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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 184/01)

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

OJ C 174, 16.6.2012

Past publications

OJ C 165, 9.6.2012

OJ C 157, 2.6.2012

OJ C 151, 26.5.2012

OJ C 138, 12.5.2012

OJ C 133, 5.5.2012

OJ C 126, 28.4.2012

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 15 February 2012 — Felixstowe Dock and Railway Company Ltd, Savers Health and Beauty Ltd, Walton Container Terminal Ltd, AS Watson card Services (UK) Ltd, Hutchison Whampoa (Europe) Ltd, Kruidvat UK Ltd, Superdrug Stores plc v The Commissioners for Her Majesty's Revenue & Customs

(Case C-80/12)

(2012/C 184/02)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicants: Felixstowe Dock and Railway Company Ltd, Savers Health and Beauty Ltd, Walton Container Terminal Ldt, AS Watson card Services (UK) Ldt, Hutchison Whampoa (Europe) Ltd, Kruidvat UK Ldt, Superdrug Stores plc

Defendant: The Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. In circumstances where:

    1. The provisions of a Member State (such as the United Kingdom) provide for a company ('a claimant company') to claim group relief for the losses of a company that is owned by a consortium ('a consortium company') on the condition that a company that is a member of the same group of companies as the claimant company is also a member of the consortium (a 'link company'), and

    2. The parent company of the group of companies (not itself being the claimant company, the consortium company or the link company) is not a national of the United Kingdom or any other Member State,

    Do Arts. 49 and 54, TFEU preclude the requirement that the 'link company' be either resident in the United Kingdom or carrying on a trade in the United Kingdom through a permanent establishment situated there?

2. If the answer to question 1 is yes, is the United Kingdom required to provide a remedy to the claimant company (for example, by allowing that company to claim relief for the losses of the consortium company) in circumstances where:

    1. the 'link company' has exercised its freedom of establishment but the consortium company and the claimant companies have not exercised any of the freedoms protected by European Law,

    2. the link(s) between the surrendering company and the claimant company consists of companies not all of which are established in the EU/EEA.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 8 March 2012 — Brück Edgar v Agentur für Arbeit Villingen-Schwenningen — Familienkasse

(Case C-126/12)

(2012/C 184/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Brück Edgar

Defendants: Agentur für Arbeit Villingen-Schwenningen — Familienkasse

Question referred

Are Article 13(1) and Article 13(2)(a) of Regulation No 1408/71 [1] to be interpreted as precluding the granting of (differential) child benefit by a Member State of residence, in cases where a person entitled to child benefit — like the other parent — is a cross-border commuter employed in Switzerland and draws family benefits there in respect of his children living in the Member State of residence which are lower than the child benefit provided for in the Member State of residence?

[1] Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ 1971 L 149, p. 2 (English special edition: Series I Chapter 1971(II) P. 0416), as amended by Council Regulation (EC) No 118/97 of 2 December 1996, OJ 1997 L 28, p. 1, and Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, OJ 2005 L 117, p. 1.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 23 March 2012 — Goldbet Sportwetten GmbH v Massimo Sperindeo

(Case C-144/12)

(2012/C 184/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Goldbet Sportwetten GmbH

Defendant: Massimo Sperindeo

Questions referred

1. Is Article 6 of Regulation (EC) No 1896/2006 [1] of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (Regulation No 1896/2006) to be interpreted as meaning that Article 24 of Council Regulation (EC) No 44/2001 [2] on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation No 44/2001), which confers jurisdiction on a court before which a defendant enters an appearance, must also be applied in the European order for payment procedure?

2. If question 1 is answered in the affirmative:

   Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition to a European order for payment itself constitutes the entry of an appearance, provided that that statement does not contest the jurisdiction of the court of origin?

3. If question 2 is answered in the negative:

   Is Article 17 of Regulation No 1896/2006 in conjunction with Article 24 of Regulation No 44/2001 to be interpreted as meaning that the lodging of a statement of opposition confers jurisdiction by virtue of the entry of an appearance at most where that statement itself presents arguments on the substance of the case but does not contest the jurisdiction?

[1] OJ L 399, p. 1.
[2] OJ 2001 L 12, p. 1.

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland), lodged on 30 March 2012 — Minister Finansów v RR Donnelley Global Turnkey Solutions Poland Sp. z o.o.

(Case C-155/12)

(2012/C 184/05)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Minister Finansów

Respondent: RR Donnelley Global Turnkey Solutions Poland Sp. z o.o.

Questions referred

1. Are the provisions of Articles 44 and 47 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] to be interpreted as meaning that complex services relating to the storage of goods, which comprise admission of the goods to the warehouse, placing the goods on the appropriate storage shelves, storing the goods for the customer, issuing the goods, unloading and loading and, in the case of certain customers, repackaging materials supplied in collective packaging into individual sets, constitute services connected with immovable property which are to be taxed, in accordance with Article 47 of Directive 2006/112, at the place where the immovable property is located?

2. Alternatively, should it be accepted that the services in question are to be taxed, pursuant to Article 44 of Directive 2006/112, at the place where the customer for whom the services are supplied has established his business on a permanent basis or has a fixed establishment or, in the absence of such a place, at the place where he has his permanent address or usually resides?

(1) OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 30 March 2012 — Salzgitter Mannesmann Handel GmbH v SC Laminorul SA

(Case C-157/12)

(2012/C 184/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Salzgitter Mannesmann Handel GmbH

Defendant: SC Laminorul SA

Questions referred

Does Article 34(4) 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 (1) (OJ 2001 L 12, p. 1) ('Regulation No 44/2001') also cover cases of irreconcilable judgments given in the same Member State (State of origin)?

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

Appeal brought on 11 April 2012 by Verenigde Douaneagenten BV against the judgment delivered by the General Court (Seventh Chamber) on 10 February 2012 in Case T-32/11 Verenigde Douaneagenten v Commission

(Case C-173/12 P)

(2012/C 184/07)

Language of the case: Dutch

Parties

Appellant: Verenigde Douaneagenten BV (represented by: S.H.L. Moolenaar, lawyer)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court in accordance with the pleas put forward in this appeal;

— Order the Commission to pay the costs.

Pleas in law and main arguments

1. The ***first two pleas*** concern errors of law, in so far as the General Court held that the respondent was right to conclude that the EUR.1 movement certificates were issued on the basis of an incorrect account of the facts provided by the exporter.

   The General Court relies in this respect on several letters, sent to the Departement van Economische Zaken (Department of Economic Affairs), dating from over two and a half years before the actual export which are open to a number of interpretations, as well as on an inadvertent incorrect interpretation of the cumulation rules; the General Court disregards the fact that these rules are regarded by the authorities themselves as very complex.

   In addition, the General Court fails to have regard to the fact that the Netherlands customs authorities declared in the proceedings before the Gerechtshof te Amsterdam that they were unable to prove that the issue of the certificates in question in relation to the EUR.1 certificates is attributable to the incorrect account of the facts provided by the exporter.

2. The ***third, fourth and fifth pleas*** concern errors of law, in so far as the General Court held that the Curaçao customs authorities did not know or could not have known that the goods in question were not eligible for preferential treatment at the time of issue of the EUR.1 movement certificates.

   In the appellant's submission, in its findings, the General Court fails to have regard to the fact that the Departement of Economic Affairs in Curaçao did at least one check on the location of the exporter before the issue of the EUR.1 movement certificates. In addition, the General Court fails to have regard to the fact that, when issuing an EUR.1 movement certificate, the customs authorities in Curaçao check the origin of the sugar in question in conjunction with the processing thereof so as to verify the rules chosen.

