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COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 379/01)

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

OJ C 373, 1.12.2012

Past publications

OJ C 366, 24.11.2012

OJ C 355, 17.11.2012

OJ C 343, 10.11.2012

OJ C 331, 27.10.2012

OJ C 319, 20.10.2012

OJ C 311, 13.10.2012

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 18 October 2012 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-301/10) [1]

(Failure of a Member State to fulfil obligations — Pollution and nuisance — Urban waste water treatment — Directive 91/271/EEC — Articles 3, 4 and 10 — Annex I(A) and (B))

(2012/C 379/02)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán, A.-A. Gilly and A. Demeneix, acting as Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: L. Seeboruth, acting as Agent, D. Anderson QC, and S. Ford and B. McGurk, Barristers)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 3(1) and (2), 4(1) and (3) and 10 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40) and of Annex I(A) and (B) thereto — Failure to have ensured the appropriate treatment of urban waste water from several parts of London (Whitburn, Beckton, Crossness and Mogden)

Operative part of the judgment

The Court:

1. *Declares that, by failing to ensure:*

   — *appropriate collection of the urban waste water of the agglomerations, with a population equivalent of more than 15 000, of Sunderland (Whitburn) and London (Beckton and Crossness collecting systems), in accordance with Article 3(1) and (2) of, and Annex I(A) to, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, and*

   — *appropriate treatment of the urban waste water of the agglomeration, with a population equivalent of more than 15 000, of London (Beckton, Crossness and Mogden treatment plants), in accordance with Article 4(1) and (3) and Article 10 of, and Annex I(B) to, Directive 91/271,*

   the United Kingdom has failed to fulfil its obligations under that directive;

2. *Orders the United Kingdom to pay the costs.*

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[1] OJ C 246, 11.9.2010.

Judgment of the Court (Grand Chamber) of 16 October 2012 — Hungary v Slovak Republic

(Case C-364/10) [1]

(Failure of a Member State to fulfil obligations — Article 259 TFEU — Citizenship of the European Union — Article 21 TFEU — Directive 2004/38/EC — Right to move within the territory of the Member States — President of Hungary — Prohibition on entering the territory of the Slovak Republic — Diplomatic relations between Member States)

(2012/C 379/03)

Language of the case: Slovak

Parties

Applicant: Hungary (represented by: M.Z. Fehér and E. Orgován, Agents)

Defendant: Slovak Republic (represented by: B. Ricziová, Agent)

Intervener in support of the defendant: European Commission (represented by: A. Tokár, D. Maidani and S. Boelaert, Agents)

Re:

Article 259 TFEU — Failure of a Member State to fulfil obligations — Breach of Article 18(1) EC, Article 3(2) TEU, Article 21(1) TFEU and 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 (OJ 2004 L 158, p. 77) — Abusive application of European Union law — Prohibition on entering the territory of the Slovak Republic imposed on the President of Hungary when intending to take up the invitation made by a social organisation — Prohibition on entry based, in part, on Directive 2004/38/EC — Application of the provisions of European Union law on the free movement of persons to Heads of State and to other persons representing the Member States

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hungary to pay the costs;*

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

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Fifth Chamber) of 18 October 2012 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Elenca Srl v Ministero dell'Interno

(Case C-385/10) ([1])

(Free movement of goods — Quantitative restrictions and measures having equivalent effect — Internal liners in flues and chimney pipes — Lack of CE conformity marking — Marketing precluded)

(2012/C 379/04)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Elenca Srl

Defendant: Ministero dell'Interno

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 2, 4(2), 5 and 6 of Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12) — Products not covered by harmonised standards as provided for in the directive — National rules that preclude the marketing of plastic internal flue or chimney pipe linings not bearing EC marking

Operative part of the judgment

1. *Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as precluding national provisions which automatically make the marketing of construction products, such as those at issue in the main proceedings, originating from another Member State, subject to the affixing of CE marking.*

2. *Articles 34 TFEU to 37 TFEU must be interpreted as precluding national provisions which automatically make the marketing of construction products, such as those at issue in the main proceedings, originating from another Member State, subject to the affixing of CE marking.*

([1]) OJ C 274, 9.10.2010.

Judgment of the Court (First Chamber) of 18 October 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — X NV v Staatssecretaris van Financiën

(Case C-498/10) ([1])

(Freedom to provide services — Restrictions — Fiscal legislation — Obligation on the recipient of a service, established in the national territory, to withhold at source the wages tax on the remuneration due to a service provider established in another Member State — No such obligation in respect of a service provider established in the same Member State)

(2012/C 379/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: X NV

Respondent: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 56 TFEU — Restrictions on the freedom to provide services — Withholding at source of tax on remuneration which has to be applied by the recipient of a provision of services, established on the national territory, to remuneration due to a service provider having its seat in another Member State — No such obligation in the case of a service provider having its seat in the same Member State

Operative part of the judgment

1. *Article 56 TFEU must be interpreted as meaning that the obligation imposed, under the legislation of a Member State, on the service recipient to withhold at source wages tax on the remuneration paid to service providers established in another Member State, whereas such an obligation does not exist in relation to remuneration paid to service providers who are established in the Member State at issue, constitutes a restriction on the freedom to provide services, within the meaning of that provision, in that it entails an additional administrative burden and related liability risks.*

2. *In so far as the restriction to the freedom to provide services arising from national legislation, such as that at issue in the main proceedings, results from the obligation to withhold tax at source, in that it entails an additional administrative burden and related liability risks, that restriction can be justified by the need to ensure the effective collection of tax and does not go beyond what is necessary to achieve that purpose, even in the light of the opportunities for mutual assistance in the recovery of taxes presented by Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Council Directive 2001/44/EC of 15 June 2001. The subsequent renunciation of the withholding tax at issue in the main proceedings cannot prejudice either its appropriateness to achieve the aim pursued or its proportionality, both of which must be assessed solely in the light of the objectives pursued.*

3. *In order to determine whether the obligation on the service recipient to withhold tax at source, in that it entails an additional administrative burden and related liability risks, constitutes a restriction on the freedom to provide services prohibited by Article 56 TFEU, it is irrelevant whether the non-resident service provider may deduct the tax withheld in the Netherlands from the tax for which he is liable in the Member State in which he is established.*

([1]) OJ C 13, 15.1.2011.

Judgment of the Court (Third Chamber) of 18 October 2012 (reference for a preliminary ruling from the Raad van State — Netherlands) — State Secretary van Justitie v Mangat Singh

(Case C-502/10) ([1])

(Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Scope — Article 3(2)(e) — Residence based on a formally limited permit)

(2012/C 379/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie

Defendant: Mangat Singh

Re:

Reference for a preliminary ruling — Raad van State — Interpretation of Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44) — Concept of a 'formally limited residence permit' — Residence permit not offering any prospect of a residence permit of indefinite duration, but which can be extended indefinitely

Operative part of the judgment

Article 3(2)(e) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as meaning that the concept of 'residence permit [which] has been formally limited' does not include a fixed-period residence permit, granted to a specific group of persons, the validity of which may be extended indefinitely without however offering any prospect of a residence permit of indefinite duration where such a formal limitation does not prevent the long-term residence of the third country national in the Member State concerned, that being a matter for the referring court to ascertain.

([1]) OJ C 346, 18.12.2010.

Judgment of the Court (Third Chamber) of 18 October 2012 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) — United Kingdom) — United States of America v Christine Nolan

(Case C-583/10) [1]

(Reference for a preliminary ruling — Directive 98/59/EC — Protection of workers — Collective redundancies — Scope — Closure of an American military base — Information and consultation of workers — Time at which the consultation obligation arises — Lack of jurisdiction of the Court)

(2012/C 379/07)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: United States of America

Defendant: Christine Nolan

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Articles 2 and 5 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16) — Employer's obligation to inform and consult the workers' representatives — Determination of the time at which that obligation arises

Operative part of the judgment

The Court of Justice of the European Union does not have jurisdiction to reply to the question referred by the Court of Appeal (England & Wales) (Civil Division) (United Kingdom), by decision of 6 December 2010.

[1] OJ C 89, 19.3.2011.

Judgment of the Court (Fifth Chamber) of 18 October 2012 (reference for a preliminary ruling from the Upravno sodišče Republike Slovenije — Slovenia) — Pelati d.o.o. v Republika Slovenija

(Case C-603/10) [1]

(Approximation of laws — Directive 90/434/EEC — Common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States — Article 11(1)(a) — National legislation under which authorisation must be obtained for the grant of tax advantages — Application for authorisation to be made at least 30 days before the proposed operation is effected)

(2012/C 379/08)

Language of the case: Slovene

Referring court

Upravno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Pelati d.o.o.

Defendant: Republika Slovenija

Re:

Reference for a preliminary ruling — Upravno sodišče Republike Slovenije — Interpretation of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) — Article 11(1)(a) — Tax advantages in connection with division — National legislation setting a time-limit for submitting applications for those advantages — Refusal of the tax advantages in question because of non-compliance with the time-limit — Compatibility of the refusal with the directive in question

Operative part of the judgment

Article 11(1)(a) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which the grant of the tax advantages applicable to a division in accordance with that directive is subject to the condition that the application relating to that operation is submitted within a specified period. However, it is for the national court to ascertain whether the details

of the implementation of that period, and more particularly the determination of its starting-point of the period, are sufficiently precise, clear and foreseeable to enable taxpayers to ascertain their rights and to ensure that they are in a position to enjoy the tax advantages provided for by that directive.

([1]) OJ C 80, 12.3.2011.

Judgment of the Court (Grand Chamber) of 16 October 2012 — European Commission v Republic of Austria

(Case C-614/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 95/46/EC — Processing of personal data and free movement of such data — Protection of natural persons — Article 28(1) — National supervisory authority — Independence — Supervisory authority and the Federal Chancellery — Personal and organisational links)

(2012/C 379/09)

Language of the case: German

Parties

Applicant: European Commission (represented by: B. Martenczuk and B.R. Killmann, Agents,)

Intervener in support of the applicant: European Data Protection Supervisor (EDPS) (represented by: H. Kranenborg, I. Chatelier and H. Hijmans, Agents)

Defendant: Republic of Austria (represented by: G. Hesse, Agent)

Intervener in support of the defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of the second subparagraph of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Obligation for the Member States to ensure that the national supervisory authorities responsible for supervising the processing of personal data exercise their duties entirely independently — Close personal and organisational connections between the supervisory authority and the Federal Chancellor's Office (Bundeskanzleramt) — Subjection of the supervisory authority to the supervision of the Federal Chancellor

Operative part of the judgment

The Court:

1. *Declares that, by failing to take all of the measures necessary to ensure that the legislation in force in Austria meets the requirement of independence with regard to the Datenschutzkommission (Data Protection Commission), more specifically by laying down a regulatory framework under which*

   — *the managing member of the Datenschutzkommission is a federal official subject to supervision,*

   — *the office of the Datenschutzkommission is integrated with the departments of the Federal Chancellery, and*

   — *the Federal Chancellor has an unconditional right to information covering all aspects of the work of the Datenschutzkommission,*

   the Republic of Austria has failed to fulfil its obligations under the second subparagraph of Article 28(1) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

2. *Orders the Republic of Austria to pay the costs incurred by the European Commission;*

3. *Orders the Federal Republic of Germany and the European Data Protection Supervisor to bear their own respective costs.*

([1]) OJ C 72, 5.3.2011.

