

Official Journal

of the European Union

C 331



English edition

Information and Notices

Volume 55

27 October 2012

<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
IV Notices		
NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES		
Court of Justice of the European Union		
2012/C 331/01	Last publication of the Court of Justice of the European Union in the <i>Official Journal of the European Union</i> OJ C 319, 20.10.2012	1
V Announcements		
COURT PROCEEDINGS		
Court of Justice		
2012/C 331/02	Case C-355/10: Judgment of the Court (Grand Chamber) of 5 September 2012 — European Parliament v Council of the European Union (Schengen Borders Code — Decision 2010/252/EU — Surveillance of the sea external borders — Introduction of additional rules governing border surveillance — Commission's implementing powers — Scope — Application for annulment)	2
2012/C 331/03	Case C-490/10: Judgment of the Court (Second Chamber) of 6 September 2012 — European Parliament v Council of the European Union (Action for annulment — Regulation (EU, Euratom) No 617/2010 — Notification to the Commission of investment projects in energy infrastructure within the European Union — Choice of legal basis — Article 337 TFEU and Article 187 EA — Article 194 TFEU)	2

EN

Price:
EUR 3

(Continued overleaf)

2012/C 331/04	Case C-544/10: Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Deutsches Weintor eG v Land Rheinland-Pfalz (Reference for a preliminary ruling — Approximation of laws — Public health — Consumer information and protection — Labelling and presentation of foodstuffs — Concepts of ‘nutrition claims’ and ‘health claims’ — Regulation (EC) No 1924/2006 — Description of a wine as ‘easily digestible’ — Reference to reduced acidity levels — Beverages containing more than 1,2 % by volume of alcohol — Prohibition of health claims — Charter of Fundamental Rights of the European Union — Article 15(1) — Freedom to choose an occupation — Article 16 — Freedom to conduct a business — Compatibility)	3
2012/C 331/05	Case C-619/10: Judgment of the Court (First Chamber) of 6 September 2012 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Trade Agency Ltd v Seramico Investments Ltd (Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Enforcement — Grounds for challenge — Document instituting proceedings not served on the defendant — Review by the court in which enforcement is sought — Scope — Value of the information in the certificate — Infringement of public policy — Judgment lacking reasoning)	3
2012/C 331/06	Case C-18/11: Judgment of the Court (Fourth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — The Commissioners for Her Majesty’s Revenue & Customs v Philips Electronics UK Ltd (Freedom of establishment — Tax legislation — Corporation tax — Tax relief — National legislation excluding the transfer of losses incurred in the national territory by a non-resident branch of a company established in another Member State to a company of the same group established in the national territory)	4
2012/C 331/07	Case C-42/11: Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Cour d’appel d’Amiens — France) — European arrest warrant issued against João Pedro Lopes Da Silva Jorge (Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of the European arrest warrant — Implementation in national law — Arrested person is a national of the issuing Member State — European arrest warrant issued for the purposes of enforcing a custodial sentence — Legislation of a Member State restricting the power not to execute the European arrest warrant to cases where the requested persons are nationals of that State)	5
2012/C 331/08	Joined Cases C-71/11 and C-99/11: Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v Y (C-71/11), Z (C-99/11) (Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or for subsidiary protection status — Article (2)(c) — Classification as a ‘refugee’ — Article 9(1) — Definition of ‘acts of persecution’ — Article 10(1)(b) — Religion as ground for persecution — Connection between the reasons for persecution and the acts of persecution — Pakistani nationals who are members of the Ahmadiyya religious community — Acts by the Pakistani authorities designed to prohibit the manifestation of a person’s religion in public — Acts sufficiently serious for the person concerned to have a well founded fear of being persecuted on account of his religion — Individual assessment of the facts and circumstances — Article 4)	5
2012/C 331/09	Case C-83/11: Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) — United Kingdom) — Secretary of State for the Home Department v Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman (Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Article 3(2) — Obligation to facilitate, in accordance with national legislation, entry and residence for ‘any other family members’ who are dependants of a Union citizen)	6

Notice No	Contents (continued)	Page
2012/C 331/10	Case C-96/11 P: Judgment of the Court (Eighth Chamber) of 6 September 2012 — August Storck KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Appeal — Community trade mark — Absolute ground for refusal — Lack of distinctive character — Three-dimensional sign consisting of the shape of a chocolate mouse)	7
2012/C 331/11	Joined Cases C-147/11 and C-148/11: Judgment of the Court (Third Chamber) of 6 September 2012 (references for a preliminary ruling from the Upper Tribunal — United Kingdom) — Secretary of State for Work and Pensions v Lucia Czop (C-147/11), Margita Punakova (C-148/11) (Regulation (EEC) No 1612/68 — Directive 2004/38/EC — Right of permanent residence — Social assistance benefits — Care of a child — Period of residence completed before the State of origin acceded to the European Union)	8
2012/C 331/12	Case C-170/11: Judgment of the Court (First Chamber) of 6 September 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) — Maurice Robert Josse Marie Ghislain Lippens, Gilbert Georges Henri Mittler, Jean Paul François Caroline Votron v Hendrikus Cornelis Kortekaas, Kortekaas Entertainment Marketing BV, Kortekaas Pensioen BV, Dirk Robbard De Kat, Johannes Hendrikus Visch, Euphemia Joanna Böklerink, Laminco GLD N-A, Ageas NV, formerly Fortis NV (Regulation (EC) No 1206/2001 — Cooperation in the taking of evidence in civil and commercial matters — Matters covered — Hearing by the court of a Member State of a witness who is a party in the main proceedings residing in another Member State — Possibility to summon a party as a witness before the competent court in accordance with the law of its Member State)	8
2012/C 331/13	Case C-308/11: Judgment of the Court (Fifth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main — Germany) — Chemische Fabrik Kreussler & Co. GmbH v Sunstar Deutschland GmbH, formerly John O. Butler GmbH (Directive 2001/83/EC — Medicinal products for human use — Article 1(2)(b) — Meaning of ‘medicinal product by function’ — Definition of the term ‘pharmacological action’)	9
2012/C 331/14	Case C-324/11: Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Legfelsőbb Bíróság — Hungary) — Gábor Tóth v Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága (Taxation — VAT — Directive 2006/112/EC — Article 9 — Meaning of taxable person — Right to deduct — Refusal — Principle of tax neutrality — Issuer of the invoice removed from the business register — Issuer of the invoice having failed to declare his employees to the tax authority — Obligation of the taxable person to satisfy himself as to the propriety of the conduct of the issuer of that invoice vis-à-vis the tax authority)	9
2012/C 331/15	Case C-327/11 P: Judgment of the Court (Fifth Chamber) of 6 September 2012 — United States Polo Association v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Word mark ‘U.S. POLO ASSN.’ — Opposition by the holder of the earlier word mark ‘POLO-POLO’)	10
2012/C 331/16	Case C-471/11: Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Augstākās Tiesas Senāts — Latvia) — Cido Grupa SIA v Valsts ieņēmumu dienests (Accession of new Member States — Transitional measures — Agricultural products — Sugar — Regulation (EC) No 60/2004 — Basis of assessment and rate applicable for the charge on surplus stocks)	11
2012/C 331/17	Case C-487/11: Judgment of the Court (Second Chamber) of 6 September 2012 (reference for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — Laimonis Treimanis v Valsts ieņēmumu dienests (Regulation (EEC) No 918/83 — Articles 1(2)(c), 2 and 7(1) — Relief from import duties on personal property — The term ‘property intended ... for meeting ... household needs’ — Motor vehicle imported into the European Union — Vehicle used by a member of the family of the importing owner)	11

Notice No	Contents (continued)	Page
2012/C 331/18	Case C-496/11: Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Tribunal Central Administrativo Sul — Portugal) — Portugal Telecom SGPS, SA v Fazenda Pública (VAT — Sixth Directive — Articles 17(2) and 19 — Deductions — VAT due or paid for services acquired by a holding company — Services having a direct, immediate and unequivocal relationship with taxable output transactions) 12	12
2012/C 331/19	Case C-524/11: Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Lowlands Design Holding BV v Minister van Financiën (Common Customs Tariff — Combined Nomenclature — Tariff classification — Romper bags for babies and young children — Subheadings 6209 20 00 or 6211 42 90) 12	12
2012/C 331/20	Case C-367/12: Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) lodged on 1 August 2012 — Corinna Prinz-Stremitzer, Susanne Sokoll-Seebacher 13	13
2012/C 331/21	Case C-383/12 P: Appeal brought on 8 August 2012 by Environmental Manufacturing LLP against the judgment of the General Court (Fourth Chamber) delivered on 22 May 2012 in Case T-570/10: Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) 13	13
2012/C 331/22	Case C-397/12 P: Appeal brought on 28 August 2012 by Transports Schiocchet — Excursions against the order of the General Court (Seventh Chamber) delivered on 18 June 2012 in Case T-203/11 Schiocchet v Council and Commission 14	14
2012/C 331/23	Case C-400/12: Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 31 August 2012 — Secretary of State for the Home Department v MG 15	15
2012/C 331/24	Case C-406/12: Action brought on 4 September 2012 — European Commission v Republic of Slovenia 15	15
2012/C 331/25	Case C-407/12: Action brought on 3 September 2012 — European Commission v Republic of Slovenia 16	16
2012/C 331/26	Case C-410/12 P: Appeal brought on 7 September 2012 by medi GmbH & Co. KG against the judgment of the General Court (Sixth Chamber) delivered on 12 July 2012 in Case T-470/09 medi GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) 16	16
General Court		
2012/C 331/27	Order of the General Court of 18 September 2012 — Schröder v CPVO — Hansson (LEMON SYMPHONY) (Joined Case T-133/08, T-134/08, T-177/08 and T-242/09) (Plant varieties — Decision by the CPVO to adapt, of its own motion, the official description of the variety LEMON SYMPHONY — Application for revocation of the Community plant variety right granted for the variety LEMON SYMPHONY — Application for annulment of the Community plant variety right granted for the variety LEMON SYMPHONY — Application for a Community plant variety right for the variety SUMOST 01 — Summons to attend oral proceedings before the Board of Appeal of the CPVO — Period of notice to attend of at least one month) 17	17

Notice No	Contents (continued)	Page
2012/C 331/28	Case T-265/08: Judgment of the General Court of 19 September 2012 –Germany v Commission (ERDF — Reduction of financial assistance — Operational programme falling within Objective 1 (1994-1999), concerning the Land Thüringen (Germany))	17
2012/C 331/29	Joined Cases T-168/10 and T-572/10: Judgment of the General Court of 19 September 2012 — Commission v SEMEA and Commune of Millau (Arbitration clause — Grant contract concerning a local development plan consisting in the performance of work for the preparation and launching of a European local enterprise centre in Millau (France) — Repayment of part of the advance payments made — Admissibility of an action brought against a company established under French law removed from the companies register — Application of French law — Administrative contract — Recovery of sum overpaid — Time-bar — Enforceability of an arbitration clause — Assumption of debt — Incidental debts rule — Stipulation in favour of third party)	18
2012/C 331/30	Case T-326/10: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in light grey, dark grey, beige, dark red and brown) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in light grey, dark grey, beige, dark red and brown — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009)	19
2012/C 331/31	Case T-327/10: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in black, dark grey, light grey and dark red) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in black, dark grey, light grey and dark red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009)	19
2012/C 331/32	Case T-328/10: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in dark grey, light grey, beige and dark red) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in dark grey, light grey, beige and dark red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009)	19
2012/C 331/33	Case T-329/10: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in black, grey, beige and dark red) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in black, grey, beige and dark red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009).....	20
2012/C 331/34	Case T-26/11: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in black, beige, brown, dark red and grey) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in black, beige, brown, dark red and grey — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009).....	20
2012/C 331/35	Case T-31/11: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in pink, violet, beige and dark grey) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in pink, violet, beige and dark grey — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009)	20