   The General Court also fails to have regard to the fact that the EUR.1 movement certificates were issued by the customs authorities on the basis of certificates of Form A origin ('Form A'), pursuant to which it is not possible to issue an EUR.1 movement certificate.

When the raw materials enter Curaçao, those customs authorities take delivery of the Form As. The appellant cannot be blamed for the fact that these very forms were lost in a fire in the archives of the customs authorities in Curaçao. Since the archives have been destroyed, it is no longer possible to determine which documents were present in the customs authorities' file.

In the appellant's submission, the General Court's conclusion that the administrator would have given these documents to the respondent's mission if the documents had been present in the administration is not sound. That consideration alone cannot lead to the conclusion that the Form As were not present there, in the light of all the foregoing considerations.

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 16 April 2012 — Association de médiation sociale v Union locale des syndicats CGT, Hichem Laboubi, Union départementale CGT des Bouche-du-Rhône, Confédération générale du travail (CGT)

(Case C-176/12)

(2012/C 184/08)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Association de médiation sociale

Defendants: Union locale des syndicats CGT, Hichem Laboubi, Union départementale CGT des Bouche-du-Rhône, Confédération générale du travail (CGT)

Questions referred

1. May the fundamental right of workers to information and consultation, recognised by Article 27 of the Charter of Fundamental Rights of the European Union, and as specified in the provisions of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, [1] be invoked in a dispute between private individuals in order to assess the compliance of a national measure implementing the directive?

2. In the affirmative, may those same provisions be interpreted as precluding a national legislative provision which excludes from the calculation of staff numbers in the undertaking, in particular to determine the legal thresholds for putting into place bodies representing staff, workers with the following contracts: apprentice, contrat initiative-emploi, contrat d'accompagnement dans l'emploi and contrat de professionnalisation?

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[1] Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29).

Appeal brought on 16 April 2012 by The Dow Chemical Company against the judgment of the General Court (Seventh Chamber) delivered on 2 February 2012 in Case T-77/08: The Dow Chemical Company v European Commission

(Case C-179/12 P)

(2012/C 184/09)

Language of the case: English

Parties

Appellant: The Dow Chemical Company (represented by: D. Schroeder and R. Polley, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— Set aside the General Court's judgment in Case T-77/08 insofar as it dismisses its request to annul the Commission's decision of 5 December 2007 in Case COMP/38629 as amended by Commission decision C(2008) 2974 final of 23 June 2008 insofar as it relates to the Appellant;

— Annul the Commission's decision of 5 December 2007 in Case COMP/38629 as amended by Commission decision C(2008) 2974 final of 23 June 2008 insofar as it relates to the Appellant;

— In the alternative, set aside the General Court's judgment in case T-77/08 insofar as it dismisses its request to substantially reduce the fine imposed on it;

— Substantially reduce the fine imposed on it;

— Order the Commission to pay the Dow Chemical Company's legal and other costs and expenses in relation to this matter; and

— Take any other measures that the Court considers appropriate.

Pleas in law and main arguments

The appeal contains two pleas. According to the first plea, the General Court erred in law as concerns the imputation of the infringement to the Appellant. Since the Appellant did not exercise decisive influence over DuPont Dow Elastomers ('***DDE***'), a joint venture with EI du Pont de Nemours and Company, it did not participate in the infringement committed by DDE. The General Court erred in law by misinterpreting the related concepts of a single economic unit, of a single undertaking and of the exercise of decisive influence. According to the second plea, the General Court erred in law as concerns the increase of the Appellant's fine by 10 % for deterrence. The General Court erred in law by holding that the Commission did not breach the principle of equal treatment in this respect.

Reference for a preliminary ruling from the Korkein oikeus (Finland) lodged on 24 April 2012 — Melvin West v Virallinen syyttäjä

(Case C-192/12)

(2012/C 184/10)

Language of the case: Finnish

Referring court

Korkein oikeus

Parties to the main proceedings

Applicant: Melvin West

Defendant: Virallinen syyttäjä

Question referred

In applying Article 28(2) of the Framework Decision, does 'executing Member State' mean the Member State from which a person was originally surrendered to another Member State on the basis of a European arrest warrant, or that second Member State from which the person was surrendered to a third Member State which is now requested to surrender the person onward to a fourth Member State? Or is consent perhaps required from both Member States?

Action brought on 26 April 2012 — European Commission v Council of the European Union

(Case C-196/12)

(2012/C 184/11)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

— Declare that, by failing to adopt the Commission's Proposal for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto, the Council has failed to fulfil its obligations under the Staff Regulations;

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

Pleas in law and main arguments

By the present action, the applicant submits that the Council has departed from the Commission's Proposal for a Council Regulation adjusting with the effect from 1 July 2011 the remuneration and pensions of officials under Article 3 of Annex XI to the Staff Regulations, despite the fact that it is apparent from the mandatory terms of that article that the method for the annual adjustment of the remuneration and pensions is an automatic procedure which leaves the Council no discretion. The abovementioned article obliges the Council to adopt the Commission's proposal before 31 December of the current year. In the submission of the applicant, the Council is not empowered to depart from that obligation on the ground that it is of the view that the Commission ought to have submitted to it a proposal under Article 10 of Annex XI. In any event, the fundamental conditions for Article 10 to apply were not met in 2011 as is, moreover, apparent from two economic reports submitted by the Commission to the Council at the request of the Council. By adopting Decision 2011/866/EU [1] itself under Article 10 of Annex XI to the Staff Regulations, the Council thus infringed the required institutional conditions.

The Commission also complains that the Council has refused to adjust the correction coefficients which must be applied to the remuneration and pensions according to the different places of work or residence of the persons concerned. In the view of the applicant, it cannot be disputed that the 'decision' of the Council is entirely silent on that point, the reasoning underlying it referring exclusively to the 'exception clause' of Article 10 of Annex XI. The Council's attitude must therefore be regarded as an unlawful refusal to act.

(1) 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 (OJ 2011 L 341, p. 54).

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 30 April 2012 — Billerud Karlsborg Aktiebolag, Billerud Skärblacka Aktiebolag v Naturvårdsverket

(Case C-203/12)

(2012/C 184/12)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: 1. Billerud Karlsborg Aktiebolag, 2. Billerud Skärblacka Aktiebolag

Defendant: Naturvårdsverket

Questions referred

1. Does Article 16(3) and (4) of Directive 2003/87 (1) mean that an operator who has not surrendered a sufficient number of emission allowances by 30 April must pay a penalty regardless of the cause of the omission, for example, where, although the operator had a sufficient number of emission allowances on 30 April, as a result of an oversight, an administrative error or a technical problem it did not surrender them then?

2. If Question 1 is answered in the affirmative, does Article 16(3) and (4) of Directive 2003/87 mean that the penalty will or may be waived or reduced for example in the circumstances described in Question 1?

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, p. 32).

