‘place where the harmful event occurred or may occur’

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action relating to infringement of a trade mark registered in a Member State because of the use, by an advertiser,

of a keyword identical to that trade mark on a search engine website operating under a country-specific top-level domain of another Member State may be brought before either the courts of the Member State in which the trade mark is registered or the courts of the Member State of the place of establishment of the advertiser.

(¹) OJ C 30, 29.1.2011.

Judgment of the Court (Third Chamber) of 19 April 2012 — Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS v European Commission

(Case C-549/10 P) (¹)

(Appeal — Competition — Dominant position — Abuse — Market for machines for the collection of used beverage containers — Decision finding an infringement of Article 82 EC and Article 54 of the EEA Agreement — Exclusivity agreements, quantity commitments and loyalty rebates)

(2012/C 165/09)

Language of the case: English

Parties

Appellants: Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB, Tomra Butikksystemer AS (represented by: O. W. Brouwer, advocaat, J. Midthjell, advokat and A. J. Ryan, solicitor)

Other party to the proceedings: European Commission (represented by: E. Gippini Fournier and N. Khan, acting as Agents)

Re:

Appeal against the judgment of the General Court (Fifth Chamber) delivered on 9 September 2010 in Case T-155/06 *Tomra Systems ASA and Others v European Commission* dismissing an action for annulment of the Commission's decision of 29 March 2006 relating to a proceeding under Article 82 of the EC Treaty and Article 54 of the EEA Agreement (Case COMP/E-1/38.113 — Prokent/Tomra) imposing a fine of EUR 24 million on the appellants for abusing their dominant position by engaging in practices involving exclusivity agreements, quantity commitments and loyalty rebates in order to prevent or delay the entry of other manufacturers on the market for machines for the collection of used beverage containers in Austria, Germany, the Netherlands, Norway and Sweden, and, in the alternative, an application for annulment or substantial reduction of the fine.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Tomra Systems ASA, Tomra Europe AS, Tomra Systems GmbH, Tomra Systems BV, Tomra Leergutsysteme GmbH, Tomra Systems AB and Tomra Butikksystemer AS to pay the costs.*

(¹) OJ C 63, 26.2.2011.

Judgment of the Court (Third Chamber) of 19 April 2012 (reference for a preliminary ruling from the Conseil d'État (Belgium)) — Pro-Braine ASBL and Others v The Commune of Braine-le-Château

(Case C-121/11) (¹)

(Directive 1999/31/EC — Landfill of waste — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Decision relating to the carrying on of operations at an authorised landfill site, in the absence of an Environmental Impact Assessment — Concept of 'consent')

(2012/C 165/10)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Pro-Braine ASBL, Michel Bernard, Charlotte de Lantsheere

Defendant: The Commune of Braine-le-Château

Intervener: Veolia es treatment SA

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Article 14(b) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) and of Article 1(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Decision relating to the carrying on of operations at an authorised landfill site, in the absence of an Environmental Impact Assessment — Concept of 'consent' — Scope

Operative part of the judgment

The definitive decision relating to the carrying on of operations at an existing landfill site, taken on the basis of a conditioning plan, pursuant to Article 14(b) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, does not constitute a 'consent' within the meaning of Article 1(2) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, unless that decision authorises a change to or extension of

that installation or site, through works or interventions involving alterations to its physical aspect, which may have significant adverse effects on the environment within the meaning of point 13 of Annex II to Directive 85/337, and thus constitute a 'project' within the meaning of Article 1(2) of that Directive.

(¹) OJ C 152, 21.5.2011.

**Judgment of the Court (Sixth Chamber) of 19 April 2012
— European Commission v Hellenic Republic**

(Case C-297/11) (¹)

(Failure of a Member State to fulfil obligations — Directive 2000/60/EC — European Union water policy — River basin management plan — Publication — Public information and consultation — Failure to notify the Commission)

(2012/C 165/11)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: A. Marghelis and I. Hadjiyiannis, acting as Agents)

Defendant: Hellenic Republic (represented by: G. Karipsiadis, acting as Agent)

Re:

Failure of Member State to fulfil its obligations — Infringement of Articles 13(1), (2), (3) and (6), 14(1)(c) and 15(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — River basin management plans — Publication — Information and consultation of public — Failure to send copies of management plans to the Commission

Operative part of the judgment

The Court:

1. Declares that, by having failed to draw up, by 22 December 2009, the river basin management plans for both river basins located entirely within its own territory and international river basins, and by having failed to send copies of those plans, by 22 March 2010, to the European Commission, the Hellenic Republic has failed to fulfil its obligations under Articles 13(1) to (3) and (6) and 15(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and, in addition, by having failed to institute, by 22 December 2008, the public information and consultation procedure regarding the draft river basin management plans, the Hellenic Republic has failed to fulfil its obligations under Article 14(1)(c) of that directive;

2. Orders the Hellenic Republic to pay the costs.

(¹) OJ C 238, 13.8.2011.

Reference for a preliminary ruling from the Sąd Rejonowy w Zakopanem (Poland), lodged on 23 January 2012 — Criminal proceedings against Wojciech Ziemiński and Andrzej Kozak

(Case C-31/12)

(2012/C 165/12)

Language of the case: Polish

Referring court

Sąd Rejonowy w Zakopanem

Parties to the main proceedings

Wojciech Ziemiński, Andrzej Kozak

Question referred

Must Article 1.11 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (¹) be interpreted as meaning that the technical regulations, the draft of which must be communicated to the Commission pursuant to Article 8(1) of that directive, also include a legislative provision which defines the statutory concepts and prohibitions which are described and set out in Article 29 of the Ustawa z dnia 19 listopada 2009 roku o grach hazardowych (Polish Law of 19 November 2009 on games of chance) (Dz. U. No 201, position 1540, as amended)?

(¹) OJ 1998 L 204, p. 37.

Reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky (Slovak Republic), lodged on 10 February 2012 — Slovenská sporiteľňa, a.s. v Protimonopolný úrad Slovenskej republiky

(Case C-68/12)

(2012/C 165/13)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Slovenská sporiteľňa, a.s.

Defendant: Protimonopolný úrad Slovenskej republiky

Questions referred

1. Is Article 101(1) TFEU (formerly Article 81(1) EC) to be interpreted as meaning that it is of legal relevance that a competitor (trader) adversely affected by a cartel agreement between other competitors (traders) was operating on the relevant market illegally at the time when the cartel agreement was concluded?
2. For the purposes of interpreting Article 101(1) TFEU (formerly Article 81(1) EC), is it of legal relevance that, at the time when the cartel agreement was concluded, the legality of that competitor's (trader's) conduct was not called in question by the competent supervisory bodies in the Slovak Republic?
3. Is Article 101(1) TFEU (formerly Article 81(1) EC) to be interpreted as meaning that, in order to find that an agreement is restrictive of competition, it is necessary to demonstrate personal conduct on the part of the representative authorised under the undertaking's constitution or the personal assent, in the form of a mandate, of that representative, who has (or may have) taken part in that agreement, to the conduct of one of the undertaking's employees, where the undertaking has not distanced itself from the conduct of that employee and, at the same time, the agreement has even been implemented?
4. Is Article 101(3) TFEU (formerly Article 81(3) EC) to be interpreted as also applying to an agreement prohibited under Article 101(1) TFEU (formerly Article 81(1) EC) which by its nature has the effect of excluding from the market a specific individual competitor (trader) which has subsequently been found to have been carrying out foreign currency transactions on the cashless payment transactions market without holding the appropriate licence as required under national law?

Appeal brought on 10 February 2012 by Quinn Barlo Ltd, Quinn Plastics NV, Quinn Plastics GmbH against the judgment of the General Court (Third Chamber) delivered on 30 November 2011 in Case T-208/06: Quinn Barlo Ltd, Quinn Plastics NV, Quinn Plastics GmbH v European Commission

(Case C-70/12 P)

(2012/C 165/14)

Language of the case: English

Parties

Appellants: Quinn Barlo Ltd, Quinn Plastics NV, Quinn Plastics GmbH (represented by: F. Wijckmans, advocaat, M. Visser, avocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants respectfully request the Court of Justice:

- In main order: to set aside the Judgment of the General Court to the extent that it holds that the Appellants have infringed Article 101 TFEU and, on account hereof, has failed to annul Article 1 of the Decision in respect of the Appellants.
- In subsidiary order: to set aside the Judgment of the General Court to the extent that, in the exercise of its unlimited jurisdiction, it decreased the starting amount of the fine by only 10 % and failed to annul the Decision where it included in the calculation of the fine an increase on account of the duration of the infringement.
- In subsidiary order: to set aside the Judgment of the General Court to the extent that it fails to annul the Decision where it limited the reduction of the basic amount on account of differential treatment to 25 % and that, within the framework of its unlimited jurisdiction, the Court of Justice fixes a higher percentage which duly reflects the lack of liability of the Appellants for the cartel as it extends to PMMA moulding compounds and PMMA sanitary ware, thereby ensuring that such higher reduction is consistent with the general principle of proportionality.
- To order the Commission to pay the costs of the proceedings in accordance with Article 69(2) of the Rules of Procedure.

Pleas in law and main arguments

Quinn Barlo Ltd., Quinn Plastics NV and Quinn Plastics GmbH seek the setting aside, to the extent specified in their Application, of the judgment of the General Court of 30 November 2011 in Case T-208/06, Quinn Barlo Ltd, Quinn Plastics NV and Quinn Plastics GmbH v European Commission. The judgment of the General Court relates to an alleged cartel consisting of a complex of anti-competitive agreements and concerted practices in the methacrylates industry (Commission Decision C(2006) 2098 final of 31 May 2006 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.645 — Methacrylates)). The judgment finds that Quinn Barlo Ltd, Quinn Plastics NV and Quinn Plastics GmbH infringed Article 81 EC and Article 53 of the EEA Agreement (EEA) by participating in a complex of concerted agreements and practices in respect of polymethylmethacrylate solid sheet and holds the companies liable for their participation in the cartel from April 1998 until the end of October 1998 and from 24 February 2000 until 21 August 2000.

In support of their Application, Quinn Barlo Ltd., Quinn Plastics NV and Quinn Plastics GmbH put forward three pleas in law.