2012/C 331/36	Case T-50/11: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in dark grey, light grey, black, beige, dark red and light red) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in dark grey, light grey, black, beige, dark red and light red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009).....	21
2012/C 331/37	Case T-156/11: Judgment of the General Court of 18 September 2012 — Since Hardware (Guangzhou) v Council (Dumping — Imports of ironing boards originating in China — Proceeding initiated against a single company — Market economy treatment — Three-month time-limit provided for in the second indent of Article 2(7)(c) of Regulation (EC) No 1225/2009 — Burden of proof — Determination of injury)	21
2012/C 331/38	Case T-164/11: Judgment of the General Court of 19 September 2012 — Reddig v OHIM — Morleys (Knife handle) (Community trade mark — Proceedings for invalidity — Three-dimensional Community trade mark — Knife handle — Absolute ground for refusal — Sign constituted exclusively by the shape of the product necessary for obtaining a technical result — Article 7(1)(e)(ii) of Regulation (EC) No 207/2009 — Declaration of invalidity by the Board of Appeal)	21
2012/C 331/39	Case T-220/11: Judgment of the General Court of 19 September 2012 — TeamBank v OHIM — Fercredit Servizi Finanziari (f@ir Credit) (Community trade mark — Opposition proceedings — Application for Community figurative mark f@ir Credit — Earlier Community figurative mark FERCREDIT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009).....	22
2012/C 331/40	Case T-231/11: Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in dark grey, light grey, light blue, dark blue, ochre and beige) (Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in dark grey, light grey, light blue, dark blue, ochre and beige — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009).....	22
2012/C 331/41	Case T-267/11: Judgment of the General Court of 19 September 2012 — Video Research USA, v OHIM (VR) (Community trade mark — Community figurative mark VR — Failure to apply for renewal of the mark — Cancellation of the mark upon expiry of the registration — Application for restitutio in integrum — Article 81 of Regulation (EC) No 207/2009).....	22
2012/C 331/42	Case T-460/11: Judgment of the General Court of 18 September 2012 — Scandic Distilleries SA v OHIM — Bürgerbräu, Röhm & Söhne (BÜRGER) (Community trade mark — Opposition proceedings — Application for Community figurative mark BÜRGER — Earlier Community word mark Bürgerbräu — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009).....	23
2012/C 331/43	Case T-241/03 REV: Order of the General Court of 11 September 2012 — Marcuccio v Commission (Proceedings — Review — Consequences of a later judgment of the General Court — New fact — Absence — Inadmissibility)	23
2012/C 331/44	Case T-145/09: Order of the General Court of 6 September 2012 — Bredenkamp and Others v Commission (Common foreign and security policy — Restrictive measures adopted having regard to the situation in Zimbabwe — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)	23

<u>Notice No</u>	Contents (continued)	Page
2012/C 331/45	Case T-180/10: Order of the General Court of 6 September 2012 — Nickel Institute v Commission (Access to documents — Regulation (EC) No 1049/2001 — Classification, packaging and labelling of certain nickel carbonate compounds as dangerous substances — Directives 2008/58/EC and 2009/2/EC — 30th and 31st adaptations to technical progress of Directive 67/548/EEC — Partial refusal of access — Action for annulment — No need to adjudicate)	24
2012/C 331/46	Case T-222/11: Order of the General Court of 6 September 2012 — Rautenbach v Council and Commission (Common foreign and security policy — Restrictive measures adopted having regard to the situation in Zimbabwe — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)	24
2012/C 331/47	Case T-564/11: Order of the General Court of 5 September 2012 — Farage v Parliament and Buzek (Law governing the institutions — Decision of the President of the Parliament imposing on a Member of the Parliament the penalty of forfeiture of entitlement to the daily subsistence allowance for a period of 10 days — Decision of the Committee on Legal Affairs of the Parliament declaring inadmissible the Member's request for defence of his Parliamentary immunity — Manifest lack of jurisdiction of the General Court — Manifest inadmissibility)	25
2012/C 331/48	Case T-642/11 P: Order of the General Court of 4 September 2012 — Mische v Parliament (Appeals — Civil service — Officials — Appointment — Classification in grade — Competition published before the entry into force of the new Staff Regulations of Officials — Distortion of the facts — Appeal manifestly unfounded)	25
2012/C 331/49	Case T-352/12: Action brought on 3 August 2012 — Grupo Flexi de León v OHIM (FLEXI)	26
2012/C 331/50	Case T-372/12: Action brought on 20 August 2012 — El Corte Inglés v OHIM — Apro Tech (APRO)	26
2012/C 331/51	Case T-376/12: Action brought on 21 August 2012 — Hellenic Republic v Commission	26
2012/C 331/52	Case T-377/12: Action brought on 22 August 2012 — Spa Monopole v OHIM	27
2012/C 331/53	Case T-380/12: Action brought on 22 August 2012 — Demon International v OHIM — Big Line Sas di Graziani Lorenzo (DEMON)	28
2012/C 331/54	Case T-388/12: Action brought on 30 August 2012 — Singer v OHIM — Cordia Magyarország Ingatlanforgalmazó Zártkörűen Működő (CORDIO)	28
2012/C 331/55	Case T-389/12: Action brought on 5 September 2012 — EDF v Commission	29
2012/C 331/56	Case T-392/12: Action brought on 3 September 2012 — Luigi Lavazza SpA v OHIM	29
2012/C 331/57	Case T-394/12: Action brought on 28 August 2012 — Alfastar Benelux v Council	30
2012/C 331/58	Case T-398/12: Action brought on 6 September 2012 — Cosma Moden v OHIM — s.Oliver Bernd Freier (COSMA)	30



<u>Notice No</u>	Contents (continued)	Page
2012/C 331/59	Case T-399/12: Action brought on 6 September 2012 — Cosma Moden v OHIM — s.Oliver Bernd Freier (COSMA)	31
2012/C 331/60	Case T-401/12: Action brought on 10 September 2012 — Klingel v OHIM — Develey (JUNGBORN)	31
2012/C 331/61	Case T-405/12: Action brought on 10 September 2012 — FH (*) v Commission	32

European Union Civil Service Tribunal

2012/C 331/62	Case F-89/12: Action brought on 21 August 2012 — ZZ v Commission	33
2012/C 331/63	Case F-91/12: Action brought on 3 September 2012 — ZZ v Commission	33



IV

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

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 331/01)

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

OJ C 319, 20.10.2012

Past publications

OJ C 311, 13.10.2012

OJ C 303, 6.10.2012

OJ C 295, 29.9.2012

OJ C 287, 22.9.2012

OJ C 273, 8.9.2012

OJ C 258, 25.8.2012

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 5 September 2012 — European Parliament v Council of the European Union(Case C-355/10) ⁽¹⁾

(Schengen Borders Code — Decision 2010/252/EU — Surveillance of the sea external borders — Introduction of additional rules governing border surveillance — Commission's implementing powers — Scope — Application for annulment)

(2012/C 331/02)

Language of the case: English

Parties

Applicant: European Parliament (represented by: M. Dean, A. Auersperger Matic and K. Bradley, Agents)

Defendant: Council of the European Union (represented by: Z. Kupčová and R. Szostak, Agents)

Intervener in support of the defendant: European Commission (represented by: C. O'Reilly and M. Wilderspin, Agents)

Re:

Annulment of Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2010 L 111, p. 20) — Additional measures governing surveillance — Introduction of rules exceeding the extent of the Council's implementing powers

Operative part of the judgment

The Court:

1. Annuls Council Decision 2010/252/EU of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;

2. Maintains the effects of Decision 2010/252 until the entry into force of new rules within a reasonable time;
3. Orders the Council of the European Union to pay the costs;
4. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 246, 11.9.2010.

Judgment of the Court (Second Chamber) of 6 September 2012 — European Parliament v Council of the European Union(Case C-490/10) ⁽¹⁾

(Action for annulment — Regulation (EU, Euratom) No 617/2010 — Notification to the Commission of investment projects in energy infrastructure within the European Union — Choice of legal basis — Article 337 TFEU and Article 187 EA — Article 194 TFEU)

(2012/C 331/03)

Language of the case: French

Parties

Applicant: European Parliament (represented by: M. Gómez-Leal, J. Rodrigues and L. Visaggio, Agents)

Defendant: Council of the European Union (represented by: M. Simm and A. Lo Monaco, Agents)

Intervening parties in support of the defendant: French Republic (represented by: G. de Bergues and A. Adam, Agents); European Commission (represented by: P. Oliver and O. Beynet, Agents)

Re:

Action for annulment — Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96 (OJ 2010 L 180, p. 7) — Choice of the dual legal basis of Articles 337 TFEU and 187 EA — Measures falling within the specific responsibilities of the Union in relation to energy and requiring the legal basis of Article 194 TFEU only

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96;*
2. *Maintains the effects of Regulation No 617/2010 until the entry into force, within a reasonable period, of a new regulation adopted on the appropriate legal basis, namely Article 194(2) TFEU;*
3. *Orders the Council of the European Union to pay the costs except those of the French Republic and the European Commission;*
4. *Orders the French Republic and the European Commission to bear their own costs.*

⁽¹⁾ OJ C 13, 15.1.2011.

Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Deutsches Weintor eG v Land Rheinland-Pfalz

(Case C-544/10) ⁽¹⁾

(Reference for a preliminary ruling — Approximation of laws — Public health — Consumer information and protection — Labelling and presentation of foodstuffs — Concepts of ‘nutrition claims’ and ‘health claims’ — Regulation (EC) No 1924/2006 — Description of a wine as ‘easily digestible’ — Reference to reduced acidity levels — Beverages containing more than 1,2 % by volume of alcohol — Prohibition of health claims — Charter of Fundamental Rights of the European Union — Article 15(1) — Freedom to choose an occupation — Article 16 — Freedom to conduct a business — Compatibility)

(2012/C 331/04)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Deutsches Weintor eG

Defendant: Land Rheinland-Pfalz

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of the first subparagraph of Article 6(1) TEU in conjunction with Articles 15(1) and 16 of the Charter of Fundamental Rights of the European Union, and of Article 4(3) in conjunction with Articles 2(2)(5) or 10(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9), as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010 (OJ 2010 L 37, p. 16) — Description of a wine as easily digestible with a reference to reduced acidity — Prohibition of health claims made in relation to beverages containing more than 1,2 % by volume of alcohol — Meaning of ‘health claims’

Operative part of the judgment

1. *The first subparagraph of Article 4(3) of 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, as last amended by Commission Regulation (EU) No 116/2010 of 9 February 2010, must be interpreted as meaning that the words ‘health claim’ cover a description such as ‘easily digestible’ that is accompanied by a reference to the reduced content of substances frequently perceived by consumers as being harmful.*
2. *The fact that a producer or distributor of wine is prohibited under Regulation No 1924/2006, as amended by Regulation No 116/2010, without exception, from using a claim of the kind at issue in the main proceedings, even if that claim is inherently correct, is compatible with the first subparagraph of Article 6(1) TEU.*

⁽¹⁾ OJ C 72, 5.3.2011.

Judgment of the Court (First Chamber) of 6 September 2012 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Trade Agency Ltd v Seramico Investments Ltd

(Case C-619/10) ⁽¹⁾

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Enforcement — Grounds for challenge — Document instituting proceedings not served on the defendant — Review by the court in which enforcement is sought — Scope — Value of the information in the certificate — Infringement of public policy — Judgment lacking reasoning)

(2012/C 331/05)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Trade Agency Ltd

Defendant: Seramico Investments Ltd

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 34(1) and (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 (OJ 2001 L 12, p. 1) — Interpretation of Article 47 of the Charter of Fundamental Rights of the European Union — Grounds for refusing recognition — Right to an effective remedy — Defendant claiming to have received neither service of the application initiating proceedings nor the default judgment — Power of the enforcing court to determine whether the application initiating proceedings had been served on the defendant in default when service is accompanied by a certificate as provided for by Article 54 of the regulation — Decision of the court of the Member State of origin given in default of appearance without consideration of the merits of the application

Operative part of the judgment

1. Article 34(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, to which Article 45(1) thereof refers, read in conjunction with recitals 16 and 17 in the preamble, must be interpreted as meaning that, where the defendant brings an action against the declaration of enforceability of a judgment given in default of appearance in the Member State of origin which is accompanied by the certificate provided for by Article 54 of that regulation, claiming that he has not been served with the document instituting the proceedings, the court of the Member State in which enforcement is sought hearing the action has jurisdiction to verify that the information in that certificate is consistent with the evidence.
2. Article 34(1) of Regulation No 44/2001, to which Article 45(1) thereof refers, must be interpreted as meaning that the courts of the Member State in which enforcement is sought may refuse to enforce a judgment given in default of appearance which disposes of the substance of the dispute but which does not contain an assessment of the subject-matter or the basis of the action and which lacks any argument of its merits, only if it appears to the court, after an overall assessment of the proceedings and in the light of all the relevant circumstances, that that judgment is a manifest and disproportionate breach of the defendant's right to a fair trial referred to in the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, on account of the impossibility of bringing an appropriate and effective appeal against it.

Judgment of the Court (Fourth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — The Commissioners for Her Majesty's Revenue & Customs v Philips Electronics UK Ltd

(Case C-18/11) ⁽¹⁾

(Freedom of establishment — Tax legislation — Corporation tax — Tax relief — National legislation excluding the transfer of losses incurred in the national territory by a non-resident branch of a company established in another Member State to a company of the same group established in the national territory)

(2012/C 331/06)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

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

Defendant: Philips Electronics UK Ltd

Re:

Reference for a preliminary ruling — Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) — Interpretation of Article 49 TFEU — Freedom of establishment — Tax legislation — Corporation Tax — Tax relief — National legislation excluding the transfer of losses realised within the national territory by a non-resident branch of a company established in another Member State to a company established in the national territory belonging to the same group

Operative part of the judgment

1. Article 43 EC must be interpreted as meaning that where, under the national legislation of a Member State, the possibility of transferring, by means of group relief and to a resident company, losses sustained by the permanent establishment in that Member State of a non-resident company is subject to a condition that those losses cannot be used for the purposes of foreign taxation, and where the transfer of losses sustained in that Member State by a resident company is not subject to any equivalent condition, such provisions constitute a restriction on the freedom of a non-resident company to establish itself in another Member State.
2. A restriction on the freedom of a non-resident company to establish itself in another Member State, such as that at issue in the main proceedings, cannot be justified by overriding reasons in the public interest based on the objective of preventing the double use of losses or the objective of preserving a balanced allocation of the power to impose taxes between the Member States or by a combination of those two grounds.

