ISSN 1977-091X

Official Journal of the European Union

C 295

English edition

Volume 55

29 September 2012

Information and Notices

Notice No | Contents | Page

EN

Price:
EUR 3

(Continued overleaf)

EN

(Continued overleaf)

EN

(Continued overleaf)

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 295/01)

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

OJ C 287, 22.9.2012

Past publications

OJ C 273, 8.9.2012

OJ C 258, 25.8.2012

OJ C 250, 18.8.2012

OJ C 243, 11.8.2012

OJ C 235, 4.8.2012

OJ C 227, 28.7.2012

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 19 July 2012 — Council of the European Union v Zhejiang Xinan Chemical Industrial Group Co. Ltd, European Commission, Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace)

(Case C-337/09 P) [1]

(Appeal — Commercial policy — Dumping — Imports of glyphosate originating in China — Regulation (EC) No 384/96 — Article 2(7)(b) and (c) — Status of an undertaking operating under market economy conditions — Concept of 'significant State interference' within the meaning of the first indent of Article 2(7)(c) — State shareholder controlling de facto the general meeting of the producer's shareholders — Equating such control to 'significant interference' — Assessment of an export contract stamping mechanism — Limits of judicial review — Assessment of the evidence submitted)

(2012/C 295/02)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: J.-P. Hix, acting as Agent, and by G. Berrisch, Rechtsanwalt)

Other parties to the proceedings: Zhejiang Xinan Chemical Industrial Group Co. Ltd (represented initially by D. Horovitz, avocat, and subsequently by F. Graafsma, J. Cornelis and A. Woolich, advocaten, K. Adamantopoulos, dikigoros, and D. Moulis, Barrister), European Commission (represented by: T. Scharf, N. Khan and K. Talabér-Ritz, acting as Agents), Association des utilisateurs et distributeurs de l'agrochimie européenne (Audace) (represented by: J. Flynn QC)

Re:

Appeal against the judgment of 17 June 2009 of the Court of First Instance (Fourth Chamber) in Case T-498/04 *Zhejiang Xinan Chemical Industrial Group* v *Council* [2009] ECR II-1969, annulling, in so far as it concerns Zhejiang Xinan Chemical Industrial Group Co. Ltd., Article 1 of Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ 2004 L 303, p. 1) — Interpretation of Article 2(7)(c) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1) — Market economy treatment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Council of the European Union to pay the costs, including those relating to the proceedings for interim relief;*

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

---

[1] OJ C 282, 21.11.2009.

Judgment of the Court (Grand Chamber) of 19 July 2012 — European Parliament v Council of the European Union

(Case C-130/10) [1]

(Common foreign and security policy — Regulation (EC) No 881/2002 — Regulation (EU) No 1286/2009 — Restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Freezing of funds and economic resources — Choice of legal basis — Articles 75 TFEU and 215 TFEU — Entry into force of the Treaty of Lisbon — Transitional provisions — CFSP common positions and decisions — Joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and from the Commission)

(2012/C 295/03)

Language of the case: English

Parties

Applicant: European Parliament (represented initially by E. Perillo and K. Bradley, and subsequently by A. Auersperger Matić and U. Rösslein, acting as Agents)

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

Intervening parties in support of the Defendant: Czech Republic (represented by: M. Smolek, E. Ruffer and K. Najmanová, acting as Agents), French Republic (represented by: G. de Bergues and A. Adam, acting as Agents), Kingdom of Sweden (represented by: A. Falk and C. Meyer-Seitz, acting as Agents), European Commission (represented by: S. Boelaert and M. Konstantinidis, acting as Agents)

Re:

Annulment of decision — Action for annulment — Annulment of Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban (OJ 2009 L 346, p. 42) — Choice of legal basis

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Parliament to pay the costs;*

3. *Orders the Czech Republic, the French Republic, the Kingdom of Sweden and the European Commission to bear their own costs.*

([1]) OJ C 134, 22.5.2010.

Judgment of the Court (First Chamber) of 19 July 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X v Staatssecretaris van Financiën

(Case C-334/10) ([1])

(Sixth VAT Directive — Article 6(2), first subparagraph, (a) and (b), Article 11A(1)(c) and Article 17(2) — Part of a capital item forming part of the assets of a business — Temporary use for private purposes — Permanent alterations to that item — Payment of VAT in respect of the permanent alterations — Right to deduct)

(2012/C 295/04)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 6(2), first subparagraph, (a) and (b), Article 11A(1)(c) and Article 17(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Deduction of input tax — Taxable person who has made temporary use for private purposes of part of a capital item forming part of the assets of his business and who has, for those purposes, made permanent alterations to that part of the item — Entitlement to deduct the VAT paid in respect of the permanent alterations

Operative part of the judgment

Article 6(2), first subparagraph, (a) and (b), Article 11A(1)(c) and Article 17(2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that, first, a taxable person who makes temporary use for private purposes of part of a capital item forming part of the assets of his business is entitled, under those provisions, to deduct the input value added tax on the expenditure incurred in carrying out permanent alterations to that item even though those alterations were carried out with a view to that temporary use for private purposes and, secondly, that right to deduct exists irrespective of whether the taxable person was charged VAT and deducted that VAT upon the acquisition of the capital item to which those alterations were made.

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Sozialgericht Würzburg — Germany) — Doris Reichel-Albert v Deutsche Rentenversicherung Nordbayern

(Case C-522/10) ([1])

(Social security for migrant workers — Regulation (EC) No 987/2009 — Article 44(2) — Examination of entitlement to old-age pension — Taking into account of child-raising periods completed in another Member State — Applicability — Article 21 TFEU — Free movement of citizens)

(2012/C 295/05)

Language of the case: German

Referring court

Sozialgericht Würzburg

Parties to the main proceedings

Applicant: Doris Reichel-Albert

Defendant: Deutsche Rentenversicherung Nordbayern

Re:

Reference for a preliminary ruling — Sozialgericht Würzburg — Interpretation of Article 44(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1) — Conditions for taking into account child-raising periods completed in another Member State for the purpose of examining entitlement to old-age pension — National legislation making the taking into account of such periods subject to the requirement that the person concerned, during the raising or immediately before the birth of the child, pursued employed or self-employed activity by way of compulsory contribution period, giving rise to the possibility that a child-raising period might not be taken into account either in the Member State of residence during the child-raising period or in the competent Member State

Operative part of the judgment

In a situation such as that at issue in the main proceedings, Article 21 TFEU must be interpreted as meaning that it requires the competent institution of a first Member State, for the purposes of granting an old-age pension, to take account of child-raising periods completed in a second Member State as though those periods had been completed on its national territory by a person who pursued employed or self-employed activity only in that first Member State and who, at the time of the birth of his of her child, had temporarily stopped working and had, solely on family-related grounds, established his or her place of residence in the territory of the second Member State.

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (Seventh Chamber) of 19 July 2012 — European Commission v Italian Republic

(Case C-565/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment — Articles 3, 4 and 10 — Collection systems — Secondary or equivalent treatment — Treatment plants — Representative samples)

(2012/C 295/06)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Italian Republic (represented by: G. Palmieri, Agent and M. Russo, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3, 4 and 10 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40)

Operative part of the judgment

The Court:

1. *Declares that by not adopting the measures necessary in order to ensure that:*

— *the agglomerations of Acri, Siderno, Bagnara Calabra, Bianco, Castrovillari, Crotone, Santa Maria del Cedro, Lamezia Terme, Mesoraca, Montebello Ionico, Motta San Giovanni, Reggio Calabria, Rende, Rossano, Scalea, Sellia Marina, Soverato, Strongoli (Calabria), Cervignano del Friuli (Friuli-Venezia Giulia), Frascati (Lazio), Porto Cesareo, Supersano, Taviano (Puglia), Misterbianco and others, Aci Catena, Adrano, Catania and others, Giarre-Mascali-Riposto and others, Caltagirone, Aci Castello, Acireale and others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Agrigento and its outskirts, Porto Empedocle, Sciacca, Cefalù, Carini and ASI Palermo, Palermo and bordering areas, Santa Flavia, Augusta, Priolo Gargallo, Carlentini, Scoglitti, Marsala, Messina 1, Messina and Messina 6 (Sicily), the population equivalent of which is more than 15 000, and which discharge into receiving waters not considered to be 'sensitive areas' within the meaning of Article 5 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, as amended by Regulation (EC) No 1137/2008 of the European Parliament and the Council of 22 October 2008, are equipped with collecting systems for urban waste water, in accordance with Article 3 of that directive;*

— *in the agglomerations of Lanciano-Castel Frentano (Abruzzo), Acri, Siderno, Bagnara Calabra, Castrovillari, Crotone, Montebello Ionico, Motta San Giovanni, Reggio Calabria, Rossano (Calabria), Battipaglia, Benevento, Capaccio, Capri, Ischia, Casamicciola Terme, Forio, Massa Lubrense, Napoli Est, Vico Equense (Campania), Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia), Albenga, Borghetto Santo Spirito, Finale Ligure, Imperia, Santa Margherita Ligure, Quinto, Rapallo, Recco, Riva Ligure (Liguria), Casamassima, Casarano, Porto Cesareo, San Vito dei Normanni, Supersano (Puglia), Misterbianco and others, Scordia-Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascali-Riposto and others, Caltagirone, Aci Castello, Acireale and others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and its outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù,*

Carini and ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Ragusa, Scicli, Scoglitti, Campobello di Mazara, Castelvetrano 1, Triscina Marinella, Marsala, Mazara del Vallo, Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina 1, Messina 6, Milazzo, Patti and Rometta (Sicily), the population equivalent of which is more than 15 000, and which discharge into receiving waters not considered to be 'sensitive areas' within the meaning of Article 5 of Directive 91/271, as amended by Regulation No 1137/2008, urban waste water entering collecting systems is subject to treatment in conformity with the provisions of Article 4(1) and (3) of that directive; and

— *the urban waste water treatment plants constructed in order to comply with the requirements of Article 4 to 7 of Directive 91/271, as amended by Regulation No 1137/2008, are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions and in order that the treatment plants are designed so as to take into account seasonal variations of the load in the agglomerations of Lanciano-Castel Frentano (Abruzzo), Acri, Siderno, Bagnara Calabra, Castrovillari, Crotone, Montebello Ionico, Motta San Giovanni, Reggio Calabria, Rossano (Calabria), Battipaglia, Benevento, Capaccio, Capri, Ischia, Casamicciola Terme, Forio, Massa Lubrense, Napoli Est, Vico Equense (Campania), Trieste-Muggia-San Dorligo (Friuli-Venezia Giulia), Albenga, Borghetto Santo Spirito, Finale Ligure, Imperia, Santa Margherita Ligure, Quinto, Rapallo, Recco, Riva Ligure (Liguria), Casamassima, Casarano, Porto Cesareo, San Vito dei Normanni, Supersano (Puglia), Misterbianco and others, Scordia-Militello Val di Catania, Palagonia, Aci Catena, Giarre-Mascali-Riposto and others, Caltagirone, Aci Castello, Acireale and others, Belpasso, Gravina di Catania, Tremestieri Etneo, San Giovanni La Punta, Macchitella, Niscemi, Riesi, Agrigento and its outskirts, Favara, Palma di Montechiaro, Menfi, Porto Empedocle, Ribera, Sciacca, Bagheria, Cefalù, Carini and ASI Palermo, Misilmeri, Monreale, Santa Flavia, Termini Imerese, Trabia, Augusta, Avola, Carlentini, Ragusa, Scicli, Scoglitti, Campobello di Mazara, Castelvetrano 1, Triscina Marinella, Marsala, Mazara del Vallo, Barcellona Pozzo di Gotto, Capo d'Orlando, Furnari, Giardini Naxos, Consortile Letojanni, Pace del Mela, Piraino, Roccalumera, Consortile Sant'Agata Militello, Consortile Torregrotta, Gioiosa Marea, Messina 1, Messina 6, Milazzo, Patti and Rometta (Sicily),*

the Italian Republic has failed to fulfil its obligations under Articles 3, 4(1) and (3) and 10 of Directive 91/271, as amended by Regulation No 1137/2008.