The first plea in law holds, in main order, that the General Court has incorrectly applied European Union law in finding an infringement of Article 101 TFEU and/or erred in law as to the application of Article 2 of Regulation No 1/2003⁽¹⁾. Both the Commission and the General Court have adopted the legal position that an infringement of Article 101 TFEU was proven to the requisite legal standard by means of a legal test consisting of (i) evidence of the presence of the Appellants at the four meetings and (ii) the absence of evidence of the Appellants publicly distancing themselves from the content of these meetings. In so doing, both the Commission and the General Court have disregarded objective and undisputed considerations demonstrating that the said legal test was inappropriate and in any event insufficient to arrive at a legal finding that the Appellants had infringed Article 101 TFEU. As a result, by their reliance on this test, the Commission and the General Court have not respected Article 2 of Regulation No 1/2003 and have failed to establish an infringement of Article 101 TFEU to the requisite legal standard.

The second plea in law is divided into two parts. The first part of the second plea holds, in subsidiary order, that the General Court has erred in law by failing to comply with the general principle of the presumption of innocence when correcting the Commission's assessment of the duration of the alleged infringement. On account of the general presumption of innocence, the General Court was not in a position to extend the duration of the first period of alleged participation beyond the date of the second meeting. The second part of the second plea holds, in subsidiary order, that the decision of the General Court to exercise its unlimited jurisdiction by increasing the starting amount with 10 % constitutes an error in law as such decision fails to comply with the general principles of legitimate expectations and equal treatment. In the context of both parts of the second plea in law, the General Court has infringed Article 23(3) of Regulation No 1/2003.

The third plea in law holds, in subsidiary order, that the General Court has erred in law by upholding the reduction of 25 % to the basic amount and not granting a further reduction. In so doing, the General Court has infringed Article 23(3) of Regulation No 1/2003) and the general principle of proportionality.

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

Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-62/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-120/12 P)

(2012/C 165/15)

Language of the case: English

Parties

Appellant: Bernhard Rintisch (represented by: A. Dreyer, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Bariatrix Europe Inc., SAS

Form of order sought

The appellant claims that the Court should:

- annul the decision of the Seventh Chamber of the General Court (Court of First Instance) of 16 December 2011 in Case T-62/09;
- order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be annulled on the ground that the General Court infringed Article 74(2) of Council Regulation (EC) No 40/94⁽¹⁾ (CMTR) [now Article 76(2) of Regulation (EC) No 207/2009⁽²⁾] and on the ground of misuse of power. According to the appellant the General Court wrongly interpreted Article 74(2) of Regulation (EC) No 40/94 by deciding that the Board of Appeal was right in not taking into account documents and evidence submitted

by the appellant. The General Court wrongly decided that the Board lawfully refused to exercise discretion when refusing to take the aforementioned documents into account.

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

⁽²⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ L 78, p. 1

Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-109/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-121/12 P)

(2012/C 165/16)

Language of the case: English

Parties

Appellant: Bernhard Rintisch (represented by: A. Dreyer, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Valfleuri Pâtes alimentaires SA

Form of order sought

The appellant claims that the Court should:

— annul the decision of the Seventh Chamber of the General Court (Court of First Instance) of 16 December 2011 in Case T-109/09;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be annulled on the ground that the General Court infringed Article 74(2) of Council Regulation (EC) No 40/94 ⁽¹⁾ (CMTR) [now Article 76(2) of Regulation (EC) No 207/2009 ⁽²⁾] and on the ground of misuse of power. According to the appellant the General Court wrongly interpreted Article 74(2) of Regulation (EC) No 40/94 by deciding that the Board of Appeal was right in not taking into account documents and evidence submitted by the appellant. The General Court wrongly decided that the Board lawfully refused to exercise discretion when refusing to take the aforementioned documents into account.

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

⁽²⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ L 78, p. 1

Appeal brought on 5 March 2012 by Bernhard Rintisch against the judgment of the General Court (Seventh Chamber) delivered on 16 December 2011 in Case T-152/09: Bernhard Rintisch v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-122/12 P)

(2012/C 165/17)

Language of the case: English

Parties

Appellant: Bernhard Rintisch (represented by: A. Dreyer, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Valfleuri Pâtes alimentaires SA

Form of order sought

The appellant claims that the Court should:

— annul the decision of the Seventh Chamber of the General Court (Court of First Instance) of 16 December 2011 in Case T-152/09;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be annulled on the ground that the General Court infringed Article 74(2) of Council Regulation (EC) No 40/94 ⁽¹⁾ (CMTR) [now Article 76(2) of Regulation (EC) No 207/2009 ⁽²⁾] and on the ground of misuse of power. According to the appellant the General Court wrongly interpreted Article 74(2) of Regulation (EC) No 40/94 by deciding that the Board of Appeal was right in not taking into account documents and evidence submitted by the appellant. The General Court wrongly decided that the Board lawfully refused to exercise discretion when refusing to take the aforementioned documents into account.

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

⁽²⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, OJ L 78, p. 1

Reference for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 9 March 2012 — Google Spain, S.L., Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González

(Case C-131/12)

(2012/C 165/18)

Language of the case: Spanish

Referring court

Audiencia Nacional

Parties to the main proceedings

Appellants: Google Spain, S.L., Google Inc.

Respondents: Agencia Española de Protección de Datos, Mario Costeja González

Questions referred

1. With regard to the territorial application of Directive 95/46/EC⁽¹⁾ and, consequently, of the Spanish data-protection legislation:

1.1. must it be considered that an ‘establishment’, within the meaning of Article 4(1)(a) of Directive 95/46/EC, exists when any one or more of the following circumstances arise:

— when the undertaking providing the search engine sets up in a Member State an office or subsidiary for the purpose of promoting and selling advertising space on the search engine, which orientates its activity towards the inhabitants of that State,

or

— when the parent company designates a subsidiary located in that Member State as its representative and controller for two specific filing systems which relate to the data of customers who have contracted for advertising with that undertaking,

or

— when the office or subsidiary established in a Member State forwards to the parent company, located outside the European Union, requests and requirements addressed to it both by data subjects and by the authorities with responsibility for ensuring observation of the right to data protection, even where such collaboration is engaged in voluntarily?

1.2. Must Article 4(1)(c) of Directive 95/46/EC be interpreted as meaning that there is ‘use of equipment ... situated on the territory of that Member State’

when a search engine uses crawlers or robots to locate and index information contained in web pages located on servers in that Member State

or

when it uses a domain name pertaining to a Member State and arranges for searches and the results thereof to be based on the language of that Member State?

1.3. Is it possible to regard as a use of equipment, in the terms of Article 4(1)(c) of Directive 95/46/EC, the temporary storage of the information indexed by internet search engines? If the answer to that question is affirmative, can it be considered that that connecting factor is present when the undertaking refuses to disclose the place where it stores those indexes, invoking reasons of competition?

1.4. Regardless of the answers to the foregoing questions and particularly in the event that the Court of Justice of the European Union considers that the connecting factors referred to in Article 4 of the Directive are not present:

must Directive 95/46/EC on data protection be applied, in the light of Article 8 of the European Charter of Fundamental Rights, in the Member State where the centre of gravity of the conflict is located and more effective protection of the rights of European Union citizens is possible?

2. As regards the activity of search engines as providers of content in relation to Directive 95/46/EC on data protection:

2.1. in relation to the activity of the search engine of the “Google” undertaking on the internet, as a provider of content, consisting in locating information published or included on the net by third parties, indexing it automatically, storing it temporarily and finally making it available to internet users according to a particular order of preference, when that information contains personal data of third parties,

must an activity like the one described be interpreted as falling within the concept of “processing of ... data” used in Article 2(b) of Directive 95/46/EC?

2.2. If the answer to the foregoing question is affirmative, and once again in relation to an activity like the one described: must Article 2(d) of Directive 95/46/EC be interpreted as meaning that the undertaking managing the “Google” search engine is to be regarded as the “controller” of the personal data contained in the web pages that it indexes?

2.3. In the event that the answer to the foregoing question is affirmative, may the national data-control authority (in this case the Agencia Española de Protección de Datos — Spanish Data Protection Agency), protecting the rights embodied in Articles 12(b) and 14(a) of Directive 95/46/EC, directly impose on the search engine of the “Google” undertaking a requirement that it withdraw from its indexes an item of information published by third parties, without addressing itself in advance or simultaneously to the owner of the web page on which that information is located?

2.4. In the event that the answer to the foregoing question is affirmative, would the obligation of search engines to protect those rights be excluded when the information that contains the personal data has been lawfully published by third parties and is kept on the web page from which it originates?

3. Regarding the scope of the right of erasure and/or the right to object, in relation to the “derecho al olvido” (the “right to be forgotten”), the following question is asked:

3.1 must it be considered that the rights to erasure and blocking of data, provided for in Article 12(b), and the right to object, provided for by Article 14(a), of Directive 95/46/EC, extend to enabling the data subject to address himself to search engines in order to prevent indexing of the information relating to him personally, published on third parties’ web pages, invoking his wish that such information should not be known to internet users when he considers that it might be prejudicial to him or he wishes it to be consigned to oblivion, even though the information in question has been lawfully published by third parties?

(¹) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria), lodged on 19 March 2012 — Pensionsversicherungsanstalt v Peter Brey

(Case C-140/12)

(2012/C 165/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant on a point of law: Pensionsversicherungsanstalt

Respondent to the appeal on a point of law: Peter Brey

Question referred

Is a compensatory supplement to be regarded as a ‘social assistance’ benefit within the terms contemplated in Article 7(1)(b) of Directive 2004/38/EC (¹) of the European Parliament and of the Council of 29 April 2004?

(¹) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Action brought on 23 March 2012 — European Commission v French Republic

(Case C-143/12)

(2012/C 165/20)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Wilms and S. Petrova, acting as Agents)

Defendant: French Republic

Form of order sought

— declare that, by failing to issue permits in accordance with Articles 6 and 8, to reconsider and, if appropriate, to update the existing permits and to ensure that all the existing installations are operated in accordance with the requirements laid down in Articles 3, 7, 9, 10, 13, 14(a) and 9b) and 15(2) of the IPPC Directive, the French Republic has failed to fulfil its obligations under Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (IPPC Directive) (¹);

— order French Republic to pay the costs.

Pleas in law and main arguments

Pursuant to Article 5(1) of the IPPC Directive, Member States are to take the necessary measures to ensure that the competent authorities see to it, by means of permits in accordance with Articles 6 and 8 or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) not later than 30 October 2007.