⁽¹⁾ OJ C 72, 5.3.2011.

3. In a situation such as that in the main proceedings, the national court must disapply any provision of the national legislation which is contrary to Article 43 EC.

(¹) OJ C 89, 19.3.2011.

Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Cour d'appel d'Amiens — France) — European arrest warrant issued against João Pedro Lopes Da Silva Jorge

(Case C-42/11) (¹)

(Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant and surrender procedures between Member States — Article 4(6) — Ground for optional non-execution of the European arrest warrant — Implementation in national law — Arrested person is a national of the issuing Member State — European arrest warrant issued for the purposes of enforcing a custodial sentence — Legislation of a Member State restricting the power not to execute the European arrest warrant to cases where the requested persons are nationals of that State)

(2012/C 331/07)

Language of the case: French

Referring court

Cour d'appel d'Amiens

Parties to the main proceedings

João Pedro Lopes Da Silva Jorge

Re:

Reference for a preliminary ruling — Cour d'appel d'Amiens — Interpretation of Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) and Article 18 TFEU — European arrest warrant issued for the purposes of enforcing a custodial sentence — Legislation of a Member State restricting the option of non-execution of a European arrest warrant to cases in which the persons sought are nationals of that Member State — Discrimination based on nationality

Operative part of the judgment

Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and Article 18 TFEU must be interpreted as meaning that, although a Member State may, in trans-

posing Article 4(6), decide to limit the situations in which an executing judicial authority may refuse to surrender a person who falls within the scope of that provision, it cannot automatically and absolutely exclude from its scope the nationals of other Member States staying or resident in its territory irrespective of their connections with it.

The national court is required, taking into consideration the whole body of domestic law and applying the interpretative methods recognised by it, to interpret that law, so far as possible, in the light of the wording and the purpose of Framework Decision 2002/584, with a view to ensuring that that framework decision is fully effective and to achieving an outcome consistent with the objective pursued by it.

(¹) OJ C 103, 2.4.2011.

Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v Y (C-71/11), Z (C-99/11)

(Joined Cases C-71/11 and C-99/11) (¹)

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or for subsidiary protection status — Article (2)(c) — Classification as a 'refugee' — Article 9(1) — Definition of 'acts of persecution' — Article 10(1)(b) — Religion as ground for persecution — Connection between the reasons for persecution and the acts of persecution — Pakistani nationals who are members of the Ahmadiyya religious community — Acts by the Pakistani authorities designed to prohibit the manifestation of a person's religion in public — Acts sufficiently serious for the person concerned to have a well founded fear of being persecuted on account of his religion — Individual assessment of the facts and circumstances — Article 4)

(2012/C 331/08)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendants: Y (C-71/11), Z (C-99/11)

Other parties: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht, Bundesbeauftragter für Asylangelegenheiten beim Bundesamt für Migration und Flüchtlinge

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of Articles 2(c) and 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p.12) — Conditions for qualifying as a refugee — Sufficiently severe nature of an act of persecution — Acts by the Pakistani authorities seeking to restrict the activities of the Ahmadiyya religious community

Operative part of the judgment

1. Articles 9(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:

— not all interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union is capable of constituting an ‘act of persecution’ within the meaning of that provision of the Directive;

— there may be an act of persecution as a result of interference with the external manifestation of that freedom, and

— for the purpose of determining whether interference with the right to freedom of religion which infringes Article 10(1) of the Charter of Fundamental Rights of the European Union may constitute an ‘act of persecution’, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment by one of the actors referred to in Article 6 of Directive 2004/83.

2. Article 2(c) of Directive 2004/83 must be interpreted as meaning that the applicant’s fear of being persecuted is well founded if, in the light of the applicant’s personal circumstances, the competent authorities consider that it may reasonably be thought that, upon his return to his country of origin, he will engage in religious practices which will expose him to a real risk of persecution. In assessing an application for refugee status on an individual basis, those authorities cannot reasonably expect the applicant to abstain from those religious practices.

⁽¹⁾ OJ C 130, 30.4.2011.
OJ C 173, 11.6.2011.

Judgment of the Court (Grand Chamber) of 5 September 2012 (reference for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) — United Kingdom) — Secretary of State for the Home Department v Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman

(Case C-83/11) ⁽¹⁾

(Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Article 3(2) — Obligation to facilitate, in accordance with national legislation, entry and residence for ‘any other family members’ who are dependants of a Union citizen)

(2012/C 331/09)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber)

Parties to the main proceedings

Appellant: Secretary of State for the Home Department

Respondents: Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman

Re:

Reference for a preliminary ruling — Upper Tribunal — Interpretation of Article 3(2) and Article 10(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Concept of ‘any other family members’ of a Union citizen as referred to in Article 3(2) of the directive — Dependent family members of a married couple where one spouse is a third country national — Family members who are not direct ascendants of the married couple

Operative part of the judgment

1. On a proper construction of Article 3(2) of 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:

— the Member States are not required to grant every application for entry or residence submitted by family members of a Union citizen who do not fall under the definition in Article 2(2) of that directive, even if they show, in accordance with Article 10(2) thereof, that they are dependants of that citizen;

— it is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons;

— the Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness; and

— every applicant is entitled to a judicial review of whether the national legislation and its application satisfy those conditions.

2. In order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are 'dependants' of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.

3. On a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the directive and do not deprive that provision of its effectiveness.

4. The question whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive has endured in the host Member State does not fall within the scope of the directive.

Judgment of the Court (Eighth Chamber) of 6 September 2012 — August Storck KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-96/11 P) ⁽¹⁾

(Appeal — Community trade mark — Absolute ground for refusal — Lack of distinctive character — Three-dimensional sign consisting of the shape of a chocolate mouse)

(2012/C 331/10)

Language of the case: German

Parties

Appellant: August Storck KG (represented by: T. Reher and R.W. Staub, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Manea and G. Schneider, acting as Agents)

Re:

Appeal against the judgment of the General Court (First Chamber) of 17 December 2010 in Case T-13/09 *Storck v OHIM*, by which the General Court dismissed the action for annulment brought against the decision of the Fourth Board of Appeal of OHIM of 12 November 2008, rejecting the appeal filed against the decision of the Examiners refusing registration of a three-dimensional sign in the shape of a chocolate mouse as a Community trade mark for certain goods in Class 30 — Distinctive character of the mark

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders August Storck KG to pay the costs.

⁽¹⁾ OJ C 145, 14.5.2011.

⁽¹⁾ OJ C 152, 21.5.2011.

Judgment of the Court (Third Chamber) of 6 September 2012 (references for a preliminary ruling from the Upper Tribunal — United Kingdom) — Secretary of State for Work and Pensions v Lucja Czop (C-147/11), Margita Punakova (C-148/11)

(Joined Cases C-147/11 and C-148/11) ⁽¹⁾

(Regulation (EEC) No 1612/68 — Directive 2004/38/EC — Right of permanent residence — Social assistance benefits — Care of a child — Period of residence completed before the State of origin acceded to the European Union)

(2012/C 331/11)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Applicant: Secretary of State for Work and Pensions

Defendants: Lucja Czop (C-147/11), Margita Punakova (C-148/11)

Re:

References for a preliminary ruling — Upper Tribunal — Interpretation of Article 12 of Regulation No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475) and Article 16(1) of Directive 2004/38 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 (OJ 2004 L 158, p. 77) — Right of residence of a Polish national who moved to the United Kingdom prior to the accession of Poland, who, after accession, was self employed for less than a year and who is the primary carer of a child who entered general education after the period she was in self-employment

Operative part of the judgment

Article 12 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community must be interpreted as conferring on the person who is the primary carer of a migrant worker's or former migrant worker's child who is attending educational courses in the host Member State a right of residence in that State, although that provision cannot be interpreted as conferring such a right on the person who is the primary carer of the child of a person who is self-employed.

Article 16(1) of 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 must be interpreted as meaning that a European Union citizen who is a national of a Member State which recently acceded to the European Union may, pursuant to that provision, rely on a right of permanent residence where he or she has resided in the host Member State for a continuous period of more than five years, part of which was completed before the accession of the former State to the European Union, provided that the residence was in accordance with the conditions laid down in Article 7(1) of Directive 2004/38.

⁽¹⁾ OJ C 152, 21.5.2011.

Judgment of the Court (First Chamber) of 6 September 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) — Maurice Robert Josse Marie Ghislain Lippens, Gilbert Georges Henri Mittler, Jean Paul François Caroline Votron v Hendrikus Cornelis Kortekaas, Kortekaas Entertainment Marketing BV, Kortekaas Pensioen BV, Dirk Robbard De Kat, Johannes Hendrikus Visch, Euphemia Joanna Bökkerink, Laminco GLD N-A, Ageas NV, formerly Fortis NV)

(Case C-170/11) ⁽¹⁾

(Regulation (EC) No 1206/2001 — Cooperation in the taking of evidence in civil and commercial matters — Matters covered — Hearing by the court of a Member State of a witness who is a party in the main proceedings residing in another Member State — Possibility to summon a party as a witness before the competent court in accordance with the law of its Member State)

(2012/C 331/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicants: Maurice Robert Josse Marie Ghislain Lippens, Gilbert Georges Henri Mittler, Jean Paul François Caroline Votron

Defendants: Hendrikus Cornelis Kortekaas, Kortekaas Entertainment Marketing BV, Kortekaas Pensioen BV, Dirk Robbard De Kat, Johannes Hendrikus Visch, Euphemia Joanna Bökkerink, Laminco GLD N-A, Ageas NV, formerly Fortis NV

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 1(1) of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ 2001 L 174, p. 1) — Score — Hearing of witnesses by Netherlands courts of witnesses who are also parties to the main proceedings but not resident in the Netherlands — Domestic procedural law

Operative part of the judgment

The provisions of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, in particular Article 1(1) thereof, must be interpreted as meaning that the competent court of a Member State which wishes to hear as a witness a party residing in another Member State, has the option, in order to perform such a hearing, to summon that party before it and hear him in accordance with the law of its Member State.

(¹) OJ C 179, 18.6.2011.

Judgment of the Court (Fifth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Oberlandesgericht Frankfurt am Main — Germany) — Chemische Fabrik Kreussler & Co. GmbH v Sunstar Deutschland GmbH, formerly John O. Butler GmbH

(Case C-308/11) (¹)

(Directive 2001/83/EC — Medicinal products for human use — Article 1(2)(b) — Meaning of ‘medicinal product by function’ — Definition of the term ‘pharmacological action’)

(2012/C 331/13)

Language of the case: German

Referring court

Oberlandesgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Chemische Fabrik Kreussler & Co. GmbH

Defendant: Sunstar Deutschland GmbH, formerly John O. Butler GmbH

Re:

Reference for a preliminary ruling — Oberlandesgericht Frankfurt am Main — Interpretation of Article 1(2)(b) 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), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 136, p. 34) — Classification of a product as a medicinal product — Mouthwash containing 0,12 % chlorhexidine — Definition of ‘pharmacological action’

Operative part of the judgment

1. Article 1(2)(b) 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, as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004, must be interpreted as meaning that, for the purpose of defining the term ‘pharmacological action’ within the meaning of that provision, account may be taken of the definition of that term in the Guidance Document on the demarcation between the Cosmetic Products Directive 76/768 and the Medicinal Products Directive 2001/83 as agreed between the Commission services and the competent authorities of the Member States.
2. Article 1(2)(b) of Directive 2001/83 must be interpreted as meaning that, for a substance to be regarded as exerting a ‘pharmacological action’ within the meaning of that provision, it is not necessary for there to be an interaction between the molecules of which it consists and a cellular constituent of the user’s body, as an interaction between that substance and any cellular constituent present within the user’s body may be sufficient.

(¹) OJ C 282, 24.9.2011.

Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Legfelsőbb Bíróság — Hungary) — Gábor Tóth v Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága

(Case C-324/11) (¹)

(Taxation — VAT — Directive 2006/112/EC — Article 9 — Meaning of taxable person — Right to deduct — Refusal — Principle of tax neutrality — Issuer of the invoice removed from the business register — Issuer of the invoice having failed to declare his employees to the tax authority — Obligation of the taxable person to satisfy himself as to the propriety of the conduct of the issuer of that invoice vis-à-vis the tax authority)

(2012/C 331/14)

Language of the case: Hungarian

Referring court

Legfelsőbb Bíróság

Parties to the main proceedings

Applicant: Gábor Tóth

Defendant: Nemzeti Adó- és Vámhivatal Észak-magyarországi Regionális Adó Főigazgatósága

Re:

Reference for a preliminary ruling — Magyar Köztársaság Legfelsőbb Bírósága — Interpretation of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Conditions for the exercise of the right to deduct input tax in the practice of the national tax authorities — Tax payer's obligation to satisfy himself both as to the tax status of the issuer of the invoice and as to the lawfulness of the legal relationship and tax situation of the issuer's employees who carry out the invoiced work

Operative part of the judgment

1. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the principle of tax neutrality must be interpreted as meaning that they preclude the tax authority from refusing a taxable person the right to deduct value added tax due or paid for services provided to him solely on the ground that the business operator's licence of the issuer of the invoice had been withdrawn before he provided the services in question or issued the invoice for them, where that invoice contains all the information required by Article 226 of that directive, in particular the information necessary to identify the person who drew up the invoice and the nature of the services supplied.
2. Directive 2006/112 must be interpreted as meaning that it precludes the tax authority from refusing a taxable person the right to deduct value added tax due or paid for services provided to him on the ground that the issuer of the invoice relating to those services did not declare the workers he employed, without that authority establishing, on the basis of objective evidence, that the taxable person concerned knew, or ought to have known, that the transaction relied on as a basis for the right to deduct was connected with fraud committed by the issuer of the invoice or by another trader acting earlier in the chain of supply.
3. Directive 2006/112 must be interpreted as meaning that the fact that a taxable person did not verify either whether a legal relationship existed between the workers employed on a work site and the issuer of the invoice or whether the latter had declared those workers does not constitute an objective factor which demonstrates that the addressee of the invoice knew or ought to have known that he was participating in a transaction involving fraudulent evasion of value added tax, where the addressee was not in possession of any material justifying the suspicion that irregularities or fraud had been committed within that invoice issuer's sphere of activity. Accordingly, the right to deduct may not be refused on that ground where the material and formal conditions laid down by that directive for the exercise of that right are met.

4. Where the tax authority provides specific evidence of the existence of fraud, Directive 2006/112 and the principle of tax neutrality do not preclude the national court from verifying, on the basis of an overall examination of the circumstances of the case, whether the issuer of the invoice carried out the transaction in question himself. However, in a situation such as that at issue in the main proceedings, the right to deduct may be refused only where it is established by the tax authority, on the basis of objective evidence, that the addressee of the invoice knew or should have known that the transaction relied on as a basis for the right to deduct was connected with a fraud committed by the issuer or another operator supplying inputs in the chain of supply.

(¹) OJ C 282, 24.9.2011.

Judgment of the Court (Fifth Chamber) of 6 September 2012 — United States Polo Association v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-327/11 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Word mark 'U.S. POLO ASSN.' — Opposition by the holder of the earlier word mark 'POLO-POLO')

(2012/C 331/15)

Language of the case: English

Parties

Appellant: United States Polo Association (represented by: P. Goldenbaum, Rechtsanwältin)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent)

Re:

Appeal against the judgment of the General Court (Second Chamber) of 13 April 2011 in Case T-228/09 United States Polo Association v OHIM dismissing an action for annulment brought by the applicant for the word mark 'U.S. POLO ASSN.' for goods in Classes 9, 20, 21, 24 and 27 against the decision R 886/2008-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 March 2009 dismissing the appeal against the decision of the Opposition Division partly refusing registration of that mark in opposition proceedings brought by the proprietor of the Community and national word marks 'POLO-POLO' for goods in Classes 24, 35 and 39 — Interpretation and application of Article 8(4) of Regulation (EC) No 40/94 (now Article 8(4) of Regulation (EC) No 207/2009).

Operative part of the judgment

The Court:

1. Dismisses the appeal;
2. Orders United States Polo Association to pay the costs.

⁽¹⁾ OJ C 311, 22.10.2011.

Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Augstākās Tiesas Senāts — Latvia) — Cido Grupa SIA v Valsts ieņēmumu dienests

(Case C-471/11) ⁽¹⁾

(Accession of new Member States — Transitional measures — Agricultural products — Sugar — Regulation (EC) No 60/2004 — Basis of assessment and rate applicable for the charge on surplus stocks)

(2012/C 331/16)

Language of the case: Latvian

Referring court

Augstākās Tiesas Senāts

Parties to the main proceedings

Applicant: Cido Grupa SIA

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 4(1) and 6(3) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 9, p. 8) — Calculation of tax on surplus sugar stocks held by operators — Notions of 'quantity in question' and 'product concerned' in the case of sugar syrup

Operative part of the judgment

The third subparagraph of Article 6(3) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, as amended by Commission Regulation (EC) No 1667/2005 of 13 October 2005, must be interpreted as meaning that the basis of assessment for the charge payable on a surplus stock of sugar syrup (CN code 2106 90 59) is the quantity of

white sugar (CN code 1701 99 10) actually contained in that product and the rate of that charge is the rate of the import charge applicable to white sugar, increased by EUR 1,21/100 kg.

⁽¹⁾ OJ C 331, 12.11.2011.

Judgment of the Court (Second Chamber) of 6 September 2012 (reference for a preliminary ruling from the Administratīvā rajona tiesa — Latvia) — Laimonis Treimanis v Valsts ieņēmumu dienests

(Case C-487/11) ⁽¹⁾

(Regulation (EEC) No 918/83 — Articles 1(2)(c), 2 and 7(1) — Relief from import duties on personal property — The term 'property intended ... for meeting ... household needs' — Motor vehicle imported into the European Union — Vehicle used by a member of the family of the importing owner)

(2012/C 331/17)

Language of the case: Latvian

Referring court

Administratīvā rajona tiesa

Parties to the main proceedings

Applicant: Laimonis Treimanis

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Administratīvā rajona tiesa Rīgas — Interpretation of Article 7(1) 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) — Relief from import duty in respect of personal property — Concept of a household — Car used for the needs of a household in a third country — Car imported by its owner, essentially resident in the third country, into a Member State of the European Union for use free of charge by a member of the owner's family who has moved his residence to that Member State and who formed part of the same household as the owner before the vehicle was imported

Operative part of the judgment

Articles 2 and 7(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty must be interpreted as meaning that a private motor vehicle imported from a third country into the customs territory of the European Union may be imported free of import duties provided that the importer has actually transferred his normal place of

residence to the customs territory of the European Union, which is a matter for the national court to determine. A motor vehicle used free of charge by a member of that importer's family, that is by a person living under the same roof as the importer or mainly dependent on him, a matter for the national court to determine, is to be regarded as being intended for meeting the needs of the importer's household, and that use does not result in loss of entitlement to the relief in question.

(¹) OJ C 347, 26.11.2011.

Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Tribunal Central Administrativo Sul — Portugal) — Portugal Telecom SGPS, SA v Fazenda Pública

(Case C-496/11) (¹)

(VAT — Sixth Directive — Articles 17(2) and 19 — Deductions — VAT due or paid for services acquired by a holding company — Services having a direct, immediate and unequivocal relationship with taxable output transactions)

(2012/C 331/18)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Sul

Parties to the main proceedings

Applicant: Portugal Telecom SGPS SA

Defendant: Fazenda Pública

Intervening party: Ministério Público

Re:

Reference for a preliminary ruling — Tribunal Central Administrativo Sul — Interpretation of Article 17(2) 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) — Deductions — Tax incurred or paid for services acquired by a holding — Services with a direct, immediate and unequivocal relationship with taxable transactions downstream

Operative part of the judgment

Article 17(2) and (5) 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 must be interpreted as meaning that a holding company such as that at issue in the main proceedings which, in addition to its main activity of managing shares in companies in

which it holds all or part of the share capital, acquires goods and services which it subsequently invoices to those companies is authorised to deduct the amount of input VAT provided that the input services acquired have a direct and immediate link with the output economic transactions giving rise to a right to deduct. Where those goods and services are used by the holding company in order to perform both economic transactions giving rise to a right to deduct and economic transactions which do not, the deduction is allowed only in respect of the part of the VAT which is proportional to the amount relating to the former transactions and the national tax authorities are authorised to provide for one of the methods for determining the right to deduct in Article 17(5). Where those goods and services are used both for economic and non-economic activities, Article 17(5) of the Sixth Directive is not applicable and the methods of deduction and apportionment are to be defined by the Member States which, in exercising that power, must take account of the purpose and general scheme of the Sixth Directive and, on that basis, lay down a method of calculation which objectively reflects the input expenditure actually attributed to each of those two activities.

(¹) OJ C 362, 10.12.2011.

Judgment of the Court (Sixth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Lowlands Design Holding BV v Minister van Financiën

(Case C-524/11) (¹)

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Romper bags for babies and young children — Subheadings 6209 20 00 or 6211 42 90)

(2012/C 331/19)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Lowlands Design Holding BV

Defendant: Minister van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — 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) and of Commission Regulation (EC) No 651/2007 of 8 June 2007 concerning the classification of certain goods in the Combined Nomenclature (OJ 2007 L 153, p. 3) — Sleeping bags for babies and for children

Operative part of the judgment

The Combined Nomenclature forming 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, as amended by Commission Regulation (EC) No 1719/2005 of 27 October 2005, must be interpreted as meaning that romper bags such as those at issue in the main proceedings must be classified under subheading 6209 20 00 as 'babies' garments and clothing accessories, of cotton' if, on account of their size, they are suitable for young children of a body height not exceeding 86 cm. If that is not the case, those products must be classified under subheading 6211 42 90 as 'other garments, women's or girls', of cotton'.

(¹) OJ C 25, 28.1.2011.

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) lodged on 1 August 2012 — Corinna Prinz-Stremitzer, Susanne Sokoll-Seebacher

(Case C-367/12)

(2012/C 331/20)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich

Parties to the main proceedings

Applicants: Corinna Prinz-Stremitzer, Susanne Sokoll-Seebacher

Additional parties: Tanja Lang, Susanna Zehetner

Questions referred

1. Do the rule of law considerations inherent in Article 16 of the Charter of Fundamental Rights of the European Union and/or the considerations of transparency inherent in Article 49 TFEU preclude a national provision such as point 3 of Paragraph 10(2) of the Apothekengesetz (Law on pharmacies; ApG) at issue in the main proceedings, pursuant to which the condition whether there is a need to establish a new public pharmacy is not specified at least in essence in the legislation itself but its elaboration is left in considerable respects to the national courts, since it cannot be excluded that a scheme of that kind affords a significant competitive advantage to interested parties from Austria, individually and as a whole, over nationals from other Member States?
2. If Question 1 is answered in the negative: Does Article 49 TFEU preclude a national provision such as point 3 of

Paragraph 10(2) of the ApG, which in relation to the crucial condition whether a need is deemed to exist sets a rigid threshold of 5 500 persons without allowing for any departure from that general rule, since de facto under a scheme of that kind it does not appear possible to ensure (without more) the achievement in a consistent manner of the legislative objective pursued, in terms of paragraphs 98 to 101 of the Court's judgment in Joined Cases C-570/07 (¹) and C-571/07 *Blanco Pérez and Chao Gómez*?

3. If Question 2 is also answered in the negative: Do Article 49 TFEU and/or Article 47 of the Charter of Fundamental Rights of the European Union preclude a provision such as point 3 of Paragraph 10(2) of the ApG which has been interpreted, as result of the case-law of the highest national courts on the notion of assessment of a need, to include additional detailed criteria — such as whether an application has priority in time, the blocking effect of an existing application in relation to subsequent applications, the two-year lockout period following the rejection of an application, criteria for determining the number of 'permanent residents' and 'incoming users' and for allocating the customer base in the event of an overlap between the 4-km zone surrounding each of two or more pharmacies, etc. — since, as a result, it is not possible to ensure that, as a general rule, the provision will be applied in a manner that is foreseeable and calculable and within a reasonable period and, hence, the legislative provision cannot be considered appropriate, in fact, to ensure the achievement in a consistent manner of the legislative objective pursued (see paragraphs 98 to 101 and 114 to 125 of the Court's judgment in *Blanco Pérez*) and/or the provision of an adequate pharmaceutical service must be regarded as de facto not ensured and/or discrimination must be presumed as between interested parties from Austria amongst themselves or between them and interested parties from other Member States?

(¹) Judgment of 1 June 2010 in Case C-570/07 (ECR 2010, I-4629).

Appeal brought on 8 August 2012 by Environmental Manufacturing LLP against the judgment of the General Court (Fourth Chamber) delivered on 22 May 2012 in Case T-570/10: Environmental Manufacturing LLP v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-383/12 P)

(2012/C 331/21)

Language of the case: English

Parties

Appellant: Environmental Manufacturing LLP (represented by: S. Malynicz, Barrister, M. Atkins, Solicitor, K. Shadbolt, Trade Mark Attorney)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Société Elmar Wolf

Form of order sought

The appellant seeks the following order:

1. The judgment of the General Court (Fourth Chamber) in Case T-570/10 dated 22 May 2012 shall be set aside and the Court shall give final judgment in the matter.
2. The Office and intervener shall bear their own costs and pay those of the applicant.