Appeal brought on 9 May 2012 by Grazer Wechselseitige Versicherung AG against the judgment of the General Court (Sixth Chamber) delivered on 28 February 2012 in Case T-282/08 Grazer Wechselseitige Versicherung AG v European Commission

(Case C-215/12 P)

(2012/C 184/13)

Language of the case: German

Parties

Appellant: Grazer Wechselseitige Versicherung AG (represented by: H. Wollmann, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

1. Set aside the judgment under appeal;

2. give final judgment itself in the matter and annul Commission Decision 2008/719/EC of 30 April 2008 on State aid C 56/06 (ex NN 77/06) implemented by Austria for the privatisation of Bank Burgenland (OJ 2008 L 239, p. 32) and order the European Commission to pay the costs of the proceedings before the General Court and the Court of Justice;

3. in the alternative to the claim at point 2 above, refer the case back to the General Court and reserve costs.

Pleas in law and main arguments

The present appeal has been brought against the judgment of the General Court of 28 February 2012 in Case T-282/08 *Bank Burgenland*. The appellant challenges the General Court's decision in its entirety. According to the appellant, the judgment under appeal is vitiated by procedural errors as a result of which the appellant's interests were prejudiced. Moreover, the General Court infringed European Union law ('EU law') in several respects in its decision. The appellant submits the following grounds of appeal.

By its first ground of appeal, Grazer Wechselseitige Versicherung AG complains of an infringement of EU law. The General Court takes the view that the *Land* Burgenland ought not to have taken account in the privatisation process of the *Ausfallhaftung* (deficiency liability) of the *Land* Burgenland for Bank Burgenland's existing liabilities. Those considerations are wrong in law. The General Court misapplied the standard of a private-sector investor. The General Court fails to recognise that the deficiency liability of the *Land* Burgenland is an obligation assumed by the *Land* in its capacity as owner of the bank. In accordance with the case-law of the Court of Justice and the General Court's practice in other cases, such as *Ryanair*, [1] a liability assumed by a Member State in connection with an economic activity must be taken into account in the application of the private investor test. Furthermore the General Court's interpretation is incompatible with the practical effect of Community State aid rules. The principle postulated by the General Court that EU Member States may not ensure in relation to the privatisation of banks that the purchaser releases the Member State from existing State guarantees is likely to create significant obstacles to the task of overcoming the current financial and public debt crisis in Europe.

By its second ground of appeal, the appellant complains that the judgment under appeal is vitiated by a procedural error in so far as the General Court did not produce its own considerations in respect of an essential plea in law but made a blanket reference to the Commission's assertions. The Commission's assessment that the (alleged) defects in the conditions of the *Land*'s tender procedure had no impact on the size of the offers made is erroneous. By adopting that erroneous legal assessment without giving it any consideration the General Court, moreover, itself infringed EU law. The General Court disregards the fact that defective tendering conditions could lead to bidders making higher offers than in a tender procedure free of conditions. In the privatisation of Bank Burgenland, the unsuccessful consortium apparently offered an excessively high purchase price in order to compensate for the qualitative shortcomings of its own offer (the risk that, on a sale to the consortium, the deficiency liability would be invoked against the *Land*). If the General Court regards the qualitative criterion 'release from deficiency liability' as being unlawful under State aid rules, it should not have been able at the same time to accept that the consortium's offer gave a good proxy of Bank Burgenland's — aid-free — market price.

By its third ground of appeal, the appellant claims infringement of its right to be heard. The General Court failed to acknowledge an essential plea in law. It is undisputed as between the parties to the proceedings that, prior to completion of the privatisation, Bank Burgenland would have issued additional bonds in the amount of EUR 320 million on a sale to the consortium also. Those bonds would have had the benefit of the *Land*'s deficiency liability. In that regard, the appellant explicitly stated in its application of 17 July 2008 that the consortium benefited from that measure to a considerably greater extent than the appellant. The Commission failed to take that into account in comparing the two offers. In the judgment under appeal, the General Court fails to address the plea in law concerned. Thus, the General Court failed to deal exhaustively with the appellant's pleas in law and deprived the Community judicature of the possibility of exercising the power of review conferred upon it.

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[1] Case T-196/04 *Ryanair* v *Commission* [2008] ECR II-3643.

GENERAL COURT

Judgment of the General Court of 4 May 2012 — In 't Veld v Council

(Case T-529/09) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Opinion of the Council's Legal Service on a recommendation from the Commission to authorise the opening of negotiations for an international agreement — Partial refusal to grant access — Exception relating to the protection of the public interest in the field of international relations — Exception relating to the protection of legal advice — Specific and foreseeable threat to the interest in question — Overriding public interest)

(2012/C 184/14)

Language of the case: English

Parties

Applicant: Sophie in 't Veld (Brussels (Belgium)) (represented by: O. Brouwer and J. Blockx, lawyers)

Defendant: Council of the European Union (represented by: initially by M. Bauer, C. Fekete and O. Petersen, and subsequently by M. Bauer and C. Fekete, acting as Agents)

Intervener in support of the defendant: European Commission, (represented by: C. O'Reilly and P. Costa de Oliveira, acting as Agents)

Re:

Application for annulment of the Council's decision of 29 October 2009 refusing full access to document 11897/09 of 9 July 2009 containing an opinion of the Council's Legal Service entitled 'Recommendation from the Commission to the Council to authorise the opening of negotiations between the European Union and the United States of America for an international agreement to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing — Legal basis'.

Operative part of the judgment

The Court:

1. *Annuls the Council's decision of 29 October 2009 insofar as it refuses access to the undisclosed parts of document 11897/09 other than those which concern the specific content of the envisaged agreement or the negotiating directives;*

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

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

[1] OJ C 80, 27.3.2010.

Judgment of the General Court of 8 May 2012 — Dow Chemical v Council

(Case T-158/10) [1]

(Dumping — Imports of ethanolamines originating in the United States — Definitive anti-dumping duty — Expiry of anti-dumping measures — Review — Likelihood of a continuation or recurrence of dumping — Article 11(2) of Regulation (EC) No 1225/2009)

(2012/C 184/15)

Language of the case: English

Parties

Applicant: The Dow Chemical Company (Midland, Michigan, United States) (represented: initially by J.-F. Bellis, R. Luff and V. Hahn, and subsequently by J.-F. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union (represented by: J.-P. Hix, R. Szostak and B. Driessen, Agents, and by G. Berrisch, lawyer, and N. Chesaites, barrister)

Intervening party in support of the defendant: European Commission, (represented: initially by H. van Vliet and M. França, and subsequently by M. França and A. Stobiecka-Kuik, Agents)

Re:

Application for partial annulment of Council Implementing Regulation (EU) No 54/2010 of 19 January 2010 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America (OJ 2010 L 17, p. 1)

Operative part of the judgment

The Court:

1. *Annuls Council Implementing Regulation (EU) No 54/2010 of 19 January 2010 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America in so far as it concerns The Dow Chemical Company;*

2. *Orders the Council of the European Union to bear its own costs and to pay those of The Dow Chemical Company;*

3. *Orders the European Commission to bear its own costs.*

[1] OJ C 161, 19.6.2010.

Judgment of the General Court of 8 May 2012 — Tsakiris-Mallas v OHIM — Seven (7 Seven Fashion Shoes)

(Case T-244/10) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark 7 Seven Fashion Shoes — Earlier national figurative marks Seven and 7seven — Partial refusal to register — Relative grounds for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 184/16)

Language of the case: English

Parties

Applicant: Tsakiris-Mallas AE (Athens, Greece) (represented by: N. Simantiras, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Seven SpA (Leinì, Italy) (represented by D. Sindico, lawyer)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 22 March 2012 (R 1045/2009-2) relating to opposition proceedings between Seven SpA and Tsakiris-Mallas AE.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Tsakiris-Mallas AE to pay the costs.*

[1] OJ C 221, 14.8.2010.