Judgment of the Court (First Chamber) of 18 October 2012 — European Commission v Czech Republic

(Case C-37/11) ([1])

(Failure of a Member State to fulfil obligations — Admissibility — Regulation No 1234/2007 — Article 115 — Annex XV — Point I(2) — Appendix to Annex XV — Part A — Sales designations 'butter' and 'dairy spread' — Sales designation 'pomazánkové máslo' (butter spread) — List of derogations)

(2012/C 379/10)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: Z. Malůšková and H. Tserepa-Lacombe, acting as Agents)

Defendant: Czech Republic (represented by: M. Smolek, T. Müller and J. Očková, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 115 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1), in conjunction with point I(2) of Annex XV to that regulation and part A of the appendix to that annex — Legislation of a Member State authorising the marketing of a product corresponding to the sales designation 'dairy spread' under the sales designation 'pomazánkové máslo' (butter spread)

Operative part of the judgment

The Court:

1. *Declares that, by authorising pomazánkové máslo (butter spread) to be sold under the designation 'máslo' (butter) even though that product has a milk fat content of less than 80 % and water and dry non-fat milk-material contents of more than 16 % and 2 % respectively, the Czech Republic has failed to fulfil its obligations under Article 115 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) in conjunction with the first and second subparagraphs of point I(2) of Annex XV to that regulation and points 1 and 4 of part A of the appendix to that annex;*

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

(1) OJ C 80, 12.3.2011.

Judgment of the Court (Sixth Chamber) of 18 October 2012 — Herbert Neuman, Andoni Galdeano del Sel, Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v José Manuel Baena Grupo, SA

(Joined Cases C-101/11 P and C-102/11 P) (1)

(Appeals — Community design — Regulation (EC) No 6/2002 — Articles 6, 25(1)(b) and (e), and 61 — Registered Community design or model representing a seated figure — Earlier Community figurative mark — Different overall impression — Degree of freedom of the designer — Informed user — Scope of judicial review — No statement of reasons)

(2012/C 379/11)

Language of the case: Spanish

Parties

Appellants: Herbert Neuman, Andoni Galdeano del Sel (represented by: S. Miguez Pereira, abogada), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), (represented by J. Crespo Carrillo and A. Folliard-Monguiral, acting as Agents)

Other party to the proceedings: José Manuel Baena Grupo (represented by: A. Canela Giménez, abogado)

Re:

Appeal brought against the judgment of the General Court (Seventh Chamber) of 16 December 2010 — Case T-513/09 *Baena Grupo* v *OHIM — Neuman and Galdeano del Sel (seated figure)*, by which the General Court annulled the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 14 October 2009 (Case R 1323/2008-3)

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Mr Neuman and Mr Galdeano del Sel to bear their own costs and to pay those incurred by José Manuel Baena Grupo, SA in relation to the appeal in Case C-101/11 P;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and to pay those incurred by José Manuel Baena Grupo, SA in relation to the appeal in Case C-102/11 P.*

(1) OJ C 130, 30.4.2011.

Judgment of the Court (Third Chamber) of 18 October 2012 (reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) — United Kingdom) — Football Dataco Ltd, Scottish Premier League Ltd, Scottish Football League, PA Sport UK Ltd v Sportradar GmbH, Sportradar AG

(Case C-173/11) (1)

(Directive 96/9/EC — Legal protection of databases — Article 7 — Sui generis right — Database relating to football league matches in progress — Concept of re-utilisation — Localisation of the act of re-utilisation)

(2012/C 379/12)

Language of the case: English

Referring court

Court of Appeal of England and Wales (Civil Division)

Parties to the main proceedings

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

Defendant: Sportradar GmbH, Sportradar AG

Re:

Reference for a preliminary ruling — Court of Appeal of England and Wales (Civil Division) — Interpretation of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20), in particular Article 7 — Right of the maker of a database to prevent extraction and/or re-utilisation of part of the contents of the database — Concepts of extraction and re-utilisation (Article 7(2) of the directive) — Database containing information on football matches in progress ('Football Live')

Operative part of the judgment

Article 7 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that the sending by one person, by means of a web server located in Member State A, of data previously uploaded by that person from a database protected by the sui generis right under that directive to the computer of another person located in Member State B, at that person's request, for the purpose of storage in that computer's memory and display on its screen, constitutes an act of 're-utilisation' of the data by the person sending it. That act takes place, at least, in Member State B, where there is evidence from which it may be concluded that the act discloses an intention on the part of the person performing the act to target members of the public in Member State B, which is for the national court to assess.

([1]) OJ C 194, 2.7.2011.

Judgment of the Court (Seventh Chamber) of 18 October 2012 (reference for a preliminary ruling from the Fővárosi Ítélőtábla — Hungary) — Észak-dunántúli Környezetvédelmi és Vízügyi Igazgatóság (Éduköviz), Hochtief Construction AG Magyarországi Fióktelepe, now Hochtief Solutions AG Magyarországi Fióktelepe v Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

(Case C-218/11) ([1])

(Directive 2004/18/EC — Public works contracts, public supply contracts and public service contracts — Articles 44(2) and 47(1)(b), (2) and (5) — Economic and financial standing of tenderers — Minimum capacity established on the basis of a single accounting indicator — Accounting indicator liable to be influenced by divergences between national laws as regards annual company accounts)

(2012/C 379/13)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla

Parties to the main proceedings

Applicants: Észak-dunántúli Környezetvédelmi és Vízügyi Igazgatóság (Éduköviz), Hochtief Construction AG Magyarországi Fióktelepe, now Hochtief Solutions AG Magyarországi Fióktelepe

Defendant: Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

Intervening parties: Vegyépszer Építő és Szerelő Zrt, MÁVÉPCELL Kft

Re:

Reference for a preliminary ruling — Fővárosi Ítelőtábla — Interpretation of Articles 44(2), 47(1)(b), 47(3) and 47(5) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Examination of economic and financial standing of tenderers on the basis of a single accounting indicator with a different content in different Member States because of the divergences between national laws as regards accounting rules — Principle of equal treatment for tenderers

Operative part of the judgment

1. *Articles 44(2) and 47(1)(b) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts must be interpreted as meaning that a contracting authority may require a minimum level of economic and financial standing by reference to one or more particular aspects of the balance sheet, provided that those aspects are such as to provide information on such standing of an economic operator and that that level is adapted to the size of the contract concerned in that it constitutes objectively a positive indication of the existence of a sufficient economic and financial basis for the performance of that contract, without, however, going beyond what is reasonably necessary for that purpose. The requirement of a minimum level of economic and financial standing cannot, in principle, be disregarded solely because that level relates to an aspect of the balance sheet regarding which there may be differences between the legislations of the different Member States.*

2. *Article 47 of Directive 2004/18 must be interpreted as meaning that where an economic operator cannot meet a minimum level of economic and financial standing consisting in a requirement that the profit/loss item in the balance sheet of candidates or tenderers should not be negative for more than one of the last three completed financial years, because of an agreement under which that economic operator systematically transfers its profits to its parent company, that operator has no other option, in order to meet that minimum capacity level, than to rely on the capacities of another entity, in accordance with Article 47(2). It is irrelevant in that regard that the legislation of the Member State of establishment of that economic operator and that of the Member State of establishment of the contracting authority differ in that such an agreement is authorised without limitation by the legislation of the first Member State whereas, under the legislation of the second, it would only be authorised on condition that the transfer of profits does not have the effect of making the profit/loss item in the balance sheet negative.*

([1]) OJ C 232, 6.8.2011.

Judgment of the Court (Third Chamber) of 18 October 2012 (reference for a preliminary ruling from the Administrativen sad, Varna, Bulgaria) — TETS Haskovo AD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-234/11) [1]

(Taxation — VAT — Right of deduction — Contribution in kind — Destruction of property — New buildings — Adjustment)

(2012/C 379/14)

Language of the case: Bulgarian

Referring court

Administrativen sad, Varna

Parties to the main proceedings

Applicant: TETS Haskovo AD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

Reference for a preliminary ruling — Administrativen sad — Varna — Requirements to adjust input VAT deducted on acquisition of property — National legislation providing for adjustment of input VAT deductions upon destruction of property — Destruction of buildings with sole aim of constructing in their place new buildings fulfilling the same purpose, and used for future supplies giving entitlement to deduction of input VAT

Operative part of the judgment

Article 185(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the destruction, such as that at issue in the main proceedings, of several buildings intended for energy production and their replacement by more modern buildings which fulfil the same purpose as the demolished buildings does not constitute a change, after the VAT return was made, in the factors used to determine the amount of VAT to be deducted as input tax, and, therefore, does not lead to an obligation to adjust the deduction made.

[1] OJ C 232, 6.8.2011.

Judgment of the Court (Sixth Chamber) of 18 October 2012 (references for a preliminary ruling from the Consiglio di Stato — Italy) — Rosanna Valenza (C-302/11 and C-304/11), Maria Laura Altavista (C-303/11), Laura Marsella, Simonetta Schettini, Sabrina Tomassini (C-305/11) v Autorità Garante della Concorrenza e del Mercato

(Joined Cases C-302/11 to C-305/11) [1]

(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Fixed-term employment contracts in the public sector — National Competition Authority — Stabilisation procedure — Recruitment of workers employed for a fixed term as career civil servants without a public competition — Determination of length of service — Complete disregard of periods of service completed under fixed-term employment contracts — Principle of non-discrimination)

(2012/C 379/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Rosanna Valenza (C-302/11 and C-304/11), Maria Laura Altavista (C-303/11), Laura Marsella, Simonetta Schettini, Sabrina Tomassini (C-305/11)

Defendant: Autorità Garante della Concorrenza e del Mercato

Re:

References for a preliminary ruling — Consiglio di Stato — Interpretation of Clauses 4 and 5 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — National legislation under which it is possible, in derogation from the principle that public officials must be recruited by means of an open competition, for the public administrative authorities to enter into permanent work contracts with workers who have been in the employ of those authorities under fixed-term contracts — No account taken of the length of service accrued on the basis of the earlier, fixed-term contract, even where there is no interruption of the employment relationship

Operative part of the judgment

Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term

work concluded by ETUC, UNICE and CEEP, must be understood as precluding national legislation, such as that at issue in the main proceedings, which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, unless that prohibition is justified on 'objective grounds' for the purposes of clause 4(1) and/or (4). The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground.