Pleas in law and main arguments

Following the Court of Justice's judgment in Case C-252/07 Intel Corporation (2008) ECR I-8823, proof that the use of the later mark is or would be detrimental to the distinctive character of the earlier mark requires evidence of a change in the economic behaviour of the average consumer of the goods or services for which the earlier mark was registered consequent on the use of the later mark, or a serious likelihood that such a change will occur in the future. The General Court erroneously did not require such proof, instead concluding that it is sufficient merely if the earlier mark's ability to identify the goods or services for which it is registered and used as coming from the proprietor of that mark is weakened because use of the later mark leads to dispersion of the identity and hold upon the public mind of the earlier mark.

Appeal brought on 28 August 2012 by Transports Schiocchet — Excursions against the order of the General Court (Seventh Chamber) delivered on 18 June 2012 in Case T-203/11 Schiocchet v Council and Commission

(Case C-397/12 P)

(2012/C 331/22)

Language of the case: French

Parties

Appellant: Transports Schiocchet — Excursions (represented by: E. Deshoulières, avocat)

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

Form of order sought

- Set aside in its entirety the order of inadmissibility of the General Court of the European Union of 18 June 2012 in Case T-203/11;

- Uphold the claims made by the applicant at first instance, namely:

- order the Council of the European Union and the European Commission jointly and severally to compensate SARL Transports Schiocchet — Excursions for the loss which it has suffered, which amounts to EUR 8 372 483;

- rule that the sums thus awarded are to bear interest at the statutory rate to run from notification of the preliminary claim for compensation to the European Commission;

- Order the Council of the European Union and the European Commission to pay the costs incurred by the applicant, on the basis of Article 69 of the Rules of Procedure of the Court of Justice.

Pleas in law and main arguments

The applicant raises four complaints against the order of the General Court, by which the General Court dismissed as manifestly unfounded in law its application for compensation for the loss allegedly suffered.

Firstly, the applicant submits that the General Court ruled on the gravity of the wrongful act of the organs of the European Union when a mere infringement of a higher rule of law by an institution of the European Union would suffice to constitute a wrongful act by an institution of the European Union and that the General Court, when examining the admissibility of the application, may rule only on the manifest absence of wrongful act and not on the gravity thereof.

Secondly, the applicant argues that the General Court did not deal with all of the applicant's arguments. In particular, the General Court did not draw the appropriate conclusions from the fact that Regulation No 684/92 ⁽¹⁾ did not provide for any penalty against the Member States which do not comply with the authorisation procedure which it institutes.

Thirdly, the applicant disputes the decision of the General Court in that the General Court considered that the applicant's right to an effective remedy was indeed safeguarded in the context of the system introduced by Regulation No 684/92.

Lastly, the applicant claims that, in its decision, the General Court failed to have regard to the Commission's liability by accepting its wrongful failures to act. In the opinion of the applicant, the Commission neither drafted the follow-up report required under Regulation No 684/92 nor took into consideration the situation of economic operators in infringement of Article 94 TFEU.

⁽¹⁾ Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ 1992 L 74, p. 1).

Reference for a preliminary ruling from Upper Tribunal (Immigration and Asylum Chamber) London (United Kingdom) made on 31 August 2012 — Secretary of State for the Home Department v MG

(Case C-400/12)

(2012/C 331/23)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Secretary of State for the Home Department

Defendant: MG

Questions referred

1. Does a period in prison following sentence for commission of a criminal offence by a Union citizen break the residence period in the host Member State required for that person to benefit from the highest level of protection against expulsion under Article 28(3)(a) of Directive 2004/38/EC ⁽¹⁾ or otherwise preclude the person relying on this level of protection?
2. Does reference to 'previous ten years' in Article 28(3)(a) mean that the residence has to be continuous in order for a Union citizen to be able to benefit from the highest level of protection against expulsion?
3. For the purposes of Article 28(3)(a), is the requisite period of 10 years during which a Union citizen must have resided in the host Member State calculated (a) by counting back from the expulsion decision; or (b) by counting forward from the commencement of that citizen's residence in the host Member State?
4. If the answer to Question 3(a) is that the 10 year period is calculated by counting backwards, does it make a difference if the person has accrued ten years residence prior to such imprisonment?

⁽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

Action brought on 4 September 2012 — European Commission v Republic of Slovenia

(Case C-406/12)

(2012/C 331/24)

Language of the case: Slovene

Parties

Applicant: European Commission (represented by P. Hetsch, L. Nicolae and M. Žebre, acting as Agents)

Defendant: Republic of Slovenia

Form of order sought

The Commission claims that the Court should:

- Declare that, by failing to adopt all the laws and other measures necessary to transpose Directive 2009/136/EC ⁽¹⁾ of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC ⁽²⁾ on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC ⁽³⁾ concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws or, in any case, by failing to notify the Commission of such provisions, the Republic of Slovenia has failed to fulfil its obligations under Article 4 of that directive;
- order the Republic of Slovenia, pursuant to Article 260(3) TFEU, to make a penalty payment in the sum of EUR 6 531,84 a day, from the day of delivery of judgment in this case, on the grounds of its failure to fulfil its obligation to notify all measures for the transposition of Directive 2009/136/EC;
- order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of that directive expired on 25 May 2011.

⁽¹⁾ OJ 2009 L 337, p. 11.

⁽²⁾ OJ 2002 L 108, p. 51.

⁽³⁾ OJ 2002 L 201, p. 37.

Action brought on 3 September 2012 — European Commission v Republic of Slovenia

(Case C-407/12)

(2012/C 331/25)

*Language of the case: Slovene***Parties**

Applicant: European Commission (represented by P. Hetsch, L. Nicolae and M. Žebre, acting as Agents)

Defendant: Republic of Slovenia

Form of order sought

The Commission claims that the Court should:

- Declare that, by failing to adopt all the laws and other measures necessary to transpose Directive 2009/140/EC ⁽¹⁾ of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC ⁽²⁾ on a common regulatory framework for electronic communications networks and services, 2002/19/EC ⁽³⁾ on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC ⁽⁴⁾ on the authorisation of electronic communications networks and services or, in any case, by failing to notify the Commission of such provisions, the Republic of Slovenia has failed to fulfil its obligations under Article 5 of that directive;
- order the Republic of Slovenia, pursuant to Article 260(3) TFEU, to make a penalty payment in the sum of EUR 6 531,84 a day, from the day of delivery of judgment in this case, on the grounds of its failure to fulfil its obligation to notify all measures for the transposition of Directive 2009/136/EC;
- order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of that directive expired on 25 May 2011.

⁽¹⁾ OJ 2009 L 337, p. 37.

⁽²⁾ OJ 2002 L 108, p. 33.

⁽³⁾ OJ 2002 L 108, p. 7.

⁽⁴⁾ OJ 2002 L 108, p. 21.

Appeal brought on 7 September 2012 by medi GmbH & Co. KG against the judgment of the General Court (Sixth Chamber) delivered on 12 July 2012 in Case T-470/09 medi GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-410/12 P)

(2012/C 331/26)

*Language of the case: German***Parties**

Appellant: medi GmbH & Co. KG (represented by: D. Terheggen, Rechtsanwalt)

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

Form of order sought

- Set aside in full the judgment of the General Court under appeal (Case T-470/09; judgment of 12 July 2012);
- grant in full the form of order sought at first instance in accordance with the application submitted to the General Court of the European Union and the amendments in the oral hearing on 2 May 2012 as recorded in the minutes.

Pleas in law and main arguments

The present appeal is brought against the judgment of the General Court of 12 July 2012 in Case T-470/09, by which the General Court dismissed the action brought by medi GmbH & Co. KG against the decision of 1 October 2009 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Case R 692/2008-4) concerning the registration of the word sign 'medi' as a Community trade mark.

The appellant relies in essence on the following ground of appeal.

The General Court is said to have erred in law in its application of Article 7(1)(b) of the Community trade mark regulation ⁽¹⁾ in that it proceeded on the assumption that the word sign 'medi' does not have the requisite minimum degree of distinctiveness for a Community trade mark. That is incorrect, as that word sign is not a conventional abbreviation of the word 'medicine' for the relevant average English-speaking consumer.

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

GENERAL COURT

Order of the General Court of 18 September 2012 — Schröder v CPVO — Hansson (LEMON SYMPHONY)

(Joined Case T-133/08, T-134/08, T-177/08 and T-242/09) ⁽¹⁾

(Plant varieties — Decision by the CPVO to adapt, of its own motion, the official description of the variety LEMON SYMPHONY — Application for revocation of the Community plant variety right granted for the variety LEMON SYMPHONY — Application for annulment of the Community plant variety right granted for the variety LEMON SYMPHONY — Application for a Community plant variety right for the variety SUMOST 01 — Summons to attend oral proceedings before the Board of Appeal of the CPVO — Period of notice to attend of at least one month)

(2012/C 331/27)

Language of the case: German

Parties

Applicant: Ralf Schröder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt and, in Cases T-133/08 and T-134/08, by T. Henssler, lawyers)

Defendant: Community Plant Variety Office (CPVO) (represented: initially by B. Kiewiet and M. Ekvad, and subsequently by M. Ekvad, acting as Agents, assisted by A. von Mühlendahl, lawyer, and, in Case T-242/09, by A. von Mühlendahl and H. Hartwig, lawyers)

Other party to the proceedings before the Board of Appeal of the CPVO, intervener before the General Court: Jørn Hansson (Sønderød, Denmark) (represented by: G. Würtenberger and R. Kunze, lawyers)

Re:

In Case T-133/08, action brought against the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 007/2007) concerning a challenge to the decision by the CPVO to adapt, of its own motion, the official description of the variety LEMON SYMPHONY in the Register of Community Plant Variety Rights; in Case T-134/08, action brought against the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 006/2007) concerning an application for cancellation of the Community plant variety right granted for the variety LEMON SYMPHONY; in Case T-177/08, action brought against the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 005/2007) concerning an application for a Community plant variety right for the variety SUMOST 01, and, in Case T-242/09, action brought against the decision of the Board of Appeal of the CPVO of

23 January 2009 (Case A 010/2007), concerning an application for cancellation of the Community plant variety right granted for the variety LEMON SYMPHONY.

Operative part of the order

The Court hereby:

1. Dismisses the action brought against the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 23 January 2009 (Case A 010/2007) concerning an application for annulment of the Community plant variety right granted for the variety LEMON SYMPHONY;
2. Sets aside the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 007/2007) concerning a challenge to the decision by the CPVO to adapt, of its own motion, the official description of the variety LEMON SYMPHONY in the Register of Community Plant Variety Rights;
3. Dismisses the remainder of the action brought against that decision;
4. Sets aside the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 006/2007) concerning an application for revocation of the Community plant variety right granted for the variety LEMON SYMPHONY;
5. Sets aside the decision of the Board of Appeal of the CPVO of 4 December 2007 (Case A 005/2007) concerning an application for the grant of a Community plant variety right for the variety SUMOST 01;
6. Orders each party to bear its own respective costs.

⁽¹⁾ OJ C 142, 7.6.2008.

Judgment of the General Court of 19 September 2012 —Germany v Commission

(Case T-265/08) ⁽¹⁾

(ERDF — Reduction of financial assistance — Operational programme falling within Objective 1 (1994–1999), concerning the Land Thüringen (Germany))

(2012/C 331/28)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, T. Henze, C. Blaschke and K. Petersen, acting as Agents, assisted by U. Karpenstein, lawyer)

Defendant: European Commission (represented by: A. Steiblytė and B. Conte, acting as Agents)

Interveners in support of the applicant: Kingdom of Spain (represented: initially by J.M. Rodríguez Cárcamo, subsequently by N. Díaz Abad and J.M. Rodríguez Cárcamo, and finally by A. Rubio González, acting as Agents), French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries, B. Koopman, M. Bulterman and J. Langer, acting as Agents)

Re:

Action for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of Land Thüringen (Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the Federal Republic of Germany to bear its own costs and to pay those incurred by the European Commission;
3. Orders the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands to bear their own costs.

⁽¹⁾ OJ C 223, 30.8.2008.