Judgment of the General Court (Fourth Chamber) of 8 May 2012 — Yoshida Metal Industry v OHIM — Pi-Design and Others (Representation of a triangular surface with black dots)

(Case T-331/10) [1]

(Community trade mark — Invalidity proceedings — Figurative Community trade mark representing a surface with black dots — Shape of goods which is necessary to obtain a technical result — Article 7(1)(e)(ii) of Regulation (EC) No 207/2009)

(2012/C 184/17)

Language of the case: English

Parties

Applicant: Yoshida Metal Industry Co. Ltd (Tsubame-shi, Japan) (represented by: S. Verea, K. Muraro and M. Balestriero, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Pi-Design AG (Triengen, Switzerland), Bodum France (Neuilly-sur-Seine, France) and Bodum Logistics A/S (Billund, Denmark) (represented by H. Pernez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 May 2010 (Case R 1235/2008-1), relating to invalidity proceedings between Pi-Design AG, Bodum France and Bodum Logistics A/S, on the one hand, and Yoshida Metal Industry Co. Ltd, on the other hand

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 May 2010 (Case R 1235/2008-1);*

2. *Orders OHIM to bear its own costs and to pay the costs of Yoshida Metal Industry Co. Ltd;*

3. *Orders Pi-Design AG, Bodum France and Bodum Logistics A/S to bear their own respective costs.*

[1] OJ C 274, 9.10.2010.

Judgment of the General Court of 8 May 2012 — Panzeri v OHIM — Royal Trophy (Royal Veste e premia lo sport)

(Case T-348/10) [1]

(Community trade mark — Opposition proceedings — Application for figurative Community mark Royal Veste e premia lo sport — Earlier Community and international word marks veste lo sport — Earlier unregistered figurative mark panzeri veste lo sport — Relative grounds for refusal — Article 8(1)(b) and (4) of Regulation (EC) No 207/2009)

(2012/C 184/18)

Language of the case: Italian

Parties

Applicant: Luigi Panzeri (Monguzzo, Italy) (represented by: C. Galli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Royal Trophy Srl (Cava de Tirreni, Italy)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 May 2010 (Case R 988/2009-1), relating to opposition proceedings between Mr Luigi Panzeri and Royal Trophy Srl.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of Board of Appeal of the Office for the Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM) of 20 May 2010 (Case R 988/2009-1);*

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

[1] OJ C 288, 23.10.2010.

Judgment of the General Court (Fourth Chamber) of 8 May 2012 — Yoshida Metal Industry v OHIM — Pi-Design and Others (Representation of a surface with black dots)

(Case T-416/10) [1]

(Community trade mark — Invalidity proceedings — Figurative Community trade mark representing a surface with black dots — Shape of goods which is necessary to obtain a technical result — Article 7(1)(e)(ii) of Regulation (EC) No 207/2009)

(2012/C 184/19)

Language of the case: English

Parties

Applicant: Yoshida Metal Industry Co. Ltd (Tsubame-shi, Japan) (represented by: S. Verea, K. Muraro and M. Balestriero, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Pi-Design AG (Triengen, Switzerland), Bodum France (Neuilly-sur-Seine, France) and Bodum Logistics A/S (Billund, Denmark) (represented by H. Pernez, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 20 May 2010 (Case R 1237/2008-1), relating to invalidity proceedings between Pi-Design AG, Bodum France and Bodum Logistics A/S, on the one hand, and Yoshida Metal Industry Co. Ltd, on the other hand

Operative part of the judgment

The Court (Fourth Chamber):

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 20 May 2010 (Case R 1237/2008-1);*

2. *Orders OHIM to bear its own costs and to pay the costs of Yoshida Metal Industry Co. Ltd;*

3. *Orders Pi-Design AG, Bodum France and Bodum Logistics A/S to bear their own respective costs.*

[1] OJ C 328, 4.12.2010.

Judgment of the General Court of 8 May 2012 — Mizuno v OHIM — Golfino (G)

(Case T-101/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark G — Earlier Community figurative mark G+ — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 184/20)

Language of the case: German

Parties

Applicant: Mizuno KK (Osaka, Japan) (represented by: T. Raab and H.R. Lauf, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Golfino AG (Glinde, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 December 2010 (Case R 821/2010-1), relating to opposition proceedings between Golfino AG and Mizuno KK

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mizuno KK to pay the costs.*

([1]) OJ C 120, 16.4.2011.

Judgment of the General Court of 10 May 2012 — Amador López v OHIM (AUTOCOACHING)

(Case T-325/11) ([1])

(Community trade mark — Application for Community word mark AUTOCOACHING — Absolute grounds for refusal — Descriptive character — Article 8(1)(b) and (4) of Regulation (EC) No 207/2009)

(2012/C 184/21)

Language of the case: Spanish

Parties

Applicant: Pedro Germán Amador López (Barcelona, Spain) (represented by: A. Falcón Morales, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 23 March 2011 (Case R 1665/2010-2) concerning an application for registration of the word mark AUTOCOACHING as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pedro Germán Amador López to pay the costs.*

([1]) OJ C 252, 27.8.2011.

Order of the General Court of 25 April 2012 — Movimondo Onlus v Commission

(Case T-52/07) ([1])

(Development cooperation — ECHO — EuropeAid — Exclusion of contracts and grants funded by the Community budget and by the EFD — Liquidation and discontinuance of the activity of the humanitarian organisation — No need to adjudicate)

(2012/C 184/22)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of Commission Decision C(2006) 5802 final of 1 December 2006 imposing an administrative penalty on the non-governmental organisation (NGO) Movimondo Onlus — Organizzazione non governativa di cooperazione e solidarietà internazionale.

Operative part of the order

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

2. *Movimondo Onlus — Organizzazione non governativa di cooperazione e solidarietà internazionale and the European Commission shall each bear their own costs.*

(1) OJ C 82, 14.4.2007.

Order of the General Court of 4 May 2012 — UPS Europe and United Parcel Service Deutschland v Commission

(Case T-344/10) (1)

(State aid — Absence of a decision to close the procedure provided for by Article 88(2) EC — Action for failure to act — Locus standi — Admissibility)

(2012/C 184/23)

Language of the case: English

Parties

Applicants: UPS Europe NV/SA (Brussels, Belgium); and United Parcel Service Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: T. Ottervanger and E. Henny, lawyers)

Defendant: European Commission (represented by: L. Flynn and D. Grespan, acting as Agents)

Intervener in support of the defendant: Deutsche Post AG (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

Re:

Action for failure to act, seeking a declaration that the Commission unlawfully failed to take a decision, within a reasonable period, in the procedure provided for in Article 88(2) EC, initiated on 12 September 2007, concerning the State aid granted by the German authorities to Deutsche Post AG (aid C 36/07 (ex NN 25/07)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *UPS Europe NV/SA and United Parcel Service Deutschland Inc. & Co. OHG shall bear their own costs and pay those incurred by the European Commission.*

3. *Deutsche Post AG shall bear its own costs*

(1) OJ C 288, 23.10.2010.