([1]) OJ C 252, 27.8.2011.

Judgment of the Court (Seventh Chamber) of 18 October 2012 (reference for a preliminary ruling from the Hof van Beroep te Gent — Belgium) — Punch Graphix Prepress Belgium NV v Belgische Staat

(Case C-371/11) ([1])

(Reference for a preliminary ruling — Admissibility — Reference by domestic law to European Union law — Directive 90/435/EEC — Directive 90/434/EEC — Prevention of economic double taxation — Exception — Liquidation of a subsidiary upon a merger — Distribution of profits — Concept of 'liquidation')

(2012/C 379/16)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Applicant: Punch Graphix Prepress Belgium NV

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Hof van Beroep te Gent — Interpretation of Article 4(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Prevention of economic double taxation — Exception in respect of profits distributed when a subsidiary is liquidated — Concept of liquidation — Merger by acquisition whereby the subsidiary companies acquired are wound up without going into liquidation — Possibility, for the national tax authorities, of considering that such an operation entails liquidation, pursuant to national tax legislation which treats identically that operation and a merger which actually entails a liquidation

Operative part of the judgment

The concept of 'liquidation' in Article 4(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2006/98/EC of 20 November 2006, must be interpreted as meaning that the dissolution of a company in the context of a merger by acquisition cannot be considered to be such a liquidation.

([1]) OJ C 282, 24.9.2011.

Judgment of the Court (Second Chamber) of 18 October 2012 — Jager & Polacek GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-402/11 P) ([1])

(Appeal — Community trade mark — Opposition — Regulation (EC) No 2868/95 — Rule 18(1) — Legal nature of a communication from OHIM informing a party that an opposition has been found to be admissible — Right to an effective legal remedy)

(2012/C 379/17)

Language of the case: German

Parties

Appellant: Jager & Polacek GmbH (represented by: A. Renck, Rechtsanwalt)

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

Re:

Appeal against the judgment of the General Court (Seventh Chamber) of 12 May 2011 in Case T-488/09 *Jager & Polacek* v *OHIM (REDTUBE)* dismissing the action brought against the decision of the Fourth Board of Appeal of OHIM of 29 September 2009 (Case R 442/2009-4) relating to opposition proceedings between Jager & Polacek GmbH and RT Mediasolutions s.r.o. — Infringement of Article 80(1) and (2) of Regulation (EC) No 207/2009 — Right to an effective legal remedy

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 12 May 2011 in Case T-488/09 Jager & Polacek v OHIM (REDTUBE);*

2. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 29 September 2009 (Case R 442/2009-4) concerning opposition proceedings between Jager & Polacek GmbH and RT Mediasolutions s.r.o.;*

3. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of both the proceedings at first instance and the appeal proceedings.*

([1]) OJ C 6, 7.1.2012.

Judgment of the Court (Sixth Chamber) of 18 October 2012 reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) — Purely Creative Ltd, Strike Lucky Games Ltd, Winners Club Ltd, McIntyre & Dodd Marketing Ltd, Dodd Marketing Ltd, Adrian Williams, Wendy Ruck, Catherine Cummings, Peter Henry v Office of Fair Trading

(Case C-428/11) ([1])

(Directive 2005/29/EC — Unfair commercial practices — Practice of informing the consumer that he has won a prize and obliging him, in order to receive that prize, to incur a cost of whatever kind)

(2012/C 379/18)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Purely Creative Ltd, Strike Lucky Games Ltd, Winners Club Ltd, McIntyre & Dodd Marketing Ltd, Dodd Marketing Ltd, Adrian Williams, Wendy Ruck, Catherine Cummings, Peter Henry

Defendant: Office of Fair Trading

Re:

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) (United Kingdom) — Interpretation of Annex I, paragraph 31, to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-business commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22) — Commercial practices which are in all circumstances considered unfair — Practice whereby a consumer is informed that he has won a prize and various methods of claiming it are suggested to him that require him to incur a cost, which varies according to the method chosen

Operative part of the judgment

Paragraph 31, second indent, of Annex I to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive') must be interpreted as prohibiting aggressive practices by which traders, such as those at issue in the main proceedings, give the false impression that the consumer has already won a prize, while the taking of any action in relation to claiming that prize, be it requesting information concerning the nature of that prize or taking possession of it, is subject to an obligation on the consumer to pay money or to incur any cost whatsoever;

It is irrelevant that the cost imposed on the consumer, such as the cost of a stamp, is de minimis compared with the value of the prize or that it does not procure the trader any benefit;

It is also irrelevant that the trader offers the consumer a number of methods by which he may claim the prize, at least one of which is free of charge, if, according to one or more of the proposed methods, the consumer would incur a cost in order to obtain information on the prize or how to acquire it;

It is for the national courts to assess the information provided to consumers in the light of recitals 18 and 19 in the preamble to Directive 2005/29 and Article 5(2)(b) thereof, that is to say, by taking into account whether that information is clear and can be understood by the public targeted by the practice.

([1]) OJ C 311, 22.10.2011.

Judgment of the Court (Third Chamber) of 18 October 2012 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Mednis SIA v Valsts ieņēmumu dienests

(Case C-525/11) ([1])

(VAT — Directive 2006/112/EC — Article 183 — Conditions for the refund of the excess VAT — National legislation deferring the refund of part of the excess VAT pending examination of the taxable person's annual tax return — Principles of fiscal neutrality and proportionality)

(2012/C 379/19)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Mednis SIA

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Deduction of input VAT — National legislation limiting monthly VAT refund — Deferment, until examination of annual tax return, of the refund of the part of overpaid VAT that exceeds 18 % of the total value of the taxable transactions carried out during the tax month in question

Operative part of the judgment

Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not authorising the tax authority of a Member State to defer, without undertaking a specific analysis and solely on the basis of an arithmetical calculation, the refund of part of the excess VAT which has arisen during a one-month tax period, pending the examination by that authority of the taxable person's annual tax return.

([1]) OJ C 6, 7.1.2012.

Order of the Court of 18 September 2012 — Omnicare Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Astellas Pharma GmbH

(Case C-588/11 P) ([1])

(Appeal — Community trade mark — Application for registration of the word sign 'OMNICARE' — Opposition — Decision of the Board of Appeal rejecting the application — Action — Judgment of the General Court dismissing that action — Withdrawal of the opposition — Appeal — No need to adjudicate)

(2012/C 379/20)

Language of the case: English

Parties

Appellant: Omnicare Inc. (represented by: M. Edenborough, QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: J. Crespo Carrillo, acting as Agent), Astellas Pharma GmbH (represented by: M.L. Polo Carreño, abogada)

Re:

Appeal brought against the judgment of the General Court (First Chamber) of 9 September 2011 in Case T-290/09 *Omnicare* v *OHIM — Astellas Pharma (OMNICARE)* in which the General Court dismissed an action, brought by the applicant for the word mark 'OMNICARE' for services in Class 42, for the annulment of Decision R 402/2008-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 14 May 2009 annulling the Opposition Division's decision rejecting the opposition brought by the proprietor of the national mark 'OMNICARE' for services in Classes 35, 41 and 42 — Interpretation and application of Article 8(1)(b) of Regulation No 207/2009 — Notion of genuine use of an earlier mark — Mark used for services provided free of charge

Operative part of the order

1. *There is no need to adjudicate on the appeal brought by Omnicare Inc.*

2. *Omnicare Inc. shall pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in the course of the present proceedings and the proceedings for interim measures.*

3. *Omnicare Inc. and Astellas Pharma GmbH shall each bear their own costs.*

([1]) OJ C 25, 28.1.2012.

Reference for a preliminary ruling from the Raad van State (Netherlands), lodged on 27 August 2012 — A.M. van der Ham, A.H. van der Ham-Reijersen van Buuren; other party: College van Gedeputeerde Staten van Zuid-Holland

(Case C-396/12)

(2012/C 379/21)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: A.M. van der Ham, A.H. van der Ham-Reijersen van Buuren

Other party: College van Gedeputeerde Staten van Zuid-Holland

Questions referred

1. How should the term 'intentional non-compliance' in Article 51(1) of Council Regulation (EC) No 1698/2005 ([1]) of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) …, as amended by Council Regulation (EC) No 74/2009 ([2]) of 19 January 2009, in Article 23 of Commission Regulation (EC) No 1975/2006 ([3]) of 7 December 2006 laying down detailed rules for the implementation of Regulation No 1698/2005 …, and in Article 67(1) of Commission Regulation (EC) No 796/2004 ([4]) of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers …, be understood? In order to assume that intentional non-compliance has occurred, is it sufficient that there is non-compliance with long-established, settled policy as described in Article 8(2)(c) of the national Beleidsregels normenkader randvoorwaarden Gemeenschappelijk Landbouwbeleid (Netherlands Policy Rules governing the Cross-Compliance Standards Framework for the Common Agricultural Policy)?

2. Does European Union law preclude a ruling in a Member State that there is 'intentional' non-compliance with a scheme, within the terms of those regulations, on the ground that one or more of the following circumstances obtained:

   (a) intent has already been assumed in the cross-compliance requirement in respect of which there has been non-compliance;

   (b) the cross-compliance requirement concerned is complex;

   (c) long-established, settled policy exists;

   (d) there has been an active performance of an act, or a conscious omission of an act;

   (e) the farmer was previously informed of compliance deficiencies in respect of the cross-compliance requirement concerned; and

   (f) the extent of the non-compliance with the cross-compliance requirement points to intentional non-compliance?

3. Can 'intent' with regard to the 'non-compliance' be attributed to the beneficiary of the subsidy if a third party carries out the work on the instructions of that beneficiary?

([1]) OJ 2005 L 277, p. 1.
([2]) OJ 2009 L 30, p. 100.
([3]) OJ 2006 L 368, p. 74.
([4]) OJ 2004 L 141, p. 18.

Reference for a preliminary ruling from the Audiencia Provincial de Salamanca (Spain) lodged on 11 September 2012 — Asociación de Consumidores Independientes de Castilla y León

(Case C-413/12)

(2012/C 379/22)

Language of the case: Spanish

Referring court

Audiencia Provincial de Salamanca

Parties to the main proceedings

Appellant: Asociación de Consumidores Independientes de Castilla y León

Questions referred

1. Does the protection afforded to the consumer under Council Directive 93/13/EEC ([1]) on unfair terms in consumer contracts allow the Audiencia Provincial, as a national court of appeal, to hear and determine, in spite of the absence of any relevant domestic legal rule, the appeal brought against the decision of the court of first instance assigning to a court of the place where the defendant has its address territorial jurisdiction to hear and determine the action for an injunction brought by a consumer association of restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?