Judgment of the General Court of 19 September 2012 — Commission v SEMEA and Commune of Millau

(Joined Cases T-168/10 and T-572/10) ⁽¹⁾

(Arbitration clause — Grant contract concerning a local development plan consisting in the performance of work for the preparation and launching of a European local enterprise centre in Millau (France) — Repayment of part of the advance payments made — Admissibility of an action brought against a company established under French law removed from the companies register — Application of French law — Administrative contract — Recovery of sum overpaid — Time-bar — Enforceability of an arbitration clause — Assumption of debt — Incidental debts rule — Stipulation in favour of third party)

(2012/C 331/29)

Language of the case: French

Parties

Applicant: European Commission (represented by: S. Petrova, agent, assisted by E. Bouttier, lawyer)

Defendant: Société d'économie mixte d'équipement de l'Aveyron (SEMEA) (Millau, France) and Commune de Millau (France) (represented by: L. Hincker and F. Bleykasten, lawyers)

Re:

Applications for repayment of the principal sum of EUR 41 012 paid by the Commission as a guarantee agreed by it in the context of the funds granted to the SEMEA, increased by interest accrued and accruable, and all other sums in compensation for the harm suffered by it.

Operative part of the judgment

The Court rules:

1. Cases T-168/10 and T-572/10 are joined for the purposes of judgment;
2. The Société d'économie mixte d'équipement de l'Aveyron (SEMEA) and the commune of Millau (France) are ordered jointly and severally to pay the principal sum of EUR 41 012 to the European Commission, increased by default interest at the annual legal rate applied in France from 27 April 1993 until full payment of that sum. The interest accrued by the date of 15 April 2010, and at yearly intervals thereafter, shall be capitalised and itself bear interest;
3. The actions of the Commission in Cases T-168/10 and T-572/10 are dismissed as to the remainder;
4. The counterclaim by the SEMEA in Case T-168/10 and the counterclaim by the commune of Millau in Case T-572/10 are dismissed;
5. The SEMEA shall bear its own costs and those of the Commission in Case T-168/10;
6. The commune of Millau shall bear its own costs and those of the Commission in Case T-572/10.

⁽¹⁾ OJ C 161, 19.6.2010.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in light grey, dark grey,
beige, dark red and brown)**

(Case T-326/10) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
light grey, dark grey, beige, dark red and brown —
Absolute ground for refusal — Lack of distinctive character
— Article 7(1)(b), Article 75 and Article 76(1) of Regulation
(EC) No 207/2009)*

(2012/C 331/30)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 7 June 2010 (Case R 188/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in light grey, dark grey, beige, dark
red and brown as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 288, 23.10.2010.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in black, dark grey, light
grey and dark red)**

(Case T-327/10) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
black, dark grey, light grey and dark red — Absolute
ground for refusal — Lack of distinctive character —
Article 7(1)(b), Article 75 and Article 76(1) of Regulation
(EC) No 207/2009)*

(2012/C 331/31)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 7 June 2010 (Case R 189/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in black, dark grey, light grey and
dark red as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 288, 23.10.2010.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in dark grey, light grey,
beige and dark red)**

(Case T-328/10) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
dark grey, light grey, beige and dark red — Absolute
ground for refusal — Lack of distinctive character —
Article 7(1)(b), Article 75 and Article 76(1) of Regulation
(EC) No 207/2009)*

(2012/C 331/32)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 7 June 2010 (Case R 190/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in dark grey, light grey, beige and
dark red as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 288, 23.10.2010.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in black, grey, beige and
dark red)**

(Case T-329/10) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
black, grey, beige and dark red — Absolute ground for
refusal — Lack of distinctive character — Article 7(1)(b),
Article 75 and Article 76(1) of Regulation (EC)
No 207/2009)*

(2012/C 331/33)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 7 June 2010 (Case R 191/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in black, grey, beige and dark red
as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 288, 23.10.2010.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in black, beige, brown, dark
red and grey)**

(Case T-26/11) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
black, beige, brown, dark red and grey — Absolute ground
for refusal — Lack of distinctive character — Article 7(1)(b),
Article 75 and Article 76(1) of Regulation (EC)
No 207/2009)*

(2012/C 331/34)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 15 November 2010 (Case R 1317/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in black, beige, brown, dark red
and grey as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 72, 5.3.2011.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in pink, violet, beige and
dark grey)**

(Case T-31/11) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
pink, violet, beige and dark grey — Absolute ground for
refusal — Lack of distinctive character — Article 7(1)(b),
Article 75 and Article 76(1) of Regulation (EC)
No 207/2009)*

(2012/C 331/35)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board
of Appeal of OHIM of 15 November 2010 (Case
R 1284/2010-4) concerning an application for registration of
a figurative sign representing a tartan pattern in pink, violet,
beige and dark grey as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 72, 5.3.2011.

**Judgment of the General Court of 19 September 2012 —
Fraas v OHIM (Tartan pattern in dark grey, light grey,
black, beige, dark red and light red)**

(Case T-50/11) ⁽¹⁾

*(Community trade mark — Application for a figurative
Community trade mark representing a tartan pattern in
dark grey, light grey, black, beige, dark red and light red —
Absolute ground for refusal — Lack of distinctive character
— Article 7(1)(b), Article 75 and Article 76(1) of Regulation
(EC) No 207/2009)*

(2012/C 331/36)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz,
Germany) (represented by: R. Kunze and G. Würtenberger,
lawyers)

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

Re:

Action brought against the decision of the Fourth Board of
Appeal of OHIM of 15 November 2010 (Case R 1316/2010-4)
concerning an application for registration of a figurative sign
representing a tartan pattern in dark grey, light grey, black,
beige, dark red and light red as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 89, 19.3.2011.

**Judgment of the General Court of 18 September 2012 —
Since Hardware (Guangzhou) v Council**

(Case T-156/11) ⁽¹⁾

*(Dumping — Imports of ironing boards originating in China
— Proceeding initiated against a single company — Market
economy treatment — Three-month time-limit provided for in
the second indent of Article 2(7)(c) of Regulation (EC) No
1225/2009 — Burden of proof — Determination of injury)*

(2012/C 331/37)

Language of the case: French

Parties

Applicant: Since Hardware (Guangzhou) Co., Ltd (Canton, China)
(represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: Council of the European Union (represented by: B.
Driessen, acting as Agent, B. O'Connor, Solicitor, and S. Gubel,
lawyer)

Interveners in support of the defendant: European Commission (rep-
resented by: S. Thomas and H. van Vliet, acting as Agents), Vale
Mill (Rochdale) Ltd, (Rochdale, United Kingdom) and Colombo
New Scal SpA, (Rovagnate, Italy) (represented by: G. Berrisch,
lawyer, and N. Chesaites, Barrister)

Re:

Application for annulment of Council Implementing Regulation
(EU) No 1243/2010 of 20 December 2010 imposing a
definitive anti-dumping duty on imports of ironing boards orig-
inating in the People's Republic of China produced by the Since
Hardware (Guangzhou) Co., Ltd (OJ 2010 L 338, p. 22).

Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders Since Hardware (Guangzhou) Co., Ltd to bear its own
costs and to pay the costs incurred by the Council of the
European Union, Vale Mill (Rochdale) Ltd and Colombo New
Scal SpA.
3. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 120, 16.4.2011.

**Judgment of the General Court of 19 September 2012 —
Reddig v OHIM — Morleys (Knife handle)**

(Case T-164/11) ⁽¹⁾

*(Community trade mark — Proceedings for invalidity —
Three-dimensional Community trade mark — Knife handle
— Absolute ground for refusal — Sign constituted exclusively
by the shape of the product necessary for obtaining a
technical result — Article 7(1)(e)(ii) of Regulation (EC) No
207/2009 — Declaration of invalidity by the Board of
Appeal)*

(2012/C 331/38)

Language of the case: English

Parties

Applicant: Reddig GmbH (Drebber, Germany) (represented by: C.
Thomas, lawyer)

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

*Other party to the proceedings before the Board of Appeal of OHIM,
intervener before the General Court:* Morleys Ltd (Preston, United
Kingdom) (represented by: A. Stein and M. Terbach, lawyers,
and E. Gunaratnam, Solicitor)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 15 December 2010 (Case R 1072/2009-2), concerning invalidity proceedings between Morleys Ltd and Reddig GmbH.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Reddig GmbH to pay the costs.

⁽¹⁾ OJ C 152, 21.5.2011.

Judgment of the General Court of 19 September 2012 — TeamBank v OHIM — Fercredit Servizi Finanziari (f@ir Credit)

(Case T-220/11) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for Community figurative mark f@ir Credit — Earlier Community figurative mark FERCREDIT — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 331/39)

Language of the case: German

Parties

Applicant: TeamBank AG Nürnberg (Nuremberg, Germany) (represented by: T. Kiphuth, H. Lindner and D. Terheggen, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: R. Manea and G. Schneider, agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court: Fercredit Servizi Finanziari SpA (Rome, Italy) (represented by: G. Petrocchi, A. Masetti Zannini de Concina and R. Cartella, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 3 February 2011 (Case R 719/2010-1) relating to opposition proceedings between Fercredit Servizi Finanziari SpA and TeamBank AG Nürnberg.

Operative part of the judgment

The Court rules:

1. The action is dismissed.
2. TeamBank AG Nürnberg is ordered to pay the costs.

⁽¹⁾ OJ C 194, 2.7.2011.

Judgment of the General Court of 19 September 2012 — Fraas v OHIM (Tartan pattern in dark grey, light grey, light blue, dark blue, ochre and beige)

(Case T-231/11) ⁽¹⁾

(Community trade mark — Application for a figurative Community trade mark representing a tartan pattern in dark grey, light grey, light blue, dark blue, ochre and beige — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b), Article 75 and Article 76(1) of Regulation (EC) No 207/2009)

(2012/C 331/40)

Language of the case: German

Parties

Applicant: V. Fraas GmbH (Helmbrechts-Wüstenselbitz, Germany) (represented by: R. Kunze and G. Würtenberger, lawyers)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: initially R. Manea then D. Walicka, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 4 March 2011 (Case R 2041/2010-4) concerning an application for registration of a figurative sign representing a tartan pattern in dark grey, light grey, light blue, dark blue, ochre and beige as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders V. Fraas GmbH to pay the costs.

⁽¹⁾ OJ C 238, 13.8.2011.

Judgment of the General Court of 19 September 2012 — Video Research USA, v OHIM (VR)

(Case T-267/11) ⁽¹⁾

(Community trade mark — Community figurative mark VR — Failure to apply for renewal of the mark — Cancellation of the mark upon expiry of the registration — Application for restitutio in integrum — Article 81 of Regulation (EC) No 207/2009)

(2012/C 331/41)

Language of the case: English

Parties

Applicant: Video Research USA, Inc. (New York, New York, United States) (represented by: B. Brandreth, Barrister)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM, of 8 March 2011 (Case R 1187/2010-2), relating to an application for *restitutio in integrum*.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Video Research USA, Inc. to pay the costs.*

⁽¹⁾ OJ C 211, 16.7.2011.

Judgment of the General Court of 18 September 2012 — Scandic Distilleries SA v OHIM — Bürgerbräu, Röhm & Söhne (BÜRGER)

(Case T-460/11) ⁽¹⁾

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

(2012/C 331/42)

Language of the case: English

Parties

Applicant: Scandic Distilleries SA (Bihor, Romania) (represented by: Á. László, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bürgerbräu, August Röhm & Söhne KG (Bad Reichenhall, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 May 2011 (Case R 1962/2010-2), relating to opposition proceedings between Bürgerbräu, August Röhm & Söhne KG and Scandic Distilleries SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Scandic Distilleries SA to pay the costs.*

⁽¹⁾ OJ C 331, 12.11.2011.

Order of the General Court of 11 September 2012 — Marcuccio v Commission

(Case T-241/03 REV) ⁽¹⁾

(Proceedings — Review — Consequences of a later judgment of the General Court — New fact — Absence — Inadmissibility)

(2012/C 331/43)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: European Commission (represented by: C. Berardis-Kayser and J. Baquero Cruz, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Application for revision of the Order of the General Court of 17 May 2006 in Case T-241/03 *Marcuccio v Commission* ECR-SC I-A-2-111 and II-A-2-517.

Operative part of the order

1. *The application for revision is dismissed as inadmissible.*
2. *Mr Marcuccio shall bear his own costs and those incurred by the European Commission.*

⁽¹⁾ OJ C 200, 23.8.2003.

Order of the General Court of 6 September 2012 — Bredenkamp and Others v Commission

(Case T-145/09) ⁽¹⁾

(Common foreign and security policy — Restrictive measures adopted having regard to the situation in Zimbabwe — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)

(2012/C 331/44)

Language of the case: English

Parties

Applicants: John Arnold Bredenkamp (Harare, Zimbabwe) and the other applicants whose names appear on the annex to this order (represented by: D. Vaughan QC, P. Moser, Barrister, and R. Khan, Solicitor)

Defendant: European Commission (represented by: P. van Nuffel, T. Scharf and M. Konstantinidis, acting as Agents)

Interveners in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by E. Jenkinson, I. Rao and F. Penlington and subsequently by E. Jenkinson, I. Rao and C. Murrell, acting as Agents, and D. Beard QC, and by the Council of the European Union (represented by M. Bishop and R. Szostak, acting as Agents)

Re:

ACTION for the annulment of Commission Regulation (EC) No 77/2009 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2009 L 23, p. 5), as amended by Commission Regulation (EU) No 173/2010 of 25 February 2010 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2010 L 51, p. 13) in so far as it concerns the applicants.