Order of the President of the General Court of 8 May 2012 — Investigación y Desarrollo en Soluciones y Servicios IT v Commission

(Case T-134/12 R)

(Application for interim measures — Financial assistance — Research and development — Recovery of advance payments made — Application for suspension of operation — Disregard of formal requirements — Inadmissibility)

(2012/C 184/24)

Language of the case: Spanish

Parties

Applicant: Investigación y Desarrollo en Soluciones y Servicios IT, SA (Alicante, Spain) (represented by: M. Jiménez Perona, lawyer)

Defendant: European Commission

Re:

Application for suspension of operation of the Commission's measure, notified by letter of 13 January 2012, revoking several subsidies granted to the applicant.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 2 April 2012 — Hellenic Republic v Commission

(Case T-150/12)

(2012/C 184/25)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Chalkias, X. Basakou and A. Vasilopoulou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Annul the decision of the Commission of 25 January 2012 No C(2011) 9335 final 'on aid granted by Greece to cereal producing farmers and cereal collecting cooperatives (No SA 27354 (C 36/2010) (ex NN 3/2010, ex CP 11/2009))' and

— order the Commission to pay the costs.

Pleas in law and main arguments

By this action the Hellenic Republic seeks the annulment of the decision of the Commission of 25 January 2012 'on aid granted by Greece to cereal producing farmers and cereal collecting cooperatives (Number SA 27354 (C 36/2010) (ex NN 3/2010, ex CP 11/2009)]', communicated under Number C(2011) 9335 final.

As the first ground for annulment, the applicant maintains that the contested decision is unclear, because it does not clearly reveal (i) in what respect the aid is unlawful, (ii) how the level of the aid is defined and (iii) who are the beneficiaries for whom recovery should be made. Further, the applicant maintains that the publication of the Commission's investigation which was undertaken is unclear, with the result that the principle of legal certainty is infringed and the rights of defence of concerned third parties are harmed, contrary to Article 108(2) TFEU, read together with Article 6(1) of Council Regulation 659/1999 of 22 March 1999. ([1])

As the second ground for annulment, the applicant claims that there has been an erroneous interpretation and application of Article 107(1) TFEU, and an erroneous assessment of the facts, because the measures taken — in both forms, the establishment of a guarantee and the interest rate subsidy — do not fulfil the criteria for the definition of unlawful State aid.

As the third ground for annulment, the applicant maintains that the contested decision is vitiated by an error in the assessment of the facts and contravenes an essential procedural requirement, because the Commission, by means of an erroneous assessment of the facts and with a defective and/or insufficient statement of reasons, came to the conclusion that the measures of interest rate subsidy and provision of a guarantee by the government for the funding to the Association of Agricultural Co-operatives constitute unlawful State aid, since they constitute a selective economic advantage for direct and indirect beneficiaries and threaten to distort competition and to affect trade between Member States.

As the fourth ground for annulment, the applicant maintains that the Commission made an erroneous interpretation and application of Article 107(3)(b) TFEU, and misused the discretion which it has in the field of State aid, since in any event the 2009 payment should have been regarded as consistent with the common market because of the manifestly severe economic disruption of the entire Greek economy and because the validity of a provision of European Union primary law cannot be dependent on the validity of a communication by the Commission, such as the Temporary Community framework on support (hereafter TCF). Further, the Commission rejected with an inadequate statement of reasons the applicant's argument on the fulfilment of the conditions of the TCF in the present case.

As the fifth ground for annulment, the applicant claims that the Commission made an erroneous interpretation and application of Article 107 TFEU, since without any justification it included within the financial amount to be recovered as unlawful State aid (a) part of the interest rate which in accordance with the funding arrangement and Ministerial decision No 56700/B3033/08.12.2008 represents a contribution (contribution of 0.12% of Law 128/75) and (b) the provision in Ministerial Decision 2/21304/0025/26.10.2010 of the guarantee premium at 2 % from public funds, which do not constitute State aid and should be excluded from the final amount to be recovered.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty

Action brought on 5 April 2012 — Microsoft v OHIM — Sky IP (SKYDRIVE)

(Case T-153/12)

(2012/C 184/26)

Language in which the application was lodged: English

Parties

Applicant: Microsoft Corp. (Redmond, US) (represented by: A. Carboni and J. Colbourn, Solicitors)

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

Other party to the proceedings before the Board of Appeal: Sky IP International Ltd (Isleworth, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 January 2012 in case R 2293/2010-1, and remit the application to OHIM to allow it to proceed; and

— Order OHIM and any intervening party in this Appeal to bear their own costs and pay the applicant's costs of these proceedings and those of the appeal before the First Board of Appeal in case R 2293/2010-1 and of Opposition B 1 371 501 before the Opposition Division.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SKYDRIVE', for goods and services in classes 9 and 35 — Community trade mark application No 6452411

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 3203411 of the word mark 'SKY', for amongst others goods and services in classes 9, 35, 38 and 42

Decision of the Opposition Division: Upheld 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's assessment of the likelihood of confusion was flawed. Further or in the alternative, the Board failed to carry out a proper global assessment of the likelihood of confusion.

Action brought on 5 April 2012 — IFP Énergies nouvelles v Commission

(Case T-157/12)

(2012/C 184/27)

Language of the case: French

Parties

Applicant: IFP Energies nouvelles (Rueil-Malmaison, France) (represented by: É. Morgan de Rivery and A. Noël-Baron, lawyers)

Defendant: European Commission

Form of order sought

— annul Commission Decision C(2011) 4483 final of 29 June 2011 relating to State aid No NN C 35/2008 (ex NN 11/2008) granted by France to the public body, the Institut Français du Pétrole (French Petroleum Institute; 'IFP'), in its entirety.

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging error in law, in that the Commission exceeded the limits on its powers to interpret national law under the legislation governing State aid.

2. Second plea in law, alleging failure by the Commission to establish the existence of a real economic advantage conferred on the applicant and its private-law subsidiaries.

3. Third plea in law, alleging infringement of Article 107 TFEU, in that the reference in the contested decision to the 2008 Commission Notice on guarantees [1] is not in itself sufficient to establish the existence of an economic advantage.

4. Fourth plea in law, alleging manifest errors of assessment in the determination of the alleged advantage and the intensity of the presumed State aid.

5. Fifth plea in law, alleging infringement of the principle of proportionality, first, in making the creation of an industrial and commercial public body (EPIC) subject to an obligation of prior notification and, second, in imposing overly restrictive conditions.

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[1] Commission Notice on the application of Articles [107 TFEU] and [108 TFEU] of the EC Treaty to State aid in the form of guarantees (OJ 2008 C 155, p. 10).

Action brought on 5 April 2012 — European Dynamics Belgium and Others v European Medicines Agency

(Case T-158/12)

(2012/C 184/28)

Language of the case: Greek

Parties

Applicants: European Dynamics Belgium SA (Brussels, Belgium) European Dynamics Luxembourg SA (Ettelbrück, Luxembourg), Evropaiki Dinamiki — Proigmena Sistimata Tilepikinonion Pliroforikis kai Tilematikis AE (Athens, Greece) and European Dynamics UK Ltd (London, United Kingdom) (represented by: V Christianos, lawyer)

Defendant: European Medicines Agency

Form of order sought

The applicants claim that the General Court should:

— annul the European Medicines Agency ('EMA') decision EMA/67882/2012 of 31 January 2012, whereby the EMA placed the applicants' tender in second place in the open tendering procedure EMA/2011/17/ICT, which related to its Lot 1;·

— order the EMA to pay compensation to the applicants for the loss of opportunity which the first priority framework contract would have brought, which they estimate at EUR 2 139 471,70, with interest from the date of delivery of the judgment and

— Order the EMA to pay the entirety of the applicants' costs.