2. Must Articles 4, 12, 114 and 169 of the Treaty and Article 38 of the Charter of Fundamental Rights of the European Union, read in conjunction with Directive 93/13 and the case-law of the Court of Justice relating to the high level of protection of the interests of consumers, as well as to the practical effect of directives and the principles of equivalence and effectiveness, be interpreted as meaning that the court of the place where that association has its address, and not the court of the place where the defendant has its address, is to have territorial jurisdiction to hear and determine an action for an injunction against the use of unfair terms, to protect the collective or general interests of consumers and users, brought by a consumer association with restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?

(1) 5 April 1993 OJ L 95, p. 29.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 14 September 2012 — Wikom Elektrik GmbH v VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte mbH

(Case C-416/12)

(2012/C 379/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Claimant: Wikom Elektrik GmbH

Defendant: VG Media Gesellschaft zur Verwertung der Urheber- und Leistungsschutzrechte mbH

Question referred

Does the concept of communication to the public within the meaning of Article 3(1) of Directive 2001/29/EC (1) include the rebroadcasting, by wire, of a broadcast work in the case where the original broadcast can also be received by wireless means in the catchment area, the work is rebroadcast to the owners of reception equipment who receive the broadcast personally or within their own private or family circles, and the rebroadcasting is carried out for profit-making purposes by a broadcasting organisation other than the original one?

(1) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Appeal brought on 17 September 2012 by Industrias Alen SA de CV against the judgment of the General Court (Fourth Chamber) delivered on 10 July 2012 in Case T-135/11 Clorox v OHIM — Industrias Alen (Cloralex)

(Case C-422/12 P)

(2012/C 379/24)

Language of the case: Spanish

Parties

Appellant: Industrias Alen SA de CV (represented by: A. Padial Martinez, abogada)

Other parties to the proceedings: The Clorox Company and the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fourth Chamber) of 10 July 2012 in Case T-135/11;

— uphold the decision adopted on 16 December 2010 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and, consequently, reject the opposition lodged by THE CLOROX COMPANY;

— order THE CLOROX COMPANY, the opponent, to pay the costs.

Pleas in law and main arguments

Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 (1) on the Community trade mark ('the CTMR').

— Error of the General Court in the comparison of the signs CLOROX and CLORALEX.

— Error of the General Court in the assessment of the likelihood of confusion.

— Current coexistence in OHIM's register of the term CLOR in Classes 3 and 5.

— Agreements for co-existence of the marks concluded by the parties in relation to the marks CLOROX/CLORALEX in other countries.

(1) OJ 1994 L 11, p. 1.

Reference for a preliminary ruling from the Curtea de Apel Oradea (Romania) lodged on 18 September 2012 — SC Fatorie SRL v Direcția Generală a Finanțelor Publice Bihor

(Case C-424/12)

(2012/C 379/25)

Language of the case: Romanian

Referring court

Curtea de Apel Oradea

Parties to the main proceedings

Applicant: SC Fatorie SRL

Defendant: Direcția Generală a Finanțelor Publice Bihor

Questions referred

1. Do the provisions of Directive 2006/112/EC [1] allow the penalty of loss of the right to deduct to be applied to a taxable person, when:

   (i) the invoice produced by the taxable person for the purpose of exercising his right to deduct was incorrectly drawn up by a third party, failing to apply the simplification measures;

   (ii) the taxable person has paid the VAT indicated in the invoice?

2. Does the European law principle of legal certainty militate against the administrative practice of the Romanian tax authorities that have:

   (i) first, by irrevocable administrative decision, acknowledged the right to deduct VAT;

   (ii) then reversed that decision, and made the taxable person liable to pay into the State budget the VAT for which the right to deduct was originally exercised, and to pay interest and default interest?

3. Does the principle of the fiscal neutrality of VAT permit a taxable person to be deprived of the right to deduct VAT, in circumstances in which:

   (i) the taxable person has paid the VAT incorrectly indicated in the invoice by a third party;

   (ii) the tax authorities have taken no active steps to request the third party to put right the incorrectly worded invoice;

   (iii) at present, as a result of the third party's insolvency, it is impossible for the invoice to be corrected?

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

Action brought on 20 September 2012 — European Commission v Kingdom of Spain

(Case C-428/12)

(2012/C 379/26)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: I. Galindo Martin and G. Wilms, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that the Kingdom of Spain has failed to fulfil its obligations under Articles 34 and 36 of the Treaty on the Functioning of the European Union, by making it compulsory — in Ministerial Decree FOM/734/2007 of 20 March 2007 supplementing the Rules for the implementation of the Law on the Regulation of Inland Transport in respect of authorisations for the transport of goods by road — that, in order to obtain an 'authorisation for the private, own-account transport of goods', no more than five months must have elapsed since the first registration of the first vehicle of an undertaking's fleet, and by failing to justify that requirement;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The requirement that, in order to obtain an 'authorisation for the private, own-account transport of goods', no more than five months must have elapsed since the first registration of the first vehicle of an undertaking's fleet, constitutes a measure having equivalent effect to a quantitative restriction on imports, in breach of Article 34 of the Treaty on the Functioning of the European Union. That restriction is not justified either by one of the public interest grounds set out in Article 36 TFEU or by an imperative requirement.

As regards the existence of a restriction of the free movement of goods, in practice the rules in question restrict to a greater extent the import of vehicles already registered in other Member States than the purchase of vehicles registered in Spain. In addition, given that vehicles registered in other Member States already satisfy the European and/or national technical requirements in order to be considered roadworthy in the Member States of origin, the abovementioned rules fail to have regard to the principle of mutual recognition, since a vehicle which is roadworthy in another Member State must also be roadworthy in Spain. Furthermore, the measure in question constitutes a restriction of use such as those examined by the Court of Justice of the European Union in Case C-110/05 *Commission* v *Italy* [2009] ECR I-519 and Case C-142/05 *Mickelsson and Roos* [2009] ECR I-4273.

As regards the justifications put forward by the Kingdom of Spain, namely, road safety and environmental protection, the Commission takes the view that the rules at issue are not proportionate to the objectives pursued and do not contribute to their attainment in a consistent, systematic manner.

The fact that a vehicle has been registered for the first time more than five months beforehand is no indication that it is not technically fit to be used in commercial activities nor is it an indication of the impact of its use on the environment. By contrast, a roadworthiness test would allow, at least to some extent, the technical condition of the vehicle to be determined and would be a less restrictive measure. Similarly, an examination of the technical characteristics of the vehicle, in conjunction where appropriate with a roadworthiness test, should make it possible to evaluate the level of pollution emitted by that vehicle.

Furthermore, it is difficult to see how the Kingdom of Spain can impose a five-month age-limit for the first vehicle while allowing other vehicles to be added to the fleet upon condition only that the average age-limit for the fleet does not exceed six years.

Appeal brought on 28 September 2012 by Veolia Acqua Compagnia Generale delle Acque srl, in liquidation, against the order of the General Court (Fourth Chamber) delivered on 12 July 2012 in Case T-264/00 Veolia Acqua Compagnia Generale delle Acque srl, in liquidation v Commission

(Case C-436/12 P)

(2012/C 379/27)

Language of the case: Italian

Parties

Appellant: Veolia Acqua Compagnia Generale delle Acque srl, in liquidation (represented by: A. Vianello, A. Bortoluzzi and A. Vegliantini, avvocati)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the order of 12 July 2012 in Case T-264/00 *Compagnia Generale delle Acque SpA and Italian Republic* v *European Commission*, by which the General Court dismissed the action brought by VEOLIA for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia under Laws No 30/1997 and 206/1995;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Error of law in the application of the principles outlined by the Court of Justice in the judgment in *Comitato Venezia vuole vivere* [Joined Cases C-71/09 P, C-73/09 P and C-76/09 P], with regard to the allocation of the burden of proof as to the conditions set out in Article 87(1) EC; insufficient, incorrect and, in any event, contradictory reasoning.

Reference for a preliminary ruling from the Oberlandesgericht München (Germany) lodged on 2 October 2012 — Irmengard Weber v Mechthilde Weber

(Case C-438/12)

(2012/C 379/28)

Language of the case: German

Referring court

Oberlandesgericht München

Parties to the main proceedings

Applicant: Irmengard Weber

Defendant: Mechthilde Weber

Questions referred

1. Does the scope of Article 27 of Council Regulation (EC) No 44/2001 [1] of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters extend also to cases in which two parties in one action each have the role of defendant because both parties have been sued by a third party, and in the other action have the roles of claimant and defendant? In such a situation are there proceedings 'between the same parties', or must the different claims raised by the claimant against the two defendants in the first action be examined separately, so that there cannot be taken to be proceedings 'between the same parties'?

2. Are there proceedings involving 'the same cause of action' within the meaning of Article 27 of Regulation No 44/2001 if the claims and arguments in the two actions are indeed different, but

   (a) the same preliminary issue has to be answered in order to decide both actions or

   (b) in one action, by a claim in the alternative, a declaration is sought as to a legal relationship which features in the other action as a preliminary issue?

3. Are there proceedings which have as their object a right in rem in immovable property within the meaning of Article 22(1) of Regulation No 44/2001 if a declaration is sought that the defendant did not validly exercise a right in rem of pre-emption over land situated in Germany which indisputably exists in German law?

4. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to ascertain whether the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001, because such lack of jurisdiction of the court first seised would, under Article 35(1) of Regulation No 44/2001, lead to a judgment of the court first seised not being recognised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the court first seised lacks jurisdiction because of Article 22(1) of Regulation No 44/2001?

5. Is the court second seised, when making its decision under Article 27(1) of Regulation No 44/2001, and hence before the question of jurisdiction is decided by the court first seised, obliged to examine the complaint of one party that the other party acted in abuse of process by bringing proceedings before the court first seised? Is Article 27(1) of Regulation No 44/2001 not applicable for the court second seised if the court second seised comes to the conclusion that the bringing of proceedings before the court first seised was an abuse of process?

6. Does the application of Article 28(1) of Regulation No 44/2001 presuppose that the court second seised has previously decided that Article 27 of Regulation No 44/2001 does not apply in the specific case?

7. May account be taken in the exercise of the discretion allowed by Article 28(1) of Regulation No 44/2001

   (a) of the fact that the court first seised is situated in a Member State in which proceedings statistically last considerably longer than in the Member State in which the court second seised is situated,

   (b) of the fact that, in the assessment of the court second seised, the law of the Member State in which the court second seised is situated is applicable,

   (c) of the age of one of the parties,

   (d) of the prospects of success of the action before the court first seised?

8. In the interpretation and application of Articles 27 and 28 of Regulation No 44/2001, in addition to the aim of avoiding irreconcilable or contradictory judgments, must the second claimant's entitlement to justice be taken into account?

([1]) 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.