On 3 November 2009, the Commission sent a letter before action, taking the view that the defendant permitted the operation of a large number of existing installations (1647 installations) which did not have a permit complying with the requirements of Article 5(1) of the IPPC Directive. At the time the reasoned opinion was sent, 784 existing installations were still without a permit in accordance with Article 5(1) of the directive.

Although the situation has since improved, at the time the present application was lodged, four installations continue to be operated in the French Republic without a permit in accordance with the directive.

Therefore, the Commission takes the view that the French Republic has not yet put an end to the infringement of Article 5(1) of the IPPC Directive.

⁽¹⁾ OJ 2008 L 24, p. 8.

Appeal brought on 27 March 2012 by Xeda International SA, Pace International LLC against the judgment of the General Court (Fifth Chamber) delivered on 19 January 2012 in Case T-71/10: Xeda International SA, Pace International LLC v European Commission

(Case C-149/12 P)

(2012/C 165/21)

Language of the case: English

Parties

Appellants: Xeda International SA, Pace International LLC (represented by: K. Van Maldegem, C. Mereu, avocats)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- Set aside the Judgment of the General Court in case T-71/10; and
- Annul the decision not to include diphenylamine ('DPA') in Annex I to Council Directive 91/414/EEC ⁽¹⁾ and holding that Member States must withdraw authorizations for plant protection products containing DPA by 30 May 2010; or
- Alternatively, refer the case back to the General Court to rule on the Appellant's Application for annulment; and
- Order the Respondent to pay all the costs of these proceedings (including the costs before the General Court).

Pleas in law and main arguments

The Appellants submit that, in dismissing their application for annulment in respect of the decision of the Commission to not include DPA in Annex I to Council Directive 91/414/EEC and holding that Member States must withdraw authorizations for plant protection products containing DPA by 30 May 2010, the General Court breached Union law. In particular, the Appellants contend that the General court committed a number of errors in its interpretation of the facts and of the legal framework as applicable to the Appellants' situation. That resulted in it making a number of errors in law, in particular:

- By holding that the issue regarding the possible formation of nitrosamines was not the principal motivation for the adoption of the Commission's decision, when the reasoning given by the General Court in the Judgment supported the opposite view.
- By confusing two stages in the review process for DPA under Regulation 1490/2002 ⁽²⁾, as amended by Regulation 10/95/2007 ⁽³⁾, which led the General Court to decide wrongly that the Appellant's rights of defence had not been breached.
- By finding, that the question relating to the possible formation of nitrosamines was raised in June 2008 rather than January 2008 as the documentary evidence clearly showed, the General Court's decision that the delay in the process by the European Food Safety Authority in no way denied the Appellants of their right to withdraw support for the inclusion of DPA in Annex I to Council Directive 91/414/EEC, was invalidated.

For these reasons the Appellants claim that the judgment of the General Court in Case T-71/10 should be set aside and the decision of the Commission not to include DPA in Annex I to Council Directive 91/414/EEC and holding that Member States must withdraw authorizations for plant protection products containing DPA by 30 May 2010, should be annulled.

⁽¹⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market OJ L 230, p. 1

⁽²⁾ Commission Regulation (EC) No 1490/2002 of 14 August 2002 laying down further detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC and amending Regulation (EC) No 451/2000 OJ L 224, p. 23

⁽³⁾ Commission Regulation (EC) No 1095/2007 of 20 September 2007 amending Regulation (EC) No 1490/2002 laying down further detailed rules for the implementation of the third stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC and Regulation (EC) No 2229/2004 laying down further detailed rules for the implementation of the fourth stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC OJ L 246, p. 19

Reference for a preliminary ruling from the Administrativen sad — Varna (Bulgaria), lodged on 30 March 2012 — Sani Treid EOOD v Direktor na Direktsia ‘Obzhalvane i upravljenie na izpalnenieto’ — Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-153/12)

(2012/C 165/22)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Sani Treid EOOD

Defendant: Direktor na Direktsia ‘Obzhalvane i upravljenie na izpalnenieto’ — Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite (Director of the ‘Appeals and Administration of Enforcement’ Directorate, for the City of Varna, at the Central Office of the National Revenue Agency)

Questions referred

1. Is the concept of a chargeable event within the meaning of Article 62(1) of Council Directive 2006/112/EC ⁽¹⁾ of 28 November 2006 on the common system of value added tax to be interpreted as also covering cases of exempt transactions, including transactions effected by a person who does not have the status of a taxable person within the meaning of Title III of Directive 2006/112 or that of a person liable for payment within the meaning of Title XI, Chapter 1, Section 1, of that directive?
2. Do Articles 62 and 63 of Directive 2006/112 preclude a national provision under which the chargeable event occurs at the time when the exempt transaction is performed, rather than at the time when the condition that that transaction be taxed is satisfied?
3. Does Article 63 of Directive 2006/112 preclude a national provision and a national practice whereby the chargeable event in respect of a supply of parts of a building occurs not at the time when ownership is transferred but earlier, that is to say, at the time of the provision of the agreed consideration, which constitutes an exempt transaction effected by a person who does not have the status of a taxable person or that of a person liable for payment?
4. Does Article 65 of Directive 2006/112 preclude a national provision which links the chargeability to VAT to a payment which is fully or partially determined in goods or services?

5. Do Articles 73 and 80 of Directive 2006/112 preclude a national provision under which, where the consideration for a transaction is fully or partially determined in goods or services, the basis of assessment for taxation of that transaction is in all cases its open market value?

⁽¹⁾ OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy), lodged on 2 April 2012 — Airport Shuttle Express scarl and Giovanni Panarisi v Comune di Grottaferrata

(Case C-162/12)

(2012/C 165/23)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Airport Shuttle Express scarl and Giovanni Panarisi

Defendant: Comune di Grottaferrata

Questions referred

1. Do Article 49 TFEU, Article 3 TEU, Articles 3, 4, 5 and 6 TFEU, Articles 101 and 102 TFEU and Regulation (EEC) No 2454/1992 ⁽¹⁾ and Regulation (EC) No 12/1998 ⁽²⁾ preclude the application of Articles 3(3) and 11 of Law No 21 of 1992 in so far as the latter provisions respectively state that ‘3. The registered office of the carrier, and the garage, must be located, exclusively, within the territory of the municipality which issued the authorisation’ and that ‘... Bookings of car and driver hire shall take place at the garage. Each individual car and driver hire must begin and end at the garage located in the municipality where the authorisation was issued, returning to that garage, although the collection of the user and the user’s arrival at his destination may take place also in other municipalities ...?’
2. Do Article 49 TFEU, Article 3 TEU, Articles 3, 4, 5 and 6 TFEU, Articles 101 and 102 TFEU and Regulation (EEC) No 2454/1992 and Regulation (EC) No 12/1998 preclude the

application of Articles 5 and 10 of Lazio Regional Law No 58 of 26 October 1993, in so far as the latter provisions respectively state that ‘... Users shall be collected, or the service shall begin, within the territory of the municipality which issued the authorisation’ and that ‘... Users shall be collected and the service shall begin exclusively within the territory of the municipality which issued the licence or authorisation and the service shall be provided to any destination, subject to the consent of the driver in the case of destinations beyond the municipal boundaries.’?

⁽¹⁾ OJ 1992 L 251, p. 1.

⁽²⁾ OJ 1998 L 4, p. 10.

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 2 April 2012 — Società Cooperativa Autonoleggio Piccola arl and Gianpaolo Vivani v Comune di Grottaferrata

(Case C-163/12)

(2012/C 165/24)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Società Cooperativa Autonoleggio Piccola arl, Gianpaolo Vivani

Defendant: Comune di Grottaferrata

Questions referred

1. Do Article 49 TFEU, Article 3 TEU, Articles 3, 4, 5 and 6 TFEU, Articles 101 and 102 TFEU and Regulation (EEC) No 2454/1992 ⁽¹⁾ and Regulation (EC) No 12/1998 ⁽²⁾ preclude the application of Articles 3(3) and 11 of Law No 21 of 1992 in so far as the latter provisions respectively state that ‘3. The registered office of the carrier, and the garage, must be located, exclusively, within the territory of the municipality which issued the authorisation’ and that ‘...Bookings of car and driver hire shall take place at the garage. Each individual car and driver hire must begin and end at the garage located in the municipality where the authorisation was issued, returning to that garage, although the collection of the user and the user’s arrival at his destination may take place also in other municipalities ...’?
2. Do Article 49 TFEU, Article 3 TEU, Articles 3, 4, 5 and 6 TFEU, Articles 101 and 102 TFEU and Regulation (EEC) No 2454/1992 and Regulation (EC) No 12/1998 preclude the application of Articles 5 and 10 of Lazio Regional Law No 58 of 26 October 1993, in so far as the latter provisions respectively state that ‘...Users shall be collected, or the service shall begin, within the territory of the municipality which issued the authorisation’ and that ‘...Users shall be collected and the service shall begin exclusively within the territory of the municipality which issued the licence or authorisation and the service shall be provided to any destination, subject to the consent of the driver in the case of destinations beyond the municipal boundaries ...’?

⁽¹⁾ OJ 1992 L 251, p. 1.

⁽²⁾ OJ 1998 L 4, p. 10.

GENERAL COURT

**Judgment of the General Court of 25 April 2012 —
Movimondo Onlus v Commission**(Case T-329/05) ⁽¹⁾**(Arbitration clause — Framework agreement between ECHO
and humanitarian organisations — Grant agreements —
Suspension of payments)**

(2012/C 165/25)

*Language of the case: Italian***Parties**

Applicant: Movimondo Onlus — Organizzazione non governativa di cooperazione e solidarietà internazionale (Rome, Italy) (represented by: initially P. Vitali, G. Verusio, G.M. Roberti and A. Franchi, subsequently P. Vitali, G. Verusio and A. Franchi, lawyers)

Defendant: European Commission (represented by: M. Wilderspin and F. Moro, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Principal claim, under Article 238 EC, for the payment of amounts under grant agreements and, in the alternative, annulment of two letters from the Commission dated 17 June and 27 July 2005.

Operative part of the judgment*The Court:*

1. Dismisses the action;
2. Orders Movimondo Onlus — Organizzazione non governativa di cooperazione e solidarietà internazionale to pay the costs.