Pleas in law and main arguments

By this action, the applicants seek the annulment of the EMA decision of 31 January 2012, whereby the EMA placed the applicants' tender in second place in the open tendering procedure EMA/2011/17/ICT, which related to its Lot 1, and the payment of compensation to the applicants for the loss of opportunity which first place in the open tendering procedure EMA/2011/17/ICT would have brought.

The applicants claim that the contested decision should be annulled, in accordance with Article 263 TFEU, because of contravention of the rules of European Union law and, in particular, on the following three grounds:

1. First, the EMA, contrary to the Financial regulation, its implementing regulation and the technical specifications dossier, added at the stage of presentation the condition that the tenderers' external collaborators be present, in order that they could be assessed, which was not referred to in the initial competition contract documents and, consequently, was a new award criterion.

2. Second, the EMA, contrary to the implementing regulation, assessed and attributed scores to the experience of the tenderers, which had already been examined as a qualitative selection criterion, at the stage of the award procedure.

3. Third, the EMA was in breach of the principle of transparency:

   — because one of the award criteria in the technical specifications dossier was formulated in such a way as to exclude the possibility of its objective assessment;

   — because the technical specifications dossier did not contain the algorithm on the basis of which there would result the applicants' exact score (to the second decimal point).

Action brought on 10 April 2012 — Adler Modemärkte v OHIM — Blufin (MARINE BLEU)

(Case T-160/12)

(2012/C 184/29)

Language in which the application was lodged: German

Parties

Applicant: Adler Modemärkte AG (Haibach, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal: Blufin SpA (Carpi, Italy)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 February 2012 in Case R 1955/2010-2;

— order the defendant to pay the costs, including the costs of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'MARINE BLEU' for goods in Classes 18, 24 and 25 — application No 6 505 952

Proprietor of the mark or sign cited in the opposition proceedings: Blufin

Mark or sign cited in opposition: the Italian and Community trade mark and the Italian and international trade mark registration 'BLUMARINE' for goods in Classes 3, 9, 14, 18, 19, 23, 24, 25 and 27

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was upheld in part, the application was rejected in part and the case was referred back to the Opposition Division in part

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009

Action brought on 11 April 2012 — European Dynamics Luxembourg and Evropaiki Dinamiki v Commission

(Case T-165/12)

(2012/C 184/30)

Language of the case: Greek

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg) and Evropaiki Dinamiki — Proigmena Sistimata Tilepikinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: V Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the European Commission decision CMS/cms D(2012)/00008 of 8 February 2012, which was communicated to the applicants on 9 February 2012, whereby the European Commission rejected the applicants' tender in the closed tendering procedure EuropeAid/131431/C/SER/AL, and

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

Pleas in law and main arguments

By this action, the applicants seek the annulment of the European Commission decision CMS/cms D(2012)/00008 of 8 February 2012, which was communicated to the applicants on 9 February 2012, whereby the European Commission rejected the applicants' tender in the closed tendering procedure EuropeAid/131431/C/SER/AL.

The applicants claim that the contested decision should be annulled, in accordance with Article 263 TFEU, because of contravention of the rules of European Union law and, in particular, on the following three grounds:

1. First, because of the infringement by the Commission of the principle of transparency, since the contested decision, even after the Commission's letter of 21 February 2012, did not allow the tenderers to have access to the record of the Commission's assessment.

2. Second, because of the infringement by the Commission of the duty to state reasons:

   — because, in respect of the characteristics and advantages of the successful tenderer, even after the Commission's letter of 21 February 2012, both the analytical score of the successful tenderer's technical bid and the justification for that score were completely lacking in the contested decision.

   — Because in respect of the technical bid of the applicants themselves, the contested decision, even after the Commission's letter of 21 February 2012, contained a completely inadequate statement of reasons for its score.

Appeal brought on 4 April 2012 by the Council of the European Union against the judgment of the Civil Service Tribunal of 8 February 2012 in Case F-23/11, AY v Council

(Case T-167/12 P)

(2012/C 184/31)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by M. Bauer and A.-F. Jensen, acting as Agents)

Other party to the proceedings: AY (Bousval, Belgium)

Form of order sought by the appellant

— Set aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 8 February 2012 in Case F-23/11 *AY* v *Council*;

— Refer the action back to the Civil Service Tribunal;

— Order the defendant to pay all the costs at first instance and at appeal.

Pleas in law and main arguments

In support of the appeal, the appellant relies on two pleas in law.

1. First plea in law, alleging an error of law in the reasoning given by the CST when examining the plea in law raised at first instance alleging a disregard of Articles 24a and 45(1) of the Staff Regulations of Officials of the European Union in that the Council failed, in the comparative examination of the merits and, more particularly, vocational training, to take account of the success of the person concerned in the examination of the training programme provided for in the certification procedure of officials in function group AST to move to function group AD (paragraphs 23 to 32 of the judgment under appeal). The Council argues that the finding in paragraph 28 of the judgment that the certification of officials in function group AST constitutes, by definition, vocational training is incorrect in law or, at the very least, inexact.

2. Second plea in law, alleging a distortion of the facts and evidence (paragraphs 33 to 37 of the judgment under appeal), since, on the basis of the case-file, the CST had no ground to find, in paragraph 35 of the judgment under appeal that 'the Appointing Authority took no account of the certification of officials in the comparative examination of their merits before drawing up the list of officials in grade AST 8 promoted to grade AST 9 in the 2010 promotion procedure'.

Action brought on 12 April 2012 — Peri v OHIM (Shape of a turnbuckle)

(Case T-171/12)

(2012/C 184/32)

Language of the case: German

Parties

Applicant: Peri GmbH (Weißenhorn, Germany) (represented by J. Dönch, lawyer)

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

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 1209/2011-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Three-dimensional mark in the shape of a turnbuckle, for goods in Classes 6 and 19 — application No 9 462 078

Decision of the Examiner: Registration refused

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (e)(i) and (ii) of Regulation No 207/2009

Action brought on 17 April 2012 — Syrian Lebanese Commercial Bank v Council

(Case T-174/12)

(2012/C 184/33)

Language of the case: French

Parties

Applicant: Syrian Lebanese Commercial Bank S.A. L. (Beirut, Lebanon) (represented by: P. Vanderveeren, L. Defalque and T. Bontinck, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 1 of Council Implementing Regulation No 55/2012 of 23 January 2012 and point 27 of the annex to that regulation in so far as the applicant has been added to Annex II to Council Regulation 36/2012 of 18 January 2012;

— annul Article 1 of Implementing Decision 2012/37/CFSP and point 27 of the annex to that decision in so far as the applicant has been added to Annex II to Decision 2011/273;

— annul, in so far as necessary; the Council's decision (in the form of a letter) of 24 January 2012;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. By its first plea in law, the applicant alleges a manifest error of assessment of its involvement in the financing of the Syrian Regime, since the Council failed to prove the applicant's involvement in the financing of that regime, either prior to or since adopting the contested measures.

2. By its second plea in law it alleges an infringement of the rights of the defence, of the right to a fair hearing and to effective judicial protection as a result of the failure to organise a hearing when adopting the contested measures, and by the Council's implicit refusal to furnish evidence justifying the nature and severity of the sanction.