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

(Case C-453/12)

(2012/C 379/29)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Form of order sought

— Declare that by not adopting the Commission's proposal for a Council Regulation adjusting, from 1 July 2011, the rate of contribution to the pension scheme of officials and other servants of the European Union, the Council has failed to fulfil its obligations under the Staff Regulations and under the notional fund scheme provided for in those Regulations;

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

Pleas in law and main arguments

By the present action, the applicant claims that the Council infringed Articles 83 and 83a of the Staff Regulations and the provisions contained in Annex XII to the Staff Regulations, by refusing to adopt the Commission's proposal for a Regulation which proposes to adjust, from 1 July 2011, the rate of contribution to the pension scheme of officials and other servants of the European Union, even though according to the binding wording of those provisions the annual adjustment of that rate is an automatic procedure which leaves the Council with no discretion.

According to the applicant, the refusal of the Council to adopt the Commission's proposal for a regulation and, accordingly, to lower the rate of contribution by officials, infringes not only Article 83(2) of the Staff Regulations, by requiring the officials to make an excessive contribution, but also Article 83a(1) of the Staff Regulations, by placing at risk the balance of the notional fund scheme which guarantees the pensions of officials and other agents.

Finally, according to the Commission, by laying down the method of calculation of the rate of contribution by officials and servants precisely in Annex XII to the Staff Regulations, the European Union legislature left the Council with no discretion and obliged it to adopt the Commission's proposals within a reasonable period of time.

Action brought on 12 October 2012 — European Commission v Hungary

(Case C-462/12)

(2012/C 379/30)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: G. Braun and K. Talabér-Ritz, acting as Agent(s))

Defendant(s): Hungary

Form of order sought

— Declare that Hungary has failed to fulfil its obligations under Articles 12 and 14 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)

  — in that, through the adoption of Law No XCIV of 2010 on a special tax on certain sectors of activity (az egyes ágazatokat terhelő különadóról szóló 2010. évi XCIV. törvény), it requires undertakings which provide telecommunications services under a general authorisation to pay a special tax and

  — by failing to notify interested parties properly of the intention to amend the general authorisations, rights and conditions (of use and installation), and by failing to allow the interested parties sufficient time to express their views on the proposed amendments.

— order Hungary to pay the costs.

Pleas in law and main arguments

Law No XCIV of 2010 on a special tax on certain sectors of activity (az egyes ágazatokat terhelő különadóról szóló 2010. évi XCIV. törvény) introduced a new tax, called a special tax, on three main sectors of the Hungarian economy — retail trade activities, telecommunications activities and all commercial energy supply activities — which those affected have to pay for three consecutive years on the basis of their turnover before tax.

In support of its claim for a declaration of failure to fulfil obligations the Commission put forward the following pleas in law and arguments:

Directive 2002/20/EC of the European Parliament and of the Council states that its aim is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions. With that end in view the Directive emphasises the determination of the legislature that general authorisation schemes should not distort competition or prevent access to markets.

The Directive lays down rules on the procedures for authorisation and the content of the authorisations as well as the nature and scope of the economic burdens which may be imposed in connection with those procedures. According to Article 12 of the Directive, any administrative charges imposed on electronic communications services may cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions.

In the special tax, electronic communications services have to bear, in addition to administrative charges and management charges, a further financial burden, which, however, in breach of Article 12 of the Directive, is intended, not to finance administrative costs which will be incurred in the management of the general authorisation scheme, but to cover expenditure under the general budget of the Hungarian State.

The Commission takes the view that the special tax thus collected is in the nature of a burden on electronic communications services under a general authorisation, significantly increases the financial burden borne by the suppliers of that service, is an obstacle to the free movement of telecommunications services and is intended to finance expenditure not permitted by the Directive, and, as such, is incompatible with Article 12 of the Directive.

Finally, the Commission considers that Hungary did not properly inform those concerned of its intention to amend the general authorisations and the rights and conditions (of use or installation) or allow sufficient time for the interested parties to express their views on the proposed amendments. Accordingly, Hungary has failed to fulfil its obligations under Article 14 of the Directive.

Reference for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 18 October 2012 — Nils Svensson, Sten Sjögren, Madelaine Sahlman, Pia Gadd v Retreiver Sverige AB

(Case C-466/12)

(2012/C 379/31)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicants: Nils Svensson, Sten Sjögren, Madelaine Sahlman, Pia Gadd

Defendant: Retreiver Sverige AB

Questions referred

1. If anyone other than the holder of copyright in a certain work supplies a clickable link to the work on his website, does that constitute communication to the public within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society? ([1])

2. Is the assessment under question 1 affected if the work to which the link refers is on a website on the Internet which can be accessed by anyone without restrictions or if access is restricted in some way?

3. When making the assessment under question 1, should any distinction be drawn between a case where the work, after the user has clicked on the link, is shown on another website and one where the work, after the user has clicked on the link, is shown in such a way as to give the impression that it is appearing on the same website?

4. Is it possible for a Member State to give wider protection to authors' exclusive right by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society?

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

Order of the President of the Court of 14 September 2012 (reference for a preliminary ruling from the Judecătoria Timișoara — Romania) — SC Volksbank România SA v Autoritatea Națională Pentru Protecția Consumatorilor CRPC ARAD TIMIȘ

(Case C-47/11) ([1])

(2012/C 379/32)

Language of the case: Romanian

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

([1]) OJ C 113, 9.4.2011.

Order of the President of the Court of 18 September 2012 — European Commission v Kingdom of the Netherlands

(Case C-473/11) ([1])

(2012/C 379/33)

Language of the case: Dutch

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

([1]) OJ C 347, 26.11.2011.

Order of the President of the Court of 14 September 2012 — (reference for a preliminary ruling from the Rechtbank Roermond — Netherlands) — Criminal proceedings against Jibril Jaoo

(Case C-88/12) ([1])

(2012/C 379/34)

Language of the case: Dutch

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

([1]) OJ C 126, 28.4.2012.

GENERAL COURT

Judgment of the General Court of 25 October 2012 — Arbos v Commission

(Case T-161/06) [1]

(Action for damages — 'Culture 2000' programme — Grants made for projects — Claims for payment of various sums — Article 44(1)(c) of the Rules of Procedure — Inadmissible)

(2012/C 379/35)

Language of the case: German

Parties

Applicant: Arbos Gesellschaft für Musik und Theater (Klagenfurt, Austria) (represented by: H. Karl, lawyer)

Defendant: European Commission (represented by: L. Pignataro-Nolin and I. Kaufmann-Buhler, then L. Pignataro-Nolin and W. Molls, and finally W. Molls and D. Roussanov, Agents)

Re:

Action for compensation from the Commission, first, for payment of EUR 38 585,42 plus interest at 12 % from 1 January 2001 and EUR 27 618,91 plus interest at 12 % from 1 March 2003 and, second, the payment of EUR 26 459,38 excluding VAT for fees for lawyers instructed during the pre-litigation phase.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Arbos Gesellschaft für Musik und Theater to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 212, 2.9.2006.

Judgment of the General Court of 25 October 2012 — Astrim and Elyo Italia v Commission

(Case T-216/09) [1]

(Public service contracts — Tendering procedure — Maintenances services for air conditioning, heating and ventilation systems — Ispra Joint Research Centre — Rejection of a tenderer's bid — Interpretation of a condition laid down in the contract specifications — Duty to state reasons)

(2012/C 379/36)

Language of the case: Italian

Parties

Applicants: Astrim SpA (Rome, Italy) and Elyo Italia Srl (Sesto San Giovanni, Italy) (represented by: M. Brugnoletti and M. Civello, lawyers)

Defendant: European Commission (represented: initially by N. Bambara and E. Manhaeve, then E. Manhaeve and F. Moro, Agents, and D. Gullo, lawyer)

Re:

Action for annulment of the Commission Decision of 27 March 2009 rejecting the bid submitted by the applicants in connection with the call for tenders published on 25 October 2008 by the Commission for the award of routine and non-routine maintenance services for air conditioning, heating and ventilation systems at the Ispra Joint Research Centre (OJ 2008/S 208-274999), and, in the alternative, an application for partial annulment of point 17 of the invitation to tender.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Astrim SpA and Elyo Italia Srl to pay the costs.*

[1] OJ C 167, 18.7.2009.

Judgment of the General Court of 25 October 2012 — IDT Biologika v Commission

(Case T-503/10) ([1])

(Public supply contracts — Call for tenders — Supply in Serbia of rabies vaccines — Rejection of a submitted tender — Award of the contract to another tenderer)

(2012/C 379/37)

Language of the case: German

Parties

Applicant: IDT Biologika GmbH (Dessau-Roßlau, Germany) (represented by: R. Gross, T. Kroupa, T. Drosdziok and F. Ahr, lawyers)

Defendant: European Commission (represented by: F. Erlbacher and T. Scharf, agents)

Re:

Annulment of the decision dated 10 August 2010 of the European Union delegation in the Republic of Serbia (OJ 2010/S 192-293332) awarding the contract in the call for tenders EuropeAid/129809/C/SUP/RS for the supply of rabies vaccines for vaccination campaigns in Serbia to the consortium directed by the company Bioveta a.s. and rejecting the tender submitted by the applicant.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders IDT Biologika GmbH to pay the costs.*

([1]) OJ C 346, 18.12.2010.

Judgment of the General Court of 25 October 2012 — riha v OHIM — Lidl Stiftung (VITAL&FIT)

(Case T-552/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark VITAL&FIT — Earlier national word mark VITAFIT — Relative ground for refusal — Likelihood of confusion — Article 8(1)b) of Regulation (EC) No 207/2009 — Duty to state reasons — Article 75 of Regulation No 207/2009)

(2012/C 379/38)

Language of the case: German

Parties

Applicant: riha Richard Hartinger Getränke GmbH & Co. Handels-KG (Rinteln, Germany) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Lidl Stiftund & Co. KG (Neckarsulm, Germany) (represented by: M. Schaeffer and A. Marx, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 5 October 2010 (Case R 1229/2009-4) relating to opposition proceedings between Lidl Stiftund & Co. KG and riha Richard Hartinger Getränke GmbH & Co. Handels-KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders: riha Richard Hartinger Getränke GmbH & Co. Handels-KG to pay the costs.*

([1]) OJ C 30 of 29.1.2011.

Judgment of the General Court of 25 October 2012 — Automobili Lamborghini v OHIM — Miura Martínez (Miura)

(Case T-191/11) ([1])

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark Miura — Earlier national word and figurative marks MIURA — Rights of the defence — Right to be heard — Article 75 of Regulation (EC) No 207/2009 — Notification by ordinary mail — Rule 62(1) and (5) of Regulation (EC) No 2868/95)

(2012/C 379/39)

Language of the case: German

Parties

Applicant: Automobili Lamborghini Holding SpA (Sant' Agata Bolognese, Italy) (represented by: P. Kather, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Eduardo Miura Martínez and Antonio José Miura Martínez (Seville, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 21 January 2011 (Case R 161/2010-4) relating to opposition proceedings between Eduardo Miura Martínez and Antonio José Miura Martínez and Automobili Lamborghini Holding SpA.