⁽¹⁾ OJ C 257, 15.10.2005.**Judgment of the General Court of 24 April 2012 —
Evropaiki Dynamiki v Commission**(Case T-554/08) ⁽¹⁾**(Public service contracts — Call for tenders — Provision of business, technical and project consultancy services for European Union computer applications in the customs, excise and taxation areas — Rejection of a tender — Decision to award the contract to another tenderer — Action for annulment — Inadmissibility — Claim in damages — Selection and award criteria — Duty to state the reasons on which a decision is based — Manifest error of assessment)**

(2012/C 165/26)

*Language of the case: English***Parties**

Applicant: Evropaiki Dynamiki — Proigmena Systemata Tilepi-

koinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, P. Katsimani and M. Dermitzakis, lawyers)

Defendant: European Commission (represented initially by N. Bambara and E. Manhaeve, and then by E. Manhaeve, acting as Agents, and C. Erkelens, lawyer)

Re:

ACTION for annulment of the Commission's decision of 26 September 2008 rejecting the tender submitted by the consortium formed by the applicant and other companies in response to call for tenders 'TAXUD/2007/AO-005' relating to the provision of business, technical and project consultancy services for Community computer applications in the customs, excise and taxation areas ('TIMEA'), and all consequential decisions, including the decision to award the contract to the successful tenderer, brought pursuant to Articles 225 EC and 230 EC, and a claim in damages brought pursuant to Articles 225 EC, 235 EC and 288 EC.

Operative part of the judgment*The Court:*

1. Dismisses the action;
2. Orders Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay its own costs and those incurred by the European Commission.

⁽¹⁾ OJ C 55, 7.3.2009.**Judgment of the General Court of 19 April 2012 —
Evropaiki Dynamiki v Commission**(Case T-49/09) ⁽¹⁾**(Public service contracts — Community tendering procedure — Provision of services relating to the maintenance and development of the information systems of the Directorate-General for Regional Policy — Rejection of a tender — Action for annulment — Equal treatment — Obligation to state reasons — Infringement of essential procedural requirements — Manifest error of assessment — Non-contractual liability)**

(2012/C 165/27)

*Language of the case: English***Parties**

Applicant: Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and P. Katsimani, lawyers)

Defendant: European Commission (represented: initially by N. Bambara and E. Manhaeve, and subsequently by E. Manhaeve, acting as Agents, assisted by P. Wytinck and B. Hoorelbeke, lawyers)

Re:

Application, first, for annulment of the Commission's decision of 21 November 2008 to reject the tender submitted by the applicant in the context of call for tenders REGIO-A4-2008-01 for the maintenance and development of the Directorate-General for Regional Policy's information systems (OJ 2008/S 117-155067) and the decision to award the contract to another tenderer and, secondly, for damages.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders *Evropaiki Dynamiki — Proigmena Systemata Tilepikoinon Pliroforikis kai Tilematikis AE* to pay the costs.

⁽¹⁾ OJ C 90, 18.4.2009.

Judgment of the General Court of 19 April 2012 — Würth and Fasteners v Council

(Case T-162/09) ⁽¹⁾

(Actions for annulment — Dumping — No individual concern — Inadmissibility)

(2012/C 165/28)

Language of the case: German

Parties

Applicants: Adolf Würth GmbH & Co. KG (Künzelsau, Germany) and Arnold Fasteners (Shenyang) Co. Ltd (Shenyang, China) (represented by: M. Karl and M. Mayer, lawyers)

Defendant: Council of the European Union (represented by: initially J.-P. Hix, Agent, assisted by G. Berrisch and G. Wolf, lawyers, then J.-P. Hix and B. Driessen, Agents, assisted by G. Berrisch)

Parties intervening in support of the defendant: European Commission: (represented by: H. van Vliet and B. Martenczuk, Agent); and European Industrial Fasteners Institute AISBL (EIFI) (Brussels, Belgium) (represented by: initially J. Bourgeois, Y. van Gerven and E. Wäktare, then J. Bourgeois, lawyers)

Re:

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

Operative part of the judgment

The Court:

1. Dismisses the action as inadmissible.
2. Orders *Adolf Würth GmbH & Co. KG and Arnold Fasteners (Shenyang) Co. Ltd* to bear their own costs and to pay those incurred by the Council of the European Union and by the European Industrial Fasteners Institute AISBL.
3. Order the European Commission to bear its own costs.

⁽¹⁾ OJ C 167, 18.07.2009.

Judgment of the General Court of 27 April 2012 — De Nicola v EIB

(Case T-37/10) ⁽¹⁾

(Appeal — Civil service — Staff of the EIB — Appraisal — Promotion — Appraisal and promotion in respect of 2006 — Decision of the Appeals Committee — Scope of the review — Sickness insurance — Refusal to bear medical costs — Claim for compensation)

(2012/C 165/29)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Other party to the proceedings: European Investment Bank (represented by: G. Nuvoli and F. Martin, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 30 November 2009 in Case F-55/08 *De Nicola v European Investment Bank*, not yet published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the European Union Civil Service Tribunal (First Chamber) in Case F-55/08 *De Nicola v EIB* [2009], not yet published in the ECR, in so far as it dismisses, firstly, Mr Carlo De Nicola's claims seeking annulment of the decision of the Appeals Committee of the European Investment Bank (EIB); secondly, his claims seeking annulment of the decision to refuse his promotion for 2006 and all the acts connected with, consecutive and prior to that decision; and, thirdly, his claims seeking recognition of the liability of the EIB for the harassment of him which it carried out and seeking compensation for the losses alleged on that basis;
2. Dismisses the remainder of the appeal;

3. Refers the matter back to the Civil Service Tribunal;

4. Reserves the costs.

(¹) OJ C 80, 27.3.2010.

**Judgment of the General Court of 24 April 2012 —
Samskip Multimodal Container Logistics v Commission**

(Case T-166/10) (¹)

(Action for annulment — Decision awarding Community financial assistance to improve the environmental performance of the freight transport system — Marco Polo II programme — Termination of the grant agreement and definitive abandonment of the project — No longer any interest in bringing proceedings — No need to adjudicate)

(2012/C 165/30)

Language of the case: English

Parties

Applicant: Samskip Multimodal Container Logistics BV (s-Gravenzande, Netherlands) (represented by: K. Platteau, Y. Maasdam and P. Broers, lawyers)

Defendant: European Commission (represented by: K. Simonsson, Agent, assisted by J. Grayston and P. Gjørtler, lawyers)

Re:

APPLICATION for annulment of Commission Decision C(2010) 580 of 27 January 2010 on the financial assistance for proposals for actions submitted in the 2009 selection procedure in the European Union programme 'improving the environmental performance of the freight transport system' (the Marco Polo II programme), in so far as it selects Proposal TREN/B4/SUB/01-2009 MP-II/6 concerning the G2G@2XL project for funding in the amount of EUR 2 190 539.

Operative part of the judgment

The Court:

1. Declares that there is no longer any need to adjudicate on the present action;
2. Orders the European Commission to bear four fifths of the costs of Samskip Multimodal Container Logistics BV and four fifths of its own costs;
3. Orders Samskip Multimodal Container Logistics to bear one fifth of the Commission's costs and one fifth of its own costs.

(¹) OJ C 209, 31.7.2010.

**Judgment of the General Court of 25 April 2012 —
Manufacturing Support & Procurement Kala Naft v Council**

(Case T-509/10) (¹)

(Common foreign and security policy — Restrictive measures against the Islamic Republic of Iran with the aim of preventing nuclear proliferation — Freezing assets — Action for annulment — Admissibility — Power of the Council — Misuse of power — Entry into force — Non-retroactivity — Obligation to state the reasons on which the decision is based — Rights of the defence — Right to effective judicial protection — Error of law — Concept of support for nuclear proliferation — Error of assessment)

(2012/C 165/31)

Language of the case: French

Parties

Applicant: Manufacturing Support & Procurement Kala Naft Co., Tehran (Tehran, Iran) (represented by: F. Esclatine and S. Perrotet, lawyers)

Defendant: Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute-Cordeiro, Agents)

Intervener in support of the defendant: European Commission (represented by: M. Konstantinidis and É. Cujo, Agents)

Re:

Application for annulment of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81) and Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), in so far as those acts concern the applicant.

Operative part of the judgment

The Court:

1. Declares that it does not have jurisdiction to give a ruling on the second part of the first plea;
2. Annuls, as far as they concern Manufacturing Support & Procurement Kala Naft Co. Tehran:

— Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP

- Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran
- Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP
- Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007
3. Declares that the effects of Decision 2010/413, as amended by Decision 2010/644, are to be maintained as far as concerns Manufacturing Support & Procurement Kala Naft Co. Tehran from its entry into force on the 20th day following its publication in the Official Journal of the European Union until the annulment of regulation No 961/2010 takes effect.
4. Orders the Council of the European Union to bear its own costs and to by those incurred by Manufacturing Support & Procurement Kala Naft Co. Tehran.
5. Orders the European Commission to bear its own costs.

(¹) OJ C 346, 18.12.2010.

Judgment of the General Court of 25 April 2012 — Brainlab v OHIM (BrainLAB)

(Case T-326/11) (¹)

(Community trade mark — Community word mark BrainLAB — Failure to apply for renewal of the registration of the trade mark — Removal of the trade mark from the register on expiry of registration — Application for restitutio in integrum — Article 81 of Regulation (EC) No 207/2009)

(2012/C 165/32)

Language of the case: German

Parties

Applicant: Brainlab AG (Feldkirchen, Germany) (represented by: J. Bauer, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 April 2011 (Case R 1596/2010-4), relating to the application for *restitutio in integrum* and to the application for the renewal of the registration of the trade mark BrainLAB made by the applicant.

Operative part of the judgment

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 15 April 2011 (Case R 1596/2010-4);

2. Orders each party to bear its own costs.

(¹) OJ C 269, 10.9.2011.

Judgment of the General Court of 24 April 2012 — Leifheit v OHIM (EcoPerfect)

(Case T-328/11) (¹)

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

(2012/C 165/33)

Language of the case: German

Parties

Applicant: Leifheit AG (Nassau, Germany) (represented by: G. Hasselblatt, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 31 March 2011 (Case R 1658/2010-1) concerning an application for registration of the word sign EcoPerfect as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the application;

2. Orders Leifheit AG to pay the costs.

(¹) OJ C 269, 10.9.2011.