3. The third plea in law alleges a lack of sufficient and precise reasoning, in that the Council merely provided vague and general considerations without stating the specific and concrete reasons why it considered that the applicant needed to be made subject to restrictive measures.

4. By its fourth plea in law, the applicant claims that there were insufficiencies surrounding the adoption of the contested measures, in so far as the Council failed to set out therein the fundamental rights and principles which European Union law grants to the addresses of those measures, and in so far as those measures were adopted on the basis of Article 215 TFEU, which the applicant regards as devoid of any democratic guarantees.

Action brought on 20 April 2012 — Wirtgen v OHIM (Shape of a chisel holder)

(Case T-179/12)

(2012/C 184/34)

Language of the case: German

Parties

Applicant: Wirtgen GmbH (Windhagen, Germany) (represented by S. Jackermeier, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 February 2012 in Case R 1923/2011-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the three-dimensional mark in the form of a chisel holder for goods in Class 7 — application No 9 749 631

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law: Infringement of Article 37(3), the second sentence of Article 75, Article 63(2), the first part of Article 76(1) and Article 77(1) of Regulation No 207/2009 and infringement of Article 7(1)(b) of Regulation No 207/2009

Order of the General Court of 27 April 2012 — Commission v Smadja

(Case T-513/08 P) ([1])

(2012/C 184/35)

Language of the case: French

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

([1]) OJ C 44, 21.2.2009.

Order of the General Court of 27 April 2012 — Spa Monopole v OHIM — Club de Golf Peralada (WINE SPA)

(Case T-183/09) ([1])

(2012/C 184/36)

Language of the case: Spanish

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

([1]) OJ C 153, 4.7.2009.

Order of the General Court of 20 April 2012 — Entegris v OHIM — Optimize Technologies (OPTIMIZE TECHNOLOGIES)

(Case T-163/10) ([1])

(2012/C 184/37)

Language of the case: English

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

([1]) OJ C 161, 19.6.2010.

Order of the General Court of 3 May 2012 — Consorzio del vino nobile di Montepulciano and Others v Commission

(Case T-318/10) ([1])

(2012/C 184/38)

Language of the case: Italian

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

([1]) OJ C 260, 25.9.2010.

Order of the General Court of 10 May 2012 — Portugal v Commission

(Case T-475/10) [1]

(2012/C 184/39)

Language of the case: Portuguese

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

[1] OJ C 328, 4.12.2010.

Order of the General Court of 2 May 2012 — Spain v Commission

(Case T-339/11) [1]

(2012/C 184/40)

Language of the case: Spanish

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

[1] OJ C 252, 27.8.2011.

Order of the General Court of 30 April 2012 — Igcar Chemicals v ECHA

(Case T-526/11) [1]

(2012/C 184/41)

Language of the case: Spanish

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

[1] OJ C 347, 26.11.2011.

Order of the General Court of 3 May 2012 — Nycomed v OHIM — Bayer Consumer Care (ALEVIAN DUO)

(Case T-561/11) [1]

(2012/C 184/42)

Language of the case: English

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

[1] OJ C 6, 7.1.2012.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 18 April 2012 — Buxton v Parliament

(Case F-50/11) ([1])

(Civil service — Officials — Award of merit points — Staff report — Part-time work — Equal treatment)

(2012/C 184/43)

Language of the case: French

Parties

Applicant: **Dawn Cheryl Buxton** (Luxembourg) (represented by: P. Nelissen Grade and G. Leblanc, lawyers)

Defendant: **European Parliament** (represented by: S. Alves and N.B. Rasmussen, agents)

Re:

Civil service — Application for annulment of the decision of the appointing authority to grant the applicant only one merit point for the 2009 reports procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Buxton to bear her own costs and to pay the costs of the European Parliament.*

([1]) OJ C 186, 25.6.2011, p. 36.

Order of the Civil Service Tribunal (Third Chamber) of 25 April 2012 — Oprea v Commission

(Case F-108/11) ([1])

(Civil service — Open competition — Non-admission to the competition — Pre-litigation procedure — Procedural irregularity — Manifest inadmissibility)

(2012/C 184/44)

Language of the case: French

Parties

Applicant: **Valentin Oprea** (Brussels, Belgium) (represented by: A. Fratini and F. Filpo, lawyers)

Defendant: **European Commission** (represented by: J. Currall and B. Eggers, acting as Agents)

Re:

Application for annulment of the decision of the selection board for open competition EPSO/AD/198/10 not to admit the applicant to that competition because of an alleged lack of professional experience

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Oprea is ordered to pay the costs in their entirety.*

([1]) OJ C 25, 28.1.2012, p. 69.

Action brought on 9 January 2012 — ZZ v Commission and EMA

(Case F-2/12)

(2012/C 184/45)

Language of the case: Bulgarian

Parties

Applicant: ZZ (represented by: M. Ekimdzhiev, K. Boncheva and G. Chernicherska, lawyers)

Defendants: European Commission and European Medicines Agency

Subject-matter and description of the proceedings

Application for (i) the annulment of the Commission's decisions concerning the drawing up and approval of the shortlist submitted to the EMA's Management Board in the context of the procedure for the selection and appointment of the Executive Director of that agency, (ii) the annulment of the appointment of another candidate to that post and (iii) compensation for the non-material damage allegedly sustained.

Form of order sought

— Annul the decision of the pre-selection panel adopting a shortlist of candidates for submission to the European Commission's Consultative Committee on Appointments, notified to the applicant by email of 14 March 2011;

— annul the prior decision of the European Commission's Consultative Committee on Appointments of 14 March 2011 calling the four candidates on the pre-selection panel's shortlist to an interview with that committee, notified to the applicant by email of 14 March 2011;

— annul the decision of the European Commission's Consultative Committee on Appointments of 14 March 2011 agreeing with the opinion of the pre-selection panel that the four candidates on the latter's shortlist had greater merits, notified to the applicant by email of 14 March 2011;

— annul the decision of the European Commission of 20 April 2011 adopting a shortlist of candidates;

— annul the decision of the European Commission of 6 October 2011 rejecting the administrative complaint submitted under Article 90 of the Staff Regulations of Officials of the European Union and setting out the grounds of the European Commission's decision of 20 April 2011 adopting a shortlist of candidates;

— annul the decision of the Management Board of the EMA of 6 October 2011 appointing the Executive Director of the EMA, in accordance with the procedure laid down in Article 91(4) of Staff Regulations of Officials of the European Union, that decision having been the subject of a complaint submitted to the appointing authority pursuant to Article 90 of those Staff Regulations;

— order appropriate compensation for the non-material damage sustained;

— order the Commission and the EMA to pay the costs.

Action brought on 11 January 2012 — ZZ v European Commission

(Case F-6/12)

(2012/C 184/46)

Language of the case: French

Parties

Applicant: ZZ (represented by: C. Dony, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission decision rejecting the applicant's complaint against the refusal to grant him an expatriation allowance.

Form of order sought

— Annul the appointing authority's decision of 11 October 2011 rejecting the applicant's complaint under Article 90(2) of the Staff Regulations against the decision of 24 May 2011 refusing to grant him an expatriation allowance.

— Order the European Commission to pay the costs.

Action brought on 23 February 2012 — ZZ v ECB

(Case F-26/12)

(2012/C 184/47)

Language of the case: English

Parties

Applicant: ZZ (represented by: S. Pappas, lawyer)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the ECB decision rejecting the applicant's requests to document access and the claim for damages.