Operative part of the judgment

The General Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 January 2011 (Case R 161/2010 4);*

2. *Orders the Commission to pay the costs.*

([1]) OJ C 160, 28.5.2011.

Judgment of the General Court of 26 October 2012 — CF Sharp Shipping Agencies v Council

(Case T-53/12) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Actions for annulment — Obligation to state the reasons on which the decision is based)

(2012/C 379/40)

Language of the case: English

Parties

Applicant: CF Sharp Shipping Agencies Pte Ltd (Singapore, Singapore) (represented by: S. Drury, Solicitor, K. Adamantopoulos and J. Cornelis, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen and V. Piessevaux, acting as Agents)

Re:

Annulment of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 and Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 in so far as they concern the inclusion of CF Sharp Shipping Agencies Pte Ltd on the list in Annex VIII to Regulation No 961/2010.*

2. *Annuls Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 in so far as it concerns the inclusion of CF Sharp Shipping Agencies on the list in Annex IX thereto.*

3. *Holds that there is no longer any need to adjudicate on the application by CF Sharp Shipping Agencies seeking annulment of Regulation No 961/2010 and Implementing Regulation No 1245/2011 with immediate effect.*

4. *Dismisses the action as to the remainder.*

5. *Orders the Council of the European Union to pay the costs.*

(1) OJ C 89, 24.3.2012.

Judgment of the General Court of 26 October 2012 — Oil Turbo Compressor Co. v Council

(Case T-63/12) (1)

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Action for annulment — Obligation to state the reasons on which the decision is based)

(2012/C 379/41)

Language of the case: German

Parties

Applicant: Oil Turbo Compressor Co. (Private Joint Stock) (Teheran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union (represented by: M. Bishop and Z. Kupčová)

Re:

Application for annulment of Council Decision 2011/783/CFSP OJ 1 December 2011 amending Decision 2010/413/CFSP on restrictive measures against Iran (OJ 2011 L 319, p. 71), to the extent that it concerns the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/783/CFSP OJ 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran in so far as it concerns Oil Turbo Compressor Co. (Private Joint Stock);*

2. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Oil Turbo Compressor.*

(1) OJ C 98, 31.3.2012.

Action brought on 24 September 2012 — Bacardi v OHIM — Granette & Starorežná Distilleries (42 BELOW)

(Case T-435/12)

(2012/C 379/42)

Language in which the application was lodged: English

Parties

Applicant: Bacardi Co. Ltd (Vaduz, Liechtenstein) (represented by: M. Reinisch, lawyer)

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

Other party to the proceedings before the Board of Appeal: Granette & Starorežná Distilleries a.s. (Ústí nad Labem, Czech Republic)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 July 2012 in case R 2100/2011-2;

— Reject the opposition against the registration of the word-device mark '42 BELOW' No 8391856 for goods in class 33;

— Transmit the judgment of the General Court of the European Union to OHIM; and

— Order OHIM and the other party to the proceedings before the Board of Appeal to pay all costs and expenses.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark '42 BELOW', for goods in class 33 — Community trade mark application No 8391856

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

Mark or sign cited in opposition: Czech trade mark registration No 263350 for the figurative mark 'VODKA 42', for among others goods and services in class 33; Unregistered trade mark 'VODKA 42' used in Czech Republic and Slovakia

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

Decision of the Board of Appeal: Upheld the appeal and refused the CTM application for all the goods

Pleas in law:

— Infringement of Rule 50(2)(g) of Commission Regulation No 2868/95; and

— Infringement of Article 8(4) of Council Regulation No 207/2009.

Action brought on 28 September 2012 — Deutsche Rockwool Mineralwoll v OHIM — Ceramicas del Foix (Rock & Rock)

(Case T-436/12)

(2012/C 379/43)

Language in which the application was lodged: English

Parties

Applicant: Deutsche Rockwool Mineralwoll GmbH & Co. OHG (Gladbeck, Germany) (represented by: J. Krenzel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ceramicas del Foix, SA (Barcelona, Spain)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 July 2012 in case R 495/2011-2; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'Rock & Rock', for goods in classes 2, 19 and 27 — Community trade mark registration No 3468774

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

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

Grounds for the application for a declaration of invalidity: The request for a declaration of invalidity was based on relative grounds for refusal pursuant to Article 53(1)(a) in conjunction with Article 8(1)(b) of Council Regulation No 207/2009. The cancellation applicant invoked the following earlier rights: German trade mark registration No 30229274 of the word mark 'Rock', for goods and services in classes 1, 6, 7, 8, 17, 19, 37 and 42; German trade mark registration No 30212141 of the word mark 'MASTERROCK', for goods and services in classes 17, 19 and 37; German trade mark registration No 39920622 of the word mark 'FIXROCK', for goods in classes 6, 17 and 19; German trade mark registration No 2078534 of the word mark 'FLEXIROCK', for goods in class 19; German trade mark registration No 39732094 of the word mark 'COVERROCK', for goods in classes 17 and 19; German trade mark registration No 30306452 of the word mark 'CEILROCK', for goods in classes 6, 17 and 19

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

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 5 October 2012 — ancotel v OHIM — Acotel (ancotel.)

(Case T-443/12)

(2012/C 379/44)

Language in which the application was lodged: German

Parties

Applicant: ancotel GmbH (Frankfurt am Main, Germany) (represented by: H. Truelsen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Acotel SpA (Rome, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 August 2012 in Case R 1895/2011-4 (ex R 1385/2008-1);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark, containing the word element 'ancotel', for services in Classes 35 and 38 — Community trade mark application No 3 314 424

Proprietor of the mark or sign cited in the opposition proceedings: Acotel SpA

Mark or sign cited in opposition: the national and Community figurative mark, containing the word element 'ACOTEL', for goods and services in Classes 9 and 38

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 8 October 2012 — Koscher + Würtz v OHIM — Kirchner & Wilhelm (KW SURGICAL INSTRUMENTS)

(Case T-445/12)

(2012/C 379/45)

Language in which the application was lodged: German

Parties

Applicant: Koscher + Würtz GmbH (Spaichingen, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt, M. Bergermann, J. Vogtmeier and A. Kramer, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kirchner & Wilhelm GmbH + Co (Asperg, 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 6 August 2012 in Case R 1675/2011-4;

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

Pleas in law and main arguments

Applicant for a Community trade mark: Koscher + Würtz GmbH

Community trade mark concerned: International registration with protection in respect of the European Union of a figurative mark containing the word element 'KW SURGICAL ELEMENTS' for goods in Class 10 — International registration with protection in respect of the European Union No W 968 722

Proprietor of the mark or sign cited in the opposition proceedings: Kirchner & Wilhelm GmbH + Co

Mark or sign cited in opposition: National word mark 'Ka We' for goods in Class 10

Decision of the Opposition Division: Opposition refused

Decision of the Board of Appeal: Appeal allowed and protection denied in respect of the trade mark registration

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

Action brought on 10 October 2012 — Visa Europe v Commission

(Case T-447/12)

(2012/C 379/46)

Language of the case: English

Parties

Applicant: Visa Europe Ltd (London, United Kingdom) (represented by: A. Renshaw and J. Aitken, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claim that the Court should:

— Annul the Commission's decision of 31 July 2012 given in Case COMP/D1/39398 — *Visa MIF*, insofar as it rejects Visa Europe's request to modify the debit multilateral interchange fee (MIF) cap made legally binding by the Commission's decision of 8 December 2010; and

— Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that

   — the Commission breached Art. 41 of the Charter of Fundamental Rights of the European Union, Visa Europe's rights of defence and the principle of sound administration by not providing Visa Europe with the opportunity to effectively make known its views on the relevant facts and on the Commission's objections regarding the alleged shortcomings in the economic study submitted by Visa Europe before definitively rejecting Visa Europe's request to modify the MIF cap.

2. Second plea in law, alleging that

   — the Commission breached Art. 9(2)(a) of Regulation 1/2003 ([1]), the principle of sound administration and Art. 296 TFEU by not comparing the economic study submitted by Visa Europe with the studies previously used to calculate the MIF cap and by relying on irrelevant considerations when rejecting Visa Europe's request to modify the MIF cap.

3. Third plea in law, alleging that

   — the Commission committed a manifest error of assessment. It rejected evidence submitted by Visa Europe on the basis of flawed considerations, as well as on the basis of objections inconsistent with the Commission's own precedents. Furthermore, the Commission failed to appreciate that its objections, even if they were correct, would nevertheless fail to justify the refusal to modify the MIF cap.

([1]) Council Regulation No 1/2003 on the implementation of the rules on competition laid down in Articles [101] and [102] of the [TFEU] (OJ L 1, p. 1)

Action brought on 10 October 2012 — Davril v Council and Commission

(Case T-448/12)

(2012/C 379/47)

Language of the case: French

Parties

Applicant: Philippe Davril (Épargnes, France) (represented by: C.-É. Gudin, lawyer)

Defendant: European Commission and Council of the European Union

Form of order sought

— Award full compensation for the damage sustained by virtue of the monetary penalties imposed, that is to say, the sum of EUR 174 900;

— Award full compensation of the non-material damage sustained by him, that is to say, the sum of EUR 100 000;

— Order the Council and the Commission to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on pleas in law which are in essence identical or similar to those relied upon in Cases T-195/11 *Cahier and Others* v *Council and Commission* ([1]) and T-458/11 *Riche* v *Council and Commission*. ([2])

([1]) OJ 2011 C 173, p. 14.
([2]) OJ 2011 C 298, p. 28.

Action brought on 17 October 2012 — British Telecommunications v Commission

(Case T-456/12)

(2012/C 379/48)

Language of the case: English

Parties

Applicant: British Telecommunications plc (London, United Kingdom) (represented by: J. Rivas Andrés and G. van de Walle de Ghelcke, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the European Commission of 12 June 2012 given in State Aid Case SA.33540 (2012/N) — United Kingdom City of Birmingham — Digital District NGA Network; and

— Order the defendant to pay the costs incurred by the present action.