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

(1) OJ C 30, 29.1.2011.

Judgment of the Court (Grand Chamber) of 19 July 2012 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — (United Kingdom) — Littlewoods Retail Ltd and Others v Her Majesty's Commissioners for Revenue and Customs

(Case C-591/10) (1)

(Second and Sixth VAT Directives — Input tax — Refund of excess — Payment of interest — Procedures)

(2012/C 295/07)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Littlewoods Retail Ltd and Others

Defendant: Her Majesty's Commissioners for Revenue and Customs

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 8 and Annex A, point 13, of the Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition, Series I, Chapter 1967 p.16) — Interpretation of Article 11C(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Repayment of overpaid input tax — Interest rate applicable

Operative part of the judgment

European Union law must be interpreted as requiring that a taxable person who has overpaid value added tax which was collected by the Member State contrary to the requirements of European Union legislation on value added tax has a right to reimbursement of the tax collected in breach of European Union law and to the payment of interest on the amount of the latter. It is for national law to determine, in compliance with the principles of effectiveness and equivalence, whether the principal sum must bear 'simple interest', 'compound interest' or another type of interest.

(1) OJ C 89, 19.3.2011.

Judgment of the Court (Grand Chamber) of 19 July 2012 — Alliance One International Inc., Standard Commercial Tobacco Co. Inc v Trans-Continental Tobacco Leaf Corp. Ltd, European Commission and European Commission v Alliance One International Inc., Standard Commercial Tobacco Co. Inc., Trans-Continental Leaf Tobacco Corp. Ltd

(Joined Cases C-628/10 P and C-14/11 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Spanish market for the purchase and first processing of raw tobacco — Price-fixing and market-sharing — Infringement of Article 81 EC — Attributability of unlawful conduct of subsidiaries to their parent companies — Presumption of innocence — Rights of the defence — Obligation to state the reasons on which the decision is based — Equal treatment)

(2012/C 295/08)

Language of the cases: English

Parties

Appellants: Alliance One International Inc., Standard Commercial Tobacco Co. Inc. (represented by: M. Odriozola Alén and A. João Vide, abogados)

Other parties to the proceedings: Trans-Continental Leaf Tobacco Corp. Ltd, European Commission (represented by: F. Castillo de la Torre, E. Gippini Fournier and R. Sauer, acting as Agents)

and

Appellant: European Commission (represented by F. Castillo de la Torre, E. Gippini Fournier and R. Sauer, acting as Agents)

Other parties to the proceedings: Alliance One International Inc., Standard Commercial Tobacco Co. Inc., Trans-Continental Leaf Tobacco Corp. Ltd (represented by M. Odriozola Alén and A. João Vide, abogados)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 27 October 2010 in Case T-24/05 *Alliance One International and Others* v *Commission*, by which the General Court dismissed, as regards Alliance One International, Inc. and Standard Commercial Tobacco Co., Inc., an action for annulment of Commission Decision C(2004) 4030 final of 20 October 2004 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/C.38.238/B.2 — Raw tobacco — Spain) concerning a cartel relating to the fixing of prices paid to producers and of quantities bought from them on the Spanish raw tobacco market

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Alliance One International Inc. and Standard Commercial Tobacco Co. Inc. to bear their own costs and to pay those incurred by the European Commission in relation to the appeal in Case C-628/10 P;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by Alliance One International Inc., Standard Commercial Tobacco Co. Inc. and Trans-Continental Leaf Tobacco Corp. Ltd in relation to the appeal in Case C-14/11 P.*

([1]) OJ C 72, 5.3.2011.
OJ C 80, 12.3.2011.

Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Marianne Scheunemann v Finanzamt Bremerhaven

(Case C-31/11) ([1])

(Freedom of establishment — Free movement of capital — Direct taxation — Inheritance tax — Conditions for the calculation of the tax — Acquisition through inheritance of a shareholding, as sole shareholder, in a capital company established in a third country — National legislation excluding shareholdings in such companies from tax advantages)

(2012/C 295/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Marianne Scheunemann

Defendant: Finanzamt Bremerhaven

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Articles 56 EC and 58 EC — Acquisition by inheritance of a shareholding, as a sole shareholder, in a capital company established in a third country forming part of the private wealth of the deceased — Inheritance tax — National legislation providing for tax advantages for companies which have their registered office or principle place of business in the national territory

Operative part of the judgment

Legislation of a Member State, such as that at issue in the main proceedings which, for the purposes of calculating inheritance tax, excludes the application of certain tax advantages to an estate in the form of a shareholding in a capital company established in a third country, while conferring those advantages in the event of the inheritance of such a shareholding when the registered office of the company is in a Member State, primarily affects the exercise of the freedom of establishment for the purposes of Article 49 TFEU et seq., since that holding enables the shareholder to exert a definite influence over the decisions of that company and to determine its activities. Those Treaty provisions are not intended to apply to a situation concerning a shareholding held in a company which has its registered office in a third country.

([1]) OJ C 113, 9.4.2011.

Judgment of the Court (Fourth Chamber) of 19 July 2012 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — A Oy

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

(Sixth Directive — Exemptions — Article 15(6) — Exemption for the supply of aircraft used by airlines operating for reward chiefly on international routes — Supply of aircraft to an operator who makes them available to such an undertaking — Concept of 'operating for reward on international routes' — Charter flights)

(2012/C 295/10)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

A Oy

Re:

Reference for preliminary ruling — Korkein hallinto-oikeus — Interpretation of Article 15(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Exemption for certain transactions relating to aircraft used by airlines operating for reward chiefly on international routes — Whether transactions of companies operating chiefly international charter flights to satisfy the needs of businesses and private individuals — Delivery of aircraft to an operator which does not itself operate for reward chiefly on international routes, but which makes the aircraft available to such an operator.

Operative part of the judgment

1. *The wording 'operating for reward on international routes' within the meaning of Article 15(6) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December 1992 must be interpreted as encompassing also international charter flights to meet demand from undertakings and private persons.*

2. *Article 15(6) of Directive 77/388, as amended by Directive 92/111, must be interpreted as meaning that the exemption for which it provides also applies to the supply of an aircraft to an operator who is not itself an 'airline operating for reward chiefly on international routes' within the meaning of that provision but which acquires that aircraft for the purposes of exclusive use thereof by such an undertaking.*

3. *The circumstances referred to by the national court, namely the fact that the purchaser of the aircraft passes on the charge corresponding to its use to an individual who is its shareholder and who uses that aircraft essentially for his own business and/or private purposes, with the airline also having the opportunity to use it for other flights, are not such as to affect the answer to the second question.*

([1]) OJ C 89, 19.3.2011.

Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Frankfurt am Main V-Höchst v Deutsche Bank AG

(Case C-44/11) ([1])

(Directive 2006/112/EC — Article 56(1)(e) — Article 135(1)(f) and (g) — Exemption for transactions relating to the management of securities-based assets (portfolio management))

(2012/C 295/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Frankfurt am Main V-Höchst

Defendant: Deutsche Bank AG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 56(1)(e) and Article 135(1)(f) and (g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemption for transactions relating to the management of securities-based assets carried out for private clients

Operative part of the judgment

1. *A securities-based assets management service, such as that at issue in the main proceedings, namely where a taxable person for remuneration and on the basis of his own discretion takes decisions on the purchase and sale of securities and implements those decisions by buying and selling the securities, consists of two elements which are so closely linked that they form, objectively, a single economic supply.*

2. *Article 135(1)(f) or (g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that securities-based asset management, such as that at issue in the main proceedings, is not exempt from value added tax under that provision.*

3. *Article 56(1)(e) of Directive 2006/112 must be interpreted as covering not only the services referred to in Article 135(1)(a) to (g) of Directive 2006/112, but also securities-based assets management services.*

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Veronsaajien oikeudenvalvontayksikkö v A Oy

(Case C-48/11) ([1])

(Direct taxation — Freedom of establishment — Free movement of capital — EEA Agreement — Articles 31 and 40 — Directive 2009/133/EC — Scope — Exchange of shares between a company established in a Member State and a company established in a third State party to the EEA Agreement — Refusal of a tax advantage — Agreement on mutual administrative assistance in the field of taxation)

(2012/C 295/12)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Veronsaajien oikeudenvalvontayksikkö

Defendant: A Oy

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Articles 31 and 40 of the Agreement of 2 May 1992 on the European Economic Area (OJ 1992 L 1, p. 3) — Interpretation of Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ 2009 L 310, p. 34) — Scope of application of that directive — Exchange of shares between a company established in a Member State of the European Union and a company established in a third state that is a member of the EEA (Norway) — Whether those transactions are treated for tax purposes in the same way as an exchange of shares between domestic companies or between companies established in Member States

Operative part of the judgment

Article 31 of Agreement on the European Economic Area of 2 May 1992 precludes legislation of a Member State which treats an exchange of shares between a company established in that Member State and a company established in a third country that is a party to that agreement as a taxable disposal of shares whereas such an operation would be neutral for tax purposes if it concerned only domestic companies or companies established in other Member States, if there is, between that Member State and the third country, an agreement on mutual administrative assistance in the field of taxation which provides for an exchange of information between the national authorities which is as effective as that provided for in Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799, which is for the referring court to ascertain.

([1]) OJ C 103, 2.4.2011.

Judgment of the Court (Grand Chamber) of 19 July 2012 (reference for a preliminary ruling from the Hessisches Landessozialgericht, Darmstadt (Germany)) — Land Hessen v Florence Feyerbacher

(Case C-62/11) ([1])

(Protocol on the Statute of the European System of Central Banks and of the ECB — Article 36 — Protocol on the Privileges and Immunities of the European Communities — Articles 13, 15 and 23 — ECB Headquarters Agreement — Article 15 — Applicability to ECB staff of the provisions of German social welfare law providing for a parental allowance)

(2012/C 295/13)

Language of the case: German

Referring court

Hessisches Landessozialgericht, Darmstadt

Parties to the main proceedings

Appellant: Land Hessen

Respondent: Florence Feyerbacher

Re:

Reference for a preliminary ruling — Hessisches Landessozialgericht, Darmstadt — Interpretation of Article 15 of the Agreement of 18 September 1998 between the Government of the Federal Republic of Germany and the European Central Bank on the Headquarters of that institution, in conjunction with Article 36 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank — Right of a German official of the European Central Bank to receive a parental allowance provided for under German law — Classification of the Agreement on the Headquarters of the European Central Bank as part of European Union law or as an international treaty — Applicability of the provisions of German social law providing for the parental allowance to employees of the European Central Bank

Operative part of the judgment

Article 15 of the Agreement of 18 September 1998 between the German Government and the European Central Bank on the Headquarters of that institution, read in conjunction with Article 36 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, in the version annexed to the EC Treaty, does not preclude the Federal Republic of Germany from being able to grant an allowance such as that at issue in the main proceedings.