Action brought on 12 April 2012 — AX v Council

(Case T-196/11)

(2012/C 165/34)

Language in which the application was lodged: French

Parties

Applicant: AX (Polotsk, Belarus) (represented by: M. Michaluskas, lawyer)

Defendant: Council of the European Union

Form of order sought

- The applicant claims that the General Court should:
- Annul Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus, in so far as concerns the applicant;
- Annul Council Regulation No 84/2011 of 31 January 2011 amending Regulation No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, in so far as concerns the applicant;
- Annul Council Implementing Decision 2011/174/CFSP of 21 March 2011 implementing Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus, in so far as concerns the applicant;
- Annul Council Implementing Regulation No 271/2011 of 21 March 2011 implementing Article 8a(1) of Regulation No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, in so far as concerns the applicant;
- Order the Council to pay the costs.

Pleas in law and main arguments

The applicant relies on three pleas in law in support of its action.

1. The first plea, alleging an insufficient statement of reasons and breach of the rights of the defence, since the reasons given for the contested measures do not enable the applicant to contest the validity of the measures before the General Court or the latter to review the lawfulness of the measures.
2. The second plea, alleging error of assessment, since there is no factual justification for the contested measures.
3. The third plea, alleging failure to have regard to the principle of proportionality, in particular with regard to the restriction on entry into and transit within the territory of the European Union.

Action brought on 5 March 2012 — Bial — Portela v OHIM — Probiotal (PROBIAL)

(Case T-113/12)

(2012/C 165/35)

Language in which the application was lodged: English

Parties

Applicant: Bial — Portela & Ca, SA (São Mamede do Coronado, Portugal) (represented by: B. Braga da Cruz and J. Pimenta, lawyers)

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

Other party to the proceedings before the Board of Appeal: Probiotal SpA (Novara, Italy)

Form of order sought

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 December 2011 in case R 1925/2010-4;
- Order the defendant to refuse the grant of the registration of Community trade mark No 2408128 'PROBIAL'; and
- Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

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 figurative mark in dark blue and light blue 'PROBIAL', for goods in classes 1, 5 and 31 — Community trade mark application No 2408128

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

Mark or sign cited in opposition: Portuguese trade mark registration No 155284 of the word mark 'Bial', for goods in class 5; the trade mark 'Bial' being well known in Portugal; Community trade mark registration No 1400183 of the figurative mark in black and white 'Bial', for goods and services in classes 3, 5 and 42; Spanish trade mark registration No 2026481 of the figurative mark in black and white 'Bial', for services in class 35; international registration No 490635 for the mark in standard characters 'Bial', for goods in class 5; emblem of establishment No 868 of the figurative sign 'Bial'; Name of establishment No 35157 for the word 'Bial'; logotype No 951 of the figurative sign 'Bial'

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that the trademarks in question were not confusingly similar.

**Action brought on 8 March 2012 — Bode Chemie v OHIM
— Laros (sterilina)**

(Case T-114/12)

(2012/C 165/36)

Language in which the application was lodged: French

Parties

Applicant: Bode Chemie GmbH (Hamburg, Germany) (represented by: N. Aicher, lawyer)

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

Other party to the proceedings before the Board of Appeal: Laros Srl (Cremona, Italy)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 January 2012 in Case R 2423/2010-4; and
- order the defendant to pay the costs, including the costs of the appeal proceedings before OHIM.

Pleas in law and main arguments

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

Community trade mark concerned: Figurative mark consisting of the word elements 'sterilina', in the colours white and red for goods in Classes 3 and 5 — Community trade mark applied for No 8120032.

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

Mark or sign cited in opposition: Community trade mark 'STERILLIUM' No 221168 for goods in Class 5; Figurative Community mark in the colours blue and white 'BODE Sterillum' No 6262257 for goods in Class 5.

Decision of the Opposition Division: Rejection of the opposition in its entirety.

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

Pleas in law: Breach of Article 8(1)(b) of Regulation No 2007/2009, in that contrary to the opinion of the Board of Appeal, a global assessment of the relevant criteria in respect of the identity and/or similarity between the goods, of the similarity between the signs and the distinctive character of the opposing mark leads to a determination of a likelihood of confusion for the public.

**Action brought on 5 March 2012 — USFSPEI and Loescher
v Council**

(Case T-119/12)

(2012/C 165/37)

Language of the case: French

Parties

Applicants: Union syndicale fédérale des services publics européens et internationaux (USFSPEI) (Brussels, Belgium) and Bernd Loescher (Rhode Saint Genèse, Belgium) (represented by: A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

- annul Council Decision 2011/866/EU of 19 December 2011 concerning the Commission's proposal for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto;
- order the Council to pay the applicant Loescher, as well as other officials and servants of the European Union, arrears in remuneration and pensions to which they are entitled from 1 July 2011 onwards, together with default interest from the date those arrears were due, at the rate laid down by the ECB for its main refinancing operations, increased by two percentage points;
- order the Council to pay the USF and the applicant one Euro by way of symbolic compensation for the non-material damage suffered through the wrongful act in the form of the adoption of Council Decision 2011/866/EU of 19 December 2011;
- order the Council of the European Union to pay the costs.

Pleas in law and main arguments

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

- first, breach of Articles 64, 65 and 65a of the Staff Regulations of Officials of the European Union, Articles 1 and 3 of Annex XI thereto, infringement of the principles of sincere cooperation and coherence flowing from Article 4(3) TEU and the principle of legitimate expectations and the obligation stemming from the adage *patere legem quam ipse fecisti* and
- second, breach of the Council's Decision of 23 June 1981 setting up the tripartite concertation by failing to ensure that the points of view of the staff and the administrative authorities were in fact made known to the Member States' representatives before the adoption of the contested decision.

Action brought on 9 March 2012 — Shahid Beheshti University v Council

(Case T-120/12)

(2012/C 165/38)

Language of the case: French

Parties

Applicant: Shahid Beheshti University (Teheran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2011/299/CFSP of 23 May 2011 in so far as it concerns the applicant;
- declare Decision 2010/413/CFSP of 26 July 2010 inapplicable to the applicant pursuant to Article 277 TFEU;
- annul Council Implementing Regulation (EU) No 503/2011 of 23 May 2011 implementing Regulation (EU) No 961/2010 in so far as it concerns the applicant;
- declare Regulation (EU) No 961/2010 inapplicable to the applicant pursuant to Article 277 TFEU;
- annul Council Decision 2011/783/CFSP of 1 December 2011 in so far as it concerns the applicant;
- annul Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 in so far as it concerns the applicant;

— annul the decision contained the Council's letter of 5 December 2011 addressed to the applicant; and

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging lack of legal basis for Decision 2010/413/CFSP, which is the legal basis for Decision 2011/299/CFSP, and infringement of the Treaties and of international law. Decision 2010/413/CFSP should therefore be held to be inapplicable to the applicant.
 2. Second plea in law, alleging lack of legal basis for Regulation No 961/2010, which is the legal basis for Implementing Regulation No 503/2011. The applicant claims that Article 215 TFEU cannot be the legal basis for Regulation No 961/2010, since Decision 2010/413/CFSP, which it is intended to implement in the European Union internal legal order, was not adopted in accordance with Chapter 2 of Title V of the TEU. Regulation No 261/2010 should accordingly be declared inapplicable to the applicant.
 3. Third plea in law, alleging infringement of Article 215 TFEU in the procedure for listing the applicant in Annex VIII to Regulation No 961/2010 by Implementing Regulation No 503/2011.
 4. Fourth plea in law, alleging infringement, by Decision 2011/29/CFSP and Implementing Regulation No 502/2011, of the rights of the defence, sound administration and the right to effective legal protection, since the Council did not observe the right to be heard, the obligation of notification and the obligation to state reasons.
 5. Fifth plea in law, alleging infringement of the principle of proportionality.
 6. Sixth plea in law, alleging infringement of the right to respect for property.
 7. Seventh plea in law, alleging that the inclusion of the applicant on the list of sanctioned entities results from an error of fact, in that the applicant, as a public university having legal personality without representation of the Ministry of Defence and of the logistical support to the armed forces in its governing body, is not held or controlled by that minister or involved in scientific research relating to nuclear arms.
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Action brought on 19 March 2012 — ActionSportGames v OHIM

(Case T-122/12)

(2012/C 165/39)

*Language in which the application was lodged: Danish***Parties***Applicant:* ActionSportGames A/S (Humblebæk, Denmark) (represented by: W. Rebernik, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*Other party to the proceedings before the Board of Appeal:* FN Herstal SA (Herstal, Belgium)**Form of order sought**

— Annul the defendant's decision of 12 January 2012 in Case R 2096/2010-1;

— Uphold the decision of the Opposition Division of 24 September 2010 (Case No B 1 344 904);

— Order the defendant to pay the costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* ActionSportGames A/S*Community trade mark concerned:* Word mark 'SCAR' for goods in Class 28 in Community trade mark application No 5 750 054.*Proprietor of the mark or sign cited in the opposition proceedings:* FN Herstal SA*Mark or sign cited in opposition:* The non-registered Belgian word mark 'SCAR' for goods in Classes 13 and 28.*Decision of the Opposition Division:* Opposition dismissed.*Decision of the Board of Appeal:* Decision of the Opposition Division annulled and case referred back to that division.*Pleas in law:* The applicant claims that there is no likelihood of confusion between the disputed trade marks, since the goods at issue are fundamentally different because FN Herstal's goods are made up of proper firearms for military use, whereas the applicant's goods are replica and toy weapons for sport and play.**Action brought on 22 March 2012 — Free v OHIM — Noble Gaming (FREEVOLUTION TM)**

(Case T-127/12)

(2012/C 165/40)

*Language in which the application was lodged: French***Parties***Applicant:* Free (Paris, France) (represented by: Y. Coursin, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Noble Gaming Ltd (Prague, Czech Republic)**Form of order sought**

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 December 2011 in Case R 2326/2010-2;

— hold that the earlier marks relied on and in particular the French word mark FREE No 1734391 are similar to the mark at issue 'FREEVOLUTION' within the meaning of Article 8(1)(b) and all the more so within the meaning of Article 8(5) of Regulation No 207/2009;

— hold that the application for registration of the mark at issue must be rejected on the basis of Article 8(1)(b) and all the more so in accordance with Article 8(5) of Regulation No 207/2009; and

— order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, both before the General Court and the OHIM.

Pleas in law and main arguments*Applicant for a Community trade mark:* Other party to the proceedings before the Board of Appeal.*Community trade mark concerned:* Figurative mark containing the word element 'FREEVOLUTION' for goods and services in Classes 9, 41 and 42 — Community trade mark applied for No 8206443.*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant.