Pleas in law and main arguments

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

1. First plea in law, alleging that

   — the Commission infringed Article 107(3)(c) TFEU and paragraph 35 of the Broadband Guidelines [1] by failing to analyse whether the objective of the aid is well defined;

2. Second plea in law, alleging that

   — the Commission failed to assess the proportionality of the proposed measure under Article 107(3)(c) TFEU and paragraphs 51 and 79 of the Broadband Guidelines and should have opened the formal investigation procedure;

3. Third plea in law, alleging that

   — the Commission should have opened the formal investigation procedure because the proposed aid has effects on markets other than NGA for which there is no market failure and the Commission failed to analyse them;

4. Fourth plea in law, alleging that

   — by requiring the selected operator to '*satisfy all different types of network access that operators may seek*' the contested decision removes the '*incentive effect*' and is incompatible with the Broadband Guidelines and Article 107(3)(c) TFEU;

5. Fifth plea in law, alleging that

   — the Commission has infringed Article 107(3)(c) TFEU and the Broadband Guidelines by approving the use of State aid for the duplication of pre-existing leased lines networks in the Target Area;

6. Sixth plea in law, alleging that

   — by requiring the New Network to '*satisfy all different types of network access that operators may seek*' the contested decision is disproportionate and inconsistent with the Community regulatory framework for electronic communications;

7. Seventh plea in law, alleging that

   — the contested decision is vitiated by errors of fact and manifest errors of appreciation and the Commission infringed its obligations in relation to the preliminary investigation to state adequate reasons on which it based the contested decision.

[1] Communication from the Commission — Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks [OJ 2009 C 235, p. 7]

Action brought on 17 October 2012 — Virgin Media v Commission

(Case T-460/12)

(2012/C 379/49)

Language of the case: English

Parties

Applicant: Virgin Media Ltd (Hook, United Kingdom) (represented by: J. Ellison, D. Slater, Solicitors, and D. Waelbroeck, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare the application admissible and well-founded;

— Annul the State aid decision SA.33540 of the Commission of 12 June 2012 published in the Official Journal of the European Union on 25 July 2012 declaring the aid measure 'City of Birmingham — Digital Districts NGA Network' compatible with Article 107(3)(c) of the Treaty on the functioning of the European Union; and

— Order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging an incorrect statement of the facts in the contested decision, which includes, *inter alia*:

   — a finding that the applicant had no competitive presence in the Digital Districts of Birmingham comprising Digbeth, Eastside and the Jewellery Quarter (the 'Relevant Area');

   — a finding that the Relevant Area has only a modest next generation access ('NGA') broadband capability consisting of BT Group plc's planned Fibre-to-the-cabinet ('FTTC') roll-out in a part of the area;

   — a finding that broadband speeds in the relevant area are substantially limited to low end (20 Mbps download and 2 Mbps upload);

— a finding that the market has failed because certain specific services are not available to a category of small and medium sized enterprises ('SMEs') in the area at prices they can afford;

— a finding that no party had any objection to Birmingham City Council's NGA broadband scheme relating to the Digital Districts (the 'Scheme');

— a finding that the mapping and consultation process confirms that the Scheme will not have a negative impact upon competition.

2. Second plea in law, alleging an incorrect application of the State aid rules and in particular those expressed in the Community Guidelines for the application of state aid rules in relation to rapid deployment of broadband networks (OJ 2009 C 235, p. 7) (the 'Broadband Guidelines'). The defendant's misapplication of the TFEU's State aid rules and the Broadband Guidelines includes, *inter alia*:

— a failure to rebut a presumption against the legality of State aid in an area with competing residential broadband services (paragraphs 77 and 78 of the Broadband Guidelines);

— a failure to show a market failure (paragraph 35 of the Broadband Guidelines), in particular to define the relevant market that had allegedly failed; and to adduce meaningful evidence to find a 'failure' on the basis of price alone;

— a failure to conduct a proper market consultation (paragraph 51 (a) of the Broadband Guidelines);

— a failure to assess the impact of the State aid upon competition in the relevant markets in accordance with paragraphs 34 and 35 of the Broadband Guidelines.

Action brought on 19 October 2012 — Flughafen Lübeck v Commission

(Case T-461/12)

(2012/C 379/50)

Language of the case: German

Parties

Applicant: Flughafen Lübeck GmbH (Lübeck, Germany) (represented by: M. Núñez Müller, J. Dammann de Chapto and T. Becker, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's decision of 22 February 2012 on the initiation of the formal investigation procedure under Article 108(2) TFEU concerning State aid No SA.27585 (2012/C) (2012/NN) and SA.31149 (2012/C) (ex 2012/NN) (OJ 2012 C 241, p. 56) in so far as that decision initiates the formal investigation procedure in relation to the applicant's schedule of airport charges in 2006;

— annul the decision referred to above in so far as it requires the Federal Republic of Germany, in accordance with Article 10(3) of Regulation (EC) No 659/1999, ([1]) to reply to the information injunction contained in the Commission's decision in relation to the applicant's schedule of airport charges in 2006;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of defence of the Federal Republic of Germany

— By the first plea, the applicant submits that the Commission infringed the rights of defence of the Federal Republic of Germany by initiating the formal investigation procedure in relation to the schedule of airport charges even though it was not the subject of the preliminary investigation procedure. The applicant submits in that respect that, according to the case-law of the Court, it can rely on the infringement of the rights of defence of the Federal Republic of Germany, leading to the annulment (in part) of the contested decision.

2. Second plea in law, alleging breach of the obligation to conduct a diligent and impartial examination

— By the second plea, the applicant submits that the Commission failed to fulfil its obligation to conduct a diligent and impartial examination, in that it initiated the formal investigation procedure in relation to the schedule of charges without giving the Federal Republic of Germany or the applicant the opportunity during the preliminary investigation procedure to comment on its alleged unlawfulness under State aid law.

3. Third plea in law, alleging infringement of Article 108(2) and (3) TFEU and of Articles 4, 6 and 13(1) of Regulation No 659/1999

   — In the third plea, the applicant states that the Commission infringed Article 108(2) and (3) TFEU and Articles 4, 6 and 13(1) of Regulation No 659/1999, in that it failed to conduct the two-stage State aid control procedure laid down in those provisions — consisting of the preliminary investigation procedure and the formal investigation procedure — in respect of the schedule of charges.

4. Fourth plea in law, alleging infringement of Article 107(1) TFEU

   — In the context of the fourth plea, the applicant submits that the Commission infringed Article 107(1) TFEU in so far as it takes the view that the schedule of charges confers State aid. According to the applicant, the Commission was not entitled to infer the selectivity of the schedule of charges from the fact that the schedule applied only to airport users. Further, the applicant takes the view that the Commission should not have found that the schedule of charges was a State measure, as the majority of shares in the applicant were privately owned at the time when the schedule of charges was issued.

5. Fifth plea in law, alleging breach of the obligation to state reasons

   — In the applicant's opinion, the Commission also infringed the second paragraph of Article 296 TFEU, in that it failed to state adequate reasons for the initiation of the formal investigation procedure in relation to the 2006 schedule of charges.

6. Sixth plea in law, alleging infringement of Article 10(2) and (3) of Regulation No 659/1999

   — In the context of the sixth plea, the applicant states that the Commission infringed Article 10(2) and (3) of Regulation No 659/1999 in that it issued an information injunction, within the meaning of Article 10(3) of Regulation No 659/1999, to the Federal Republic of Germany in relation to the schedule of charges without first sending the Federal Republic of Germany a simple request for information, as provided for in Article 10(2) of Regulation No 659/1999.

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

Action brought on 19 October 2012 — Pilkington Group v Commission

(Case T-462/12)

(2012/C 379/51)

Language of the case: English

Parties

Applicant: Pilkington Group Ltd (St Helens, United Kingdom) (represented by: J. Scott, S. Wisking and K. Fountoukakos-Kyriakakos, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Order the annulment pursuant to Article 263 TFEU of the European Commission Decision of 6 August 2012 rejecting a request for confidential treatment (Decision C(2012) 5718 final) (Case COMP/39.125 — Carglass) (and in particular Article 4 thereof); and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has infringed Article 296 TFEU, Article 8 of the Hearing Officer Mandate (1) and Article 41 of the Charter of Fundamental Rights and the principle of good administration by failing to examine adequately the applicant's detailed arguments and providing inadequate reasons for its approach.

2. Second plea in law, alleging that the defendant has infringed EU law (in particular Article 339 TFEU, Article 28 of Council Regulation (EC) No 1/2003 (2), Article 8 of the Hearing Officer Mandate) by deciding to publish information which, on application of the correct legal test and assessment, ought to be considered as falling within the obligation on professional secrecy, as the Commission:

   — failed to apply the correct legal test,

   — erred in its assessment of whether the information in question constitutes business secrets or other confidential information;

— used irrelevant criteria such as that the information constitutes material facts of the alleged infringement; and

— erred in its assessment of whether there are overriding reasons permitting disclosure, in particular in light of the Commission's own approach of refusing access to documents containing similar information and the case law of the European Courts, which creates a general presumption that such information is confidential and cannot be disclosed to the public.

3. Third plea in law, alleging that the defendant has infringed EU law by violating the principle of equal treatment by adopting an unfavourable approach in the case of the applicant as compared to undertakings in a similar position in other recent or contemporaneous proceedings.

4. Fourth plea in law, alleging that the defendant has infringed EU law by violating the principle of legitimate expectations in that it has breached the applicant's legitimate expectation to have confidential information obtained by or provided to the Commission in the context of competition proceedings protected from disclosure.

5. Fifth plea in law, alleging that the defendant has infringed EU law (in particular Article 339 TFEU, Article 28 of Council Regulation (EC) No 1/2003, Article 8 of the Hearing Officer Mandate) by deciding to publish information which is capable of identifying specific individuals.

6. Sixth plea in law, alleging that the defendant has infringed the principle of proportionality and Regulation (EC) No 1049/2001 ([3]) (in particular Article 4(2) thereof) by adopting a disproportionate means of disclosing the information in question and circumventing the principles and procedures of the said regulation.

([1]) Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, (OJ 2011 L 275, p. 29)

([2]) Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 001, p. 1)

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

Action brought on 22 October 2012 — Popp and Zech v OHIM — Müller-Boré & Partner (MB)

(Case T-463/12)

(2012/C 379/52)

Language in which the application was lodged: German

Parties

Applicants: Eugen Popp (Munich, Germany) and Stefan M. Zech (Munich) (represented by: C. Rohnke and M. Jacob, lawyers)

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

Other party to the proceedings before the Board of Appeal: Müller-Boré & Partner (Munich, Germany)

Form of order sought

The applicants claim that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 July 2012 in Case R 506/2011-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'MB' for services in Class 42 — Community trade mark application No 7 369 771

Proprietor of the mark or sign cited in the opposition proceedings: Müller-Boré & Partner

Mark or sign cited in opposition: the word mark MBP and the national and Community trade mark, including the word element 'MB&P', for services in Classes 35 and 42

Decision of the Opposition Division: rejection of the opposition

Decision of the Board of Appeal: the appeal was upheld and the application was rejected

Pleas in law:

— Infringement of Article 42(2) and Article 15(1) of Regulation No 207/2009

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

Appeal brought on 15 October 2012 by Luigi Marcuccio against the order of the Civil Service Tribunal of 3 August 2012 in Case F-57/12 R, Marcuccio v Commission

(Case T-464/12 P (R))

(2012/C 379/53)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Set aside the order under appeal in its entirety and without exception.