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Oberlandesgericht Köln — Germany) — ebookers.com Deutschland GmbH v Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

(Case C-112/11) ([1])

(Transport — Air transport — Common rules for the operation of air services in the European Union — Regulation (EC) No 1008/2008 — Obligation on the person selling air travel to ensure that the customer's acceptance of optional price supplements is on an opt-in basis — Concept of 'optional price supplements' — Price of flight cancellation insurance provided by an independent insurance company and forming part of the overall price)

(2012/C 295/14)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: ebookers.com Deutschland GmbH

Defendant: Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV

Re:

Reference for a preliminary ruling — Oberlandesgericht Köln — Interpretation of Article 23(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (Recast) (OJ 2008 L 293, p. 3) — Obligation on the seller of the air travel to ensure that the customer's acceptance of the optional price supplements is on an opt-in basis — Concept of 'optional price supplements' — Price of cancellation insurance provided by an independent insurance company, forming part of the overall price and charged to the passenger at the same time as the price of the flight

Operative part of the judgment

The concept of 'optional price supplements', referred to in the last sentence of Article 23(1) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, must be interpreted as meaning that it covers costs, connected with the air travel, arising from services, such as the flight cancellation insurance at issue in the main proceedings, supplied by a party other than the air carrier and charged to the customer by the person selling that travel, together with the air fare, as part of a total price.

([1]) OJ C 173, 11.6.2011.

Judgment of the Court (Fourth Chamber) of 19 July 2012 (reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division) — United Kingdom) — Neurim Pharmaceuticals (1991) Ltd v Comptroller-General of Patents

(Case C-130/11) ([1])

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining a supplementary protection certificate — Medicinal product having obtained a valid marketing authorisation — First authorisation — Product successively authorised as a veterinary medicinal product and a human medicinal product)

(2012/C 295/15)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Neurim Pharmaceuticals (1991) Ltd

Defendant: Comptroller-General of Patents

Re:

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) — Interpretation of Articles 3 and 13(1) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (codified version) (OJ 2009 L 152, p. 1) — Interpretation of Article 8(3) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67)) — Conditions for obtaining a supplementary protection certificate — Date of the first placement on the market to be taken into account for the grant of a certificate — Products comprising a common active ingredient having each received a marketing authorisation, the first for a veterinary medicinal product for a particular indication, the second for a medicinal product for human use for a different indication

Operative part of the judgment

1. *Articles 3 and 4 of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as meaning that, in a case such as that in the main proceedings, the mere existence of an earlier marketing authorisation obtained for a veterinary medicinal product does not preclude the grant of a supplementary protection certificate for a different application of the same product for which a marketing authorisation has been granted, provided that the application is within the limits of the protection conferred by the basic patent relied upon for the purposes of the application for the supplementary protection certificate.*

2. *Article 13(1) of Regulation (EC) No 469/2009 must be interpreted as meaning that it refers to the marketing authorisation of a product which comes within the limits of the protection conferred by the basic patent relied upon for the purposes of the application for the supplementary protection certificate.*

3. *The answers to the above questions would not be different if, in a situation such as that in the main proceedings where the same active ingredient is present in two medicinal products having obtained successive marketing authorisations, the second marketing authorisation required a full application in accordance with Article 8(3) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, or if the product covered by the first marketing authorisation of the corresponding medicinal product is within the scope of protection of a different patent which belongs to a different registered proprietor from the supplementary protection certificate applicant.*

(1) OJ C 179, 18.6.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 — European Commission v French Republic

(Case C-145/11) (1)

(Failure of a Member State to fulfil obligations — Directive 2001/82/EC — Veterinary medicinal products — Decentralised procedure for the grant of marketing authorisation for a veterinary medicinal product in a number of Member States — Generic medicinal products similar to the reference medicinal products already authorised — Refusal to approve request by a Member State — Composition and form of the medicinal product)

(2012/C 295/16)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Šimerdová, A. Marghelis and O. Beynet, Agents)

Defendant: French Republic (represented by: G. de Bergues, S. Menez and R. Loosli-Surrans, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 32 and 33 of Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ 2001 L 311, p. 1) — Decentralised procedure for the grant of marketing authorisation in more than one Member State — Generic medicinal products similar to the reference medicinal products already authorised — Member State's refusal to approve based on scientific grounds related to the composition of the medicinal product and the choice of pharmaceutical form — Principle of mutual recognition

Operative part of the judgment

The Court:

1. *Declares that, by refusing to approve two requests for marketing authorisation of the medicinal veterinary products CT-Line 15 % Premix and CT-Line 15 % Oral Powder in the context of the decentralised procedure provided for by Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, as amended by Directive 2004/28/EC of the European Parliament of the Council of 31 March 2004, the French Republic has failed to fulfil its obligations under Articles 32 and 33 of that directive;*

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

(1) OJ C 160, 28.5.2011.

Judgment of the Court (Grand Chamber) of 19 July 2012 (reference for a preliminary ruling from the Landesarbeitsgericht Berlin-Brandenburg — Germany) — Ahmed Mahamdia v People's Democratic Republic of Algeria

(Case C-154/11) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Jurisdiction over individual contracts of employment — Contract with an embassy of a third State — Immunity of the employing State — Concept of branch, agency or other establishment within the meaning of Article 18(2) — Compatibility with Article 21 of an agreement conferring jurisdiction on the courts of the third State)

(2012/C 295/17)

Language of the case: German

Referring court

Landesarbeitsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: Ahmed Mahamdia

Defendant: People's Democratic Republic of Algeria

Re:

Reference for a preliminary ruling — Landesarbeitsgericht Berlin-Brandenburg — Interpretation of Articles 18, 19 and 21 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 to hear a dispute concerning the validity of the termination of the employment contract of the applicant, a national of a Member State and of a non-member country, who had been employed as a driver in the Member State of which he is a national by the embassy of the non-member country of which he is also a national pursuant to an employment contract which provided that the courts of that latter State would have jurisdiction in the event of a dispute

Operative part of the judgment

1. *Article 18(2) 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 embassy of a third State situated in a Member State is an 'establishment' within the meaning of that provision, in a dispute concerning a contract of employment concluded by the embassy on behalf of the sending State, where the functions carried out by the employee do not fall within the exercise of public powers. It is for the national court seised to determine the precise nature of the functions carried out by the employee.*

2. *Article 21(2) of Regulation No 44/2001 must be interpreted as meaning that an agreement on jurisdiction concluded before a dispute arises falls within that provision in so far as it gives the employee the possibility of bringing proceedings, not only before the courts ordinarily having jurisdiction under the special rules in Articles 18 and 19 of that regulation, but also before other courts, which may include courts outside the European Union.*

([1]) OJ C 173, 11.6.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 (reference for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Bawaria Motors sp. z o.o. v Minister Finansów

(Case C-160/11) ([1])

(Directive 2006/112/EC — VAT — Article 136 — Exemptions — Articles 313 to 315 — Special margin scheme — Supply of second-hand vehicles by a taxable dealer — Vehicles previously supplied exempt from VAT to a taxable dealer by another taxable person which had a right of partial deduction of input tax)

(2012/C 295/18)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Bawaria Motors sp. z o.o.

Defendant: Minister Finansów

Re:

Reference for a preliminary ruling — Naczelny Sąd Administracyjny — Interpretation of Articles 136, 313(1), 314 and 315 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Special arrangements for taxable dealers — Sale of second-hand vehicles to a final consumer — Application of the margin scheme where the dealer purchased the vehicle exempt from tax from a person which itself benefited from a partial deduction of input tax

Operative part of the judgment

Articles 313(1) and 314 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Articles 136 and 315 of that directive must be interpreted as meaning that a taxable dealer is not eligible for the application of the margin scheme where it supplies motor vehicles considered to be second-hand goods, within the meaning of Article 311(1)(1) of that directive, which it has previously acquired exempt from VAT from another taxable person which had only a right of partial deduction of input VAT paid on the purchase price of those vehicles.

([1]) OJ C 204, 9.7.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 (references for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gdańsku — Poland) — Fortuna sp. z o.o. (C-213/11), Grand sp. z o.o. (C-214/11), Forta sp. z o.o. (C-217/11) v Dyrektor Izby Celnej w Gdyni

(Joined Cases C-213/11, C-214/11 and C-217/11) [1]

(Internal market — Directive 98/34/EC — Technical standards and regulations — Procedure for the provision of information in the field of technical standards and regulations — Low-prize gaming machines — Prohibition of the amendment, extension and issue of operating authorisations — Concept of 'technical regulation')

(2012/C 295/19)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gdańsku

Parties to the main proceedings

Applicants: Fortuna sp. z o.o. (C-213/11), Grand sp. z o.o. (C-214/11), Forta sp. z o.o. (C-217/11)

Defendant: Dyrektor Izby Celnej w Gdyni

Re:

References for a preliminary ruling — Wojewódzki Sąd Administracyjny w Gdańsku — Interpretation of 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, as amended by Council Directive 2006/96/EC of 20 November 2006 (OJ 1998 L 204, p. 37) — Concept of 'technical regulation' — National provision prohibiting the amendment of an operating authorisation for low-prize gaming machines in respect of a change of the place in which those machines are installed

Operative part of the judgment

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, as amended by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that national provisions, such as those of the Law on games of chance (ustawa o grach hazardowich) of 19 November 2009, which could have the effect of limiting, or even gradually rendering impossible, the running of gaming on low-prize machines anywhere other than in casinos and gaming arcades are capable of constituting 'technical regulations', within the meaning of that provision, the drafts of which must be the subject of communication as provided for in the first subparagraph of Article 8(1) of the directive, in so far as it is established that those provisions constitute conditions which can significantly influence the nature or the marketing of the product concerned, which is a matter for the referring court to determine.

[1] OJ C 219, 23.7.2011.

Judgment of the Court (Fourth Chamber) of 19 July 2012 (reference for a preliminary ruling from the Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės — Lithuania) — Lietuvos geležinkeliai AB v Vilniaus teritorinė muitinė, Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

(Case C-250/11) [1]

(Relief from customs duties and VAT exemptions on imports of goods — Fuel contained in the standard tanks of land motor vehicles — Notion of 'motorised road vehicle' — Locomotives — Road transport and transport by rail — Principle of equal treatment — Principle of neutrality)

(2012/C 295/20)

Language of the case: Lithuanian

Referring court

Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės

Parties to the main proceedings

Applicant: Lietuvos geležinkeliai AB

Defendants: Vilniaus teritorinė muitinė, Muitinės departamentas prie Lietuvos Respublikos finansų ministerijos

Re:

Reference for a preliminary ruling — Mokestinių ginčų komisija prie Lietuvos Respublikos Vyriausybės — Interpretation of Article 112 of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1) and of Article 107(1)(a) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ 2009 L 324, p. 23) — Interpretation of Article 82(1) of Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods (OJ 1983 L 105, p. 38) and Article 84(1)(a) of

Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods (OJ 2009 L 292, p. 5) — Import, free of customs duty and exempt from VAT, of fuel contained in the standard tanks of land motor vehicles — Company which had diesel put into the standard fuel tanks of its locomotives in a non-member State — Concept of land motor vehicles

Operative part of the judgment

Article 112(1)(a) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Council Regulation (EEC) No 1315/88 of 3 May 1988, Article 107(1)(a) of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty, Article 82(1)(a) of Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value added tax on the final importation of certain goods, as amended by Council Directive 88/331/EEC of 13 June 1988 and Article 84(1)(a) of Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods must be interpreted as meaning that they do not apply to locomotives.