Operative part of the order

1. There is no need to adjudicate on this action.
2. The European Commission shall bear, in addition to its own costs, those incurred by John Arnold Bredenkamp, Alpha International (PVT) Ltd, Breco (Asia Pacific) Ltd, Breco (Eastern Europe) Ltd, Breco (South Africa) Ltd, Breco (UK) Ltd, Breco Group, Breco International, Breco Nominees Ltd, Breco Services Ltd, Corybantes Ltd, Echo Delta Holdings, Masters International Ltd, Piedmont (UK) Ltd, Raceview Enterprises, Scottlee Holdings (PVT) Ltd, Scottlee Resorts Ltd, Timpani Exports Ltd and Tremalt Ltd.
3. The United Kingdom of Great Britain and Northern Ireland and the Council of the European Union shall each bear their own costs.

⁽¹⁾ OJ C 141, 20.6.2009.

Order of the General Court of 6 September 2012 — Nickel Institute v Commission

(Case T-180/10) ⁽¹⁾

(Access to documents — Regulation (EC) No 1049/2001 — Classification, packaging and labelling of certain nickel carbonate compounds as dangerous substances — Directives 2008/58/EC and 2009/2/EC — 30th and 31st adaptations to technical progress of Directive 67/548/EEC — Partial refusal of access — Action for annulment — No need to adjudicate)

(2012/C 331/45)

Language of the case: English

Parties

Applicant: Nickel Institute (Toronto, Canada) (represented by: initially, K. Nordlander, lawyer, and H. Pearson, Solicitor, and, subsequently, K. Nordlander)

Defendant: European Commission (represented by: P. Oliver and P. Costa de Oliveira, acting as Agents)

Interveners in support of the applicant: Republic of Finland (represented by: J. Heliskoski and M. Pere, acting as Agents) and Kingdom of Sweden (represented by: A. Falk, K. Petkovska, C. Meyer-Seitz and S. Johannesson, acting as Agents)

Re:

Application for annulment of the decision of the European Commission of 8 February 2010 (reference SG.E3/HP/psi — Ares(2010)65824) concerning the refusal to grant Nickel Institute full access to certain internal documents, in particular to opinions of the Commission's Legal Service, drawn up in the context of two consecutive procedures which resulted in the classification of, inter alia, certain nickel carbonate compounds in Annex I to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (O), English Special Edition 1967, p. 234).

Operative part of the order

1. There is no longer any need to adjudicate on the action.
2. The European Commission shall bear its own costs as well as half of the costs incurred by Nickel Institute.
3. Nickel Institute shall bear half of its own costs.
4. The Republic of Finland and the Kingdom of Sweden shall bear their own respective costs.

⁽¹⁾ OJ C 161, 19.6.2010.

Order of the General Court of 6 September 2012 — Rautenbach v Council and Commission

(Case T-222/11) ⁽¹⁾

(Common foreign and security policy — Restrictive measures adopted having regard to the situation in Zimbabwe — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)

(2012/C 331/46)

Language of the case: English

Parties

Applicant: Muller Conrad Rautenbach (Harare, Zimbabwe) (represented by: S. Smith QC, M. Lester, Barrister, and W. Osmond, Solicitor)

Defendants: Council of the European Union (represented by: B. Driessen and J. Herrmann, acting as Agents) and European Commission (represented by E. Paasivirta, M. Konstantinidis and T. Scharf, acting as Agents)

Re:

ACTION for the annulment of Council Decision 2011/101/CFSP of 15 February 2011 concerning restrictive measures against Zimbabwe (OJ 2011 L 42, p. 6), and of Commission Regulation (EU) No 174/2011 of 23 February 2011 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2011 L 49, p. 23), in so far as they concern the applicant.

Operative part of the order

1. *There is no need to adjudicate on this action.*
2. *The Council of the European Union shall bear, in addition to its own costs, those incurred by Muller Conrad Rautenbach.*
3. *The European Commission shall bear its own costs.*

⁽¹⁾ OJ C 186, 25.6.2011.

Order of the General Court of 5 September 2012 — Farage v Parliament and Buzek

(Case T-564/11) ⁽¹⁾

(Law governing the institutions — Decision of the President of the Parliament imposing on a Member of the Parliament the penalty of forfeiture of entitlement to the daily subsistence allowance for a period of 10 days — Decision of the Committee on Legal Affairs of the Parliament declaring inadmissible the Member's request for defence of his Parliamentary immunity — Manifest lack of jurisdiction of the General Court — Manifest inadmissibility)

(2012/C 331/47)

Language of the case: English

Parties

Applicant: Nigel Paul Farage (Brussels (Belgium)) (represented by: P. Bennett, solicitor)

Defendants: European Parliament (represented by: N. Lorenz and D. Moore, acting as Agents) and Jerzy Buzek (Brussels (Belgium))

Re:

ACTION for annulment, first, of the decision of the President of the Parliament of 2 March 2010 imposing on the applicant the penalty of forfeiture of entitlement to the daily subsistence allowance for a period of 10 days, secondly, of the decision of the Bureau of the Parliament of 24 March 2010 confirming

the above decision of the President of the Parliament, thirdly, of the decision of the Committee on Legal Affairs of the Parliament declaring inadmissible the applicant's request for defence of immunity and, fourthly, of an unspecified decision of the Parliament.

Operative part of the order

1. *The action is dismissed.*
2. *Nigel Paul Farage is to bear his own costs and to pay those of the European Parliament.*

⁽¹⁾ OJ C 25, 28.1.2012.

Order of the General Court of 4 September 2012 — Mische v Parliament

(Case T-642/11 P) ⁽¹⁾

(Appeals — Civil service — Officials — Appointment — Classification in grade — Competition published before the entry into force of the new Staff Regulations of Officials — Distortion of the facts — Appeal manifestly unfounded)

(2012/C 331/48)

Language of the case: English

Parties

Appellant: Harald Mische (Brussels, Belgium) (represented by: R. Holland, J. Mische and M. Velardo, lawyers)

Other parties to the proceedings: European Parliament (represented by: S. Seyr and S. Alves, Agents); and Council of the European Union (represented by: A. Jensen and J. Herrmann, Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 29 September 2011 in Case F-93/05 *Mische v Parliament* [2011] ECR-SC I-A-1-0000 and II-A-1-0000 seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed.*
2. *Mr Harald Mische shall bear his own costs and those incurred by the European Parliament in the present proceedings.*
3. *The Council of the European Union shall bear its own costs.*

⁽¹⁾ OJ C 49, 18.2.2012.

Action brought on 3 August 2012 — Grupo Flexi de León v OHIM (FLEXI)**(Case T-352/12)**

(2012/C 331/49)

*Language of the case: Spanish***Parties**

Applicant: Grupo Flexi de León, SA de CV (León, Mexico) (represented by M. Zarobe, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2012 in Case R 1335/2011-2 in relation to Community trade mark application No 9 532 797 'FLEXI';
- order the defendant to pay the costs of the proceedings before the General Court.

Pleas in law and main arguments

Community trade mark concerned: word mark 'FLEXI' for goods in Classes 18 and 25 — Community trade mark application No 9 532 797

Decision of the Examiner: application rejected

Decision of the Board of Appeal: appeal dismissed

Pleas in law: infringement of Article 7(1)(c) and (b) of Regulation No 207/2009

Form of order sought

The applicant claims that the General Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 May 2012 in Case R 196/2011-2, declaring that, pursuant to Article 8(1)(b) of Regulation No 207/2009, the opponent's action before OHIM should have been upheld and the decision of the Opposition Division granting Community trade mark No 8 253 551 'APRO' (mixed) in full should have been annulled;
- order the defendant and the other party opposing this action to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Apro Tech Co., Ltd

Community trade mark concerned: Figurative mark 'APRO' for goods in Class 12 — Community trade mark application No 8 253 551

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

Mark or sign cited in opposition: national and Community figurative mark 'B-PRO by Boomerang' and Community word marks 'PRO MOUNTAIN' and 'PRO OUTDOOR' for goods in Class 12

Decision of the Opposition Division: opposition rejected

Decision of the Board of Appeal: appeal dismissed

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

Action brought on 20 August 2012 — El Corte Inglés v OHIM — Apro Tech (APRO)**(Case T-372/12)**

(2012/C 331/50)

*Language in which the application was lodged: Spanish***Parties**

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: E. Seijo Veiguela, J. Rivas Zurdo and I. Munilla Muñoz, lawyers)

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

Other party to the proceedings before the Board of Appeal: Apro Tech Co., Ltd (Taichung Hsien, Taiwan)

Action brought on 21 August 2012 — Hellenic Republic v Commission**(Case T-376/12)**

(2012/C 331/51)

*Language of the case: Greek***Parties**

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

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- uphold the action;

— annul Commission Implementing Decision C(2012) 3838 of 22 June 2012 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2012) 3838 and published at OJ 2012 L 165, p. 83 (2012/336/EU), in so far as it concerns financial corrections imposed on the Hellenic Republic in the dried grape sector and in the area of unlawful plantation of vineyards;

— order the Commission to pay the costs;

Pleas in law and main arguments

By its action, the Hellenic Republic seeks the annulment of the Commission implementing decision of 22 June 2012 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2012) 3838 and published at OJ 2012 L 165, p. 83 (2012/336/EU), in so far as it concerns financial corrections imposed on the Hellenic Republic in the dried grape sector for the marketing year 2006/07 and in the wine sector — plantation of vines without the right to replant.

As regards the correction in the dried grape sector, the applicant contends, first, that the corrections imposed at a rate of 100 % for sultanas and at a rate of 25 % for currants, relating to the reduction in minimum yield, the specialisation of the vineyard plots, actual yields and deliveries, are based on an incorrect assessment of the facts and on a misinterpretation and misapplication of the fourth indent of Article 3(2) of Regulation No 1621/1999. ⁽¹⁾

Second, the applicant submits that the contested decision is unlawful and should be annulled because the imposition by the Commission of a flat-rate correction of 100 % for sultanas and 25 % for currants, relating to deficiencies as regards the reduction in minimum yield, the failure to observe the requirement for specialisation of vineyard plots and actual yields and deliveries, is based on a misinterpretation and misapplication of Annex 2 to document VI/5530/97, Annex 17 to document AGRI/17933/2000 and document AGRI/60637/2006, lacks an adequate statement of reasons, is disproportionate to the deficiencies found and goes beyond the discretion available to the Commission.

As regards plantation without the right to replant, the applicant contends, first, that the imposition of a financial correction by the Commission is unlawful and should be annulled because (a) it concerns the rejection of expenditure that was effected more than 24 months before the communication of the results of the Commission's investigation, in breach of Article 7(4) of Regulation No 1258/1999 ⁽²⁾ and now Article 31 of Regulation No

1290/2005, ⁽³⁾ and (b) it infringes the principle of legal certainty and weakens the rights of defence and of support of the applicant's submissions because it goes back to events and acts of past decades.

Third, the applicant submits that the Commission's view that the areas which were regularised under Article 2(3)(a) of Regulation No 1493/1999 ⁽⁴⁾ have been regularised in a manner not compatible with that provision, because the fact that the vineyard register was not completed at the time when the applications for regularisation were drawn up meant that the necessary guarantees for the checking of deviations were not provided, is based on an error as to the facts.

Fourth, the applicant contends that the contested decision is unlawful and should be annulled because the correction imposed and the method applied for calculating it, with the application *mutatis mutandis* of Article 86 of Regulation No 479/2008, ⁽⁵⁾ is contrary to Article 31 of Regulation No 1290/2005 and to the guidelines in document VI/5330/87, and the method's application leads to results that are disproportionate to the deficiencies found.

Fifth, the applicant submits that the Commission's determination that the total area regularised pursuant to Article 2(3)(a) of Regulation No 1493/1999 was 7 112,04 hectares and that the average value of the planting rights was EUR 1 500/hectare is based on an error as to the facts, lacks an adequate statement of reasons and is contrary to the principle of proportionality.

⁽¹⁾ Commission Regulation (EC) No 1621/1999 of 22 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards aid for the cultivation of grapes to produce certain varieties of dried grapes.

⁽²⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy.

⁽³⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy.

⁽⁴⁾ Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine.

⁽⁵⁾ Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999.

Action brought on 22 August 2012 — Spa Monopole v OHIM

(Case T-377/12)

(2012/C 331/52)

Language in which the application was lodged: French

Parties

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

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

Other party to the proceedings before the Board of Appeal: Olivar Del Desierto, SL (Almería, Spain)

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 22 June 2012 in Case R 135/2011-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Olivar Del Desierto, SL.

Community trade mark concerned: Figurative mark comprising the word element 'OLEOSPA' for goods and services in Classes 3, 35 and 39 — registration application No 7 268 832.