Pleas in law and main arguments

The present appeal is brought against the decision of the President of the Civil Service Tribunal of 3 August 2012 rejecting the application for suspension of the operation of: (i) the Commission's decision rejecting the appellant's request for payment of the sum of EUR 1 661, unlawfully deducted, in the appellant's opinion, from his invalidity allowance; (ii) the Commission's implied decision dismissing the appellant's complaint; and (iii) any decision on the basis of which the Commission deducted the sum of EUR 1 661 from the appellant's invalidity allowance for the months of June, July, August and September 2011.

The appellant relies on two grounds of appeal.

— First ground, alleging absolute failure to state reasons in the order under appeal, distortion and misrepresentation of the facts, reasons which are manifestly illogical, unreasonable and arbitrary, as well as manifest error of assessment with regard to those reasons, in particular with regard to paragraphs 22 to 28 of the order.

— Second ground, alleging incorrect, false and unreasonable interpretation and clear breach of Article 86 of the Rules of Procedure of the Civil Service Tribunal, with regard to the order to 'pay to the Tribunal the sum of EUR 1 000'.

Action brought on 19 October 2012 — AGC Glass Europe and Others v Commission

(Case T-465/12)

(2012/C 379/54)

Language of the case: English

Parties

Applicants: AGC Glass Europe (Brussels, Belgium); AGC Automotive Europe (Fleurus, Belgium); AGC France (Boussois, France); AGC Flat Glass Italia Srl (Cuneo, Italy); AGC Glass UK Ltd (Northhampton, United Kingdom); and AGC Glass Germany GmbH (Wegberg, Germany) (represented by: L. Garzaniti, J. Blockx and P. Niggemann, lawyers, and S. Ryan, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Article 3 of the Decision of the European Commission of 6 August 2012 on the rejection, pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, of a request for confidential treatment submitted by the applicants in relation to Case COMP/39.125 — *Carglass*;

— Order the defendant to pay the costs of the proceedings; and

— Take any other measures that the General Court considers appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the hearing officer breached Article 8 of the terms of reference of the hearing officer ([1]) and the duty to give reasons under Article 296 TFEU and Article 41(2) of the Charter of Fundamental Rights of the European Union by misconstruing the scope of his competence and considering that he was unable to review the applicants' submissions as to the breach of the principle of legitimate expectations, the principle of equal treatment, and the right to good administration which would be entailed by the publication of the contested information in the Commission's decision in Case COMP/39.125 — *Carglass*.

2. Second plea in law, alleging that in permitting the Commission to publish the contested information, the hearing officer breached the applicants' legitimate expectations, based on the Commission's leniency notices ([2]) and past practices regarding the protection of information submitted in a leniency application, that the information which they submitted in the context of their cooperation with the Commission would not be disclosed to the public to the extent possible.

3. Third plea in law, alleging that the hearing officer infringed the principle of equal treatment by permitting the Commission to take the same approach regarding the publication of a certain category of information with respect to all of the addressees of the Commission's decision in Case COMP/39.125 — *Carglass*, despite the fact that the applicants are in a different position from the other addressees of the decision *vis-à-vis* publication of this information due to their status as the sole leniency applicant in the *Carglass* case.

4. Fourth plea in law, alleging that hearing officer infringes the applicants' right to good administration under Article 41(1) of the Charter of Fundamental Rights of the European Union by permitting the Commission to adopt an arbitrary policy with respect to the publication of a certain category of information in its decisions relating to cartel proceedings.

5. Fifth plea in law, alleging that the hearing officer breaches Article 4 of Regulation (EC) No 1049/2001 ([3]) and the Commission's notice on access to file ([4]), on the basis that these provisions prevent the Commission from granting members of the public access to documents submitted to the Commission by leniency applicants. By permitting the Commission to publish information which was contained in these documents in the non-confidential version of its decision in Case COMP/39.125 — *Carglass*, the hearing officer allows the Commission to circumvent these provisions.

6. Sixth plea in law, alleging that the hearing officer breaches the obligation of professional secrecy under Article 339 TFEU and Article 28 of Council Regulation (EC) No 1/2003 ([5]) by considering that the contested information is not confidential information and can be disclosed by the Commission. The hearing officer commits manifest errors of assessment as to the application of the criteria for the confidentiality of information in the case law of the Court, and fails to apply the balancing of interests required by the case law in his assessment.

([1]) Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p.29)

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

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

([4]) Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325, p.7).

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (Third Chamber) of 13 September 2012 — Markland v Europol

(Case F-34/11) [1]

(Civil Service — Europol staff — Temporary staff contract — Application of the CEOS — Grading — Action manifestly unfounded)

(2012/C 379/55)

Language of the case: Dutch

Parties

Applicant: Saskia Jane Markland (The Hague, Netherlands) (represented by: N.D. Dane, lawyer)

Defendant: European Police Office (Europol) (represented by: D. Neumann, D. El Khoury and J. Arnould, acting as Agents)

Re:

Application for annulment of the decision to place the applicant in grade AST 5.

Operative part of the order

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

2. *Ms Markland shall bear her own costs and pay those incurred by the European Police Office.*

[1] OJ C 204, 9.7.11, p. 30.

Action brought on 28 September 2012 — ZZ v Commission

(Case F-108/12)

(2012/C 379/56)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision concerning the transfer of the applicant's pension rights into the European Union pension scheme, which decision applies the new GIP relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Annul the decision of 9 December 2011 concerning the transfer of the applicant's pension rights under Article 11(2) and (3) of Annex VIII to the Staff Regulations into the European Union pension scheme;

— In so far as necessary, annul the decision rejecting his claim of 20 June 2012 made against the decision of 9 December 2011;

— Order the Commission to pay the costs.

Action brought on 1 October 2012 — ZZ v EMA

(Case F-110/12)

(2012/C 379/57)

Language of the case: French

Parties

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

Defendant: European Medicines Agency

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's application seeking reclassification of his contract as a member of the auxiliary staff as a contract as a member of the temporary staff.

Form of order sought

— Annul the decision of 21 November 2011 of the authority empowered to conclude contracts rejecting the applicant's application seeking reclassification of his contract as a member of the auxiliary staff as a contract as a member of the temporary staff;

— order the EMA to bear the costs.

Action brought on 2 October 2012 — ZZ v Commission

(Case F-111/12)

(2012/C 379/58)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi, A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to accept the findings of the Medical Committee ruling on the applicant's level of disability and the occupational origin of his disease

Form of order sought

— Annul the Commission's decision of 8 November 2011 to accept the findings of the Medical Commission dated 25 August 2011 and served on the applicant on 28 November 2011;

— In so far as necessary, annul the decision rejecting the applicant's claim dated 22 June 2012;

— Order the Commission to pay the applicant the provisional fixed sum *ex aequo et bono* of EUR 100 000 in respect of the non-pecuniary damage suffered;

— Order the Commission to pay the costs.

Action brought on 4 October 2012 — ZZ and Others v Commission

(Case F-112/12)

(2012/C 379/59)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of decisions on the transfer of the applicants' pension rights under the European Union pension scheme which applies the new general implementing provisions concerning Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

— Annul the decisions transferring the applicants' pension rights under Article 11(2) of Annex VIII to the Staff Regulations acquired before entry into service with the European Commission;

— where necessary, annul the decisions rejecting their complaints, which are identical, directed against the decisions transferring their pension rights;

— order the Commission to pay the costs.

Action brought on 15 October 2012 — ZZ v Frontex

(Case F-116/12)

(2012/C 379/60)

Language of the case: French

Parties

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

Defendant: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Subject-matter and description of the proceedings

Annulment of the applicant's staff report and a claim for damages.

Form of order sought

— Annul the applicant's staff report for 2010;

— order the defendant to pay the sum of EUR 10 000 in respect of the non-material damage suffered by the applicant;

— order Frontex to pay the costs.

Action brought on 17 October 2012 — ZZ v Europol

(Case F-119/12)

(2012/C 379/61)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-J. Ghosez, lawyer)

Defendant: Europol

Subject-matter and description of the proceedings

Annul the decision of Europol not to renew the applicant's contract for an unlimited duration and order Europol to pay the applicant the difference between the remuneration to which the applicant would have been entitled had she remained in her post at Europol and any other compensation actually received by her since 1 June 2012.

Form of order sought

— Annul the decision taken by the defendant on 3 April 2012 by which it informed the applicant that her fixed-term contract expiring on 31 May 2012 would not be renewed;

— order the defendant to pay the applicant the difference between (i) the remuneration to which she would have been entitled had she remained in her post at Europol and (ii) the amount of remuneration, fees, unemployment benefits and any other compensation actually received by her since 1 June 2012 by way of replacement for the remuneration she was receiving as a temporary agent;

— order Europol to pay the costs.

Action brought on 17 October 2012 — ZZ v Europol

(Case F-120/12)

(2012/C 379/62)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-J. Ghosez, lawyer)

Defendant: Europol

Subject-matter and description of the proceedings

Annul the decision of Europol not to renew the applicant's contract for an unlimited duration and order Europol to pay the applicant the difference between the remuneration to which the applicant would have been entitled had she remained in her post at Europol and any other compensation actually received by her since 1 March 2012.

Form of order sought

— Annul the decision taken by the defendant on 28 November 2011 by which it informed the applicant that her fixed-term contract expiring on 29 February 2012 would not be renewed;

— order the defendant to pay the applicant the difference between (i) the remuneration to which the applicant would have been entitled had she remained in her post at Europol and (ii) the amount of remuneration, fees, unemployment benefits and any other compensation actually received by her since 1 March 2012 by way of replacement for the remuneration she was receiving as a temporary agent;

— order Europol to pay the costs.

Action brought on 17 October 2012 — ZZ v Europol

(Case F-121/12)

(2012/C 379/63)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-J. Ghosez, lawyer)

Defendant: Europol

Subject-matter and description of the proceedings

Annul the decision of Europol not to renew the applicant's contract for an unlimited duration and order Europol to pay the applicant the difference between the remuneration to which the applicant would have been entitled had she remained in her post at Europol and any other compensation actually received by her since 15 April 2012.

Form of order sought

— Annul the decision taken by the defendant on 20 December 2011 by which it informed the applicant that her fixed-term contract expiring on 14 April 2012 would not be renewed;

— order the defendant to pay the applicant the difference between (i) the remuneration to which she would have been entitled had she remained in her post at Europol and (ii) the amount of remuneration, fees, unemployment benefits and any other compensation actually received by her since 15 April 2012 by way of replacement for the remuneration she was receiving as a temporary agent;

— order Europol to pay the costs.

Order of the Civil Service Tribunal of 18 October 2012 — Verstreken v Council

(Case F-16/10) [1]

(2012/C 379/64)

Language of the case: French

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

[1] OJ C 134, 22.5.2010, p. 55.

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