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Ainārs Rēdlihs v Valsts ieņēmumu dienests

(Case C-263/11) ([1])

(Sixth VAT Directive — Directive 2006/112/EC — Concept of 'economic activity' — Supplies of timber in order to alleviate the damage caused by a storm — Reverse charge procedure — Failure to register in the register of taxable persons — Fine — Principle of proportionality)

(2012/C 295/21)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Ainārs Rēdlihs

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 4 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and Article 9 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Concepts of 'taxable person' and 'economic activity' — Supplies of timber made by an individual, the owner of a forest intended for his personal use, in order to alleviate the damage caused by a storm — Compliance with the principle of proportionality of a national measure penalising, by a fine fixed at the level of the amount of tax normally payable for the value of the goods supplied, the failure to register in the register of taxable persons for VAT purposes, whereas the person concerned was not liable for the tax, even if he had registered in that register

Operative part of the judgment

1. *Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2006/138/EC of 19 December 2006, must be interpreted as meaning that supplies of timber made by a natural person for the purpose of alleviating the consequences of a case of force majeure come within the scope of the exploitation of tangible property, which must be regarded as an 'economic activity' within the meaning of that provision, where those supplies are carried out for the purposes of obtaining income therefrom on a continuing basis. It is for the national court to carry out an assessment of all the circumstances of the case in order to determine whether the exploitation of tangible property, such as a forest, is carried out for the purposes of obtaining income therefrom on a continuing basis.*

2. *European Union law must be interpreted as meaning that it is possible that a rule of national law allowing a fine to be imposed, fixed at the level of the rate of VAT normally applicable for the value of the goods transferred in the supplies made, on an individual who has failed to fulfil his obligation to register in the register of taxable persons for VAT purposes and who was not liable for that tax, may be contrary to the principle of proportionality. It is for the national court to determine whether the amount of the penalty does not go further than is necessary to attain the objectives of ensuring the correct levying and collection of the tax and preventing fraud, having regard to the facts of the case and, inter alia, the sum actually imposed and the possible existence of fraud or circumvention of the applicable legislation attributable to the taxable person whose failure to register is being penalised.*

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Third Chamber) of 19 July 2012 — Kaimer GmbH & Co. Holding KG, Sanha Kaimer GmbH & Co. KG, Sanha Italia Srl v European Commission

(Case C-264/11 P) [1]

(Appeal — Competition — Cartel — Penalty — Copper and copper alloy fittings sector — Probative value of statements made in the context of the leniency policy)

(2012/C 295/22)

Language of the case: German

Parties

Appellants: Kaimer GmbH & Co. Holding KG, Sanha Kaimer GmbH & Co. KG, Sanha Italia Srl (represented by: J. Brück, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: V. Bottka and R. Sauer, Agents)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-379/06 *Kaimer and Others* v *Commission* by which the General Court dismissed in part the appellants' action for annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement concerning a cartel in the copper and copper alloy fittings sector or, in the alternative, for a reduction in the fine imposed on the appellants — Distortion of the evidence — Error of assessment regarding the probative value of statements made in the context of the leniency policy — Infringement of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Kaimer GmbH & Co. Holding KG, Sanha Kaimer GmbH & Co. KG and Sanha Italia Srl to pay the costs.*

[1] OJ C 269, 10.9.2011.

Judgment of the Court (Eighth Chamber) of 19 July 2012 (reference for a preliminary ruling from the Cour d'appel de Lyon, France) — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects v Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s.à.r.l., Société Rohm & Haas Europe Trading APS-UK Branch

(Case C-336/11) [1]

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Polishing pads intended exclusively for semiconductor wafer-polishing machines — Tariff headings 3919 and 8466 (or 8486) — Definition of 'parts' or 'accessories')

(2012/C 295/23)

Language of the case: French

Referring court

Cour d'appel de Lyon

Parties to the main proceedings

Applicants: Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

Defendants: Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s.à.r.l., Société Rohm & Haas Europe Trading APS-UK Branch

Re:

Reference for a preliminary ruling — Cour d'appel de Lyon — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 (OJ 2006 L 301, p. 1) and Commission Regulation (EC) No 1214/2007 of 20 September 2007 (OJ 2007 L 286, p. 1) — Polishing pads intended exclusively for semiconductor wafer-polishing machines — Tariff headings 3919 and 8466 — Definition of 'parts' or 'interchangeable tools' — Exemption — Reimbursement of customs duties

Operative part of the judgment

The Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, in the successive versions of the following regulations, amending Annex I to Regulation No 2658/87: Commission Regulations (EC) No 1789/2003 of 11 September 2003; No 1810/2004 of 7 September 2004; No 1719/2005 of 27 October 2005; and No 1549/2006 of 17 October 2006, must be interpreted as meaning that polishing pads intended for a polishing machine for working semiconductor materials — as such coming under tariff heading 8464 (or heading 8486 from 1 January 2007) — imported separately from the machine, in the

form of discs perforated in the centre, made up of a hard polyurethane layer, a layer of polyurethane foam, an adhesive layer and a protective plastic film, which do not contain any metal part or any abrasive substance and are used to polish 'wafers', in combination with an abrasive liquid, and must be replaced at a frequency determined by their level of wear, come under subheading 3919 90 10, as self-adhesive flat shapes, other than squares or rectangles, made of plastic.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium) — Pie Optiek v Bureau Gevers, European Registry for Internet Domains

(Case C-376/11) ([1])

(Internet — .eu Top Level Domain — Regulation (EC) No 874/2004 — Domain names — Phased registration — Article 12(2) — Concept of 'licensees of prior rights' — Person authorised by the proprietor of a trade mark to register, in his own name but on behalf of that proprietor, a domain name identical or similar to that trade mark — No authorisation for other uses of the sign as a trade mark)

(2012/C 295/24)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Pie Optiek

Defendants: Bureau Gevers, European Registry for Internet Domains

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Articles 12(2) and 21(1)(a) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the.eu Top Level Domain and the principles governing registration (OJ 2004 L 162, p. 40) — Interpretation of Article 4(2)(b) of Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the.eu Top Level Domain (OJ 2002 L 113, p. 1) — Speculative and abusive registrations — Concept of 'licensees of prior rights' — Person authorised by the proprietor of a trade mark to register, in his own name but on behalf of the licensor, a domain name identical or similar to the trade mark, in the absence of any other use of the sign as a trade mark — Name registered without 'rights or legitimate interest'

Operative part of the judgment

The third subparagraph of Article 12(2) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the.eu Top Level Domain and the principles governing registration must be interpreted as meaning that, in a situation where the prior right concerned is a trade mark right, the words 'licensees of prior rights' do not refer to a person who has been authorised by the proprietor of the trade mark concerned solely to register, in his own name but on behalf of that proprietor, a domain name identical or similar to that trade mark, but without that person being authorised to use the trade mark commercially in a manner consistent with its functions.

([1]) OJ C 298, 8.10.2011.

Judgment of the Court (First Chamber) of 19 July 2012 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña — Spain) — International Bingo Technology SA v Tribunal Económico-Administrativo Regional de Cataluña (TEARC)

(Case C-377/11) ([1])

(Sixth VAT Directive — Articles 11A(1)(a), 17(5) and 19(1) — Organisation of games of bingo — Legal obligation to use part of the card price to pay winnings to players — Calculation of the basis of assessment)

(2012/C 295/25)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Applicant: International Bingo Technology SA

Defendant: Tribunal Económico-Administrativo Regional de Cataluña (TEARC)

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Cataluña — Interpretation of Article 11A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Taxable amount — Organisation of games of bingo — Sale of tickets to players — Use of part of the sums thus collected to pay out winnings to players

Operative part of the judgment

1. *Article 11A(1)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 98/80/EC of 12 October 1998, must be interpreted as meaning that, in the case of the sale of bingo cards such as those at issue in the main proceedings, the taxable amount for VAT does not include the portion of the card price fixed in advance by legislation and intended to be used to pay winnings to players;*

2. *Articles 17(5) and 19(1) of Sixth Directive 77/388, as amended by Directive 98/80, must be interpreted as meaning that the Member States may not provide that, for the purposes of calculating the deductible proportion of VAT, the portion, fixed in advance by legislation, of the bingo card price which must be returned to players as winnings is to be regarded as forming part of the turnover which must be included in the denominator of the fraction referred to in Article 19(1).*

([1]) OJ C 290, 1.10.2011.

Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Verwaltungsgericht Giessen — Germany) — Natthaya Dülger v Wetteraukreis

(Case C-451/11) ([1])

(EEC-Turkey Association Agreement — Association Council Decision No 1/80 — Article 7, first paragraph — Right of residence of members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State — Thai national who was married to a Turkish worker and lived with him for more than three years)

(2012/C 295/26)

Language of the case: German

Referring court

Verwaltungsgericht Giessen

Parties to the main proceedings

Applicant: Natthaya Dülger

Defendant: Wetteraukreis

Re:

Reference for a preliminary ruling — Verwaltungsgericht Giessen — Interpretation of the first indent of the first paragraph of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey — Right of residence of members of a family of a Turkish worker duly registered as belonging to the labour force of a Member State — Thai national who cohabited with her Turkish husband for more than three years and until her divorce

Operative part of the judgment

The first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, which was signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a member of the family of a Turkish worker, who is a national of a third country other than Turkey, may invoke, in the host Member State, the rights arising from that provision, where all the other conditions laid down by the provision have been fulfilled.

([1]) OJ C 347, 26.11.2011.

Judgment of the Court (Fourth Chamber) of 19 July 2012 (reference for a preliminary ruling from the Augstākās Tiesas Senāts — Latvia) — Garkalns SIA v Rīgas dome

(Case C-470/11) ([1])

(Article 49 EC — Restrictions on freedom to provide services — Equal treatment — Obligation of transparency — Betting and gaming — Casinos, amusement arcades and bingo halls — Obligation to obtain the prior agreement of the municipality of the place of establishment — Discretion — Substantial impairment of the interests of the State and of the residents of the administrative area concerned — Justifications — Proportionality)

(2012/C 295/27)

Language of the case: Latvian

Referring court

Augstākās Tiesas Senāts

Parties to the main proceedings

Applicant: Garkalns SIA

Defendant: Rīgas dome

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 56 TFEU (Article 49 EC) — National legislation providing, for the purpose of limiting betting and gaming, a system of authorisation for the establishment of casinos, amusement arcades and bingo halls — Refusal to grant authorisation for the development of an amusement arcade on the ground that the organisation of betting and gaming in the premises envisaged would substantially impair the interests of the residents of the local area

Operative part of the judgment

Article 49 EC must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which confers on local authorities a broad discretion in enabling them to refuse authorisation to open a casino, amusement arcade or bingo hall on grounds of 'substantial impairment of the interests of the State and of the residents of the administrative area concerned', provided that that legislation is genuinely intended to reduce opportunities for gambling and to limit activities in that domain in a consistent and systematic manner or to ensure the maintenance of public order and in so far as the competent authorities exercise their powers of discretion in a transparent manner, so that the impartiality of the authorisation procedures can be monitored, it being for the national court to determine whether those conditions are satisfied.

([1]) OJ C 331, 12.11.2011.

Action brought on 25 June 2012 — European Commission v Republic of Bulgaria

(Case C-307/12)

(2012/C 295/28)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: P. Hetsch, D. Düsterhaus, S. Petrova)

Defendant: Republic of Bulgaria

Form of order sought

— Declare that, by not adopting the legal or administrative provisions necessary in order to render national law compatible with Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, ([1]) or at least by not notifying those provisions to the Commission, the Republic of Bulgaria has failed to fulfil its obligations under Article 40 of that directive;

— Order the Republic of Bulgaria, pursuant to Article 260(3) TFEU, to pay a penalty payment of EUR 15 200,80 per day, calculated from the day on which judgment is delivered in the present proceedings, on account of its failure to fulfil the obligation to notify the measures adopted in order to render its national law compatible with Directive 2008/98/EC;

— Order the Republic of Bulgaria to pay the costs.

Pleas in law and main arguments

The period for the adoption of measures to transpose the directive expired on 12 December 2010.