Form of order sought

The applicant claims that the Tribunal should:

— annul the ECB decisions rejecting the requests to document access of the applicant, i.e. the decision dated 21 June 2011 by which the application of the applicant for access to documents has been rejected, the decision of the Director General dated 12 August 2011 and the decision of the President of the European Central Bank dated 12 December 2011;

— order the ECB to pay a compensation, evaluated ex aequo et bono at EUR 10 000, for the moral prejudice suffered;

— order the ECB to pay the costs.

Action brought on 24 February 2012 — ZZ v Commission

(Case F-27/12)

(2012/C 184/48)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: R. Ferlin, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the Commission's decision not to include the applicant in competition EPSO/COM/AD/02/10–AD7.

Form of order sought

— Annul Decision No R/718/11 of the European Commission of 21 November 2011;

— In the alternative, annul the competition in its entirety;

— Order the Commission to pay the sum of EUR 50 000 by way of compensation for the non-material damage caused to the applicant;

— Order the defendant to pay all the costs of the proceedings and all legal costs.

Action brought on 9 March 2012 — ZZ v ERCEA

(Case F-33/12)

(2012/C 184/49)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo)

Defendant: European Research Council Executive Agency (ERCEA)

Subject-matter and description of the proceedings

Partial annulment of the applicant's contract with the ERCEA in the part in which he is graded at AD 10.

Form of order sought

— Annul the part of the ERCEA's decision and of the decision to reject the applicant's complaint in which they classify the applicant at grade 10;

— Order the ERCEA to pay damages for the material harm sustained by the applicant, calculated on the basis of the salary difference between a CA3a and a CA3b, function group III, in respect of the whole period of his contract with the ERCEA, and for the non-material harm sustained by him, plus compensatory and default interest at the rate of 6.75% for the non-material and material harm sustained;

— Order the European Research Council Executive Agency (ERCEA) to pay the costs.

Action brought on 13 March 2012 — ZZ v Commission

(Case F-34/12)

(2012/C 184/50)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Salerno, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision not to admit the applicant to the assessment centre stage of the competition EPSO/AD/207/11.

Form of order sought

— Annul the implied decision of the selection board in open competition EPSO/AD/207/11 of 3 December 2011 rejecting the request for review made by the applicant on 3 August 2011, against the earlier decision of that selection board not to invite the applicant to the assessment centre stage, communicated to the latter by letter from ESPO dated 26 July 2011;

— order the Commission to pay the applicant EUR 10 000 as compensation for the non-material damage caused as a consequence of the contested decision;

— order the Commission to pay the costs.

Action brought on 15 March 2012 — ZZ v EIB

(Case F-36/12)

(2012/C 184/51)

Language of the case: French

Parties

Applicant: ZZ (represented by: N. Thieltgen, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

(i) Annulment of the implied decision rejecting the applicant's claim for compensation and (ii) compensation for the damage which the applicant claims to have suffered on account of the alleged administrative errors on the part of the defendant.

Form of order sought

— Order the EIB to pay compensation for physical, material and non-material damage caused to the applicant as a result of the unlawfulness of the administrative errors on the part of the EIB, together with default interest:

— for infringement by the EIB of its duty to have due regard for the welfare of officials and its duty of protection, EUR 114 100;

— for infringement of Article 42 of the Staff Regulations, EUR 10 000;

— order the EIB to pay the costs.

Action brought on 16 March 2012 — ZZ v EIB

(Case F-37/12)

(2012/C 184/52)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

First, an application for annulment of the letter by which the President of the EIB rejected, following the report by the 'Dignity at work' committee, the applicant's complaint alleging mobbing. Second, an application for annulment of the opinion of the abovementioned committee, in so far as it failed to find that the applicant was a victim of mobbing.

Form of order sought

— Annul the letter of 20 December 2011 in so far as the President of the EIB, in addition to not adopting any provision on the mobbing to which the applicant has been subjected for 20 years, claimed that he could threaten the applicant in order to force him to accept submissively all his acts of bullying and the acts of oppression to which he is subjected on a daily basis, starting with the abandonment of a third of the appeals brought before the Committee of Inquiry;

— Annul the report and the conclusions adopted on 26 October 2011 by the Committee of Inquiry, in far as they:

— provided an inadequate definition of mobbing and failed to address the applicant's complaint, so that the measures adopted by the EIB are wholly inadequate;

— dismissed the appeal, without referring to the applicable rules;

— failed to provide any evidence of the investigations purportedly carried out and failed to refer to either the facts complained of by the applicant or the grounds of justification provided by the EIB;

— Annul all related, consequent and prior measures, including in particular those used by the Committee for mobbing, which were requested to no avail on 21 December 2011 and refused on 6 January 2012;

— order the EIB to pay the costs.

Action brought on 20 March 2012 — ZZ v EASA

(Case F-40/12)

(2012/C 184/53)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. G. Schwend, lawyer)

Defendant: European Aviation Safety Agency

Subject-matter and description of the proceedings

Annulment of the decision to dismiss the applicant and claim for compensation for damage claimed to be suffered because of that dismissal and alleged harassment.

Form of order sought

— Annul the decision terminating the employment of 24 May 2011, with all the financial consequences arising therefrom;

— Order EASA to pay the sum of EUR 301 559,04 in compensation for material damage;

— Order EASA to pay the sum of EUR 50 000,00 in compensation for non-material damage;

— Order EASA to pay the amount of EUR 250.00 per day from 23 May 2011 until the date of service of final judgment as compensation for the non-material damage caused by the harassment;

— Order EASA to pay the costs.

Action brought on 26 March 2012 — ZZ v Commission

(Case F-42/12)

(2012/C 184/54)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis, É. Marchal and S. Orlandi, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the proposal to transfer pension rights acquired before entry into service with the Commission on the basis of the calculation taking into account the new GIP entering into force after the application for transfer by the applicant.

Form of order sought

— Annul the decision of 14 December 2011 rejecting the applicant's complaint and requiring the application of the GIP and the actuarial rates in force when she applied to transfer her pension rights;

— If necessary, annul the PMO proposal of 1 August 2011 applying the actuarial values resulting from the new GIP;

— Order the Commission to pay the costs.

Action brought on 2 April 2012 — ZZ and ZZ v Commission

(Case F-44/12)

(2012/C 184/55)

Language of the case: French

Parties

Applicants: ZZ and ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis, É. Marchal and S. Orlandi, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the proposals to transfer pension rights acquired before entry into service with the Commission on the basis of the calculation taking into account the new GIP entering into force after the applications for transfer by the applicants.

Form of order sought

— Annul the decisions rejecting the applicants' complaints and requiring the application of the GIP and the actuarial rates in force when they applied to transfer their pension rights;

— If necessary, annul the decisions concerning the calculation of the pension rights acquired before entry into service with the Commission to be credited;

— Order the Commission to pay the costs.

Action brought on 23 April 2012 — ZZ v Commission

(Case F-46/12)

(2012/C 184/56)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the selection board in competition EPSO/AST/111/10 not to include the applicant's name on the list of successful candidates of that competition.

Form of order sought

— Annul the decision of the selection board in competition EPSO/AST/111/10 not to include the applicant's name on the list of successful candidates of that competition;

— order the Commission to pay the costs.

Order of the Civil Service Tribunal (Third Chamber) of 20 April 2012 — Collado v Commission

(Case F-15/12)

(2012/C 184/57)

Language of the case: French

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

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