Mark or sign cited in opposition: French figurative mark 'free LA LIBERTÉ N'A PAS DE PRIX' No 99785839 for goods and services in Classes 9 and 38; French word mark 'FREE' No 1734391; French word mark 'FREE MOBILE' No 73536224 for goods in Class 9; Trade name 'FREE' used in business in France; domain name 'FREE.FR' used in business.

Decision of the Opposition Division: Rejection of the opposition in its entirety.

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

Pleas in law: Infringement of Article 8(1)(b) and Article 8(5) of Regulation No 207/2009 in so far as there is a distinction between how the similarity of the signs should be assessed under each of those provisions; infringement of Article 8(1)(b) of Regulation No 207/2009 in so far as there is indeed a likelihood of confusion with regard to the trade marks at issue; and, infringement of Article 8(5) of Regulation No 207/2009 in so far as there is a link between the marks 'FREE' and 'FREEVOLUTION' such that the mark with a reputation 'FREE' is prejudiced by the existence of the trade mark at issue.

Action brought on 23 March 2012 — Spa Monopole v OHIM — Orly International (SPARITUAL)

(Case T-131/12)

(2012/C 165/41)

Language in which the application was lodged: French

Parties

Applicant: Spa Monopole compagnie fermière de Spa SA/NV (Spa, Belgium) (represented by: L. De Brouwer, E. Cornu and É. De Gryse, lawyers)

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

Other party to the proceedings before the Board of Appeal: Orly International, Inc (Van Nuys, USA)

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 9 January 2012 in Case R 2396/2010-1;

— order the defendant to pay the costs.

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: Word mark 'SPARITUAL' for goods in Class 3 — Community trade mark applied for No 3631884

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

Mark or sign cited in opposition: Benelux registrations of the word marks 'SPA' and 'Les Thermes de Spa' for goods and services in Classes 3, 32 and 42

Decision of the Opposition Division: Rejection of the application for a Community trade mark

Decision of the Board of Appeal: Annulment of the contested decision and rejection of the opposition

Pleas in law: Infringement of Article 8(5) of Regulation No 207/2009 in the assessment of the reputation of the word mark 'SPA' in Class 32 and infringement of Article 8(5) of Regulation No 207/2009 in the assessment of the likelihood that unfair advantage would be taken of the repute of the mark 'SPA'.

Action brought on 23 March 2012 — Scooters India v OHIM — Brandconcern (LAMBRETTA)

(Case T-132/12)

(2012/C 165/42)

Language in which the application was lodged: English

Parties

Applicant: Scooters India Ltd (Sarojini Nagar, India) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal: Brandconcern BV (Amsterdam, Netherlands)

Form of order sought

— Annul the part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 January 2012 in case R 2308/2010-1, in which the applicant's appeal against the revocation of the mark in respect of its registration for goods in class 6 and 7 was dismissed; and

— Order the defendant to pay the applicant its costs incurred before the Board of Appeal and the General Court of the European Union.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been sought: The word mark 'LAMBRETTA', for goods in classes 6, 7 and 28 — Community trade mark registration No 1618982

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for revocation: The party grounded its request pursuant to Article 51(1)(a) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Revoked the CTM registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: It is submitted that the Board of Appeal erred in three respects in its assessment of the evidence under Article 51(1)(c). Had the Board of Appeal correctly applied the authorities in Case T-415/09 Vallis v New Yorker and/or La Mer Technology Inc v Laboratoires Goemar SA (Case C-259/02) and/or reviewed the evidence it would have held that there was genuine use of goods in classes 6 and 7 with the consent of SIL.

Action brought on 26 March 2012 — Ben Ali v Council

(Case T-133/12)

(2012/C 165/43)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

- adopt a measure of organisation of procedure, under Article 64 of the General Court's Rules of Procedure, to ensure that the Commission discloses 'all documents relating to the adoption' of the contested regulation;
- annul the contested regulation in so far as it concerns the applicant;
- order the Council of the European Union to pay the applicant an overall sum of EUR 50 000 in compensation for all forms of damage;

— order the Council of the European Union to pay the applicant a sum of EUR 7 500 for legal expenses in support of the application, in accordance with Article 91 of the Rules of Procedure, as recoverable costs;

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

Pleas in law and main arguments

By his application, the applicant seeks (i) the annulment of Council Decision 2012/50/CFSP of 27 January 2012 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia ⁽¹⁾ and (ii) damages in respect of the loss which he considers to have suffered.

In support of the action, the applicant relies on seven pleas in law which are, in essence, identical or similar to those raised in Case T-301/11 *Ben Ali v Council*. ⁽²⁾

⁽¹⁾ OJ 2012 L 27, p. 11.

⁽²⁾ OJ 2011 C 226, p. 29.

Action brought on 28 March 2012 — Wehmeyer v OHIM — Cluett, Peabody (Fairfield)

(Case T-139/12)

(2012/C 165/44)

Language in which the application was lodged: English

Parties

Applicant: Wehmeyer GmbH & Co. KG (Aachen, Germany) (represented by: C. Weil, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cluett, Peabody & Co. Inc. (New York, United States)

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 19 January 2012 in case R 2509/2010-1;
- Dismiss the opposition filed by the other party to the proceedings before the Board of Appeal to the application for registration of the Community trade mark 'Fairfield'; and
- Order OHIM and the other party to the proceedings before the Board of Appeal to pay the costs, including those incurred by the applicant before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Fairfield', for goods in classes 3, 14, 18 and 25 — Community trade mark application No 6294342

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

Mark or sign cited in opposition: Community trade mark registration No 3079481 of the figurative mark 'FAIRFIELD BY ARROW', for goods in class 25

Decision of the Opposition Division: Partly rejected the contested trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that there was a likelihood of confusion between the two trademarks.

Action brought on 28 March 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA

(Case T-140/12)

(2012/C 165/45)

Language of the case: English

Parties

Applicants: Teva Pharma BV (Utrecht, Netherlands) and Teva Pharmaceuticals Europe BV (Utrecht, Netherlands) (represented by: D. Anderson, QC (Queen's Counsel), K. Bacon, Barrister, G. Morgan and C. Drew, Solicitors)

Defendant: European Medicines Agency

Form of order sought

— Annul the decision of the European Medicines Agency, contained in its letter of 24 January 2012, refusing to validate the applicants' application for a marketing authorisation;

— Order the Commission to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the refusal to validate their application for the authorisation of a generic version of an orphan medicinal product is contrary to Article 8 of Regulation (EC) No 141/2000⁽¹⁾ properly interpreted. In particular, it is contrary to the wording and effect of Article 8, as well as the policy underlying the said regulation and its *travaux préparatoires*, to

exclude a generic version of an orphan medicinal product from the market for more than the ten year period stipulated in Article 8(1) of the said regulation. The applicants further allege that Article 8(3) permits an authorisation for a similar product to be granted during that 10 year period, by way of derogation from Article 8(1), in certain specified circumstances. Such authorisation should not, however, have the effect of extending the 10 year market exclusivity for the first orphan product.

⁽¹⁾ Regulation (EC) No 141/2000 of the European Parliament and of the Council of 16 December 1999 on orphan medicinal products (OJ 2000 L 18, p. 1)

Action brought on 26 March 2012 — Pro-Duo v OHIM — El Corte Inglés (GO!)

(Case T-141/12)

(2012/C 165/46)

Language in which the application was lodged: English

Parties

Applicant: Pro-Duo (Ghent, Belgium) (represented by: T. Alkin, Barrister)

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

Other party to the proceedings before the Board of Appeal: El Corte Inglés, SA (Madrid, Spain)

Form of order sought

— Suspend the action pending the outcome of the Cancellation proceedings No 5011 C;

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 January 2012 in case R 1373/2011-4, insofar as it declined to suspend proceedings pending outcome of the Cancellation proceedings, or to annul the decision entirely; and

— Order the Opponent to pay the costs incurred by the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark in black, white and grey 'GO!', for goods in class 3 — Community trade mark application No 8859712

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

Mark or sign cited in opposition: Community trade mark registration No 6070981 of the figurative mark 'GO GLORIA ORTIZ', for goods in class 3

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The Board of Appeal of the Office for Harmonisation in the Internal Market erred in law in failing to suspend the proceedings; and infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that there was a likelihood of confusion between the two trademarks.

Action brought on 30 March 2012 — Aventis Pharmaceuticals v OHIM — Fasel (CULTRA)

(Case T-142/12)

(2012/C 165/47)

Language in which the application was lodged: English

Parties

Applicant: Aventis Pharmaceuticals, Inc. (New Jersey, United States) (represented by: R. Gilbey, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fasel Srl (Bologna, 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 26 January 2012 in case R 2478/2010-1;

— The Court is invited to provide its opinion and reasons, as regards the similarity of signs, had the correct facts and tests been applied by the Board of Appeal; and

— Order the losing party to pay the costs incurred by the applicant in the present proceedings and in the previous proceedings.

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 figurative mark 'CULTRA', for goods in class 10 — Community trade mark application No 7534035

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

Mark or sign cited in opposition: Czech trade mark registration No 301724 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; German trade mark registration No 30406574 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; Finish trade mark registration No 233638 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; UK trade mark registration No 2355273 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44; Hungarian trade mark registration No 183214 of the word mark 'SCULPTRA', for goods and services in classes 5, 10 and 44

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 of Commission Regulation No 2868/95 and Article 76(2) of Council Regulation No 207/2009, as the Board of Appeal: (i) based its reasoning and decision on a fact that was not alleged or submitted by the parties, nor referred to in the contested decision, namely that the contested sign will primarily or exclusively be perceived as 'ULTRA' with a rounded figurative element; (ii) failed to address important arguments and evidence submitted by the applicant, regarding conceptual similarity, failed to compare correctly the signs with regard to their overall impression, and failed accordingly to apply the global comparison rule, as defined by the Court of Justice; (iii) failed to proceed to an evaluation of likelihood of confusion based on the sole facts that were placed before it; and (iv) failed to take into account in a legally sustainable manner the interdependence of relevant global factors, in particular, the identity or similarity of the goods and services, and the similarity between the signs.

Action brought on 30 March 2012 — Germany v Commission

(Case T-143/12)

(2012/C 165/48)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: T. Henze, K. Petersen and U. Soltész, lawyer)

Defendant: European Commission

Form of order sought

- Annul Article 1 of Commission Decision C(2012) 184 final of 25 January 2012 on Measure No C 36/2007 (ex NN 25/2007) implemented by Germany for Deutsche Post AG;
- annul Articles 4 to 6 of Commission Decision C(2012) 184 final of 25 January 2012 on Measure No C 36/2007 (ex NN 25/2007) implemented by Germany for Deutsche Post AG;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on 10 pleas in law.