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

Mark or sign cited in opposition: Benelux word marks 'SPA' for goods in Classes 3 and 32

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal upheld and opposition rejected.

Pleas in law:

— Infringement of Article 8(1)(b) of Regulation No 207/2009;

— Infringement of Article 8(5) of Regulation No 207/2009.

Action brought on 22 August 2012 — Demon International v OHIM — Big Line Sas di Graziani Lorenzo (DEMON)

(Case T-380/12)

(2012/C 331/53)

Language in which the application was lodged: German

Parties

Applicant: Demon International, LC (Orem, United States) (represented by: T. Krüger, lawyer)

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

Other party to the proceedings before the Board of Appeal: Big Line Sas di Graziani Lorenzo (Thiene (VI), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 20 June 2012 in Case R 1845/2011-4;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the action and of the appeal proceedings R 1845/2011-4.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'Demon' for goods in Class 9 — Community trade mark No 6 375 398

Proprietor of the Community trade mark: Big Line Sas di Graziani Lorenzo

Applicant for the declaration of invalidity of the Community trade mark: Demon International, LC

Grounds for the application for a declaration of invalidity: International word mark 'DEMON' for goods in Class 28

Decision of the Cancellation Division: The application for a declaration of invalidity was granted in part

Decision of the Board of Appeal: The appeal was allowed and the application for a declaration of invalidity dismissed

Pleas in law: Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 August 2012 — Singer v OHIM — Cordia Magyarország Ingatlanforgalmazó Zártkörűen Működő (CORDIO)

(Case T-388/12)

(2012/C 331/54)

Language in which the application was lodged: German

Parties

Applicant: Daniela Singer (Obertrubach, Germany) (represented by: B. Korom, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cordia Magyarország Ingatlanforgalmazó Zártkörűen Működő Rt (Budapest, Hungary)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 July 2012 in Case R 1842/2011-2

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'CORDIO' for services in Class 42 — Community trade mark application No 9 115 262

Proprietor of the mark or sign cited in the opposition proceedings: Cordia Magyarország Ingatlanforgalmazó Zártkörűen Működő Rt

Mark or sign cited in opposition: the word mark 'CORDIA' for services in Classes 36, 37 and 42

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: There is no likelihood of confusion between the marks at issue.

Action brought on 5 September 2012 — EDF v Commission

(Case T-389/12)

(2012/C 331/55)

Language of the case: English

Parties

Applicant: Électricité de France SA (EDF) (Paris, France) (represented by: A. Creus Carreras and A. Valiente Martin, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission decision C(2012) 4617 final of 28 June 2012 refusing to grant the applicant an extension until 31 December 2014 of the Final Investment Decision deadline provided by one of the Commitments imposed in merger proceedings (Case No COMP/M.5549 — EDF/SEGEBEL);

— Order the defendant to pay the costs of the 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

— error of law and incorrect application of paragraphs 72 et seq. of the Commission Notice on remedies acceptable under the Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 ⁽¹⁾.

2. Second plea in law, alleging

— manifest error of assessment of the significant facts of the case.

3. Third plea in law, alleging

— violation of the principle of proportionality.

4. Fourth plea in law, alleging

— misuse of powers and/or violation of the principle of sound administration.

5. Fifth plea in law, alleging

— lack of motivation, since the Commission failed to provide any reason supporting its decision.

⁽¹⁾ OJ C 267 2008, p. 1

Action brought on 3 September 2012 — Luigi Lavazza SpA v OHIM

(Case T-392/12)

(2012/C 331/56)

Language in which the application was lodged: Italian

Parties

Applicant: Luigi Lavazza SpA (Turin, Italy) (represented by: A. Vanzetti, G.E. Sironi, M. Ricolfi and C.E. Mezzetti, lawyers)

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

Other party to the proceedings before the Board of Appeal: Commercialunion Prima Srl (Bresso, Italy)

Form of order sought

- uphold the action and annul the decision of the First Board of Appeal of 26 June 2012 in Case R 124/2011-1, on grounds of infringement of Article 8(1)(b) of Regulation No 207/2009;
- reject the opposition of Commercialunione Prima Srl to the European Union-wide registration of international trade mark No W000943981 'Lavazza a modo mio' and, consequently, grant the same scope of registration;
- order that the costs borne by Luigi Lavazza SpA in the proceedings be fully awarded in its favour.

Pleas in law and main arguments

Applicant for a Community trade mark: Luigi Lavazza SpA

Community trade mark concerned: Figurative mark 'LAVAZZA A MODO MIO' for goods and services in Classes 11, 29, 30 and 43 — International registration for European Union No W00 943 981

Proprietor of the mark or sign cited in the opposition proceedings: Commercialunione Prima Srl

Mark or sign cited in opposition: National figurative marks 'A MODO MIO', 'la PIZZA A MODO MIO' and 'A MODO MIO BIRRA & MUSIC' for services in Class 42

Decision of the Opposition Division: Action partially upheld

Decision of the Board of Appeal: The Board of Appeal took note of the withdrawal of the application for registration of 'LAVAZZA A MODO MIO' for Class 43 only and dismissed the action as to the remainder

Pleas in law: Infringement of Article 8(1)(b) and the second part of Article 76(1) of Regulation No 207/2009

Action brought on 28 August 2012 — Alfastar Benelux v Council

(Case T-394/12)

(2012/C 331/57)

Language of the case: English

Parties

Applicant: Alfastar Benelux SA (Ixelles, Belgium) (represented by: N. Keramidas and N. Korogiannakis, lawyers)

Defendant: Council of the European Union

Form of order sought

- Annul the decision of the defendant to reject the bid of the applicant filed in response to the open call for tenders UCA-218-07 for the provision of technical maintenance — help desk and on-site intervention services for the PC's printers

and peripherals of the General Secretariat of the Council (OJ/S 2008/S 91-122796), communicated afresh to the applicant by registered letter dated 18 June 2012, following the annulment of the previous award decision dated 1 December 2008 by the General Court in its judgment in case T-57/09 *Alfastar Benelux v Council*;

- Order the defendant to pay the applicant's damages suffered on account of the tendering procedure in question; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violated the tender specification since the use of the movers to execute technical assistance tasks as envisaged in the winning tender is contrary to such specifications;
2. Second plea in law, alleging that the contested decision is vitiated by multiple manifest errors of assessment especially concerning the certification of the winning tenderer, the qualifications of the personnel of the winning tenderer as opposed to those of the applicant, the knowledge transfer marks, the evaluation of the number of staff proposed by the tenderers.
3. Third plea in law, alleging that the evaluation committee mixed selection and award criteria and phases of the tendering procedure.
4. Fourth plea in law, alleging that there exist various inconsistencies and inaccurate information in the call for tenders.
5. Fifth plea in law, alleging that the defendant did not comply with the provision of Article 100(2) of the Financial Regulation⁽¹⁾, especially with regard to the verification of selection criteria.

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

Action brought on 6 September 2012 — Cosma Moden v OHIM — s.Oliver Bernd Freier (COSMA)

(Case T-398/12)

(2012/C 331/58)

Language in which the application was lodged: German

Parties

Applicant: Cosma Moden GmbH & Co. KG (Emsdetten, Germany) (represented by: J. Meyer, lawyer)

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

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

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 July 2012 in Case R 2011/2010-4 in respect of Community trade mark application No 6 589 808 and alter that decision to the effect that the appeal is well founded and that the opposition must as a result also be rejected as to the remainder;
- order the defendant to pay the costs including those incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'COSMA' for goods and services in Classes 24, 25 and 35 — Community trade mark application No 6 589 808

Proprietor of the mark or sign cited in the opposition proceedings: s.Oliver Bernd Freier GmbH & Co. KG

Mark or sign cited in opposition: the figurative mark including the word element 'comma' and the national word mark 'comma' for goods and services in Classes 3, 6, 9, 14, 18, 20, 25, 26, 28 and 35

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 6 September 2012 — Cosma Moden v OHIM — s.Oliver Bernd Freier (COSMA)

(Case T-399/12)

(2012/C 331/59)

Language in which the application was lodged: German

Parties

Applicant: Cosma Moden GmbH & Co. KG (Emsdetten, Germany) (represented by: J. Meyer, lawyer)

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

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

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 July 2012 in Case R 2010/2010-4 in respect of Community trade mark application No 6 593 479 and alter that decision to the effect that the appeal is well founded and that the opposition must as a result also be rejected as to the remainder;

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark including the word element 'COSMA' for goods and services in Classes 24, 25 and 35 — Community trade mark application No 6 593 479

Proprietor of the mark or sign cited in the opposition proceedings: s.Oliver Bernd Freier GmbH & Co. KG

Mark or sign cited in opposition: the figurative mark including the word element 'comma' and the national word mark 'comma' for goods and services in Classes 3, 6, 9, 14, 18, 20, 25, 26, 28 and 35

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 10 September 2012 — Klingel v OHIM — Develey (JUNGBORN)

(Case T-401/12)

(2012/C 331/60)

Language in which the application was lodged: German

Parties

Applicant: Robert Klingel OHG (Pforzheim, Germany) (represented by: T. Zeiher, lawyer)

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

Other party to the proceedings before the Board of Appeal: Develey Holding GmbH & Co. Beteiligungs KG (Unterhaching, Germany)

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 9 July 2012 in Case R 936/2011-4;
- reject the opposition to the protection of international registration W 1 002 323 — JUNGBORN;
- in the alternative, refer the case back to the Board of Appeal for a further decision;
- order the unsuccessful party to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Robert Klingel OHG

Community trade mark concerned: Word mark 'JUNGBORN' for goods in Classes 29, 30, 32 and 33 — international registration designating the European Union No W 1 002 323

Proprietor of the mark or sign cited in the opposition proceedings: Develey Holding GmbH & Co. Beteiligungs KG

Mark or sign cited in opposition: German word mark 'BORN' for goods in Classes 29, 30 and 32

Decision of the Opposition Division: The opposition was allowed in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 41(1)(a) and Article 8(1)(b) of Regulation No 207/2009

Action brought on 10 September 2012 — FH(*) v Commission

(Case T-405/12)

(2012/C 331/61)

Language of the case: French

Parties

Applicant: FH(*) (represented by: É. Boigelot and R. Murru, lawyers)

Defendant: European Commission

Form of order sought

- Declare the action admissible and well-founded;
- Consequently,
 - before making its ruling, and as a measure of enquiry, order the production of the framework contract DI/06350-00 which was concluded between the Commission and the company Intrasoft;
 - annul the decision of 10 July 2012 and, as a result, the erratum of 11 July 2012;
 - order the European Commission to compensate it for the harm suffered by the applicant, set at the total sum of EUR 12 500, which is subject to increase in the course of the proceedings;
 - in any event, order the defendant to pay the entire costs, in accordance with Article 87 of the Rules of Procedure of the General Court of the European Union.

Pleas in law and main arguments

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

1. The first plea in law alleges infringement of the following principles: the duty to state reasons, the protection of legitimate expectations and the rights of the defence, the applicant having been informed orally of the contested decision withdrawing with immediate effect the documents giving him access to Commission buildings and that decision being referred to only in the minutes of a meeting between the applicant and the Commission's human resources and security department. The applicant claims that the contested decision does not refer to the factors which led the Commission to take such a decision and that the legal basis of the decision was communicated to the applicant by an erratum issued after the decision took effect.
2. The second plea in law alleges infringement of the principle of the presumption of innocence, in so far as it would appear that the only basis for the contested decision is an interview held by the Belgian police with the applicant in the course of an enquiry of which he is not the object but which concerns a childhood friend with whom he telephoned from time to time.
3. The third plea in law alleges infringement of the principle of proportionality, the Commission having denied the applicant access to Commission buildings although no charges had been laid against him and he is not the object of the police investigation in question.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 21 August 2012 — ZZ v Commission

(Case F-89/12)

(2012/C 331/62)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Rodrigues, A. Blot and A. Tymen, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision not to regrade the applicant.

Form of order sought

- Annul the decision adopted on 10 May 2012 by the Director of Directorate D of DG Human Resources and Security and sent to the applicant by note of 11 May 2012 rejecting the applicant's claim of 25 January 2012;
- In so far as necessary, annul the decision of 21 November 2011 rejecting the applicant's request of 29 June 2011;
- Order the defendant to take the corrective measures necessary to re-establish compliance with the principle of career equivalence as regards the applicant;

— Order the Commission to pay all the costs.

Action brought on 3 September 2012 — ZZ v Commission

(Case F-91/12)

(2012/C 331/63)

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

Action for annulment of the decision to calculate the entitlement to pension rights acquired before the entry into service on the basis of the general implementing provisions for Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011.

Form of order sought

- annul the decision to calculate the entitlement to pension rights acquired before the entry into service on the basis of the general implementing provisions for Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;
 - order the Commission to pay the costs.
-

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