([1]) OJ L 312, 22.11.2008, p. 3.

Reference for a preliminary ruling from the Corte dei Conti — Sezione Giurisdizionale per la Regione Siciliana (Italy) lodged on 28 June 2012 — Giuseppa Romeo v Regione Siciliana

(Case C-313/12)

(2012/C 295/29)

Language of the case: Italian

Referring court

Corte dei Conti — Sezione Giurisdizionale per la Regione Siciliana

Parties to the main proceedings

Applicant: Giuseppa Romeo

Defendant: Regione Siciliana

Questions referred

1. In interpreting and applying the rules and principles of European Union law, may a national court — on the basis of national legislation which makes a *renvoi* to European Union law in relation to purely internal situations — depart from, or incorrectly apply, the interpretation placed on those rules and principles in the case-law of the Court of Justice?

2. Are the interpretation and application of Article 3 of Law 241/1990 and of Article 3 of Sicilian Regional Law 10/1991 — in relation to Article 1 of Law 241/90, which requires the Italian administrative authorities to apply the principles of European Union law, pursuant to the obligation to state reasons for the acts of public authorities laid down in the second paragraph of Article 296 of the Treaty on the Functioning of the European Union and in Article 41(2)(c) of the Charter of Fundamental Rights of the European Union — to the effect that measures of public authorities in a private-law form (that is to say, measures which relate to individual rights and which are in any event mandatory in matters relating to pensions) may be exempt from the obligation to state reasons, compatible with European Union law, and does such a case amount to infringement of an essential procedural requirement governing an administrative measure?

3. Is the first sentence of Article 21g(2) of Law 241/1990, as interpreted by the administrative case-law — in relation to the obligation to state reasons for an administrative measure laid down by Article 3 of Law 241/1990 and by Sicilian Regional Law 10/1991, read in conjunction with the obligation to state reasons for the acts of public authorities laid down by the second paragraph of Article 296 of the Treaty on the Functioning of the European Union and Article 41(2)(c) of the Charter of Fundamental Rights of the European Union — compatible with Article 1 of Law 241/1990, which requires the administrative authorities to apply the principles of European Union law, and, consequently, are the interpretation and application of that interpretation whereby the authorities may supplement a statement of reasons for an administrative measure in court proceedings compatible and admissible?

Reference for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 29 June 2012 — J. Sebastian Guevara Kamm v TAM Airlines S.A./TAM Linhas Aéreas S.A.

(Case C-316/12)

(2012/C 295/30)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: J. Sebastian Guevara Kamm

Defendant: TAM Airlines S.A./TAM Linhas Aéreas S.A.

Question referred

Is Article 2(j) of Regulation (EC) No 261/2004 [1] to be interpreted, with regard to the 'reasonable grounds' mentioned therein, to the effect that 'reasonable grounds' can only be grounds pertaining to the person of the passenger which jeopardise the safety of air transport or of other passengers or which affect other public or contractual interests, or can 'reasonable grounds' also be other grounds not pertaining to the person of the passenger, in particular cases of *force majeure*?

[1] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Reference for a preliminary ruling from the Curtea de Apel București (Romania) of 5 July 2012 — E.On Energy Trading SE v Agenția Națională de Administrare Fiscală, Direcția Generală a Finanțelor Publice a Municipiului București — Serviciul de administrare a contribuabililor nerezidenți

(Case C-323/12)

(2012/C 295/31)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: E.On Energy Trading SE

Defendants: Agenția Națională de Administrare Fiscală, Direcția Generală a Finanțelor Publice a Municipiului București — Serviciul de administrare a contribuabililor nerezidenți

Questions referred

1. May a taxable person having its principal place of business in a Member State of the European Union other than Romania, and that has identified for VAT purposes a tax representative in Romania, on the basis of the provisions of domestic law in force before Romania acceded to the European Union, be regarded as a 'taxable person not established in the territory of the country', within the meaning of Article 1 of Eighth Council Directive 79/1072/EEC [1] of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country?

2. Does the requirement, laid down in Article 1472(1)(a) of Law No 571/2003 on the Tax Code and transposing the provisions of the Directive, that the legal person should not be identified for VAT purposes, represent a further condition in addition to those expressly provided for in Articles 3 and 4 [of the Eighth Directive] and, if so, is a further condition of this kind permitted, having regard to Article 6 of the Directive?

3. Can Articles 3 and 4 [of the Eighth Directive] have direct effect, or does satisfaction of the conditions explicitly regulated by those provisions rather confer on the legal person not established in the territory of Romania, in accordance with Article 1, the right to refund of VAT, regardless of the form they are given in the national legislation?

[1] OJ L 331, p. 11, Special Edition, 09/vol. 1, p.34.

Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 July 2012 — Ministero dello Sviluppo Economico and Autorità per la vigilanza sui Contratti Pubblici di lavori, servizi e forniture v Soa Nazionale Costruttori

(Case C-327/12)

(2012/C 295/32)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ministero dello Sviluppo Economico and Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture

Defendant: Soa Nazionale Costruttori — Organismo di Attestazione Spa

Question referred

Do the principles of Community competition law and Articles 101, 102 and 106 of the Treaty on the Functioning of the European Union preclude the application of the tariffs laid down by Presidential Decree No 34 of 25 January 2000 and by Presidential Decree No 207 of 5 October 2010 for the attestation activities carried out by [a specific category of company, namely,] the *società organismi di attestazione* (SOAs)?

Appeal brought on 16 July 2012 by Pi-Design AG, Bodum France and Bodum Logistics A/S against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-331/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-337/12 P)

(2012/C 295/33)

Language of the case: English

Parties

Appellants: Pi-Design AG, Bodum France, and Bodum Logistics A/S, (represented by: H. Pernez, Advocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Yoshida Metal Industry Co. Ltd

Form of order sought

The appellants claim that the Court should:

— Squash the judgment of the General Court

— Annul the Community trademark 1 371 244

Subsidiairily

— Refer the case back to the General Court with the obligation to refer the case back to the Board of Appeal in the case of annulment of the latter's decision.

— Order YOSHIDA METAL INDUSTRY CO. LTD. to bear the costs.

Pleas in law and main arguments

The appellants submit that the contested judgment should be annulled on the ground that the General court infringed Article 7(1)(e)(ii) of the Community trade mark regulation by applying incorrect criteria in the identification of the essential characteristics of the contested sign and by distorting the evidence before it.

Appeal brought on 16 July 2012 by Office for Harmonisation in the Internal Market (Trade Marks and Designs), against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-331/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-338/12 P)

(2012/C 295/34)

Language of the case: English

Parties

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

Other parties to the proceedings: Yoshida Metal Industry Co. Ltd and Pi-Design AG, Bodum France, Bodum Logistics A/S

Form of order sought

The appellant claims that the Court should:

— uphold the Appeal in its entirety

— annul the Contested Judgment

— order Yoshida Metal Industry Co. Ltd to pay the costs incurred by the Office.

Pleas in law and main arguments

— The appellant submits that the General Court failed to state the reasons in support of the Contested Judgment to the extent that it did not address the Office's argument referred to at paragraph 18 of the Contested Judgment.

— The appellant also submits that the General Court breached Article 7(1)(e)(ii) CTMR. It should have observed that a two-dimensional sign may be, not only applied to, but also incorporated in a three-dimensional object. Applying Article 7(1)(e)(ii) CTMR thus requires to take account of all possible manners in which it can be envisaged, on the date of filing, that the sign in question could be embodied in a three-dimensional object. The General Court distorted the evidence by ruling that the Board of Appeal had based its examination exclusively on the goods actually marketed. In fact, the Board of Appeal made it clear that its findings are primarily based on the patents submitted by Pi-Design. In any event, reference to additional material, including patents and the goods actually marketed, should not be prohibited where such material corroborate the conclusion that the features of the contested sign, as filed, are liable to achieve a technical result once incorporated in a three dimensional object. This is the only appropriate approach for preserving the legal security and the public interest underlying Article 7(1)(e)(ii) CTMR.

Appeal brought on 16 July 2012 by Pi-Design AG, Bodum France and Bodum Logistics A/S against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-416/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-339/12 P)

(2012/C 295/35)

Language of the case: English

Parties

Appellants: Pi-Design AG, Bodum France, and Bodum Logistics A/S, (represented by: H. Pernez, Advocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Yoshida Metal Industry Co. Ltd

Form of order sought

The appellants claim that the Court should:

— Squash the judgment of the General Court

— Annul the Community trademark 1 372 580

Subsidiairily

— Refer the case back to the General Court with the obligation to refer the case back to the Board of Appeal in the case of annulment of the latter's decision.

— Order YOSHIDA METAL INDUSTRY CO. LTD. to bear the costs.

Pleas in law and main arguments

The appellants submit that the contested judgment should be annulled on the ground that the General court infringed Article 7(1)(e)(ii) of the Community trade mark regulation by applying incorrect criteria in the identification of the essential characteristics of the contested sign and by distorting the evidence before it.

Appeal brought on 16 July 2012 by Office for Harmonisation in the Internal Market (Trade Marks and Designs), against the judgment of the General Court (Fourth Chamber) delivered on 8 May 2012 in Case T-416/10: Yoshida Metal Industry Co. Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-340/12 P)

(2012/C 295/36)

Language of the case: English

Parties

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

Other parties to the proceedings: Yoshida Metal Industry Co. Ltd and Pi-Design AG, Bodum France, Bodum Logistics A/S

Form of order sought

The appellant claims that the Court should:

— uphold the Appeal in its entirety

— annul the Contested Judgment

— order Yoshida Metal Industry Co. Ltd to pay the costs incurred by the Office.

Pleas in law and main arguments

— The appellant submits that the General Court failed to state the reasons in support of the Contested Judgment to the extent that it did not address the Office's argument referred to at paragraph 18 of the Contested Judgment.

— The appellant also submits that the General Court breached Article 7(1)(e)(ii) CTMR. It should have observed that a two-dimensional sign may be, not only applied to, but also incorporated in a three-dimensional object. Applying Article 7(1)(e)(ii) CTMR thus requires to take account of all possible manners in which it can be envisaged, on the date of filing, that the sign in question could be embodied in a three-dimensional object. The General Court distorted the evidence by ruling that the Board of Appeal had based its examination exclusively on the goods actually marketed. In fact, the Board of Appeal made it clear that its findings are primarily based on the patents submitted by Pi-Design. In any event, reference to additional material, including patents and the goods actually marketed, should not be prohibited where such material corroborate the conclusion that the features of the contested sign, as filed, are liable to achieve a technical result once incorporated in a three dimensional object. This is the only appropriate approach for preserving the legal security and the public interest underlying Article 7(1)(e)(ii) CTMR.

Reference for a preliminary ruling from the Tribunal do Trabalho de Viseu (Portugal) lodged on 18 July 2012 — Worten — Equipamentos para o Lar, S.A. v ACT — Autoridade para as Condições de Trabalho

(Case C-342/12)

(2012/C 295/37)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho de Viseu

Parties to the main proceedings

Applicant: Worten — Equipamentos para o Lar, S.A.

Defendant: ACT — Autoridade para as Condições de Trabalho

Questions referred

1. Is Article 2 of Directive 95/46/EC [1] to be interpreted as meaning that the record of working time, that is, the indication, in relation to each worker, of the times when working hours begin and end, as well as breaks and intervals not included in that period, is included within the concept of personal data?

2. If so, is the Portuguese State obliged, under Article 17(1) of Directive 95/46/EC, to provide for appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network?