1. First plea in law, alleging infringement of Article 107(1) TFEU in so far as the 'pension subsidy' was found to have benefited an undertaking

The 'pension subsidy' is granted directly to the Postbeamtenversorgungskasse (PBVK) (civil servants' pension fund) and indirectly to retired civil servants, and is thus not granted to any undertaking. Nor has there been any indirect aid for Deutsche Post AG (DPAG).

2. Second plea in law, alleging infringement of Article 107(1) TFEU in so far as the 'pension subsidy' was found to have compensated costs 'normally' borne by undertakings

The 'pension subsidy' fully finances excess social costs which would not 'normally' be borne by undertakings. Furthermore, the costs compensated by means of the 'pension subsidy' constitute a 'special charge' for the purposes of *Combust*.⁽¹⁾

3. Third plea in law, alleging infringement of Article 107(1) TFEU (alternatively of Article 107(3) TFEU) in so far as price-regulated revenues were taken into account

The 'comparative advantage' does not arise from the 'pension subsidy' and is entirely independent of it. The 'comparative advantage' arises from regulated prices and thus from non-State resources (*PreussenElektra*⁽²⁾). There is no double compensation of costs. No 'aid' is thus being declared incompatible with the internal market and reclaimed. The 'aid' merely provides an opportunity retroactively to skim off DPAG's revenues.

4. Fourth plea in law, alleging infringement of Articles 107 TFEU and 108 TFEU and Regulation (EC) No 659/1999⁽³⁾ by the unlawful skimming-off of price-regulated revenues in State aid proceedings — misuse of powers/abuse of process

The Commission can lawfully recover revenues in that form only in the context of Regulation (EC) No 1/2003,⁽⁴⁾ not in State aid proceedings.

5. Fifth plea in law, alleging infringement of Articles 107 TFEU and 108 TFEU and Regulation No 659/1999 by the unlawful pursuit of 'cross-subsidisation' in State aid proceedings — misuse of powers/abuse of process

Any 'cross-subsidisation' arises from regulated prices, from non-State resources and not, therefore, from aid. Such 'cross-subsidisation' cannot be pursued in State aid proceedings either.

6. Sixth plea in law, alleging infringement of Article 107(1) TFEU (alternatively of Article 107(3) TFEU) as a result of erroneous calculations in respect of compensation of social costs

The benchmark adopted by the Commission, which takes into account the employee's share, is erroneously excessive since, under German social insurance law, an employer bears only the employer's share. As the employee's share has already been taken into account by the Commission in relation to the wage base ('notional gross wage'), the fact that it is taken into account again in the benchmark means that it is counted twice. The increase in the wage base is also misconceived, as civil servants' salaries were higher than wages paid by private competitors.

7. Seventh plea in law, alleging infringement of Article 107(1) TFEU (alternatively of Article 107(3) TFEU) in so far as the 'pension subsidy' was found to constitute aid (incompatible with the internal market) in respect of the period from 1995 to 2002 also

8. Eighth plea in law, alleging infringement of Article 108(1) TFEU and Article 1(b)(i) of Regulation No 659/1999 in so far as the pension subsidy was found to constitute new aid

The Commission's findings are based on an inadequate assessment of the facts.

9. Ninth plea in law, alleging infringement of Article 14(1) and Article 7(5) of Regulation No 659/1999 in so far as the order for recovery and the obligation to desist contained in Article 4(1) and Article 4(4) respectively are contrary to the law on State aid

Recovery under Article 4(1) relates not to 'aid' but to DPAG's revenues from regulated stamp prices. Compliance with the order no longer to benefit cannot be achieved by means of a reduction in 'aid'. A reduction in the 'pension subsidy' would have no effect on the size of the 'comparative advantage'. To cease to benefit in accordance with Article 4(4) would require the amendment of price regulation, and thus encroaches upon the applicant's regulatory sovereignty.

10. Tenth plea in law, alleging infringement of Article 6 TEU, Article 41 of the Charter of Fundamental Rights of the European Union, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of good administration and Article 10(1) of Regulation No 659/1999, on account of the unreasonable length of the proceedings and inactivity on the part of the Commission

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- (¹) Case T-157/01 *Danske Busvognmænd v Commission* [2004] ECR II-917.
 (²) Case C-379/98 *PreussenElektra* [2001] ECR I-2099.
 (³) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).
 (⁴) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 29 March 2012 — Bayerische Motoren Werke v OHIM (ECO PRO)

(Case T-145/12)

(2012/C 165/49)

Language of the case: English

Parties

Applicant: Bayerische Motoren Werke AG (München, Germany) (represented by: C. Onken, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 January 2012 in case R 1418/2011-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'ECO PRO' for goods in classes 9 and 12 — International Registration (IR) No W 1059979

Decision of the Examiner: Refused protection of the International Registration designating the European Union.

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that the International Registration of the applicant's trademark was devoid of distinctive character within the meaning of this article.

Action brought on 30 March 2012 — Wünsche Handelsgesellschaft International v Commission

(Case T-147/12)

(2012/C 165/50)

Language of the case: German

Parties

Applicant: Wünsche Handelsgesellschaft International mbH & Co KG (Hamburg, Germany) (represented by: K. Landry and G. Schwendinger, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision REM 02/09 of 16 September 2011 (C(2011) 6393 final);

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

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision REM 02/09 of 16 September 2011 (C(2011) 6393 final) determining that remission of import duties is not justified in a particular case, which concerns imports by the applicant of preserved mushrooms of the genus *Agaricus* — country of origin, China — in 2004 and 2006.

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

1. Infringement of Article 220(2)(b) of the Customs Code

- The applicant is doubtful about the Commission's assessment that there was an error on the part of the German customs authorities in the present case.
- In any event, the applicant does not recognise the (alleged) error. The applicant, who acted in good faith and is experienced, cannot be accused of a lack of due care. In view of the complex legal position and the longstanding practice of the German authorities, the applicant can claim a legitimate expectation.

2. Infringement of Article 239 of the Customs Code

- The Commission made a procedural legal error in that, by means of a simple reference to refusal pursuant to Article 220(2)(b) of the Customs Code, it summarily also denied remission of import duties under Article 239 of the Customs Code, without any separate assessment.
- Furthermore, the Commission also committed a substantive legal error in failing to recognise that there are 'special circumstances' for the purposes of Article 239 of the Customs Code in the present case, and that the criteria for remission under that provision were satisfied.

3. Infringement of general legal principles

The applicant further claims that, in adopting the contested decision, the Commission infringed the primary-law principle of protection of legitimate expectations, the principle of proportionality, the principle of good administration and the principle of equal treatment.

Action brought on 4 April 2012 — Deutsche Post v Commission

(Case T-152/12)

(2012/C 165/51)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

Defendant: European Commission

Forms of order sought

The applicant claims that the General Court should:

- annul Articles 1 and 2, as well as Articles 4 to 6, of the Decision of the European Commission of 25 January 2012 on Measure C 36/2007 (ex NN 25/2007) granted by Germany in favour of Deutsche Post AG (Commission Document No C(2012) 184 final);
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant raises a total of 13 pleas in law in support of its action:

- A. The applicant raises 10 pleas in law in support of its action for annulment of Article 1 and Articles 4 to 6 of the Commission Decision of 25 January 2012:

First plea in law: Breach of Article 107(1) TFEU

by reason of the incorrect classification, at variance with the 'Combus' case-law of the Court, ⁽¹⁾ of the partial financing by the State of outstanding pension commitments of a former State-owned enterprise as an element constituting aid;

Second plea in law: Breach of Article 108(1) TFEU and of Article 1(b)(i) of Regulation (EC) No 659/1999 ⁽²⁾

by reason of the incorrect classification of the partial financing by the State of outstanding pension commitments as 'new' aid;

Third plea in law: Breach of Article 107(1) TFEU

by reason of the improper treatment of the regulated charges as an element constituting aid, contrary to the 'PreussenElektra' case-law of the Court of Justice, ⁽³⁾ and of the objection of a mere (allegedly) inappropriate allocation of costs between two product groups as an element constituting aid;

Fourth plea in law: Errors of competence and assessment, in addition to infringement of the principle of non-discrimination and of the duty of genuine cooperation with Member States

by reason of the retrospective infringement of the national regulation of charges, despite a long-standing knowledge of that regulation and contrary to the Commission's entire decision-making practice to date;

Fifth plea in law: Breach of Article 107(1) and (3) TFEU

by reason of the incorrect fixing of the social security contributions to be borne by private competitors ('benchmark'), as well as by reason of a fictitious increase in the actual gross earnings of officials as the calculation basis for the application of the 'benchmark';

Sixth plea in law: Failure to state adequate grounds pursuant to Article 296 TFEU

by reason of the fact that the extremely extensive content of the contested decision is in part unclear, contradictory or incomprehensible and fails to indicate clearly the connection between the individual parts;

Seventh plea in law: Infringement of the principle of legality and Article 107(1) TFEU

due to the contradictory description of the basis for the calculation of the amount to be paid back and the fact that it is not identifiable;

Eighth plea in law: Infringement of the right to 'have affairs handled within a reasonable time' as an aspect of the right to 'good administration' under Article 41 of the Charter of Fundamental Rights of the European Union (Charter of Fundamental Rights) and Article 10(1) of Regulation No 659/1999

by reason of the fact that the proceedings lasted more than 12 years from the opening decision of 1999 up to the contested decision of 25 January 2012;

Ninth plea in law: Infringement of the right to 'good administration' resulting from Article 41(1) of the Charter of Fundamental Rights, as well as breach of Article 15 of Regulation No 659/1999

by reason of the complete failure to act in relation to the regulation of charges under Paragraph 20(2) of the German Postgesetz, of which the Commission was aware since 1999 at the latest, but which was made the subject-matter of the proceedings only after more than 11 years by the extension decision of 10 May 2011;

Tenth plea in law: Infringement of the principles of legal certainty, protection of legitimate expectations and sound administration, which are protected as fundamental rights, as well as breach of Article 7(1) of Regulation No 659/1999

by reason of the failure to recognise the conclusive nature of the decision of 2002, which, according to the Commission, contrary to the imperative duty arising out of Article 7(1) of Regulation No 659/1999, did not 'conclusively' regulate the

State measures which were the subject-matter of the proceedings and to which the pension costs also belonged.

B. The applicant raises three further pleas in law in support of its action for annulment of Article 2 of the Commission Decision of 25 January 2012:

Eleventh plea in law: Infringement of the principles of 'sound administration' and a 'reasonable duration' of proceedings

by reason of an unlawful failure to examine the existence of 'over-compensation' by the 'financial compensation' since 1999, as the Court has already determined in its judgment in Case T-266/02 *Deutsche Post v Commission* [2008] ECR II-1233;

Twelfth plea in law: Breach of Article 106(2) TFEU

by the provision of inadequate reasoning for the fact that the fourth criterion of the 'Altmark' ⁽⁴⁾ judgment was not satisfied in the present case;

Thirteenth plea in law: Incorrect application of the aid element in Article 107(1) TFEU

by reason of the fact that the 'financial compensation' fulfils the conditions governing a finding that there is a service of general economic interest within the terms of Article 106(2) TFEU.

⁽¹⁾ Judgment in Case T-157/01 *Danske Busvognmænd v Commission* [2004] ECR II-917.

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

⁽³⁾ Judgment in Case C-379/98 *PreussenElektra* [2001] ECR I-2099.

⁽⁴⁾ Judgment in Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747.

Action brought on 2 April 2012 — Schulze v OHIM — NKL (Klassiklotterie)

(Case T-155/12)

(2012/C 165/52)

Language in which the application was lodged: German

Parties

Applicant: Hans Gerd Schulze (Hamburg, Germany) (represented by: K. Lodigkeit, lawyer)

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

Other party to the proceedings before the Board of Appeal: NKL Nordwestdeutsche Klassenlotterie (Hamburg)

Form of order sought

The applicant claims that the General Court should:

- set aside the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 30 January 2012 (Appeal R 600/2011-4), in so far as that decision refused registration of the mark 'Klassiklotterie';
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark concerned: Word mark 'Klassiklotterie' for goods and services in Classes 28, 35 and 41 (Application No 8 554 354).

Proprietor of the mark or sign cited in the opposition proceedings: NKL Nordwestdeutsche Klassenlotterie.

Mark or sign cited in opposition: German word mark 'NKL-Klassiklotterie' for goods and services in Classes 16, 35 and 41 (Mark No 2 904 650).

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Breach of Article 8(1)(b) of Regulation No 207/2009, as there is no likelihood of confusion between the opposing marks.

Action brought on 5 April 2012 — Sweet Tec v OHIM (Shape of an oval)

(Case T-156/12)

(2012/C 165/53)

Language of the case: German

Parties

Applicant: Sweet Tec GmbH (Boizenburg, Germany) (represented by T. Nägele, lawyer)

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

Form of order sought

- Annul the contested decision of the First Board of Appeal of OHIM of 19 January 2012 in appeal proceedings R 542/2011-1 relating to the application for Community trade mark No 9 554 171;
- order OHIM to pay the costs of the proceedings, including the costs incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional mark, representing the shape of an oval, for goods in Classes 16 and 30 (application No 9 554 171).

Decision of the Examiner: Application refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 as the trade mark applied for has distinctive character and is not descriptive of the goods at issue in this case.

Action brought on 10 April 2012 — Alstom and Others v Commission

(Case T-164/12)

(2012/C 165/54)

Language of the case: English

Parties

Applicants: Alstom (Levallois Perret, France); Alstom Holdings (Levallois Perret); Alstom Grid SAS (Paris, France); and Alstom Grid AG (Oberentfelden, Switzerland) (represented by: J. Derenne, lawyer, N. Heaton, P. Chaplin and M. Farley, Solicitors)

Defendant: European Commission

Form of order sought

- Annul the Commission's decision of 26 January 2012 contained in letters n° D/2012/006840 and n° D/2012/006863 to transmit certain documents to the High Court of England and Wales that were submitted by the applicants (or their predecessors) to the Commission during the course of the investigation in Case COMP/F/38.899 — Gas Insulated Switchgear (OJ 2008 C 5, p. 7);
- Order the Commission to pay the costs of the applicants.

Pleas in law and main arguments

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

1. First plea in law, alleging that the transmission of the documents in question to the High Court of England and Wales would:

— constitute an error of fact and result in the disclosure of leniency material contained in such documents, which, in violation of Article 4(3) TEU, would undermine the interests of the European Union and interfere with its functioning and independence, in particular by jeopardising the overall effectiveness of the Commission's leniency programme that is so paramount to the Commission's ability to accomplish its task of enforcing Article 101 TFEU;

— violate the general principle of right to be heard and in particular paragraph 26 of the Cooperation Notice ⁽¹⁾ as the Commission failed to seek the consent of the concerned companies to disclose the leniency material contained in such documents;

— violate the Commission's duty to give reasons under Article 296 TFEU as it implicitly rejected the applicants' claims that certain parts of the documents in question constitute leniency material without stating any reasons.

2. Second plea in law, alleging that the decision should be annulled on the grounds that:

— transmitting the confidential information contained in the documents in question to the High Court of England and Wales for the purposes of use in the English proceedings cannot be justified on the basis of Article 4(3) TEU, as disclosure of such information will discourage undertakings in the future from co-operating with the Commission in its investigations and thereby interfere with the Commission's ability to enforce competition law;

— transmitting the confidential information contained in the documents in question to the High Court of England and Wales when that Court has expressly informed the Commission that it intends to disclose such information to third parties that are members of a confidentiality ring breaches paragraph 25 of the Cooperation Notice;

— the protection afforded by the confidentiality ring in this case falls below the standards required by Article 339 TFEU and paragraph 25 of the Cooperation Notice. Disclosure of the confidential information contained in

the documents in question to the High Court of England and Wales would, therefore, breach the Commission's obligations under these principles.

3. Third plea in law, alleging that the decision to transmit such documents to the High Court of England and Wales violates the principle of proportionality as it was neither appropriate nor necessary for the Commission to transmit the confidential version of such documents together with its annexes to the English High Court, even though the annexes are not relevant to the central issues which the English High Court will have to address and the General Court redacted from its judgment in Case T-121/07 all references to the content of these documents.

⁽¹⁾ Commission Notice on the cooperation between the Commission and the courts of the EU Member States in the application of Articles 81 and 82 EC (OJ 2004 C 101, p. 54)

Action brought on 13 April 2012 — Georgias and Others v Council and Commission

(Case T-168/12)

(2012/C 165/55)

Language of the case: English

Parties

Applicants: Aguy Clement Georgias (Harare, Zimbabwe); Trinity Engineering (Private) Ltd (Harare); and Georgiadis Trucking (Private) Ltd (Harare) (represented by: M. Robson and E. Goulder, Solicitors, and H. Mercer, Barrister)

Defendants: European Commission and Council of the European Union

Form of order sought

— Order that the EU and the Commission and/or the Council make good the damage caused, resulting from the application of certain restrictive measures in respect of Zimbabwe, by compensating the applicants on the basis of Articles 268 TFEU and the second paragraph of Article 340 TFEU in the following amounts or any other amounts that the Court shall decide:

(i) 469 520,24 euros (EUR) or equivalent to Trinity;

(ii) 5 627 020 euros (EUR) or equivalent to Georgiadis;

(iii) 374 986,57 euros (EUR) or equivalent to Senator Georgias;

(iv) any sum that the Court deems appropriate to compensate Senator Georgias for the non-pecuniary damage claimed;

(v) interest at the rate of 8 % per annum on the above sums or any other rate that this Court may award;

— Order an inquiry into the level of damage suffered by the applicants, if and to the extent that the Court finds it necessary;

— Order the Commission and/or the Council to pay the costs incurred by the applicants in the present proceedings.

Pleas in law and main arguments

In support of the present action, by which damages against the EU for non-contractual liability are claimed, the applicants rely on two pleas in law.

1. First plea in law, alleging

— following unlawful actions in the adoption of Commission Regulation (EC) 412/2007 of 16 April 2007 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (JO L 101, p. 6):

(i) manifest error of assessment of the facts combined with breaches of the rights of the defence and to an effective judicial remedy;

(ii) misuse of power;

(iii) breach of rights of the defence with regard to the renewals of the asset-freezing measures.

2. Second plea in law, alleging

— that the damage incurred includes:

(i) the loss of specific business opportunities through the extra-territorial application of the asset-freezing measures to all persons concerned doing business in the EU;

(ii) personal stress due to the eventual loss of business in the EU;

(iii) losses arising from the application of the said Regulation to Senator Georgias in May 2007 and upon renewal thereof and leading to pecuniary and non-pecuniary damage in consequence of him being excluded from the EU territory and subjected to asset-freezing.

Action brought on 10 April 2012 — CHEMK and KF v Council

(Case T-169/12)

(2012/C 165/56)

Language of the case: English

Parties

Applicants: Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) (Chelyabinsk, Russia); and Kuznekie ferrosplavy OAO (KF) (Novokuznetsk, Russia) (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 60/2012 of 16 January 2012 terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 of the anti-dumping measures applicable to imports of ferro-silicon originating, *inter alia*, in Russia (OJ L 22, p. 1), in so far as it affects the applicants; and

— Order the defendant to pay the cost incurred by the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

— that the Institutions breached Article 11(9) in connection with Article 2(12) of 'the basic Regulation' ⁽¹⁾ by failing to establish the amount of the dumping margin of the applicants. In addition, or in the alternative, the Institutions erred in law and exceeded their margin of discretion in their powers of prospective assessment under Article 11(3) by allowing the findings on lasting nature of changed circumstances to subsume the dumping findings, vitiating the findings on the changed dumping margin in the interim review and extending the scope of analysis of continuation of dumping so as to cover/affect the findings on dumping margin. Lastly, the Institutions infringed the applicants' rights of defence with respect to dumping by failing to disclose their final calculation of dumping to the applicants.

2. Second plea in law, alleging

— that the Institutions made a manifest error of assessment in concluding that an adjustment for SG&A costs and profit of RFAI had to be made to the applicants' export price and in the related finding that the applicants and RFAI did not constitute a single economic entity.

3. Third plea in law, alleging

— that the Institutions breached Article 11(3), third subparagraph and/or made manifest errors of assessment in concluding that there was no lasting change of circumstances with respect to the reduced dumping margin of the applicants.

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

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