3. Likewise, if Question 2 is answered in the affirmative, when the Member State does not adopt any measure pursuant to Article 17(1) of Directive 95/46/EC and when the employer, responsible for processing that data, adopts a system of restricted access to that data which does not allow automatic access by the national authority responsible for inspecting working conditions, is the principle of the primacy of European law to be interpreted as meaning that the Member State cannot penalise that employer for such behaviour?

---

[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 Krajský soud v Plzni (Czech Republic) lodged on 24 July 2012 — Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA) v Léčebné lázně Mariánské Lázně, a.s.

(Case C-351/12)

(2012/C 295/38)

Language of the case: Czech

Referring court

Krajský soud v Plzni

Parties to the main proceedings

Applicant: Ochranný svaz autorský pro práva k dílům hudebním, o.s. (OSA)

Defendant: Léčebné lázně Mariánské Lázně, a.s.

Questions referred

1. **Must Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [1] be interpreted as meaning that an exception disallowing remuneration to authors for the communication of their work by television or radio transmission by means of television or radio receivers to patients in rooms in a spa establishment which is a business is contrary to Articles 3 and 5 (Article 5(2)(e), (3)(b) and (5))?**

2. **Is the content of those provisions of the directive concerning the above use of a work unconditional enough and sufficiently precise for copyright collecting societies to be able to rely on them before the national courts in a dispute between individuals, if the State has not transposed the directive correctly in national law?**

3. **Must Article 56 et seq. and Article 102 of the Treaty on the Functioning of the European Union (or as the case may be Article 16 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market** [2]**) be interpreted as precluding the application of rules of national law which reserve the exercise of collective management of copyright in the territory of the State to only a single (monopoly) copyright collecting society and thereby do not allow recipients of services a free choice of a collecting society from another State of the European Union?**

---

[1] OJ L 167, p. 10.
[2] OJ L 376, p. 36.

Reference for a preliminary ruling from the Tribunale amministrativo Regionale per l'Abruzzo (Italy) lodged on 25 July 2012 — Consiglio Nazionale degli Ingegneri v Comune di Castelvecchio Subequo, Comune di Barisciano

(Case C-352/12)

(2012/C 295/39)

Language of the case: Italian

Referring court

Tribunale amministrativo Regionale per l'Abruzzo

Parties to the main proceedings

Applicant: Consiglio Nazionale degli Ingegneri

Defendants: Comune di Castelvecchio Subequo, Comune di Barisciano

Questions referred

1. Does Directive 2004/18/EC [1] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in particular Article 1(2)(a) and (d), Article 2 and Article 28 of that directive and Categories 8 and 12 in Annex [II] thereto, preclude national legislation which permits written agreements to be entered into between two contracting authorities for the provision of support to municipalities relating to the study, analysis and planning of the reconstruction of the historical centres of the municipalities of Barisciano and Castelvecchio Subequo, as described in greater detail in the technical specifications annexed to the agreement and defined by the national and regional legislation for the sector, for consideration which is not, prima facie, of a non-remunerative nature, where the authority responsible for carrying out this task may act as an economic operator?

2. In particular, does Directive [2004/18/EC] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, in particular Article 1(2)(a) and (d), Article 2 and Article 28 of that directive and Categories 8 and 12 in Annex [II] thereto, preclude national legislation which permits written agreements to be entered into between two contracting authorities for the provision of support to municipalities relating to the study, analysis and planning of the reconstruction of the historical centres of the municipalities of Barisciano and Castelvecchio Subequo, as described in greater detail in the technical specifications annexed to the agreement and defined by the national and regional legislation for the sector, for consideration which is not, prima facie, of a non-remunerative nature, where specific justification for the award of contracts under a privately negotiated procedure is to be found in post-emergency primary and secondary legislation, taking into account defined, specific public interests?

---

[1] OJ 2004 L 134, p. 114.

Appeal brought on 25 July 2012 by Asa Sp. z o.o. against the judgment of the General Court (Third Chamber) delivered on 22 May 2012 in Case T-110/11 Asa v OHIM — Merck (FEMIFERAL)

(Case C-354/12 P)

(2012/C 295/40)

Language of the case: Polish

Parties

Appellant: Asa Sp. z o.o. (represented by: M. Chimiak, adwokat)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— set aside the contested judgment of the General Court of the European Union delivered on 22 May 2012 in Case T-110/11;

— refer the case back to the General Court for re-examination;

— order the Office to pay the costs of the proceedings before the Court of Justice.

Pleas in law and main arguments

The appellant alleges that the General Court of the European Union infringed Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version) ([1]) by failing to have regard to the legal criteria of essential importance for the application of that provision, and by committing manifest errors in the assessment of those criteria in the circumstances of the present case.

Thus, the appellant alleges that the General Court did not apply correctly the interpretation relating to the criterion of the average consumer, a test which is relevant on the facts of the present case. The appellant further alleges that the General Court misappraised the inherent distinctive character of the earlier marks FEMINATAL, although the appellant submitted in its application to the General Court that the Board of Appeal of OHIM did not examine that question diligently and exhaustively. The appellant also takes the view that the General Court misappraised the trade marks' visual and conceptual similarity. Finally, the appellant alleges that the General Court misappraised the likelihood of deceiving the average consumer.

Furthermore, the appellant alleges that the General Court infringed Article 9 of the Treaty on European Union through the application of other legal criteria in similar cases.

([1]) OJ 2009 L 78, p. 1.

Reference for a preliminary ruling from the Tribunale di Milano (Italy) lodged on 26 July 2012 — Nintendo Co., Ltd and Others v PC Box Srl and 9Net Srl

(Case C-355/12)

(2012/C 295/41)

Language of the case: Italian

Referring court

Tribunale di Milano

Parties to the main proceedings

Applicants: Nintendo Co., Ltd, Nintendo of America Inc., Nintendo of Europe GmbH

Defendants: PC Box Srl, 9Net Srl

Questions referred

1. Must Article 6 of Directive 2001/29/EC ([1]) be interpreted, including in the light of recital 48 in the preamble thereto, as meaning that the protection of technological protection measures attaching to copyright-protected works or other subject matter may also extend to a system, produced and marketed by the same undertaking, in which a device is installed in the hardware which is capable of recognising on a separate housing mechanism containing the protected works (videogames produced by the same undertaking as well as by third parties, proprietors of the protected works) a recognition code, in the absence of which the works in question cannot be visualised or used in conjunction with that system, the equipment in question thus incorporating a system which is not interoperable with complementary equipment or products other than those of the undertaking which produces the system itself?

2. Should it be necessary to consider whether or not the use of a product or component whose purpose is to circumvent a technological protection measure predominates over other commercially important purposes or uses, may Article 6 of Directive 2001/29/EC be interpreted, including in the light of recital 48 in the preamble thereto, as meaning that the national court must adopt criteria in assessing that question which give prominence to the particular intended use attributed by the right holder to the product in which the protected content is inserted or, in the alternative or in addition, criteria of a quantative nature relating to the extent of the uses under comparison, or criteria of a qualitative nature, that is, relating to the nature and importance of the uses themselves?

([1]) OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 31 July 2012 — Carratù v Poste Italiane SpA

(Case C-361/12)

(2012/C 295/42)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Carmela Carratù

Defendant: Poste Italiane SpA

Questions referred

1. Is a provision of national law which, in giving effect to Directive 1999/70/EC, ([1]) provides for economic consequences in cases of unlawful suspension of a contract of employment, with a null and void time-limit clause, that are different from and considerably less favourable than those in cases of unlawful suspension of a contract governed by the ordinary civil law with a null and void time-limit clause, contrary to the principle of equivalence?

2. Is it compatible with the law of the European Union that, in its implementation, the effectiveness of a sanction should benefit an employer acting wrongfully, to the detriment of the employee so prejudiced, in such a way that the temporal, and natural, duration of proceedings directly damages the employee to the benefit of the employer and that the effectiveness of reinstatement should be reduced proportionately as proceedings continue, so far as to be almost nullified?

3. In the course of implementing European law as provided for by Article 51 of the Charter of Nice, is it compatible with Article 47 of the Charter and Article 6 of the ECHR for the temporal, and natural, duration of proceedings to damage directly the employee to the benefit of the employer and for the effectiveness of reinstatement to be reduced proportionately as the proceedings continue, so far as to be almost nullified?

4. Having regard to the explanations contained in Article 3(1)(c) of Directive 2000/78/EC ([2]) and in Article 14(1)(c) of Directive 2006/54/EC, ([3]) does the notion of employment conditions contained in clause 4 of Directive 1999/70/EC also include the consequences of an unlawful interruption of an employment relationship?

5. If the answer to the preceding question is in the affirmative, is the difference between the consequences normally provided for in national law for the unlawful interruption of fixed-term employment relationships and those of indefinite duration justifiable under clause 4?

6. Must the general Community law principles of legal certainty, the protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, and the right to an independent tribunal and, more generally, to a fair hearing, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1(8) of the Treaty of Lisbon and to which Article 46 of the Treaty on European Union refers) — in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000, as implemented by the Treaty of Lisbon — be interpreted as precluding the adoption by the Italian State, after a significant period of time (9 years), of a provision such as Article 32(7) of Law No 183/10 which distorts the consequences of proceedings under way by directly prejudicing the employee to the benefit of the employer and which causes the effectiveness of reinstatement to be reduced proportionately as proceedings continue, so far as to be almost nullified?

7. If the Court of Justice should not recognise the principles set out above as having the value of fundamental principles of European Union law for the purposes of their horizontal and general application and that, therefore, a provision such as Article 32(5) to (7) of Law No 183/10 is incompatible only with the obligations laid down in Directive 1999/70/EC and the Nice Charter, must a company such as the defendant be regarded as a State body for the purposes of the direct, vertical, ascending application of European law, and in particular of clause 4 of Directive 1999/70/EC and the Charter of Nice?

([2]) OJ L 303, p. 16.
([3]) OJ L 204, p. 23.

Reference for a preliminary ruling from the Cour administrative d'appel de Nantes (France) lodged on 2 August 2012 — Adiamix v Ministre de l'Économie et des Finances

(Case C-368/12)

(2012/C 295/43)

Language of the case: French

Referring court

Cour administrative d'appel de Nantes

Parties to the main proceedings

Appellant: Adiamix

Respondent: Ministre de l'Économie et des Finances

Question referred

Is Commission Decision 2004/343/EC of 16 December 2003, ([1]) on which the payment order at issue is necessarily contingent, valid?

([1]) 2004/343/EC: Commission Decision of 16 December 2003 on the aid scheme implemented by France for the takeover of firms in difficulty (OJ 2004 L 108, p. 38).

Reference for a preliminary ruling from the Tribunale di Tivoli (Italy) lodged on 3 August 2012 — Enrico Petillo, Carlo Petillo v Unipol

(Case C-371/12)

(2012/C 295/44)

Language of the case: Italian

Referring court

Tribunale di Tivoli

Parties to the main proceedings

Applicants: Enrico Petillo, Carlo Petillo

Defendant: Unipol

Question referred

In the light of Directives 72/166/EEC, [1] 84/5/EEC, [2] 90/232/EEC [3] and 2009/103/EC [4] governing compulsory insurance against civil liability arising from the use of motor vehicles, is it permissible for the domestic legislation of a Member State effectively to provide — by imposing, solely in the case of damage arising from road traffic accidents, a compulsory method for quantifying the damage — a limitation (in terms of quantification) of the liability for non-material damage lying with the persons (insurance companies) obliged under those directives to ensure compulsory insurance for damage caused by the use of vehicles?

[1] Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360).

[2] Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17).

[3] Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33).

[4] Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11).

Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 3 August 2012 — Nnamdi Onuekwere v Secretary of State for the Home Department

(Case C-378/12)

(2012/C 295/45)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicants: Nnamdi Onuekwere

Defendants: Secretary of State for the Home Department

Questions referred

1. In what circumstances, if any, will a period of imprisonment constitute legal residence for the purposes of the acquisition of a permanent right of residence under Article 16 of the Citizens Directive 2004/38 [1]?

2. If a period of imprisonment does not qualify as legal residence, is a person who has served a period of imprisonment permitted to aggregate periods of residence before and after his imprisonment for the purposes of calculating the period of 5 years needed to establish permanent right of residence under the Directive?

[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 (Text with EEA relevance)
OJ L 158, p. 77

GENERAL COURT

Action brought on 19 July 2012 — Knauf Insulation Technology v OHIM — Saint Gobain Cristaleria (ECOSE)

(Case T-323/12)

(2012/C 295/46)

Language in which the application was lodged: English

Parties

Applicant: Knauf Insulation Technology (Visé, Belgium) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal: Saint Gobain Cristaleria, SL (Madrid, Spain)

Form of order sought

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 17 April 2012 in case R 259/2011-5 insofar as it has declared the opponent's opposition successful against the CTM application for part of the goods and services applied for;

— Order the defendant and — if applicable — the Opponent to jointly and severally pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ECOSE', for goods and services in classes 1, 2, 3, 16, 17, 19, 20 and 40 — Community trade mark application No W00993849

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: Spanish trade mark registration No 2556409 of the word mark 'ECOSEC FACHADAS', for goods in classes 17 and 19

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the contested decision and dismissed the appeal and confirmed the contested decision for the remainder

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

Action brought on 19 July 2012 — Knauf Insulation Technology v OHIM — Saint Gobain Cristaleria (ECOSE TECHNOLOGY)

(Case T-324/12)

(2012/C 295/47)

Language in which the application was lodged: English

Parties

Applicant: Knauf Insulation Technology (Visé, Belgium) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal: Saint Gobain Cristaleria, SL (Madrid, Spain)

Form of order sought

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2012 in joined cases R 1193/2011-5 and R 1426/2011-5 insofar as it has declared the opponent's opposition successful against the CTM application for part of the goods and services applied for;

— Order the defendant and — if applicable — the Opponent to jointly and severally pay all the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'ECOSE TECHNOLOGY', for goods and services in classes 1, 2, 3, 16, 17, 19, 20 and 40 — Community trade mark application No W 998610

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: Spanish trade mark registration No 2556409 of the word mark 'ECOSEC FACHADAS', for goods in classes 17 and 19

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the contested decision and dismissed the appeal and confirmed the contested decision for the remainder

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

Action brought on 19 July 2012 — Hut.com v OHIM — Intersport France (THE HUT)

(Case T-330/12)

(2012/C 295/48)

Language in which the application was lodged: English

Parties

Applicant: The Hut.com Ltd (Northwich, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal: Intersport France (Longjumeau, France)

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 27 April 2012 in case R 814/2011-2; and

— Order the defendant and the other party before the Board of Appeal to bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'THE HUT', for inter alias services in class 35 — Community trade mark application No 8394091

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: French trade mark registration No 33228708 of the word mark 'LA HUTTE', for goods in classes 3, 5, 18, 22, 25 and 28

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

Decision of the Board of Appeal: Partially annulled the contested decision

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

Action brought on 23 July 2012 — Rocket Dog Brands v OHIM — Julius-K9 (K9 PRODUCTS)

(Case T-338/12)

(2012/C 295/49)

Language in which the application was lodged: English

Parties

Applicant(s): Rocket Dog Brands LLC (Hayward, United States) (represented by: J. Reid, Barrister)

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

Other party to the proceedings before the Board of Appeal: Julius-K9 bt (Szigetszentmiklós, Hungary)

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 21 May 2012 (R 1961/2011-4) insofar as it rejects the action in relation to all goods in class 25, and the following goods in class 18 namely goods made of these materials and not included in other classes; wallets, purses; purses, not of precious metal; and

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'K9 PRODUCTS' in black and white, for among others goods in classes 18 and 25 — Community trade mark registration No 5966031

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: Community trade mark registration No 3933256 of the figurative mark 'K9' in black and white, for goods in class 25

Decision of the Cancellation Division: Declared the Community trade mark partially invalid

Decision of the Board of Appeal: Annulled the contested decision to the extent it declared the CTM invalid and rejected the cancellation request in its entirety

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

Action brought on 30 July 2012 — Gandia Blasco v OHIM — Sachi Premium — Outdoor Furniture (Armchairs)

(Case T-339/12)

(2012/C 295/50)

Language in which the application was lodged: English

Parties

Applicant: Gandia Blasco, SA (Valencia, Spain) (represented by: I. Sempere Massa, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sachi Premium — Outdoor Furniture, L[da] (Estarreja, Portugal)

Form of order sought

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 25 May 2012 (R 970/2011-3) Declare the contested Community Design No 1512633-0001 invalid; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: A design for 'armchairs, loungers' — registered Community design No 1512633-0001

Proprietor of the Community design: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community design: The applicant

Grounds for the application for a declaration of invalidity: The applicant requested the invalidation of the RCD based on Articles 4 to 9 of Council Regulation No 6/2002; Community design registration No 52113-0001, for 'armchairs'

Decision of the Cancellation Division: Rejected the application for a declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 4 to 9 of Council Regulation No 6/2002

Action brought on 1 August 2012 — Fuchs/OHIM — Les Complices (Star)

(Case T-342/12)

(2012/C 295/51)

Language in which the application was lodged: English

Parties

Applicant: Max Fuchs (Freyung, Germany) (represented by: C. Onken, lawyer)

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

Other party to the proceedings before the Board of Appeal: Les Complices SA (Montreuil-sous-Bois, France)

Form of order sought

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 May 2012 in case R 2040/2011-5;

— Reject the opposition No 1299967 in its entirety; and

— Order the defendant and the other party before the Board of Appeal to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark representing a black star, for goods in classes 18, 24 and 25 — Community trade mark application No 5588694

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 632232 of the figurative mark representing a white star in a black circle, for goods in classes 3, 9, 14, 16, 18, 20, 24 and 28; French trade mark registration No 1579557 of the figurative mark representing a white star in a black circle, for goods in class 25

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 1 August 2012 — Virgin Atlantic Airways v Commission

(Case T-344/12)

(2012/C 295/52)

Language of the case: English

Parties

Applicant: Virgin Atlantic Airways Ltd (Crawley, United Kingdom) (represented by: N. Green, QC and K. Dietzel, Solicitor)

Defendant: European Commission

Form of order sought

— Order the annulment of the decision of the European Commission of 30 March 2012 in Case COMP/M.6447 (IAG/bmi); and

— Order the defendant to pay the applicant's costs in these proceedings.

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 that the defendant has committed an error of law by not taking into account relevant information regarding the competitive conditions that would prevail absent the acquisition, allowing the Commission to appraise the acquisition against a less competitive situation than would have been the case. In particular, the Commission erred in its treatment of: (i) the package of slots sold by bmi to IAG/British Airways in September 2011; and (ii) the bmi slots over which IAG/British Airways took security in return for a pre-payment of £60m of the purchase price for bmi.

2. Second plea in law, alleging that the defendant has made a series of material errors and failed to take into account relevant information in relation to the assessment of the impact of the acquisition on the incremental increase in slots (and market power) held by IAG at London Heathrow post-acquisition.

3. Third plea in law, alleging that the defendant made a series of errors and failed to take into account relevant information in failing to identify or in dismissing further horizontal affected markets.

4. Fourth plea in law, alleging that the Commission has committed an error of law by: (i) failing to undertake a Phase II investigation; and (ii) accepting commitments which fail to address the serious doubts found by the Commission to exist.

5. Fifth plea in law, alleging that the defendant has committed an error of law in incorrectly characterising the legal relationship between IAG and each of Iberia and British Airways as falling within Article 5(4) of the EU Merger Regulation ([1]), allowing it to conclude that the acquisition was a concentration with a 'Community dimension' for the purposes of Article 1 of the said regulation and to conclude that it had jurisdiction to review the acquisition. The decision is therefore ultra vires.

([1]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, p. 1).

Action brought on 3 August 2012 — Akzo Nobel and Others v Commission

(Case T-345/12)

(2012/C 295/53)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, Netherlands), Akzo Nobel Chemicals Holding AB (Nacka, Sweden) and Eka Chemicals AB (Bohus, Sweden) (represented by: C. Swaak and R. Wesseling, lawyers)

Defendant: European Commission

Form of order sought

— Annulment, in whole or in part, of Commission Decision C(2012) 3533 final of 24 May 2012 rejecting a request for confidential treatment submitted in relation to Case COMP/38.620 — Hydrogen Peroxide and Perboratem;

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

Pleas in law and main arguments

In support of the action, the applicants rely on three main pleas in law and two alternative pleas in law.

1. First plea in law, alleging that the Commission has violated the duty to state reasons and the applicants' right to good administration pursuant to Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

2. Second plea in law, alleging that the publication of the extended non-confidential version of the Hydrogen Peroxide Decision violates the Commission's obligation of confidentiality pursuant Article 339 TFEU as further implemented by Regulation 1/2003 ([1]), Regulation 773/2004 ([2]) and the Commission's 2002 and 2006 Leniency Notices ([3]).

3. Third plea in law, alleging the publication of an extended non-confidential version of the Hydrogen Peroxide Decision that contains information originating from the applicants' leniency application violates the principles of legal certainty, the applicants' legitimate expectations and the right to good administration pursuant to Article 41 of the Charter of Fundamental Rights of the European Union.

4. Fourth plea in law, applicable to the extent that the Commission decision can be considered to imply a decision to grant access to certain information on the basis of the Transparency Regulation ([4]), alleging that the Commission has violated its duty to state reasons and the right to good administration pursuant to Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union.

5. Fifth plea in law, applicable to the extent that the Commission decision can be considered to imply a decision to grant access to certain information on the basis of the Transparency Regulation, alleging that the publication of the extended non-confidential version of the Hydrogen Peroxide Decision violates the said regulation.

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

([2]) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ L 123, p. 18).

([3]) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3) and Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17).

([4]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

Action brought on 3 August 2012 — Afepadi and Others v Commission

(Case T-354/12)

(2012/C 295/54)

Language of the case: Spanish

Parties

Applicants: Asociación Española de Fabricantes de Preparados alimenticios especiales, dietéticos y plantas medicinales (Afepadi) (Barcelona, Spain), Elaboradores Dietéticos, SA (Spain), Nova Diet, SA (Burgos, Spain), Laboratorios Vendrell, SA (Spain), Ynsadiet, SA (Madrid, Spain) (represented by: P. Velázquez González, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul recitals 11, 14 and 17 in the preamble to Commission Regulation (EU) 432/2012 as they are seriously detrimental to the applicants' interests;

— in the interest of legal certainty, declare that the rejection of the health claims listed in Article 13 of Regulation (EC) 1924/2006 of the Parliament and of the Council must result from a legislative act;

— order the European Commission to pay the costs of the present action.

Pleas in law and main arguments

On 16 May 2012 the Commission adopted Regulation (EU) No 432/2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health. ([1]) That regulation implements Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. ([2])

In support of their action, the applicants claim that the principle of legal certainty has been infringed.

In that regard, it claims that, in spite of the work which has been carried out, the Commission's task laid down in Article 13(3) of Regulation (EC) 1924/2006 of adopting a Community list of permitted claims has not been fulfilled in its entirety, since not all of the health claims submitted for evaluation by the EFSA were made subject to an authorisation decision. Consequently, a large number of statements remain to be evaluated for the first time or to be evaluated more extensively, including evaluations of botanical substances which the applicants frequently use in their foodstuffs.

In that way, operators in the foodstuff production sector and users of botanical substances know, with certainty, which health claims are based on generally accepted scientific data (the 222 authorised health claims) and which may be used in their products. However, they have not been informed in the same way (by means of a regulation) of the situation as regards claims which are not on the authorised list, that is to say, whether they are pending evaluation or require further evaluation, whether they have been rejected, whether they have been authorised or not, or when and in what time-frame.

(1) OJ 2012 L 136, p. 1.
(2) OJ 2006 L 404, p. 9.

Appeal brought on 8 August 2012 by Rosella Conticchio against the order of the Civil Service Tribunal of 12 July 2012 in Case F-22/11 Conticchio v Commission

(Case T-358/12 P)

(2012/C 295/55)

Language of the case: Italian

Parties

Appellant: Rosella Conticchio (Rome, Italy) (represented by: R. Giuffrida and A. Tortora, lawyers)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the General Court should:

— set aside the order of the Civil Service Tribunal of 12 July 2012 in Case F-22/11 *Conticchio* v *Commission*;

— grant the appellant the form of order sought at first instance;

— in the alternative, in the event that the Court should consider it appropriate and necessary, refer the case back to the Civil Service Tribunal to rule on the form of order sought by her at first instance;

— declare that the action at first instance, in relation to which the order under appeal was made, was admissible and well founded in its entirety, without exception;

— order the defendant to reimburse the appellant all costs, disbursements and fees incurred by her in relation both to the proceedings at first instance and to the present appeal proceedings.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal of the European Union of 12 July 2012, in Case F-22/11 *Conticchio* v *Commission*, dismissing, as being in part manifestly inadmissible and in part manifestly unfounded, an action principally seeking annulment of the decision calculating the appellant's retirement pension.

The appellant relies on three grounds of appeal.

1. First ground of appeal: 'Failure to have regard to the principle of good faith, fairness and impartiality — failure to indicate clearly the prescriptive authority to be attributed to certain provisions and practices followed by the Commission in its relationships with its employees'

   In that connection, the appellant states that in the order under appeal her arguments were held to be manifestly unfounded, with the Civil Service Tribunal finding that the salary slip for January 2010 could be challenged as from when she became aware of her actual position. However, that salary slip is not a decision-making act which can be challenged independently, since it is not conclusive of her position at the time of pension. It is settled case-law that, since a salary slip is an administrative decision of an accounting nature, it cannot constitute per se an act adversely affecting an official and, consequently, in the absence of other specific elements, it is not open to challenge before the courts. In that regard, the appellant states that the SysPer 2 system is not sufficient to quantify future pension rights in pecuniary terms, just as the 'Calculette Pension' (pensions calculator) gives a figure which is solely indicative and not open to challenge. Ms Conticchio was only able to challenge the final decision, communicated in writing, concerning the award and calculation of her pension rights, since it was not until then that she could be certain of the exact monthly amount of the pension itself.

2. Second ground of appeal: 'Infringement of the right to judicial protection and the right to a public hearing'

   Since the Civil Service Tribunal took the view that the documents before it provided it with sufficient information, it decided to give a decision by reasoned order without taking further steps in the proceedings. That decision infringed the appellant's right to full judicial protection. Ms Conticchio's right to set out her own arguments was not upheld; nor, contrary to the principle of fair legal process, was she allowed to provide further clarification with regard to possible grounds of inadmissibility and/or the unfounded nature of the action. To that effect, the appellant states that Article 41 of the Charter of Fundamental Rights of the European Union enshrines the right to good administration, understood as the right of every person to have his affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the European Union. That right includes, inter alia, the right of every person to be heard before the adoption of an individual measure which affects him adversely.

3. Third ground of appeal:'Unjust enrichment — Infringement of due process'

The appellant submits that the action at first instance cannot be considered out of time, since it was impossible to draw enough evidence from the salary slip to support the plea in law under consideration. The appellant was unable to allege unjust enrichment by the Commission until 26 May 2010, when she received the decision calculating her pension. At no point did she have full knowledge of the amount of contributions paid, since she never received the relevant notifications from the Commission services responsible. It must also be stated that the actuarial equivalent of the previous pension rights accrued by her with the Italian Istituto nazionale della previdenza sociale (National institution for social welfare) was paid to the Commission and those rights transferred to the Community pension scheme, thereby creating an imbalance between the pension which she received and the contributions paid throughout her career. In that way, the Administration first required a specific level of contributions and then awarded a level of seniority lower than the actual number of years worked during the career, giving rise to its own unjust enrichment at the expense of its officials.

Order of the General Court of 6 August 2012 — Makhlouf v Council

(Case T-82/12) ([1])

(2012/C 295/56)

Language of the case: French

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

([1]) OJ C 109, 14.4.2012.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 28 May 2012 — ZZ v Commission

(Case F-58/12)

(2012/C 295/57)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for (i) annulment of the implied decision rejecting the applicant's request relating to the defendant's compliance with the judgment of the Civil Service Tribunal of 4 November 2008 in Case F-41/06 *Marcuccio* v *Commission* and (ii) compensation for the harm which the applicant claims to have suffered.

Form of order sought

— Annul the decision issued by — or in any event attributable to — the Commission rejecting — howsoever and whether in full or in part — the claims set out in the application of 25 March 2011;

— annul the decision issued by — or in any event attributable to — the Commission rejecting — howsoever and whether in full or in part — the claims set out in the application of 17 October 2011;

— in so far as necessary, declare that, by failing to adopt, even in part, the measures necessary to comply with the judgment of the Civil Service Tribunal of 4 November 2008 in Case F-41/06 *Marcuccio* v *Commission*, within a reasonable time of that judgment's delivery, the Commission has acted unlawfully;

— order the Commission to pay the applicant the sum of EUR 70 000 by way of compensation for the wrongful damage sustained by the applicant as a result of the Commission's unlawful failure to adopt all the measures necessary for compliance with the judgment of 4 November 2008;

— order the Commission to pay the costs.

Action brought on 17 July 2012 — ZZ and Others v EIB

(Case F-73/12)

(2012/C 295/58)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

First, annulment of the decisions contained in salary slips to apply the general decision of the European Investment Bank setting a salary progression capped at 2.8% for all staff and the decision establishing a merit grid entailing the loss of 1 % of salary and, second, an order that the defendant pay the difference in remuneration together with interest on arrears and damages.

Form of order sought

— Annul the decisions to apply to the applicants the decision of the EIB's Board of Directors of 13 December 2011 setting a salary progression capped at 2.8% and the decision of the EIB's Management Committee of 14 February 2012 establishing a merit grid entailing the loss of 1 % of salary, decisions that are contained in the salary slips of April 2012, and annul to the same extent all the decisions contained in subsequent salary slips;

— order the defendant to pay the difference between the remuneration resulting from the aforementioned decisions of the EIB's Board of Directors of 13 December 2011 and of the EIB's Management Committee of 14 February 2012 and that paid in application of the preceding salary scheme, with interest on arrears to be added to that difference in remuneration with effect from 12 April 2012 and then on the 12th day of every month until full payment, the rate of interest being the ECB rate, increased by three percentage points;

— order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, such loss being assessed equitably, and on a provisional basis, at 1.5% of the monthly remuneration of each applicant;

— order the EIB to pay the costs.

Action brought on 25 July 2012 — ZZ v Council

(Case F-78/12)

(2012/C 295/59)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the Council's decision not to include the applicant in the list of officials eligible for promotion in respect of 2011

Form of order sought

— Annul the decision of 12 September 2011 of the Secretariat General of the Council and the decision of the Appointing Authority of 18 April 2012 not to include the applicant in the list of officials eligible for promotion;

— Order the Council to pay material and non-pecuniary damages provisionally assessed at EUR 40 000, which will be more precisely quantified during the proceedings, and compensatory and late-payment interest at the rate of 6.75%;

— Order the Council to pay the costs.

Action brought on 27 July 2012 — ZZ v Council

(Case F-81/12)

(2012/C 295/60)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decisions not to promote the applicant to grade AD12 in respect of promotion years 2010 and 2011.

Form of order sought

— Annul the decision of the Appointing Authority not to promote the applicant to grade AD12 in respect of promotion year 2010;

— Annul the decision of the Appointing Authority not to promote the applicant to grade AD12 in respect of promotion year 2011;

— If necessary, annul the decision of 18 April 2012 rejecting the claims brought against the decisions not to promote him to grade AD12 in respect of promotion years 2010 and 2011;

— Order the Council to pay the costs.

Action brought on 1 August 2012 — ZZ and Others v EIB

(Case F-83/12)

(2012/C 295/61)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

First, annulment of the decisions to distribute awards to the applicants pursuant to the new performance system resulting from the decision of 14 December 2010 of the Board of Directors and the decisions of 9 November 2010 and 16 November 2011 of the Management Committee and, second, subsequent application for the defendant to be ordered to pay the difference in remuneration, and damages.

Form of order sought

— Annul the decisions to distribute awards to the applicants pursuant to the new performance system resulting from the Board of Directors' decision of 14 December 2010 and the Management Committee's decisions of 9 November 2010 and 16 November 2011, the individual award decision being contained in the April 2012 notice, brought to the attention of the persons concerned on 22 April 2012 at the earliest;

— consequently,

  — order the defendant to pay the difference between the remuneration resulting from the Board of Directors' decision of 14 December 2010 and the decisions of 9 November 2010 and 16 November 2011, and that paid in application of the preceding bonus system, with interest on arrears to be added to that difference in remuneration with effect from 22 April 2012 until full payment, the rate of interest being the ECB rate, increased by three percentage points;

— order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, such loss being assessed equitably, and on a provisional basis, at 1.5% of the monthly remuneration of each applicant;

— order the EIB to pay the costs.

Action brought on 1 August 2012 — ZZ v Council

(Case F-84/12)

(2012/C 295/62)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Velardo, lawyer)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision refusing the applicant direct access to the final report of the findings of the Invalidity Committee and access to the diagnosis of the third doctor of that committee.

Form of order sought

— Annul the decision of 17 October 2011 denying the applicant direct access to the final report of the findings of the Invalidity Committee and access to the diagnosis of the third doctor;

— Annul the decision of the Appointing Authority of 24 March 2012 constitution a response to the claim submitted under Article 90(2) of the Staff Regulations;

— Order the defendant to pay damages with late-payment and compensatory interest at the rate of 6.75% in respect of the non-pecuniary and pecuniary harm suffered;

— Order the Council to pay the costs.

Action brought on 3 August 2012 — ZZ v Commission

(Case F-85/12)

(2012/C 295/63)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to calculate accredited pension rights acquired before entry into service on the basis of the new General Implementing Provisions.

Form of order sought

— Annul the decision of 27 January 2012 to accredit the pension rights acquired by the applicant before his entry into service at the Commission pursuant to Article 11(2) of Annex VIII to the Staff Regulations;

— to the extent necessary, annul the decision rejecting the applicant's complaint of 2 May 2012 against the decision determining the accreditation in the European Union pension scheme of the applicant's pension rights acquired before his entry into service;

— order the Commission to pay the costs.

EN

2012 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 200 per year
EU Official Journal, L + C series, paper + annual DVD	22 official EU languages	EUR 1 310 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 840 per year
EU Official Journal, L + C series, monthly DVD (cumulative)	22 official EU languages	EUR 100 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, DVD, one edition per week	multilingual: 23 official EU languages	EUR 200 per year
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual DVD.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our sales agents. The list of sales agents is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (http://eur-lex.europa.eu) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: http://europa.eu

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN