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<u>Notice No</u>	Contents	Page
	IV <i>Notices</i>	
	NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES	
	Court of Justice of the European Union	
2013/C 101/01	Last publication of the Court of Justice of the European Union in the <i>Official Journal of the European Union</i> OJ C 86, 23.3.2013	1
	V <i>Announcements</i>	
	COURT PROCEEDINGS	
	Court of Justice	
2013/C 101/02	Case C-252/11: Order of the Court (First Chamber) of 22 October 2012 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — Erika Šujetová v Rapid life životná poisťovňa as (Reference for a preliminary ruling — No need to adjudicate)	2
2013/C 101/03	Case C-495/11 P: Order of the Court of 13 September 2012 — Total SA, Elf Aquitaine SA v European Commission (Appeal — Regulation (EC) No 1/2003 — Competition — Agreements, decisions and concerted practices — Infringement of the principles of conferred powers and of proportionality — Manifestly incorrect interpretation — Infringement of the rights of the defence and of the principles of equity and of the equality of arms — Obligation to state reasons)	2

EN

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(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2013/C 101/04	Case C-497/11 P: Order of the Court of 10 October 2012 — Hellenic Republic v European Commission (Appeal — ERDF — Reduction in financing — Objective 1 operational programme (1994 — 1999), ‘Accessibility and Trunk Roads’ in Greece — Delegation of auxiliary tasks by the Commission to third parties — Professional secrecy — Rate of financial correction — Discretion of the Commission — Judicial review)	3
2013/C 101/05	Case C-540/11: Order of the Court (Sixth Chamber) of 19 September 2012 (request for a preliminary ruling from the Tribunal de première instance de Bruxelles — Belgium) — Daniel Levy, Carine Sebbag v Belgian State (Free movement of capital — Direct taxation — Taxation of dividends — Bilateral convention which precludes double taxation — Subsequent amendment, by one of the two States party to the convention, of its national legislation, having the effect of reintroducing double taxation — Obligations of the Member States under Articles 10 EC and 293 EC)	3
2013/C 101/06	Case C-597/11 P: Order of the Court of 4 October 2012 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission (Appeal — Public contract awarded by the Commission — Rejection of a tender — Obligation to state reasons — Regulation (EC, Euratom) No 1605/2002 — Article 89 — Regulation (EC, Euratom) No 2342/2002 — Articles 140 and 141 — Period allowed for the receipt of tenders — Period allowed for the submission of requests for information)	3
2013/C 101/07	Case C-611/11 P: Order of the Court of 10 October 2012 — ara AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Allrounder SARL (Appeal — Community trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — International registration designating the European Community — Figurative mark A with two triangular motifs — Earlier national word mark A — Relative ground for refusal — No likelihood of confusion)	4
2013/C 101/08	Case C-624/11 P: Order of the Court of 27 September 2012 — Brighton Collectibles, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Felmar (Appeal — Community trade mark — Regulations (EC) No 40/94 and (EC) No 207/2009 — Article 8(4) — Community word mark BRIGHTON — Opposition proceedings — Interpretation of the provisions of national law on relative grounds for refusal of registration)	4
2013/C 101/09	Case C-649/11 P: Order of the Court of 3 October 2012 — Cooperativa Vitivinícola Arousana S. Coop. Galega v Office for Harmonisation in the Internal Market (Trade Marks and Designs), María Constantina Sotelo Ares (Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Word mark ROSALIA DE CASTRO — Opposition by the proprietor of the national word mark ROSALIA)	5
2013/C 101/10	Case C-31/12: Order of the Court (Seventh Chamber) of 10 October 2012 — (request for a preliminary ruling from the Sąd Rejonowy w Zakopanem — Poland) — Criminal proceedings against Wojciech Ziemiński, Andrzej Kozak (Reference for a preliminary ruling — No description of the main proceedings — Manifest inadmissibility)	5
2013/C 101/11	Case C-548/12: Request for a preliminary ruling from the Landgericht Krefeld (Germany) lodged on 30 November 2012 — Marc Brogsitter v Fabrication de Montres Normandes Eurl, Karsten Fräßdorf	5
2013/C 101/12	Case C-602/12 P: Appeal brought on 20 December 2012 by Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-172/09: Gem-Year Industrial Co. Ltd v Council of the European Union	6



<u>Notice No</u>	Contents (continued)	Page
2013/C 101/13	Case C-603/12: Request for a preliminary ruling from the Verwaltungsgericht Hannover (Germany) lodged on 21 December 2012 — Pia Braun v Region Hannover	7
2013/C 101/14	Case C-606/12: Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli	7
2013/C 101/15	Case C-607/12: Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli	7
2013/C 101/16	Case C-609/12: Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 27 December 2012 — Ehrmann AG v Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.	8
2013/C 101/17	Case C-610/12: Request for a preliminary ruling from the Verwaltungsgericht Giessen (Germany) lodged on 27 December 2012 — Johannes Peter v Bundeseisenbahnvermögen	8
2013/C 101/18	Case C-613/12: Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 24 December 2012 — Helm Düngemittel GmbH v Hauptzollamt Krefeld	8
2013/C 101/19	Case C-618/12: Request for a preliminary ruling from the Cour administrative d'appel de Paris (France) lodged on 10 December 2012 — Reggiani SpA Illuminazione v Ministre de l'Économie et des Finances	9
2013/C 101/20	Case C-4/13: Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 2 January 2013 — Agentur für Arbeit Krefeld — Familienkasse v Susanne Fassbender-Firman	9
2013/C 101/21	Case C-28/13 P: Appeal brought on 18 January 2013 by Gabi Thesing, Bloomberg Finance LP against the judgment of the General Court (Seventh Chamber) delivered on 29 November 2012 in Case T-590/10: Gabi Thesing, Bloomberg Finance LP v European Central Bank	9
2013/C 101/22	Case C-37/13 P: Appeal brought on 24 January 2013 by Nexans France SAS, Nexans SA against the judgment of the General Court (Eighth Chamber) delivered on 14 November 2012 in Case T-135/09: Nexans France SAS, Nexans SA v European Commission	10
2013/C 101/23	Case C-42/13: Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 28 January 2013 — Cartiera dell'Adda SpA and Cartiera di Cologno SpA v CEM Ambiente SpA	11
2013/C 101/24	Case C-48/13: Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 January 2013 — Nordea Bank Danmark A/S v Skatteministeriet (Ministry of Taxation)	11
2013/C 101/25	Case C-55/13: Action brought on 31 January 2013 — European Commission v Republic of Poland	11
2013/C 101/26	Case C-70/13 P: Appeal brought on 8 February 2013 by Getty Images (US), Inc. against the judgment of the General Court (Fifth Chamber) delivered on 21 November 2012 in Case T-338/11: Getty Images (US), Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)	12



<u>Notice No</u>	Contents (continued)	Page
2013/C 101/27	Case C-71/13 P: Appeal brought on 11 February 2013 by the Hellenic Republic against the judgment delivered by the General Court (Third Chamber) on 13 December 2012 in Case T-588/10 Greece v Commission	13
2013/C 101/28	Case C-447/10 P: Order of the President of the Fourth Chamber of the Court of 24 October 2012 — Grain Millers, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Grain Millers GmbH & Co. KG	14
2013/C 101/29	Case C-30/12: Order of the President of the Court of 4 October 2012 (reference for a preliminary ruling from the Okresný súd Prešov — Slovakia) — Valeria Marcínová v Pohotovst' s.r.o.	14
2013/C 101/30	Case C-143/12: Order of the President of the Court of 5 October 2012 — European Commission v French Republic	14
 General Court 		
2013/C 101/31	Case T-84/07: Judgment of the General Court of 7 February 2013 — EuroChem MCC v Council (Dumping — Imports of solutions of urea and ammonium nitrate originating in Russia — Request for an expiry review — Request for an interim review — Admissibility — Normal value — Export price — Articles 1, 2 and 11(1) to (3) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(1) to (3) of Regulation (EC) No 1225/2009)).....	15
2013/C 101/32	Case T-235/08: Judgment of the General Court of 7 February 2013 — Acron and Dorogobuzh v Council (Dumping — Imports of ammonium nitrate originating in Russia — Request for a partial interim review — Normal value — Export price — Articles 1 and 2 of Regulation (EC) No 384/96 (now Articles 1 and 2 of Regulation (EC) No 1225/2009)).....	15
2013/C 101/33	Case T-459/08: Judgment of the General Court of 7 February 2013 — EuroChem MCC v Council (Dumping — Imports of ammonium nitrate originating in Russia — Request for a partial interim review — Expiry review — Normal value — Export price — Articles 1, 2 and 11(2) and (3) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(2) and (3) of Regulation (EC) No 1225/2009))	16
2013/C 101/34	Case T-241/09: Judgment of the General Court of 20 February 2013 — Nikolaou v Court of Auditors (Non-contractual liability — Court of Auditors — Conduct of internal investigations — Personal data — Illegality — Causal link — Limitation period)	16
2013/C 101/35	Case T-118/10: Judgment of the General Court of 7 February 2013 — Acron v Council (Dumping — Imports of solutions of urea and ammonium nitrate originating in Russia — Request for a new exporter review — Normal value — Export price — Articles 1, 2 and 11(4) and (9) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(4) and (9) of Regulation (EC) No 1225/2009)).....	16
2013/C 101/36	Case T-492/10: Judgment of the General Court of 20 February 2013 — Melli Bank v Council (Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Entity wholly owned by an entity identified as being involved in nuclear proliferation — Plea of illegality — Obligation to state reasons — Rights of the defence — Right to effective judicial protection)	17



<u>Notice No</u>	Contents (continued)	Page
2013/C 101/37	Case T-33/12: Judgment of the General Court of 8 February 2013 — Piotrowski v OHIM (MEDIGYM) (Community trade mark — International registration designating the European Community — Word mark MEDIGYM — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 — Right to a hearing — Second sentence of Article 75 of Regulation No 207/2009).....	17
2013/C 101/38	Case T-50/12: Judgment of the General Court of 7 February 2013 — AMC-Representações Têxteis v OHIM — MIP Metro (METRO KIDS COMPANY) (Community trade mark — Opposition proceedings — Application for Community figurative mark METRO KIDS COMPANY — Earlier international figurative mark METRO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009).....	18
2013/C 101/39	Case T-407/12: Order of the General Court of 7 February 2013 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (Ubee Interactive) (Community trade mark — Opposition — Opposition withdrawn — No need to adjudicate)	18
2013/C 101/40	Case T-408/12: Order of the General Court of 7 February 2013 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (ubee) (Community trade mark — Opposition — Opposition withdrawn — No need to adjudicate)	18
2013/C 101/41	Case T-22/13: Action brought on 16 January 2013 — Senz Technologies/OHIM — Impliva (Umbrellas)	19
2013/C 101/42	Case T-23/13: Action brought on 16 January 2013 — Senz Technologies/OHIM — Impliva (Umbrellas)	19
2013/C 101/43	Case T-24/13: Action brought on 21 January 2013 — Cactus/OHIM — Del Rio Rodríguez (CACTUS OF PEACE CACTUS DE LA PAZ)	20
2013/C 101/44	Case T-38/13: Action brought on 24 January 2013 — Pedro Group/OHIM — Cortefiel (PEDRO) ...	20
2013/C 101/45	Case T-39/13: Action brought on 25 January 2013 — Cezar/OHIM — Poli-Eco (Skirting boards) ...	21
2013/C 101/46	Case T-52/13: Action brought on 4 February 2013 — Efag Trade Mark Company v OHIM (FICKEN)	21
2013/C 101/47	Case T-53/13: Action brought on 31 January 2013 — Vans/OHIM (Line which slants and curves)	22
2013/C 101/48	Case T-54/13: Action brought on 4 February 2013 — Efag Trade Mark Company v OHIM (FICKEN LIQUORS)	22
2013/C 101/49	Case T-55/13: Action brought on 4 February 2013 — Formula One Licensing/OHIM — Idea Marketing (F1H2O)	22
2013/C 101/50	Case T-56/13: Action brought on 30 January 2013 — ClientEarth and Stichting BirdLife Europe v Commission	23



<u>Notice No</u>	Contents (continued)	Page
2013/C 101/51	Case T-60/13: Action brought on 6 February 2013 — Reiner Appelrath-Cüpper/OHIM — Ann Christine Lizenzmanagement (AC)	23
2013/C 101/52	Case T-63/13: Action brought on 5 February 2013 — Three-N-Products Private v OHIM — Munindra Holding (AYUR)	24
2013/C 101/53	Case T-67/13: Action brought on 1 February 2013 — Novartis Europharm v Commission	24
2013/C 101/54	Case T-71/13: Action brought on 7 February 2013 — Anapurna/OHIM — Annapurna (ANNAPURNA)	25
2013/C 101/55	Case T-75/13: Action brought on 8 February 2013 — Boehringer Ingelheim Pharma/OHIM — Nepentes (Momarid)	26
2013/C 101/56	Case T-79/13: Action brought on 11 February 2013 — Accorinti and Others v ECB	26
2013/C 101/57	Case T-82/13: Action brought on 13 February 2013 — Panasonic and MT Picture Display v Commission	28
2013/C 101/58	Case T-83/13 P: Appeal brought on 11 February 2013 by BS against the judgment of the Civil Service Tribunal of 12 February 2012 in Case F-90/11, BS v Commission	29
2013/C 101/59	Case T-86/13 P: Appeal brought on 14 February 2013 by Diana Grazyte against the judgment of the Civil Service Tribunal of 5 December 2012 in Case F-76/11 Grazyte v Commission	30
2013/C 101/60	Case T-101/13: Action brought on 14 February 2013 — Aer Lingus v Commission	31

European Union Civil Service Tribunal

2013/C 101/61	Case F-17/11: Judgment of the Civil Service Tribunal (Second Chamber) of 19 February 2013 — BB v Commission (Civil Service — Contractual agent — Non-renewal of a fixed term contract — Action for annulment — Action for damages)	33
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IV

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

COURT OF JUSTICE OF THE EUROPEAN UNION

*(2013/C 101/01)***Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union***

OJ C 86, 23.3.2013

Past publications

OJ C 79, 16.3.2013

OJ C 71, 9.3.2013

OJ C 63, 2.3.2013

OJ C 55, 23.2.2013

OJ C 46, 16.2.2013

OJ C 38, 9.2.2013

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V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (First Chamber) of 22 October 2012 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — Erika Šujetová v Rapid life životná poisťovňa as

(Case C-252/11) ⁽¹⁾

(Reference for a preliminary ruling — No need to adjudicate)

(2013/C 101/02)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: Erika Šujetová

Defendant: Rapid life životná poisťovňa as

Re:

Request for a preliminary ruling — Krajský súd v Prešove (Slovakia) — Interpretation of Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Provision of national law under which exclusive jurisdiction in relation to an application for annulment of an arbitral award is attributed to the court in whose area of jurisdiction the arbitration proceedings took place — Provision of national law under which that court is under an obligation, upon annulling an arbitral award, to continue the main proceedings without re-examining its territorial jurisdiction — Unfair arbitration agreement or arbitration clause

Operative part of the order

It is not necessary to give a ruling on the request for a preliminary ruling submitted by the Krajský súd v Prešove (Slovakia), by decision of 7 April 2011 in Case C-252/11.

⁽¹⁾ OJ C 269, 10.9.2011.

Order of the Court of 13 September 2012 — Total SA, Elf Aquitaine SA v European Commission

(Case C-495/11 P) ⁽¹⁾

(Appeal — Regulation (EC) No 1/2003 — Competition — Agreements, decisions and concerted practices — Infringement of the principles of conferred powers and of proportionality — Manifestly incorrect interpretation — Infringement of the rights of the defence and of the principles of equity and of the equality of arms — Obligation to state reasons)

(2013/C 101/03)

Language of the case: French

Parties

Appellants: Total SA, Elf Aquitaine SA (represented by: E. Morgan de Rivery and A. Noël-Baron, avocats)

Other party to the proceedings: European Commission (represented by: B. Gencarelli, P. Van Nuffel and V. Bottka, acting as Agents)

Re:

Appeal against the judgment of the General Court (Sixth Chamber, Extended Composition) of 14 July 2011 in Case T-190/06 *Total and Elf Aquitaine v Commission* by which that Court dismissed the action for partial annulment of Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 — Hydrogen peroxide and perborate) — Competition — Agreements, decisions and concerted practices — Infringement of the principles of conferred powers and of proportionality — Manifestly incorrect interpretation — Infringement of the rights of the defence and of the principles of equity and of the equality of arms — Obligation to state reasons

Operative part of the order

1. *The appeal is dismissed.*
2. *Total SA and Elf Aquitaine SA shall pay the costs.*

⁽¹⁾ OJ C 355, 3.12.2011.

Order of the Court of 10 October 2012 — Hellenic Republic v European Commission

(Case C-497/11 P) ⁽¹⁾

(Appeal — ERDF — Reduction in financing — Objective 1 operational programme (1994 — 1999), ‘Accessibility and Trunk Roads’ in Greece — Delegation of auxiliary tasks by the Commission to third parties — Professional secrecy — Rate of financial correction — Discretion of the Commission — Judicial review)

(2013/C 101/04)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, acting as Agents, and G. Michailopoulos, dikigóros)

Other party to the proceedings: European Commission (represented by: A. Steiblytė and D. Triantafyllou, acting as Agents)

Re:

Appeal brought against the judgment of the General Court (Sixth Chamber) of 13 July 2001 in Case T-81/09 Greece v Commission, by which the General Court annulled in part an action for annulment of Commission Decision C(2008) 8573 of 15 December 2008 reducing the financial assistance of the European Regional Development Fund (ERDF) initially granted in respect of the Objective 1 operational programme (1994 — 1999), ‘Accessibility and Trunk Roads’ in Greece

Operative part of the order

1. *The appeal is dismissed.*
2. *The Hellenic Republic shall pay the costs.*

⁽¹⁾ OJ C 340, 19.11.2011.

Order of the Court (Sixth Chamber) of 19 September 2012 (request for a preliminary ruling from the Tribunal de première instance de Bruxelles — Belgium) — Daniel Levy, Carine Sebbag v Belgian State

(Case C-540/11) ⁽¹⁾

(Free movement of capital — Direct taxation — Taxation of dividends — Bilateral convention which precludes double taxation — Subsequent amendment, by one of the two States party to the convention, of its national legislation, having the effect of reintroducing double taxation — Obligations of the Member States under Articles 10 EC and 293 EC)

(2013/C 101/05)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicants: Daniel Levy, Carine Sebbag

Defendant: Belgian State

Re:

Request for a preliminary ruling — Tribunal de première instance de Bruxelles — Interpretation of Articles 10 EC, 57(2) EC and 293 EC — Permissibility of rules of national law which allow double taxation notwithstanding the existence of a bilateral convention which precludes double taxation — Amendment of national law after the convention had been concluded — Bringing into question of an acquired right — Obstacle to the free movement of capital

Operative part of the order

Insofar as Community law, as applicable at the time of the facts in the main proceedings, does not lay down any general criteria for the attribution of areas of competence between the Member States in relation to the elimination of double taxation within the European Community, Article 56 EC, read in conjunction with Articles 10 EC and 293 EC, is to be interpreted as meaning that it does not preclude a situation in which the Member State, which has undertaken, in a bilateral double taxation convention, to establish a mechanism to eliminate such double taxation of dividends, then abolishes that mechanism by way of a legislative amendment that has the effect of reintroducing a double taxation.

⁽¹⁾ OJ C 25, 28.1.2012.

Order of the Court of 4 October 2012 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-597/11 P) ⁽¹⁾

(Appeal — Public contract awarded by the Commission — Rejection of a tender — Obligation to state reasons — Regulation (EC, Euratom) No 1605/2002 — Article 89 — Regulation (EC, Euratom) No 2342/2002 — Articles 140 and 141 — Period allowed for the receipt of tenders — Period allowed for the submission of requests for information)

(2013/C 101/06)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, Δικηγόρος)

Other party to the proceedings: European Commission (represented by: M. Wilderspin, Agent)

Re:

Appeal against the judgment of the General Court (First Chamber) of 9 September 2011 in Case T-232/06 *Evropaiki Dynamiki v Commission* dismissing an application for annulment of the Commission Decision of 19 June 2006 rejecting the tender submitted by the present appellant in response to call for tenders TAXUD/2005/AO-001 concerning the specification, development, maintenance and support of customs IT systems for DG TAXUD (OJ 2005, S 117-115222), and the decision to award the contract to another tenderer

Operative part of the order

1. *The appeal is dismissed.*
2. *Evropaiki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE shall pay the costs.*

⁽¹⁾ OJ C 25, 28.1.2012.

Order of the Court of 10 October 2012 — ara AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Allrounder SARL

(Case C-611/11 P) ⁽¹⁾

(Appeal — Community trade mark — Regulation (EC) No 207/2009 — Article 8(1)(b) — International registration designating the European Community — Figurative mark A with two triangular motifs — Earlier national word mark A — Relative ground for refusal — No likelihood of confusion)

(2013/C 101/07)

Language of the case: French

Parties

Appellant: ara AG (represented by: M. Gail, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), Allrounder SARL (represented by: N. Boespflug, avocat)

Re:

Appeal brought against the judgment of the General Court (Seventh Chamber) of 22 September 2011 in Case T-174/10 *ara v OHIM — Allrounder (A with two triangular motifs)*, by which the General Court dismissed the action brought against the decision of the First Board of Appeal of OHIM of 26 January 2010 (Case R 481/2009-1) concerning opposition proceedings between ara and Allrounder — Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on

the Community trade mark (OJ 2009 L 78, p. 1) — Figurative mark A with two triangular motifs — Opposition by the holder of the national word mark 'A' — Likelihood of confusion between two marks — Incorrect assessment of the distinctive character

Operative part of the order

The Court:

1. *Dismisses the appeal;*
2. *Orders ara AG to pay the costs.*

⁽¹⁾ OJ C 133, 5.5.2012.

Order of the Court of 27 September 2012 — Brighton Collectibles, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Felmar

(Case C-624/11 P) ⁽¹⁾

(Appeal — Community trade mark — Regulations (EC) No 40/94 and (EC) No 207/2009 — Article 8(4) — Community word mark BRIGHTON — Opposition proceedings — Interpretation of the provisions of national law on relative grounds for refusal of registration)

(2013/C 101/08)

Language of the case: French

Parties

Appellant: Brighton Collectibles, Inc. (represented by: J. Horn, avocat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Felmar (represented by: A. Folliard-Monguiral, acting as Agent), Felmar (represented by: D. Monégier du Sorbier, avocat)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 27 September 2011 in Case T-403/10 *Brighton Collectibles v OHIM — Felmar*, by which the General Court dismissed the action brought against the decision of the Fourth Board of Appeal of OHIM of 30 June 2010 (Case R 408/2009-4) concerning opposition proceedings between Brighton Collectibles, Inc. and Felmar — Article 8(4) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Community word mark BRIGHTON — Opposition proceedings based on earlier national word and figurative marks — Failure to give sufficient reasons with regard to the national laws relied upon

Operative part of the order

1. *The appeal is dismissed.*
2. *Brighton Collectibles, Inc. shall pay the costs.*

(¹) OJ C 133, 5.5.2012.

Order of the Court of 3 October 2012 — Cooperativa Vitivinícola Arousana S. Coop. Galega v Office for Harmonisation in the Internal Market (Trade Marks and Designs), María Constantina Sotelo Ares

(Case C-649/11 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Word mark ROSALIA DE CASTRO — Opposition by the proprietor of the national word mark ROSALIA)

(2013/C 101/09)

Language of the case: Spanish

Parties

Appellant: Cooperativa Vitivinícola Arousana S. Coop. Galega (represented by: I. Temiño Cenicerros, Abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carillo, Agent) and María Constantina Sotelo Ares (represented by: C. Lema Devesa, Abogado)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 5 October 2010 in Case T 421/10 *Cooperativa Vitivinícola Arousana v OHIM — Sotelo Ares*, by which the General Court rejected the action brought against the decision of the Fourth Board of Appeal of OHIM of 19 July 2010 (Case R 1804/2008-4) relating to opposition proceedings between María Constantina Sotelo Ares and Cooperativa Vitivinícola Arousana, S. Coop. Galega

Operative part of the order

1. *The appeal is dismissed.*
2. *Cooperativa Vitivinícola Arousana S. Coop. Galega is ordered to pay the costs.*

(¹) OJ C 58, 25.2.2012.

Order of the Court (Seventh Chamber) of 10 October 2012 — (request for a preliminary ruling from the Sąd Rejonowy w Zakopanem — Poland) — Criminal proceedings against Wojciech Ziemiński, Andrzej Kozak

(Case C-31/12) (¹)

(Reference for a preliminary ruling — No description of the main proceedings — Manifest inadmissibility)

(2013/C 101/10)

Language of the case: Polish

Referring court

Sąd Rejonowy w Zakopanem

Criminal proceedings against

Wojciech Ziemiński, Andrzej Kozak

Re:

Request for a preliminary ruling — Sąd Rejonowy w Zakopanem — Interpretation of the concept of ‘technical regulation’ in Article 1.11 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18) — Obligation on the part of a Member State to communicate to the Commission all draft technical regulations — Law of a Member State concerning games of chance

Operative part of the order

The request for a preliminary ruling from the Sąd Rejonowy w Zakopanem (Poland), by decision of 13 January 2012, is manifestly inadmissible.

(¹) OJ C 165, 9.6.2012.

Request for a preliminary ruling from the Landgericht Krefeld (Germany) lodged on 30 November 2012 — Marc Brogsitter v Fabrication de Montres Normandes Eurl, Karsten Fräßdorf

(Case C-548/12)

(2013/C 101/11)

Language of the case: German

Referring court

Landgericht Krefeld

Parties to the main proceedings

Applicant and defendant to the counterclaim: Marc Brogsitter

Defendants and counterclaimants: Fabrication de Montres Normandes Eurl, Karsten Fräßdorf

Question referred

Must Article 5(1) of Regulation No 44/2001 ⁽¹⁾ be interpreted as meaning that a claimant who alleges that he has suffered damage by an anticompetitive act of his contractual partner domiciled in another Contracting State, which is to be regarded in German law as a tortious act, is raising claims against that person based on contract, even in so far as he bases his action on claims relating to tort?

⁽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.

Appeal brought on 20 December 2012 by Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd against the judgment of the General Court (Seventh Chamber) delivered on 10 October 2012 in Case T-172/09: Gem-Year Industrial Co. Ltd v Council of the European Union

(Case C-602/12 P)

(2013/C 101/12)

Language of the case: English

Parties

Appellants: Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: Y. Melin, V. Akritidis, avocats)

Other parties to the proceedings: Council of the European Union, European Commission, European Industrial Fasteners Institute AISBL (EIFI)

Form of order sought

The appellants claim that the Court should:

1. Set aside in its entirety the judgment of the seventh chamber of the General Court of 10 October 2012 in Case T-172/09, Gem-Year and Jinn-Well Auto-Parts (Zhejiang) v Council.
2. Accept, by giving a final judgment itself,

— the third plea in law of the application, concerning the absence of injury suffered by the Community industry, in breach of Article 3 of the basic Regulation ⁽¹⁾; and

— the seventh plea in law concerning the illegal countervailing of a subsidy through the rejection of market economy treatment, in breach of Regulation No 2026/97 ⁽²⁾ and Article 2(7)(c) of the basic Regulation.

or, in the alternative, refer the matter back to the General Court.

3. Order the Council and the interveners, in addition to paying their own costs to bear all costs occasioned to the Appellants in the course of the present proceedings and the proceedings before the General Court.

Pleas in law and main arguments

The appellants submit that the contested judgment should be annulled on the following grounds:

Firstly, in view of the facts before the General Court, it is clear that there is no evidence that the Union fasteners industry was suffering injury caused by dumped imports from China, in the sense of Article 3 (2), (5) and (6) of the basic anti-dumping Regulation ⁽³⁾. This first ground is divided into the following two parts:

- (i) The General Court distorted the clear sense of the evidence before it when it considered that the profit margin achieved by the Union fasteners industry during the period under consideration (from 1 January 2003 until 30 September 2007) was negatively affected, in a material way, by dumped imports from China; whereas the evidence in the file shows that profits fluctuated during that period, and were at their second highest during the last year (4.4 %), which is also when dumped imports from China were the highest, and were close to their maximum historical level of 4.7 % (in 2004), which is just below the target profit (5 %) used by the Commission to calculate the underselling margin.
- (ii) The evidence before the Court depicts a growing and more prosperous Union industry, notably during the investigation period. It does not depict a case of material injury but rather a case of a hypothetical missed opportunity to take full advantage of the growing domestic EU market. By deciding on this basis that the EU Institutions were right to consider that there was material injury caused by dumped imports, the General Court erred in the legal categorisation of the facts it had established, so that Article 3 (2), (5) and (6) of the basic Regulation was not applied properly.

Secondly, the General Court erred in law when it considered that a claim for market economy treatment under Article 2(7)(c) of the basic Regulation could be rejected on the basis of a finding that an upstream industry was subsidised. This amounts to the countervailing of these subsidies otherwise than following an investigation initiated under Council Regulation no 2026/97 (the then applicable basic anti-subsidy Regulation). This is an illegal interpretation of Article 2(7)(c) of the basic Regulation, and a breach of Council Regulation No 2026/97.

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- (¹) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community
OJ L 56, p. 1
- (²) Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community
OJ L 288, p. 1
- (³) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community
OJ L 343, p. 51

**Request for a preliminary ruling from the
Verwaltungsgericht Hannover (Germany) lodged on 21
December 2012 — Pia Braun v Region Hannover**

(Case C-603/12)

(2013/C 101/13)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Pia Braun

Defendant: Region Hannover

Question referred

Does the right to freedom of movement and freedom of residence conferred on a Union citizen by Articles 20 and 21 TFEU preclude — in a case such as the present one, in which a student who still lives with her parents in a Member State neighbouring Germany and whose parents commute to Germany for work has applied for an education grant for studies in a third Member State — a regulatory system in national law under which German nationals with a permanent residence outside the Federal Republic of Germany may be awarded an education grant to attend an education establishment situated in a Member State of the European Union only if special circumstances of the individual case justify the grant and, pursuant to which, the approval of the grant is left, as to the remainder, to the discretion of the competent national authorities?

Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

(Case C-606/12)

(2013/C 101/14)

Language of the case: Italian

Requesting court

Commissione tributaria provinciale di Genova

Parties to the main proceedings

Applicant: Dresser Rand SA

Defendant: Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

Questions referred

1. Does the transfer of goods to Italy from another Member State for the purpose of verifying whether those goods may be adapted to other goods acquired within Italy, without anything being done to the goods brought into Italy, come within the notion of 'work on the goods' referred to in Article 17(2)(f) of Directive 2006/112/EC (¹) and, in this connection, is it appropriate to assess the nature of the transactions which took place between F.B. ITMI and DR-IT?
2. Is Article 17(2)(f) of Directive 2006/112/EC to be interpreted as precluding the Member States from providing in their legislation or practices that the dispatch or transport of goods is not to be treated as a transfer to another Member State except on condition that the goods are returned to the Member State from which they were initially dispatched or transported?

(¹) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Commissione tributaria provinciale di Genova (Italy) lodged on 24 December 2012 — Dresser Rand SA v Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

(Case C-607/12)

(2013/C 101/15)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Genova

Parties to the main proceedings

Applicant: Dresser Rand SA

Defendant: Agenzia delle Entrate — Direzione Provinciale Ufficio Controlli

Questions referred

1. Does the transfer of goods to Italy from another Member State for the purpose of verifying whether those goods may be adapted to other goods acquired within Italy, without anything being done to the goods brought into Italy, come within the notion of ‘work on the goods’ referred to in Article 17(2)(f) of Directive 2006/112/EC⁽¹⁾ and, in this connection, is it appropriate to assess the nature of the transactions which took place between F.B. ITMI and DR-IT?
2. Is Article 17(2)(f) of Directive 2006/112/EC to be interpreted as precluding the Member States from providing in their legislation or practices that the dispatch or transport of goods is not to be treated as a transfer to another Member State except on condition that the goods are returned to the Member State from which they were initially dispatched or transported?

⁽¹⁾ OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 27 December 2012 — Ehrmann AG v Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.

(Case C-609/12)

(2013/C 101/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ehrmann AG

Defendant: Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.

Question referred

Was it necessary to comply with the duty to provide information under Article 10(2) of Regulation (EC) No 1924/2006⁽¹⁾ in 2010?

⁽¹⁾ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods, OJ 2006 L 404, p. 9, and Commission Regulation (EU) No 116/2010 of 9 February 2010 amending Regulation (EC) No 1924/2006 of the European Parliament and of the Council with regard to the list of nutrition claims (Text with EEA relevance) OJ 2010 L 37, p. 16.

Request for a preliminary ruling from the Verwaltungsgericht Giessen (Germany) lodged on 27 December 2012 — Johannes Peter v Bundeseisenbahnvermögen

(Case C-610/12)

(2013/C 101/17)

Language of the case: German

Referring court

Verwaltungsgericht Giessen

Parties to the main proceedings

Applicant: Johannes Peter

Defendant: Bundeseisenbahnvermögen

Question referred

In a case of unequal treatment that has already been found to exist in the past, between married civil servants and those living in registered life partnerships, is it in accordance with Directive 2000/78/EC⁽¹⁾ to grant, pursuant to the applicable constitutional principles in the Federal Republic of Germany, a retrospective claim for equal treatment under the law on remuneration only with effect from the beginning of the financial year in which the civil servant first made the claim to his employer?

⁽¹⁾ Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 24 December 2012 — Helm Düngemittel GmbH v Hauptzollamt Krefeld

(Case C-613/12)

(2013/C 101/18)

Language of the case: German

Requesting court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Helm Düngemittel GmbH

Defendant: Hauptzollamt Krefeld

Question referred

Has the origin of goods not been established in the case where a partial movement certificate for the goods was issued under Article 20 of Protocol 4 concerning the definition of the concept of 'originating products' and methods of administrative cooperation, as amended by Decision No 1/2006 of the EU-Egypt Association Council of 17 February 2006,⁽¹⁾ although the requirements of that provision were not fulfilled because the goods were not under the control of the issuing customs authorities at the point in time at which the partial movement certificate was issued.

⁽¹⁾ OJ 2006 L 73, p. 1.

Request for a preliminary ruling from the Cour administrative d'appel de Paris (France) lodged on 10 December 2012 — Reggiani SpA Illuminazione v Ministre de l'Économie et des Finances

(Case C-618/12)

(2013/C 101/19)

Language of the case: French

Referring court

Cour administrative d'appel de Paris

Parties to the main proceedings

Applicant: Reggiani SpA Illuminazione

Defendant: Ministre de l'Économie et des Finances

Question referred

Does Article 2 of [the] Directive [79/1072/EEC of 6 December 1979]⁽¹⁾ infringe freedom of establishment in that it limits entitlement to a refund to just moveable property?

⁽¹⁾ Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 2 January 2013 — Agentur für Arbeit Krefeld — Familienkasse v Susanne Fassbender-Firman

(Case C-4/13)

(2013/C 101/20)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant: Agentur für Arbeit Krefeld — Familienkasse

Respondent: Susanne Fassbender-Firman

Questions referred

1. Should Article 76(2) of Regulation No 1408/71⁽¹⁾ be interpreted to the effect that the competent institution of the Member State of employment enjoys discretion in applying Article 76(1) of Regulation No 1408/71 if an application for benefits is not made in the Member State of residence of the members of the family?
2. If the first question is answered in the affirmative: on the basis of which discretionary considerations may the institution competent for family benefits in the Member State of employment apply Article 76(1) of Regulation No 1408/71 as if benefits had been granted in the Member State of residence of the members of the family?
3. If the first question is answered in the affirmative: To what extent is the discretionary decision by the competent institution subject to judicial review?

⁽¹⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ 1971 L 149, p. 2; Council Regulation (EC) No 118/97 of 2 December 1996 amending and updating Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71, OJ 1977 L 28, p. 1.

Appeal brought on 18 January 2013 by Gabi Thesing, Bloomberg Finance LP against the judgment of the General Court (Seventh Chamber) delivered on 29 November 2012 in Case T-590/10: Gabi Thesing, Bloomberg Finance LP v European Central Bank

(Case C-28/13 P)

(2013/C 101/21)

Language of the case: English

Parties

Appellants: Gabi Thesing, Bloomberg Finance LP (represented by: M Stephens, R Lands, Solicitors)

Other party to the proceedings: European Central Bank

Form of order sought

The Appellants claim that the Court should:

— quash the decision of the General Court dated 29 November 2012 in case number T-590/10. It should do so on the basis that the General Court erred in law in reaching that decision.

— annul the decision of the European Central Bank ('ECB') communicated by letters dated 17 September 2010 and 21 October 2010, refusing to grant access to the documents requested by the Appellants pursuant to the Decision of the ECB of 4 March 2004 (ECB/2004/3) on public access to ECB documents ⁽¹⁾. The Court should annul that decision on the basis that:

- i) the ECB made a manifest error of assessment and/or abused its powers in reaching that decision; and
- ii) the only lawful course was for the ECB to permit access to those documents, as requested.

— quash the decision of the General Court insofar as it required the Appellants to pay the ECB's costs. It should do so on the basis that the General Court erred in law in reaching that decision.

— alternatively, remit the case to the General Court for determination in accordance with the Court's ruling on the points of law raised in this appeal.

Pleas in law and main arguments

The Appellants submit that the General Court erred in law:

- in misconstruing Article 4.1 (a) of the decision of the European Central Bank, dated 4 March 2004 (ECB/2004/3), which provides for an exception to the general right of access conferred by Article 2 of that decision;
- in holding that the ECB was entitled to conclude that disclosure of the documents requested by the Appellants would have undermined the economic policy of the EU and Greece;
- in misconstruing Article 10 of the European Convention on Human Rights;
- in failing to consider the Appellants' contentions in relation to Article 4.2 and 4.3 of the decision of the ECB;
- the Appellants also submit that the General Court erred in relation to costs.

Appeal brought on 24 January 2013 by Nexans France SAS, Nexans SA against the judgment of the General Court (Eighth Chamber) delivered on 14 November 2012 in Case T-135/09: Nexans France SAS, Nexans SA v European Commission

(Case C-37/13 P)

(2013/C 101/22)

Language of the case: English

Parties

Appellants: Nexans France SAS, Nexans SA (represented by: M. Powell, Solicitor, J.-P. Tran-Thiet, Avocat, G. Forwood, Barrister, A. Rogers, Advocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the Contested Judgment insofar as it dismissed the second branch of the applicant's first plea that the geographical scope of the dawn raid decision was overly broad and insufficiently precise;
- on the basis of the information at its disposal, annul the Dawn Raid Decision in so far as its geographic scope was overly broad, insufficiently justified and insufficiently precise, or alternatively, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice as to points of law;
- set aside the judgment under appeal insofar as it orders Nexans to bear its own costs and to pay half of the costs incurred by the Commission in the proceedings before the General Court and order the Commission to pay Nexans' costs for the proceedings before the General Court in an amount the Court sees fit,
- order the Commission to pay all of Nexans' costs in these proceedings.

Pleas in law and main arguments

The appellants submit that the General Court erred in dismissing their application for the annulment of the Dawn Raid Decision insofar as it was insufficiently precise, overly broad in its geographic scope and applied to any suspected agreements and/or concerted practices that 'probably had a global reach'. The appellants also submit that the General Court erred in its order as to costs.

⁽¹⁾ OJ L 80, p. 42

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 28 January 2013 — Cartiera dell'Adda SpA and Cartiera di Cologno SpA v CEM Ambiente SpA

(Case C-42/13)

(2013/C 101/23)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Lombardia

Parties to the main proceedings

Applicant: Cartiera dell'Adda SpA, Cartiera di Cologno SpA

Defendant: CEM Ambiente SpA

Questions referred

1. Is it contrary to Community law, when an undertaking participating in a tendering procedure has failed to declare, in its request for participation, that its technical director has not been the object of any of the prosecutions and convictions referred to in Article 38(1)(b) and (c) of Legislative Decree No 163/2006, for an interpretation of that article to be given, in accordance with which the awarding entity must order the exclusion of that undertaking even when that undertaking has suitably proved that the use of the term 'technical director' in its request was due to a mere clerical error?
2. Is it contrary to Community law, when an undertaking participating in a tendering procedure has provided relevant, suitable evidence that the persons required to make the statements referred to in Article 38(1)(b) and (c) have not been the object of any of the prosecutions and convictions referred to therein, for an interpretation of that article to be given, in accordance with which the awarding entity must order the exclusion of that undertaking as a consequence of the failure to comply with the *lex specialis* under which the tendering procedure was launched?

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 January 2013 — Nordea Bank Danmark A/S v Skatteministeriet (Ministry of Taxation)

(Case C-48/13)

(2013/C 101/24)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Nordea Bank Danmark A/S

Defendant: Skatteministeriet (Ministry of Taxation)

Question referred

Are Article 49 TFEU, read together with Article 54 (formerly Article 43 EC, read together with Article 48) and Article 31 of the EEA Agreement, read together with Article 34, to be interpreted as precluding a Member State, which allows a company situated in that State to deduct losses on an ongoing basis from a permanent establishment situated in another Member State, from making full recapture from the company of the losses arising from the permanent establishment (in so far as they are not matched with profits in future years) in the event of the permanent establishment closing down, in connection with which part of the establishment's business is transferred to an affiliated company within the group which is resident in the same State as the permanent establishment, and where it must be assumed that the possibilities for applying the losses in question have been exhausted?

Action brought on 31 January 2013 — European Commission v Republic of Poland

(Case C-55/13)

(2013/C 101/25)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Article 2(15), (16), (22), (34) and (35), Article 3(4) and (9), Article 6(1) to (3) and Article 7(1) and (3); Article 9, Article 14 and Articles 17 to 23; Articles 10 and 11; Article 16; Article 26(2)(c), second sentence et seq., and Article 26(2)(d), third and fourth sentences; Article 26(3); Article 27(2); Article 29; Article 31; Article 36; Article 42(1) to (4); Article 43(1), (4) and (8); and Article 44 of, and points 1 and 2 of Annex I to, Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC,⁽¹⁾ and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 54(1) of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/73/EC at the daily rate of EUR 88 819,20 from the day on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2009/73/EC expired on 3 March 2011.

(¹) OJ 2009 L 211, p. 94.

Appeal brought on 8 February 2013 by Getty Images (US), Inc. against the judgment of the General Court (Fifth Chamber) delivered on 21 November 2012 in Case T-338/11: Getty Images (US), Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-70/13 P)

(2013/C 101/26)

Language of the case: English

Parties

Appellant: Getty Images (US), Inc. (represented by: P. Olson, advokat)

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

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal;
- annul the contested decision in so far as it rejects the appeal brought by Getty Images against the OHIM examiner's decision of 2 August 2010;
- order OHIM to pay the costs.

Pleas in law and main arguments

In support of its appeal, the appellant raises three pleas in law: (i) infringement of CTMR (¹) Art. 7(1)(b), (ii) infringement of Art. 7(1)(c) and (iii) infringement of the principle of equal treatment.

Under Art. 7(1)(b), a mark may not be registered if it is devoid of 'any distinctive character.' A minimum degree of distinctive character is sufficient to render inapplicable the grounds for refusal set out in that article. Here the fact that the identical mark for identical and similar goods/services has twice been considered to possess the requisite distinctive character creates a very strong presumption that the PHOTOS.COM possesses the minimum amount of distinctiveness necessary. The mere fact that each of the elements considered separately is devoid of distinctive character does not mean that their combination is not distinctive. As a combination of PHOTOS +.COM, the mark takes on a meaning independent of those elements' individual meanings. It is clearly understood by the relevant audience to be a commercial domain name. Domain names are unique in their nature. As such, PHOTOS.COM indicates to the consumer that it is a unique origin of goods and services which is distinguishable from other sources of goods and services with a different name. In this way, it fulfils the purpose of a trademark and meets the Art. 7(1)(b) threshold for distinctiveness.

The public interest to take into consideration in applying Art. 7(1)(b) is to examine whether the mark is capable of guaranteeing the identity of the origin of the goods/services to the consumer by enabling him, without any possibility of confusion, to distinguish the service from others which have another origin. It is common ground that each domain name is unique, and that a domain name ending in.com indicates a commercial website. In paragraph 22 of the contested decision, the General Court acknowledged that the.com element will immediately be recognised by the relevant public as referring to a commercial internet site. The Court erred by ignoring the fact that the domain name functions well to enable the consumer to distinguish the applicant's goods/services from the applicant's competitors. The public interest in protecting the consumer is achieved and Art. 7(1)(b) is not infringed.

As regards Art. 7(1)(c), the General Court elected not to address this issue. Nonetheless it is not infringed in that the public interest behind that provision is the protection of the appellant's competitors, none of whom are affected by the registration because it is a domain name belonging to the appellant. Nor is the mark objectively descriptive in relation to the goods/services.

The principle of equal treatment demands that OHIM must be bound by its own prior decisions when reviewing identical trademark applications absent any indication that the earlier marks were registered in error. This principle compels the court to set aside OHIM's conclusion that PHOTOS.COM was not eligible for registration. The General Court argues that these principles must be balanced with 'respect for legality' and that trademark applicants may not rely on prior decisions to secure an identical decision, because the prior decision was a 'possibly unlawful act committed to the benefit of someone else'; therefore, the court found that 'such an examination must be undertaken in each individual case' (paragraph 69 of the contested decision).

The principle of equal treatment is at odds with the principle of legality. Since the STREAMSERVE decision (see Judgment of 27 February 2002, Case T-106/00, *Streamserve v OHIM*), the principle of legality has had the upper hand. This has resulted in legal uncertainty and a flood of appeals. In light of this experience more focus on the principle of equal treatment is warranted. OHIM examiners have a duty to act consistently, to apply common standards, to identify analogous cases and to give them similar treatment. When trademark applicants refer to prior registered marks, OHIM examiners should not simply be allowed to refer to STREAMSERVE and ignore the fundamental principle of equal treatment. Instead of a principle of legality whereby prior registrations are literally considered mistakes, a much more viable method is to presume that the prior marks were properly registered. In no instance is the duty to apply the principle of equal treatment so clear as where, as here, the marks and the goods are identical.

To conclude, the mark PHOTOS.COM is equally distinctive for its goods and services as the two prior registered marks. The same basis exists for registering the mark for these as it does for the original marks, and the principle of equal treatment requires this.

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

Appeal brought on 11 February 2013 by the Hellenic Republic against the judgment delivered by the General Court (Third Chamber) on 13 December 2012 in Case T-588/10 Greece v Commission

(Case C-71/13 P)

(2013/C 101/27)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: I. Khalkias and E. Leftheriotou)

Other party to the proceedings: European Commission

Form of order sought

The Hellenic Republic claims that the Court should:

— uphold the appeal and set aside in its entirety the judgment under appeal of the General Court of the European Union for the reasons more specifically set out;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

— By the first ground of appeal in the tobacco sector the Hellenic Republic maintains that the following apply:

1. infringement of European Union Law — misinterpretation of Article 31 of Regulation No 1290/2005;
2. the conditions for payment of the support in respect of tobacco were defined exhaustively and exclusively in Article 5 of Regulation (EC) No 2075/92 (¹) and therefore the General Court of the European Union erred when it unlawfully accepted that Article 16(1) of Regulation (EC) No 2848/1998 (²) lawfully laid down an additional condition for payment of the premium that the tobacco must be delivered to the first processor at the latest by 30 April of the year following the year of harvest and, further, Article 16(1) of Regulation No 2848/1998, which has the effect that as a result of late delivery by even one day the producer loses the aid in its entirety, infringes the principle of proportionality when read together with Article 39(1)(b) TFEU and Article 3(3) of Regulation No 2075/92;
3. infringement of European Union Law — misinterpretation of Article 16(1) of Regulation No 2848/1998 (on late deliveries of tobacco);
4. contradictory reasoning in the judgment under appeal and misinterpretation of Article 9(4) and Article 10(1) of Regulation No 2848/1998 (on the transfer of cultivation contracts) and
5. Misinterpretation and misapplication of Article 6(2) of Regulation No 2075/1992 and Article 7 of Regulation No 2848/1998 (on the use of leased installations or equipment by the approved first processor).

— By the second ground of appeal in the area of dried grapes, it is claimed that the General Court of the European Union erred as follows:

1. misinterpretation of the fourth indent of Article 3(2) of Regulation 1621/1999 (³) as to the meaning of natural disaster and
2. misinterpretation and misapplication of the guidelines in respect of flat-rate corrections in the area of dried grapes (sultanas for the 2004 harvest and currants for the 2005 harvest) since the conditions for the imposition of a correction of 25 % were not met and consequently the statement of reasons in the decision is insufficient.

— By the third ground of appeal in the area of cultivation of arable land, it is claimed that the following apply:

1. infringement of European Union law in respect of the legal basis for the correction, with misinterpretation of Article 7(4) of Regulation No 1258/1999 ⁽⁴⁾ when a valid legal basis is provided only by Article 31 of Regulation No 1290/05 ⁽⁵⁾ and
2. infringement of European Union Law with misinterpretation and misapplication without updating of the guidelines for flat-rate corrections under the old CAP to the new CAP in respect of the distinction of audits as basic and supplementary, insufficient statement of reasons and infringement of the principle of proportionality and the principle of legal certainty, a particular expression of which is the principle of non-retroactivity, since the amounts of the flat-rate corrections related to a distinct set of audit rules, and the contested updating of the abovementioned guidelines took place in June 2006 and consequently could not be applied to the 2006 reporting year.

— By the fourth ground of appeal in the area of cross compliance, it is maintained that by the decision of the General Court of the principle of non-retroactivity was infringed.

— By the fifth ground of appeal in respect of POSEI measures for the small islands of the Aegean, it is claimed that there is an infringement of the principle of legal certainty, and of the principle that action be taken within a reasonable period of time and that the European Union act timeously.

— By the sixth ground of appeal in the area of animal (bovine ovine and caprine) premiums, it is claimed that there was misinterpretation and misapplication of Article 8 of Regulation No 1663/95 ⁽⁶⁾ and Article 7(4) of Regulation No 1258/1999, and of Article 12 and 24(2) of Regulation No 2419/01 ⁽⁷⁾ and infringement of the principle of proportionality and the obligation to state full reasons.

⁽¹⁾ Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco (OJ 1992 L 215, p. 70).

⁽²⁾ Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector (OJ 1998 L 358, p. 17).

⁽³⁾ Commission Regulation (EC) No 1621/1999 of 22 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards aid for the cultivation of grapes to produce certain varieties of dried grapes (OJ 1999 L 192, p.21).

⁽⁴⁾ Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

⁽⁵⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

⁽⁶⁾ Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ 1995 L 158, p. 6).

⁽⁷⁾ Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 (OJ 2001 L 327, p. 1).

Order of the President of the Fourth Chamber of the Court of 24 October 2012 — Grain Millers, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Grain Millers GmbH & Co. KG

(Case C-447/10 P) ⁽¹⁾

(2013/C 101/28)

Language of the case: English

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

⁽¹⁾ OJ C 301, 6.11.2010.

Order of the President of the Court of 4 October 2012 (reference for a preliminary ruling from the Okresný súd Prešov — Slovakia) — Valeria Marcinová v Pohotovst' s.r.o.

(Case C-30/12) ⁽¹⁾

(2013/C 101/29)

Language of the case: Slovak

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

⁽¹⁾ OJ C 98, 31.3.2012.

Order of the President of the Court of 5 October 2012 — European Commission v French Republic

(Case C-143/12) ⁽¹⁾

(2013/C 101/30)

Language of the case: French

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

⁽¹⁾ OJ C 165, 9.6.2012.

GENERAL COURT

**Judgment of the General Court of 7 February 2013 —
EuroChem MCC v Council**(Case T-84/07) ⁽¹⁾

(Dumping — Imports of solutions of urea and ammonium nitrate originating in Russia — Request for an expiry review — Request for an interim review — Admissibility — Normal value — Export price — Articles 1, 2 and 11(1) to (3) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(1) to (3) of Regulation (EC) No 1225/2009))

(2013/C 101/31)

Language of the case: English

Parties

Applicant: EuroChem Mineral and Chemical Company OAO (EuroChem MCC) (Moscow, Russia) (represented: initially by P. Vander Schueren and B. Evtimov, lawyers, and subsequently by B. Evtimov and D. O'Keefe, Solicitor)

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

Intervener in support of the defendant: European Commission (represented by: H. van Vliet and K. Talabér Ritz, Agents)

Re:

Action for annulment of Council Regulation (EC) No 1911/2006 of 19 December 2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating in Algeria, Belarus, Russia and Ukraine following an expiry review pursuant to Article 11(2) of Regulation (EC) No 384/96 (OJ 2006 L 365, p. 26).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders EuroChem Mineral and Chemical Company OAO (EuroChem MCC) to bear its own costs and to pay those incurred by the Council of the European Union;
3. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 117, 26.5.2007.

**Judgment of the General Court of 7 February 2013 —
Acron and Dorogobuzh v Council**(Case T-235/08) ⁽¹⁾

(Dumping — Imports of ammonium nitrate originating in Russia — Request for a partial interim review — Normal value — Export price — Articles 1 and 2 of Regulation (EC) No 384/96 (now Articles 1 and 2 of Regulation (EC) No 1225/2009))

(2013/C 101/32)

Language of the case: English

Parties

Applicants: Acron OAO (Moscow, Russia); and Dorogobuzh OAO (Moscow) (represented: initially by P. Vander Schueren and subsequently by B. Evtimov, lawyers, and by D. O'Keefe, Solicitor)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and K. Talabér Ritz, Agents); and Fertilizers Europe (Brussels, Belgium) (represented by: B. O'Connor, Solicitor, and S. Gubel, lawyer)

Re:

Action for annulment of Council Regulation (EC) No 236/2008 of 10 March 2008 concerning terminating the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 2008 L 75, p.1).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Acron OAO and Dorogobuzh OAO to bear their own costs and to pay those incurred by the Council of the European Union and by Fertilizers Europe;
3. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 209, 15.8.2008.

**Judgment of the General Court of 7 February 2013 —
EuroChem MCC v Council**

(Case T-459/08) ⁽¹⁾

(Dumping — Imports of ammonium nitrate originating in Russia — Request for a partial interim review — Expiry review — Normal value — Export price — Articles 1, 2 and 11(2) and (3) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(2) and (3) of Regulation (EC) No 1225/2009))

(2013/C 101/33)

Language of the case: English

Parties

Applicant: EuroChem Mineral and Chemical Company OAO (EuroChem MCC) (Moscow, Russia) (represented: initially by P. Vander Schueren and B. Evtimov, lawyers, and subsequently by B. Evtimov and D. O'Keefe, Solicitor)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and M. França, Agents); and Fertilizers Europe (Brussels, Belgium) (represented by: B. O'Connor, Solicitor, and S. Gubel, lawyer)

Re:

Action for annulment of Council Regulation (EC) No 661/2008 of 8 July 2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 (OJ 2008 L 185, p.1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders EuroChem Mineral and Chemical Company OAO (EuroChem MCC) to bear its own costs and to pay those incurred by the Council of the European Union and by Fertilizers Europe;*
3. *Orders the European Commission to bear its own costs.*

⁽¹⁾ OJ C 327, 20.12.2008.

**Judgment of the General Court of 20 February 2013 —
Nikolaou v Court of Auditors**

(Case T-241/09) ⁽¹⁾

(Non-contractual liability — Court of Auditors — Conduct of internal investigations — Personal data — Illegality — Causal link — Limitation period)

(2013/C 101/34)

Language of the case: Greek

Parties

Applicant: Kalliopi Nikolaou (Greece) (represented by: V. Christianos and G. Douka, lawyers)

Defendant: Court of Auditors of the European Union (represented by: T. Kennedy and J.-M. Stenier, Agents, and by P. Tridimas)

Re:

Action for compensation for the damage allegedly suffered by the applicant as a result of irregularities and infringements of European Union law that the Court of Auditors allegedly committed in the context of an internal investigation.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Ms Kalliopi Nikolaou to pay the costs.*

⁽¹⁾ OJ C 205, 29.8.2009.

**Judgment of the General Court of 7 February 2013 —
Acron v Council**

(Case T-118/10) ⁽¹⁾

(Dumping — Imports of solutions of urea and ammonium nitrate originating in Russia — Request for a new exporter review — Normal value — Export price — Articles 1, 2 and 11(4) and (9) of Regulation (EC) No 384/96 (now Articles 1, 2 and 11(4) and (9) of Regulation (EC) No 1225/2009))

(2013/C 101/35)

Language of the case: English

Parties

Applicant: Acron OAO (Veliky Novgorod, Russia) (represented by: B. Evtimov, lawyer, and D. O'Keefe, Solicitor)

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

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and C. Clyne, Agents); and Fertilizers Europe (Brussels, Belgium) (represented by: B. O'Connor, Solicitor)

Re:

Action for annulment of Council Implementing Regulation (EU) No 1251/2009 of 18 December 2009 amending Regulation (EC) No 1911/2006 imposing a definitive anti-dumping duty on imports of solutions of urea and ammonium nitrate originating, inter alia, in Russia (OJ 2009 L 338, p. 5).

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Acron OAO to bear its own costs and to pay those incurred by the Council of the European Union and by Fertilizers Europe;
3. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 113, 1.5.2010.

Judgment of the General Court of 20 February 2013 — Melli Bank v Council

(Case T-492/10) ⁽¹⁾

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Entity wholly owned by an entity identified as being involved in nuclear proliferation — Plea of illegality — Obligation to state reasons — Rights of the defence — Right to effective judicial protection)

(2013/C 101/36)

Language of the case: English

Parties

Applicant: Melli Bank plc (London, United Kingdom) (represented: initially by S. Gadhia and S. Ashley, Solicitors, and by D. Anderson QC and R. Blakeley, Barrister, and subsequently by S. Ashley, S. Jeffrey, and A. Irvine, Solicitors, and by D. Wyatt QC and R. Blakeley)

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

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

Re:

Application for annulment of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), 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), Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11), and 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 those measures concern the applicant and, further, an application for a declaration of the inapplicability of Article 16(2)(a) of Regulation No 961/2010 and Article 23(2) of Regulation No 267/2012 to the applicant.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Melli Bank plc to bear its own costs and to pay the costs of the Council of the European Union;
3. Orders the European Commission to bear its own costs.

⁽¹⁾ OJ C 328, 4.12.2010.

Judgment of the General Court of 8 February 2013 — Piotrowski v OHIM (MEDIGYM)

(Case T-33/12) ⁽¹⁾

(Community trade mark — International registration designating the European Community — Word mark MEDIGYM — Absolute ground for refusal — Descriptiveness — Article 7(1)(c) of Regulation (EC) No 207/2009 — Right to a hearing — Second sentence of Article 75 of Regulation No 207/2009)

(2013/C 101/37)

Language of the case: German

Parties

Applicant: Elke Piotrowski (Viernheim, Germany) (represented by: J. Albrecht, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: M. Lenz and G. Schneider, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 November 2011 (Case R 734/2011-4) concerning an international registration designating the European Community of the word sign MEDIGYM.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ms Elke Piotrowski to pay the costs.

(¹) OJ C 80, 17.3.2012.

Judgment of the General Court of 7 February 2013 — AMC-Representações Têxteis v OHIM — MIP Metro (METRO KIDS COMPANY)

(Case T-50/12) (¹)

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

(2013/C 101/38)

Language of the case: English

Parties

Applicant: AMC-Representações Têxteis L^{da} (Taveiro, Portugal) (represented by: V. Caires Soares, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 24 November 2011 (Case R 2314/2010-1), concerning opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and AMC-Representações Têxteis L^{da}.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders AMC-Representações Têxteis L^{da} to pay the costs.

(¹) OJ C 109, 14.4.2012.

Order of the General Court of 7 February 2013 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (Ubee Interactive)

(Case T-407/12) (¹)

(Community trade mark — Opposition — Opposition withdrawn — No need to adjudicate)

(2013/C 101/39)

Language of the case: English

Parties

Applicant: Ubee Interactive Corp. (Jhubei City, Taiwan) (represented by: M. Nentwig, lawyer)

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 12 July 2012 (Case R 1849/2011-2) relating to opposition proceedings between Augere Holdings (Netherlands) BV and Ubee Interactive Corp.

Operative part of the order

1. There is no longer any need to adjudicate on the action.
2. The applicant and the other party to the proceedings before the Board of Appeal shall bear their own costs and each shall pay one half of the costs incurred by the defendant.

(¹) OJ C 355, 17.11.2012.

Order of the General Court of 7 February 2013 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (ubee)

(Case T-408/12) (¹)

(Community trade mark — Opposition — Opposition withdrawn — No need to adjudicate)

(2013/C 101/40)

Language of the case: English

Parties

Applicant: Ubee Interactive Corp. (Jhubei City, Taiwan) (represented by: M. Nentwig, lawyer)

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

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 12 July 2012 (Case R 1848/2011-2) relating to opposition proceedings between Augere Holdings (Netherlands) BV and Ubee Interactive Corp.

Operative part of the order

1. There is no longer any need to adjudicate on the action.
2. The applicant and the other party to the proceedings before the Board of Appeal shall bear their own costs and each shall pay one half of the costs incurred by the defendant.

(¹) OJ C 355, 17.11.2012.

Action brought on 16 January 2013 — Senz Technologies/OHIM — Impliva (Umbrellas)

(Case T-22/13)

(2013/C 101/41)

Language in which the application was lodged: English

Parties

Applicant: Senz Technologies BV (Delft, Netherlands) (represented by: W. Hoyng and C. Zeri, lawyers)

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

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

Form of order sought

The applicant claims that the Court should:

- To annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) dated 26 September 2012 in Case R 2453/2010-3;
- Uphold the arguments put forward before the General Court and declare the registration of the Registered Community Design with no. 000579032-0001 to be valid;
- Order the Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Registered Community trade design in respect of which a declaration of invalidity has been sought: The trade design 'Umbrellas' — Registered Community design No 000579032-0001

Proprietor of the Community trade design: The applicant

Applicant for the declaration of invalidity of the Community trade design: Impliva BV

Grounds for the application for a declaration of invalidity: The application for a declaration of invalidity was based on Articles 4 and 9 Council Regulation No 6/2002

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1) and Articles 6 in connection with 25 (1)(b) of Council Regulation No 6/2002.

Action brought on 16 January 2013 — Senz Technologies/OHIM — Impliva (Umbrellas)

(Case T-23/13)

(2013/C 101/42)

Language in which the application was lodged: English

Parties

Applicant: Senz Technologies BV (Delft, Netherlands) (represented by: W. Hoyng and C. Zeri, lawyers)

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

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) dated 26 September 2012 in Case R 2459/2010-3;
- Uphold the arguments put forward before the General Court and declare the registration of the Registered Community Design with no. 000579032-0002 to be valid;
- Order the Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and pay those of the applicant.

Pleas in law and main arguments

Registered Community trade design in respect of which a declaration of invalidity has been sought: The trade design 'Umbrellas' — Registered Community design No 000579032-0002

Proprietor of the Community trade design: The applicant

Applicant for the declaration of invalidity of the Community trade design: Impliva BV

Grounds for the application for a declaration of invalidity: The application for a declaration of invalidity was based on Articles 4 and 9 Council Regulation No 6/2002

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1) and Articles 6 in connection with 25 (1)(b) of Council Regulation No 6/2002.

Action brought on 21 January 2013 — Cactus/OHIM — Del Rio Rodríguez (CACTUS OF PEACE CACTUS DE LA PAZ)

(Case T-24/13)

(2013/C 101/43)

Language in which the application was lodged: English

Parties

Applicant: Cactus SA (Bertrange, Luxembourg) (represented by: K. Manhaeve, lawyer)

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

Other party to the proceedings before the Board of Appeal: Isabel Del Rio Rodríguez (Malaga, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the Second Board of Appeal of 19 October 2012;

— Order the Defendant and — if applicable — Isabel Del Rio Rodríguez to jointly and severally pay all the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'CACTUS OF PEACE CACTUS DE LA PAZ', for goods and services in classes 31, 39 and 44 — Community trade mark application No 8 489 643

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

Mark or sign cited in opposition: Community trade mark registration No 963 694 of the word mark 'CACTUS' for goods and services in classes 2, 3, 5, 6, 7, 8, 9, 11, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 39, 41 and 42

Decision of the Opposition Division: Opposition upheld in part and application rejected in part

Decision of the Board of Appeal: Annulment of the appealed decision and rejection of the opposition in its entirety

Pleas in law: Infringement of Articles 76(1) and (2) and 75 of Council Regulation No 207/2009.

Action brought on 24 January 2013 — Pedro Group/OHIM — Cortefiel (PEDRO)

(Case T-38/13)

(2013/C 101/44)

Language in which the application was lodged: English

Parties

Applicant: Pedro Group Pte Ltd (Singapore, Singapore) (represented by: B. Brandreth, lawyer)

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

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

Form of order sought

The applicant claims that the Court should:

— Annul partially the Fourth Board of Appeal's Decision of 26 November 2012 (Case R 0271/2011-4): Annulment of that part of the Decision that annulled part of the decision of the Opposition Division dated 17 December 2010 and rejected the Applicant's CTM application for certain goods in class 25;

— Order that the respondent pays the applicant its costs incurred before the Board of Appeal and the General Court.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'PEDRO', for goods and services in classes 18, 25 and 35 — Community trade mark application No 7 541 857

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

Mark or sign cited in opposition: Community trade mark registration No 1 252 899 of the figurative mark in black and white 'Pedro del Hierro' for goods and services in classes 3, 9, 14, 18, 25, 35, and 42 and the International registration No 864 740 claimed to have effect in Bulgaria, Spain and Romania for the figurative mark in black and white 'Pedro del Hierro' for goods and services in classes 3, 14, 25 and 35

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

Decision of the Board of Appeal: Annulled the contested decision as far as it rejected the opposition for goods in class 25, rejected the application for these goods and dismissed the appeal for the remainder

Pleas in law: Infringement of Articles 8(1)(b), 15 and 42(2) of Council Regulation No 207/2009.

Action brought on 25 January 2013 — Cezar/OHIM — Poli-Eco (Skirting boards)

(Case T-39/13)

(2013/C 101/45)

Language in which the application was lodged: English

Parties

Applicant: Cezar Przedsiębiorstwo Produkcyjne Dariusz Bogdan Niewiński (Elk, Poland) (represented by: M. Nentwig and G. Becker, lawyers)

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

Other party to the proceedings before the Board of Appeal: Poli-Eco Tworzywa Sztuczne sp. z o.o. (Szprotawa, Poland)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of November 8, 2012 (case R 1512/2010-3);

— Order the defendant to bear the costs.

Pleas in law and main arguments

Registered Community trade design in respect of which a declaration of invalidity has been sought: The trade design 'skirting boards' — Registered Community design No 70 438-0002

Proprietor of the Community trade design: The applicant

Applicant for the declaration of invalidity of the Community trade design: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The application for a declaration of invalidity was based on a lack of novelty and individual character pursuant to Article 25 (1)(b) in conjunction with Articles 4 to 6 of Council Regulation No 6/2002

Decision of the Cancellation Division: Declared the contested RCD invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 25(1)(b), 63(1) and 62(1) of the Council Regulation No 6/2002.

Action brought on 4 February 2013 — Efaq Trade Mark Company v OHIM (FICKEN)

(Case T-52/13)

(2013/C 101/46)

Language of the case: German

Parties

Applicant: Efaq Trade Mark Company GmbH & Co. KG (Schemmerhofen, Germany) (represented by M. Wekwerth, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 October 2012 in Case R 493/2012-1;

— Order the defendant to pay the costs including those incurred in the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'FICKEN' for goods and services in Classes 25, 32, 33 and 43 — Community trade mark application No 9 274 366

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(f) and Article 7(2) of Regulation No 207/2009

Action brought on 31 January 2013 — Vans/OHIM (Line which slants and curves)

(Case T-53/13)

(2013/C 101/47)

Language of the case: English

Parties

Applicant: Vans, Inc. (Cyprus, United States) (represented by: M. Hirsch, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul the contested decision in its entirety;
- Order the defendant to pay the costs of the proceeding.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark containing a device of a line which slants and curves for goods in classes 18 and 25 — Community trade mark application No 10 263 838

Decision of the Examiner: Rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and 7(3) of Council Regulation No 207/2009.

Action brought on 4 February 2013 — Efaq Trade Mark Company v OHIM (FICKEN LIQUORS)

(Case T-54/13)

(2013/C 101/48)

Language of the case: German

Parties

Applicant: Efaq Trade Mark Company GmbH & Co. KG (Schemmerhofen, Germany) (represented by M. Wekwerth, lawyer)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 November 2012 in Case R 2544/2011-1;
- Order the defendant to pay the costs including those incurred in the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark including the word element 'FICKEN LIQUORS' for goods and services in Classes 25, 32, 33 and 35

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(f) and Article 7(2) of Regulation No 207/2009

Action brought on 4 February 2013 — Formula One Licensing/OHIM — Idea Marketing (F1H2O)

(Case T-55/13)

(2013/C 101/49)

Language in which the application was lodged: English

Parties

Applicant: Formula One Licensing BV (Rotterdam, Netherlands) (represented by: B. Klingberg, lawyer)

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

Other party to the proceedings before the Board of Appeal: Idea Marketing SA (Lausanne, Switzerland)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of appeal in case R 1247/2011-4;

- Order the defendant to bear the costs of the proceedings before the Office for Harmonisation;
- Order the intervener to bear the costs of the proceedings before the Office for Harmonisation.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'F1H2O' , for goods and services in classes 9, 25, 38 and 41 — International Registration No 925 383 designating the European Union

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

Mark or sign cited in opposition: International Registration No 732 134, British trade mark No 2277746B, Community trade mark No 3 934 387, International registration N 845 571, Benelux trademark No 749 056, British trade mark No 2277746 D, Community trade mark No 631 531, Community trade mark No 3 429 396, International Registration No 714 320, International Registration No 823 226 and Benelux trade mark No 732 601 of the mark 'F1 et al.' for goods and services in classes 1, 3, 4, 7, 8, 9, 11, 12, 14, 16, 18, 21, 24, 25, 28, 29, 30, 32 to 36, 38, 39 and 41 to 43

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and (5) of Council Regulation No 207/2009.

Action brought on 30 January 2013 — ClientEarth and Stichting BirdLife Europe v Commission

(Case T-56/13)

(2013/C 101/50)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom); and Stichting BirdLife Europe (Zeist, Netherlands) (represented by: O. Brouwer, lawyer)

Defendants: European Commission

Form of order sought

The applicants claim that the Court should:

- Annul the defendant's refusal of their request for access to the latest draft of a literature review, on the so-called 'carbon-debt' of bioenergy derived from biomass, pursuant to 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, and Regulation (EC) No 1367/2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies; and
- Order the defendant to pay applicants' costs for conducting these proceedings including the costs of any intervening parties.

Pleas in law and main arguments

In support of the action, the applicants rely on a single plea in law.

The applicants contend that as a result of its failure to address them with an express decision regarding their request for access within the time-limits for the processing of confirmatory applications contained in Articles 8(1) and 8(2) of Regulation (EC) No 1049/2001, the defendant impliedly refused access within the meaning of Article 8(3). Further, the applicants state that this implied refusal decision was unmotivated and therefore they submit that it should be annulled for the reason of the Commission's breach of its obligation to state reasons under Article 8(1) of Regulation (EC) No 1049/2001, Article 41(2), 3rd indent of the Charter of Fundamental Rights of the European Union and Article 296 TFEU.

Action brought on 6 February 2013 — Reiner Appelrath-Cüpper/OHIM — Ann Christine Lizenzmanagement (AC)

(Case T-60/13)

(2013/C 101/51)

Language in which the application was lodged: English

Parties

Applicant: Reiner Appelrath-Cüpper Nachf. GmbH (Cologne, Germany) (represented by: C. Schumann and A. Berger, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ann Christine Lizenzmanagement GmbH & Co. KG (Braunschweig, Germany)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of 28 November 2012 (R 108/2012-4) insofar as the appeal was upheld and the CTM applied for was rejected;
- Order the defendant to pay the cost of the proceedings;
- Order the intervener to pay the costs of the proceedings before the Office for Harmonisation.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'AC', for goods and services in classes 9, 14, 18, 25 and 35 — Community trade mark application No 9 070 021

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: German trademarks No 30 666 076 and No 30 666 074 and International trade mark registration No 948 259 designating several Member States of the European Union of the figurative mark 'AC ANNE CHRISTINE', for goods and services in classes 3, 9, 14, 18, 25 and 35; Community trade mark No 6 904 783, for goods in classes 3, 9, 14 and 25; Community trademark No 6 905 541 for goods in classes 3, 14 and 25

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

Decision of the Board of Appeal: Upheld the appeal partly and annulled the contested decision with respect goods and services of classes 9, 14, 18, 25 and 35, rejected the CTM applied for these goods and services and rejected the appeal for the remainder

Pleas in law: Infringement of Articles 8(1)(b), 15 and 42(2) of Council Regulation No 207/2009.

Action brought on 5 February 2013 — Three-N-Products Private v OHIM — Munindra Holding (AYUR)

(Case T-63/13)

(2013/C 101/52)

Language in which the application was lodged: French

Parties

Applicant: Three-N-Products Private Ltd (New Delhi, India) (represented by: M. Thewes and T. Chevrier, lawyers)

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

Other party to the proceedings before the Board of Appeal: Munindra Holding BV (Lelystad, Netherlands)

Form of order sought

The applicant claims that the Court should:

- annul Decision R 2296/2011-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 23 November 2012;
- in the alternative, annul the contested decision as regards the 'consultancy services in the field of herbal remedies, nutrition, health and beauty care', in Class 44;
- order OHIM and the other party to the proceedings before the Board of Appeal to pay the costs incurred in the proceedings before the General Court and before the Board of Appeal of OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'AYUR' for goods and services in Classes 3, 5, 16 and 44 — Community trade mark No 5 429 469

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Munindra Holding BV

Grounds for the application for a declaration of invalidity: Registered Benelux word mark 'AYUS' for goods and services in Classes 3, 5, 29, 30 and 31

Decision of the Cancellation Division: Application upheld in part

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 1 February 2013 — Novartis Europharm v Commission

(Case T-67/13)

(2013/C 101/53)

Language of the case: English

Parties

Applicant: Novartis Europharm Ltd (Horsham, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the European Commission C(2012) 8605 final of 19 November 2012 to grant a marketing authorisation to Hospira UK Ltd, in accordance with Article 3 of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1); and
- Order the European Commission to pay its own costs and those of the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law, alleging that the contested decision is unlawful in that it constitutes an infringement of the data protection rights of Novartis Europharm Ltd. for its product Aclasta pursuant to Articles 13(4) of Regulation (EC) No. 2309/93 ⁽¹⁾, read in conjunction with Article 89 of Regulation (EC) No. 726/2004 ⁽²⁾. As Aclasta was granted a separate independent marketing authorisation through the centralised procedure the Aclasta authorisation does not fall under the same global marketing authorisation as Zometa (another product of Novartis Europharm Ltd) specified in article 6(1) of Directive 2001/83 ⁽³⁾ for the purposes of data protection.

In addition, the contested Decision is also unlawful in that it constitutes an infringement of Article 10(1) of Directive 2001/83/EC as data protection for the reference medicinal product Aclasta has not expired and hence the conditions for granting a marketing authorisation under this article have not been complied with.

⁽¹⁾ Council Regulation (EEC) No 2309/93 of 22 July 1993 laying down Community procedures for the authorization and supervision of medicinal products for human and veterinary use and establishing a European Agency for the Evaluation of Medicinal Products

⁽²⁾ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance)

⁽³⁾ Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

Action brought on 7 February 2013 — Anapurna/OHIM — Annapurna (ANNAPURNA)

(Case T-71/13)

(2013/C 101/54)

Language in which the application was lodged: English

Parties

Applicant: Anapurna GmbH (Berlin, Germany) (represented by: P. Ehrlinger and T. Hagen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Annapurna SpA (Prato, Italy)

Form of order sought

The applicant claims that the Court should:

- Set aside the contested decision of the Fifth Board of Appeal of OHMI of 3 December 2012, inasmuch as it upheld the registration of Community trademark No 001368166 'ANNAPURNA', and did not declare it null and void, for the goods 'bags' (class 18), 'bed covers and bed linen' (class 24) and 'articles of clothing, headgear, slippers' (class 25);
- Order the intervening party to pay the costs of the proceedings including the costs incurred during the course of the appeal proceedings;
- Request the defendant to produce the evidence of use ('Exhibits') submitted by the intervening party within the framework of the nullity proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'ANNAPURNA' for goods in classes 3, 18, 24 and 25 — Community trade mark application No 1 368 166

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

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Revoked the Community trade mark in part

Decision of the Board of Appeal: Annulled the contested decision in part and revoked the Community trade mark for further goods

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.

Action brought on 8 February 2013 — Boehringer Ingelheim Pharma/OHIM — Nepentes (Momarid)

(Case T-75/13)

(2013/C 101/55)

Language in which the application was lodged: English

Parties

Applicant: Boehringer Ingelheim Pharma (Ingelheim, Germany) (represented by: V. von Bomhard and D. Slopek, lawyers)

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

Other party to the proceedings before the Board of Appeal: Nepentes S.A. (Warsaw, Poland)

Form of order sought

The applicant claims that the Court should:

— Annul OHIM's Fourth Board of Appeal's decision of 28 November 2012 in Case R 2292/2011-4 in so far as it allowed registration of the mark MOMARID in respect of sanitary preparations for medical purposes; dietetic substances adapted for medical use; pharmaceutical and medical preparations, substances and products for protecting, maintaining, treating or conditioning for the skin, body, face, mouth, lips, eyes, hair, hands and nails; pharmaceutical and medical preparations and substances for the care and appearance of the skin, body, face, mouth, lips, eyes, hair, hands and nails; pharmaceutical and medical products and preparations for slimming purposes; dermatological pharmaceutical products, preparations and substances; dermatological preparations for the prevention and treatment of skin disorders; dermatological preparations (medicated); pharmaceutical preparations for the treatment of dermatological disorders; pharmaceutical preparations for the topical treatment of dermatological disorders; dermatological medicinal products; veterinary pharmaceutical preparations for dermatological use; veterinary medicinal products for treatment of hormonal disorders; hormones for medical purposes; hormone preparations for veterinary use; hormones; steroid products, hormone preparations for pharmaceutical and medical use; hygiene products; chemicals for pharmaceutical use (the 'Contested Goods');

— Order that the costs of the proceedings be borne by the defendant, or — in the event that the other party before OHIM intervenes on the side of the defendant — that they be borne jointly by the defendant and the intervener

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'Momarid', for goods and services in class 5 — Community trade mark application No 9 164 328

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

Mark or sign cited in opposition: Community trade mark No 2 396 448 of the mark 'LONARID' for goods in class 5

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Upheld the appeal in part

Pleas in law: Infringement of Article 75 of Council Regulation No 207/2009 in conjunction with Rule 50(2)(h) Commission Regulation No 2868/95 and Article 8(1)(b) of Council Regulation No 207/2009.

Action brought on 11 February 2013 — Accorinti and Others v ECB

(Case T-79/13)

(2013/C 101/56)

Language of the case: Italian

Parties

Applicants: Alessandro Accorinti (Nichelino, Italy), Michael Acherer (Bressanone, Italy), Giuliano Agostinetti (Mestre, Italy), Marco Alagna (Milan, Italy), Riccardo Alagna (Milan, Italy), Agostino Amalfitano (Forio, Italy), Emanuela Amsler (Turin, Italy), Francine Amsler (Turin, Italy), Alessandro Anelli (Bellinzago Novarese, Italy), Angelo Giovanni Angione (Potenza, Italy), Giancarlo Antonelli (Verona, Italy), Giuseppe Aronica (Licata, Italy), Elisa Arsenio (Sesto San Giovanni, Italy), Pasquale Arsenio (Sesto San Giovanni, Italy), Luigi Azzano (Concordia Sagittaria, Italy), Giovanni Baglivo (Lecce, Italy), Mario Bajeli (Bergamo, Italy), Stefano Baldoni (Matera, Italy), Giulio Ballini (Lonato, Italy), Antonino Barbara (Naples, Italy), Armida Baron (Cassola, Italy), Paolo Baroni (Rome, Italy), Lucia Benassi (Scandiano, Italy), Michele Benelli (Madignano, Italy), Erich Bernard (Lana, Italy), Flaminia Berni (Rome, Italy), Luca Bertazzini (Monza, Italy), Adriano Bianchi (Casale Corte Cerro, Italy), Massimiliano Bigi (Montecchio Emilia, Italy), Daniele Fabrizio Bignami (Milan, Italy), Sergio Borghesi (Coredo, Italy), Borghesi Srl (Cles, Italy), Sergio Bovini (Cogoleto, Italy), Savino Brizzi (Turin, Italy), Annunziata Brum (Badiola, Italy), Christina Brunner (Laives, Italy), Giovanni Busso (Caselette, Italy), Fabio Edoardo Cacciuttolo (Milan, Italy), Vincenzo Calabrò (Rome,

Italy), Carlo Cameranesi (Ancona, Italy), Giuseppe Campisciano (Besana in Brianza, Italy), Allegra Canepa (Pisa, Italy), Luca Canonaco (Como, Italy), Piero Cantù (Vimercate, Italy), Fabio Capelli (Tortona, Italy), Gianluca Capello (Sanremo, Italy), Sergio Capello (Sanremo, Italy), Filippo Caracciolo di Melito (Lucca, Italy), Mario Carchini (Carrara, Italy), Filippo Carosi (Rome, Italy), Elena Carra (Rome, Italy), Claudio Carrara (Nembro, Italy), Ivan Michele Casarotto (Verona, Italy), Anna Maria Cavaghetto (Turin, Italy), Gabriele Lucio Cazzulani (Segrate, Italy), Davide Celli (Rimini, Italy), Antonio Cerigato (Ferrara, Italy), Paolo Enrico Chirichilli (Rome, Italy), Celestino Ciocca (Rome, Italy), Mariagiuseppa Civale (Milan, Italy), Benito Colangelo (Bollate, Italy), Roberto Colicchio (Milan, Italy), Edoardo Colli (Trieste, Italy), Nello Paolo Colombo (Casatenovo, Italy), Mario Concini (Tuenno, Italy), Marika Congestrì (S. Onofrio, Italy), Luigi Corsini (Pistoia, Italy), Maria Chiara Corsini (Genoa, Italy), Aniello Cucurullo (Civitavecchia, Italy), Roberto Cugola (Melara, Italy), Roberto Cupioli (Rimini, Italy), Giuseppe D'Acunto (Lucca — S. Anna, Italy), Stefano D'Andrea (Ancona, Italy), Nazzareno D'Amici (Rome, Italy), Michele Danelon (Gruaro, Italy), Piermaria Carlo Davoli (Milan, Italy), Iole De Angelis (Rome, Italy), Roberto De Pieri (Treviso, Italy), Stefano De Pieri (Martellago, Italy), Ario Deasti (Sanremo, Italy), Stefano Marco Debernardi (Aosta, Italy), Gianfranco Del Mondo (Casoria, Italy), Salvatore Del Mondo (Gaeta, Italy), Gianmaria Dellea (Castelvecchana, Italy), Rocco Delsante (Langhirano, Italy), Gianmarco Di Luigi (Sant'Antimo, Italy), Alessandro Di Tomizio (Reggello, Italy), Donata Dibenedetto (Altamura, Italy), Angela Dolcini (Pavia, Italy), Denis Dotti (Milan, Italy), Raffaele Duino (San Martino Buon Albergo, Italy), Simona Elefanti (Montecchio Emilia, Italy), Maurizio Elia (Rome, Italy), Claudio Falzoni (Besnate, Italy), Enrico Maria Ferrari (Rome, Italy), Giuseppe Ferraro (Pago Vallo Lauro, Italy), Fiduciaria Cavour Srl (Rome, Italy), Giorgio Filippello (Caccamo, Italy), Giovanni Filippello (Caccamo, Italy), Dario Fiorin (Venice, Italy), Guido Fortunati (Verona, Italy), Achille Furioso (Agrigento, Italy), Monica Furlanis (Concordia Sagittaria, Italy), Vitaliano Gaglianese (San Giuliano Terme, Italy), Antonio Galbo (Palermo, Italy), Gianluca Gallino (Milan, Italy), Giandomenico Gambacorta (Rome, Italy), Federico Gatti (Besana in Brianza, Italy), Raffaella Maria Fatima Gerardi (Lavello, Italy), Mauro Gini (Bressanone, Italy), Barbara Giudiceandrea (Rome, Italy), Riccardo Grillini (Lugo, Italy), Luciano Iaccarino (Verona, Italy), Vittorio Iannetti (Carrara, Italy), Franz Anton Inderst (Marlengo, Italy), Alessandro Lepore (Giovinazzo, Italy), Hermann Kofler (Merano, Italy), Fabio Lo Presti (Ponte S. Pietro, Italy), Silvia Locatelli (Brembate, Italy), Nicola Lozito (Grumo Appula, Italy), Rocco Lozito (Grumo Appula, Italy), Fabio Maffoni (Soncino, Italy), Silvano Maffoni (Orzinuovi, Italy), Bruno Maironi Da Ponte (Bergamo, Italy), Franco Maironi Da Ponte (Bergamo, Italy), Michele Maironi Da Ponte (Bergamo, Italy), Francesco Makovec (Lesmo, Italy), Concetta Mansi (Matera, Italy), Angela Marano (Melito di Napoli, Italy), Bruno Marchetto (Milan, Italy), Fabio Marchetto (Milan, Italy), Sergio Mariani (Milan, Italy), Lucia Martini (Scandicci, Italy), Alessandro Mattei (Treviso, Italy), Giorgio Matteredo (Seregno, Italy), Mauro Mazzone (Verona, Italy), Ugo Mereghetti (Brescia, Italy) authorised to act for Fulvia Mereghetti (Casamassima, Italy), Vitale Micheletti (Brescia, Italy), Giuseppe Mignano (Genoa, Italy), Fabio Mingo (Ladispoli, Italy), Giovanni Minoretti (Guidonia Montecelio, Italy), Filippo Miuccio (Rome, Italy), Fulvio Moneta Caglio de Suvich (Milan, Italy), Giancarlo Monti (Milan, Italy), Angelo Giuseppe Morellini (Besana in Brianza, Italy), Barbara Mozzambani (San Martino Buon Albergo, Italy), Mario Nardelli (Gubbio, Italy), Eugenio Novajra (Udine, Italy), Giorgio Omizzolo (Baone, Italy), Patrizia Paesani (Rome, Italy),

Daniela Paietta (Arona, Italy), Luigi Paparo (Volla, Italy), Davide Pascale (Milan, Italy), Salvatore Pasciuto (Gaeta, Italy), Sergio Pederzani (Ossuccio, Italy), Aldo Perna (Naples, Italy), Marco Piccinini (San Mauro Torinese, Italy), Nicola Piccioni (Soncino, Italy), Stefano Piedimonte (Naples, Italy), Mauro Pilego (Bolzano, Italy), Vincenzo Pipolo (Rome, Italy), Johann Poder (Silandro, Italy), Giovanni Polazzi (Milan, Italy), Santo Pullarà (Rimini, Italy), Patrizio Ragusa (Rome, Italy), Rosangela Raimondi (Arluno, Italy), Massimo Ratti (Milan, Italy), Gianni Resta (Imola, Italy), Giuseppe Ricciarelli (San Giustino, Italy), Enrica Rivi (Scandiano, Italy), Maria Rizescu (Pesaro, Italy), Alessandro Roca (Turin, Italy), Mario Romeni (Milan, Italy), Claudio Romano (Naples, Italy), Gianfranco Romano (Pisticci, Italy), Ivo Rossi (Nettuno, Italy), Alfonso Russo (Scandiano, Italy), Iginio Russolo (San Quirino, Italy), Francesco Sabato (Barcelona, Spain), Giuseppe Salvatore (Silvi, Italy), Luca Eudilio Sarzi Amadè (Milan, Italy), Tiziano Scagliola (Terlizzi, Italy), Antonio Scalzullo (Avellino, Italy), Liviano Semeraro (Gavirate, Italy), Laura Liliana Serpente (Ancona, Italy), Maria Grazia Serpente (Ancona, Italy), Luciana Serra (Milan, Italy), Giuseppe Silecchia (Altamura, Italy), Paolo Sillani (Bergamo, Italy), Vincenzo Solombrino (Naples, Italy), Patrizia Spiezia (Casoria, Italy), Alberto Tarantini (Rome, Italy), Halyna Terentyeva (Concordia Sagittaria, Italy), Vincenzo Tescione (Caserta, Italy), Riccardo Testa (Cecina, Italy), Salvatore Testa (Pontinia, Italy), Nadia Toneatti (Trieste, Italy), Giuseppe Ucci (Como, Italy), Giovanni Urbanelli (Pescara, Italy), Giuseppina Urciuoli (Avellino, Italy), Amelia Vaccaro (Chiavari, Italy), Maria Grazia Valentini (Tuenno, Italy), Nicola Varacalli (Occhieppo Superiore, Italy), Giancarlo Vargiu (Bologna, Italy), Salvatore Veltri Barraco Alestra (Marsala, Italy), Roberto Vernero (Milan, Italy), Vincenza Vigilia (Castello d'Agogna, Italy), Celso Giuliano Vigna (Castel San Pietro Terme, Italy), Roberto Vignoli (Santa Marinella, Italy), Georg Weger (Merano, Italy), Albino Zanichelli (Busana, Italy), Andrea Zecca (Rome, Italy), Maurizio Zorzi (Ora, Italy)

(represented by: S. Sutti and R. Spelta, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

- declare the present action admissible;
- having determined and assessed the liability of the European Central Bank (ECB) pursuant to Article 340 TFEU, order the defendant to make good the damage arising in the amount of at least EUR 12 504 614,98, or in such other amount as the Court may deem just and fair, subject to updating in the course of the proceedings, together with interest at the statutory rate and default interest on the amount, accruing from the due dates to the date of actual payment;
- alternatively, again having determined and assessed the liability of the ECB pursuant to Article 340 TFEU, order the defendant to make good the damage arising in the amount of at least EUR 3 668 020,39, or in such other amount as the Court may deem just and fair, subject to updating in the course of the proceedings, together with interest at the statutory rate and default interest on the amount, accruing from the due dates to the date of actual payment;

- in the further alternative, again having determined and assessed the liability of the ECB pursuant to Article 340 TFEU, order the defendant to make good the damage arising in the amount of at least EUR 2 667 651,19, or in such other amount as the Court may deem just and fair, subject to updating in the course of the proceedings, together with interest at the statutory rate and default interest on the amount, accruing from the due dates to the date of actual payment;
- in the further and final alternative, order the ECB to make good the damage, on the basis of the lawful nature of the conduct in question or liability without fault, in the amount the Court deems just and fair;
- order the ECB to pay the costs.

Pleas in law and main arguments

The applicants in the present proceedings submit that the defendant has incurred non-contractual liability on account of the manner in which it intervened in the restructuring of the Greek debt, and claim that the ECB is liable pursuant to the third paragraph of Article 340 TFEU, since all the requirements for such liability are satisfied, namely, the alleged conduct of the ECB challenged by the applicants is unlawful, there is actual damage and there is a causal link between the damage and the conduct of the institution itself.

In that connection, the applicants state that the defendant:

- concluded in secret with the Hellenic Republic a bond swap agreement dated 15 February 2012;
- failed or refused to participate in the restructuring of the Greek debt imposed on the Hellenic State in order to obtain the second *tranche* of aid, in a conflict of interest, since the ECB is itself part of the Troika;
- adopted the decision of 5 March 2012 which made the eligibility of Greek securities as collateral conditional upon the provision of a buy-back scheme in favour of national central banks (NCBs) only, even if lacking credit quality.

In support of the action, the applicants submit that the defendant's course of conduct has had a direct, negative, causal impact on their legal positions which have suffered from the increase in the size of the 'haircut' for private investors, deferment of credit and the downgrading of private investors to the category of 'junior' creditors.

The applicants submit that the conduct in question constitutes a clear infringement of higher rules of law intended to protect individuals, in particular the principles of (i) the equal treatment of creditors, (ii) non-discrimination and equality, (iii) proportionality, (iv) protection of legitimate expectations, (v) the protection of the legitimate expectations of the holders of securities, and (vi) legal certainty.

In the alternative, should the Court of Justice not categorise the ECB's conduct as unlawful, the applicants submit none the less that there is still strict liability or liability without fault on the part of the ECB or liability for a lawful act, since the ECB's course of conduct challenged in the present proceedings has caused abnormal and special harm, in the light also of the fundamental rights as protected by the Charter of Nice, post the Treaty of Lisbon, referred to in Article 17 (property), Article 21 (principle of non-discrimination), Article 38 (consumer protection) and Article 41 (right to good administration) of that charter.

Action brought on 13 February 2013 — Panasonic and MT Picture Display v Commission

(Case T-82/13)

(2013/C 101/57)

Language of the case: English

Parties

Applicants: Panasonic Corp. (Kadoma, Japan) and MT Picture Display Co. Ltd (Matsuocho, Japan) (represented by: R. Gerrits, A. Bischke, lawyers, M. Hoskins, QC, and S. Abram, Barrister)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- Annul Commission Decision C(2012) 8839 final adopted on 5 December 2012 in case COMP/39437 — TV and Computer Monitor Tubes, in whole or in part, as appropriate, insofar as it finds that the applicants infringed Article 101 TFEU and Article 53 EEA Agreement;
- Annul the penalties imposed on the applicants, or reduce such penalties, as appropriate; and
- Order the defendant to pay the applicants' costs for these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of right to a fair hearing in relation to the period up to 10 February 2003, as:

- The contested decision bases its finding that Matsushita Electric Industrial Co., Ltd. ('MEI') participated in the alleged single and continuous infringement of Article 101 TFEU relating to colour picture tubes (the 'CPT cartel') in the period before 10 February 2003 on two new claims, which did not appear in the Statement of Objections: first that MEI knew, or should have known, about the CPT cartel and secondly that MEI made a strategic decision to participate in the CPT cartel through bilateral contacts. Similarly, the contested decision relies for the first time on certain oral statements and documentary evidence, or parts thereof, in support of these allegations;
 - The inclusion of these allegations and materials for the first time in the contested decision constitutes a serious breach of Panasonic Corporation's ('Panasonic') rights of defence is inadmissible and requires annulment of the said decision against MEI in respect of this period.
2. Second plea in law, alleging failure to prove that MEI knew or should have known of the existence and/or content of the CPT cartel in relation to the period up to 10 February 2003, as:
- Even if the allegations and/or evidence referred to under the first plea in law were admissible, the Commission has failed to prove that MEI knew or should have known that the bilateral contacts in which it participated were part of an overall plan and that the overall plan included all of the constituent elements of the alleged CPT cartel;
 - Neither does the evidence relied on show that MEI made a strategic choice to participate in any CPT cartel via bilateral meetings.
3. Third plea in law, alleging failure to prove that MEI/MT Picture Display Co., Ltd. ('MTPD') participated in the single and continuous infringement identified in the contested decision as from 10 February 2003, as:
- The activities in Europe and Asia as from 10 February 2003 did not form part of a common plan with a single objective;
 - MEI/MTPD did not participate in any multilateral CPT meetings in Europe;
 - In relation to MEI/MTPD's bilateral contacts during this period, the Commission has failed to prove that MEI/MTPD knew or should have known of the existence and/or content of the multilateral cartel activities in Europe involving other addressees of the contested decision.

4. Fourth plea in law, alleging that the penalty imposed on Panasonic/MTPD should be overturned completely, alternatively reduced, as:

- Panasonic/MTPD's primary case is that the findings of infringement against each of them should be annulled in their entirety and the penalty imposed on each of them should be overturned completely;
- Alternatively, if Panasonic/MTPD's application for annulment is successful on some but not all grounds, the penalty imposed on Panasonic/MTPD should be reduced accordingly;
- Further or alternatively, even if the finding of infringement is sustained, the fine imposed on Panasonic/MTPD is excessive, because the contested decision uses a flawed methodology which assigns an erroneously inflated value to intra-group sales for fine calculation purposes;
- Further or alternatively still, if it is not overturned completely, the fine imposed on Panasonic/MTPD should be reduced in recognition of its lesser involvement in the alleged CPT cartel.

Appeal brought on 11 February 2013 by BS against the judgment of the Civil Service Tribunal of 12 February 2012 in Case F-90/11, BS v Commission

(Case T-83/13 P)

(2013/C 101/58)

Language of the case: Italian

Parties

Appellant: BS (Messina, Italy) (represented by C. Pollicino, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- Declare the appeal admissible and well founded;
- Set aside the judgment under appeal;
- Confirm that the 'Rules on insurance against the risk of accident and occupational disease for officials of the European Communities' cover 'the entire cutaneous system' and not just 'deep cutaneous burns and pathological cutaneous scarring';

— Order that a new medical committee be set up, with the task of reviewing the appellant's case;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment dismissing an action seeking, in essence, annulment of the decision by which the appointing authority concluded the procedure initiated for the purpose of Article 73 of the Staff Rules of Officials of the European Union by finding that the appellant did not suffer physical or mental impairments as a result of an attack on the appellant.

The appellant relies on two grounds of appeal.

1. The first ground of appeal, alleging breach of the third paragraph of Article 22 of the Rules on Insurance.

It is submitted in this regard that, contrary to the requirements of those rules, the medical committee did not reach its decision as a collegiate body and, when it encountered a legal problem, failed to declare that it lacked competence.

2. Second ground of appeal, alleging breach of Article 73 of the European reference schedule for the assessment of physical and mental impairments for medical purposes.

According to the appellant, by the judgment under appeal, the Civil Service Tribunal dismissed the action without providing the specific interpretation sought as to whether the Common Rules in question cover the entire cutaneous system, or only deep cutaneous burns and pathological cutaneous scarring.

Appeal brought on 14 February 2013 by Diana Grazyte against the judgment of the Civil Service Tribunal of 5 December 2012 in Case F-76/11 Grazyte v Commission

(Case T-86/13 P)

(2013/C 101/59)

Language of the case: Italian

Parties

Appellant: Diana Grazyte (Utena, Lithuania) (represented by R. Guarino, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

- Set aside the judgment of the Civil Service Tribunal of 5 December 2012 in Case F-76/11 *Grazyte v Commission*;

- Annul the decision of the Director of DG HR D, acting as the authority responsible for concluding contracts of employment, of 29 April 2011 and, as a consequence, declare that the appellant is entitled to the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities;

- In the alternative, refer the case back to the Civil Service Tribunal for a decision;

- Order the defendant to pay the costs of the proceedings at first instance and the appeal proceedings.

Pleas in law and main arguments

The appellant relies on three grounds of appeal.

1. First ground of appeal, alleging breach and/or misinterpretation of Community law with regard to the rules on the interpretation of law and the rationale of Article 4 of Annex VII to the Staff Regulations, and failure to state reasons.

- It is submitted in this regard that both the wording of the provision in question (which refers to 'reasons other than the performance of duties in the service of a State or of an international organisation') and the rationale of that provision have the effect of excluding from the allowance any person who has left his country of origin without establishing a lasting tie with the country to which he has moved precisely because he was employed by an international organisation. It is not possible, on the basis of the wording, the logic or indeed the rationale of that provision, to arrive at the conclusion, as did the Tribunal in the judgment under appeal, that periods following employment in the service of an international organisation are to be disregarded when the move occurred, as in the present case, for personal reasons.

2. Second ground of appeal, alleging breach and/or misinterpretation of Community law with regard to the classification of Agencies as international organisations for the purpose of Article 4 of Annex VII to the Staff Rules.

— It is submitted in this regard that an ‘international organisation’ for the purpose of Article 4 of Annex VII to the Staff Regulations has been defined with great precision by the case-law. Thus, in its judgment of 30 November 2006 in *J v Commission* (in particular paragraphs 42-43), the General Court of the European Union considered that, in order for an organisation to be classified as international for the purpose of the application of Article 4(1)(a) of Annex VII to the Staff Regulations, it is necessary for it to be formally identified and recognised as such by the other States or by other international organisations created by the States. In any event, for the purpose of determining whether an organisation is an international organisation, regard must be had only to its own composition, not whether it is a member of organisations with an international composition. In the light of those strict criteria, neither the EFSA nor the ETF may be regarded as international organisations within the meaning of Article 4.

3. Third ground of appeal, alleging breach of the principle of equal treatment.

— It is submitted that the interpretation given to the provision in question by the court at first instance is illogical and has the effect of giving rise to discrimination between two categories of officials, for which this is no objective basis, by treating the position of a person who has been outside his country of origin simply because he was performing duties in the service of a State or an international organisation (thus not severing contact with his home country) in the same way as that of a person who has left his country of origin for personal reasons, leading to a severing of links with that country, and only subsequently worked for a State or an international organisation. Moreover, according to the judgment under appeal, the situation of two officials who left their respective countries of origin more than ten years ago to raise a new family abroad are to be treated differently simply because one of those individuals, after living in the new country for many years, was employed by an international organisation.

Action brought on 14 February 2013 — Aer Lingus v Commission

(Case T-101/13)

(2013/C 101/60)

Language of the case: English

Parties

Applicant: Aer Lingus Ltd (Dublin, Ireland) (represented by: D. Piccinin, Barrister, and A. Burnside, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the European Commission dated 14 November 2012, taken under clause 1.4.9 of the Commitments given by International Consolidated Airlines Group (‘IAG’) to the Commission as a condition for the Commission’s approval of IAG’s acquisition of British Midlands Limited (‘bmi’) under Council Regulation 139/2004 ⁽¹⁾, evaluating bids for take-off and landing slots at Heathrow Airport that IAG was required to divest under the Commitments, and ranking the bid submitted Virgin Atlantic Airways (‘Virgin’) for slots for the London Heathrow — Edinburgh route above the bid submitted by Aer Lingus Limited (‘Aer Lingus’) for those slots;
- Order that the Commission should pay the applicant’s costs.

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 an error in the interpretation of the Commitments. The applicant argues that the Commission erred in its interpretation of the criterion for evaluating the bids set out in clause 1.4.10(c) of the Commitments, concerning the bidding airline’s plans to offer feed to third party carriers. The Commission interpreted that criterion as encompassing Virgin’s plans to carry passengers on the London Heathrow — Edinburgh route on its own connecting flights to long haul origins/destinations, whereas that criterion is in fact limited to the provision of connecting passengers to third party carriers.
2. Second plea in law, alleging failure to take appropriate account of advice from the Monitoring Trustee ^(?). The applicant argues that the Commission failed in its duty to take appropriate account of advice from the Monitoring Trustee, and/or to give adequate reasons for departing from that advice in four respects:
 - The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee’s advice on Aer Lingus’ advantages in respect of interlining;
 - The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee’s advice on Aer Lingus’ advantages in respect of operating costs and sensitivity analysis;
 - The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee’s advice on how the various measures should be analysed in combination to produce an overall ranking; and

— The Commission failed to seek advice from the Monitoring Trustee in relation to the relative advantages of awarding the slots as a single package.

3. Third plea in law, alleging manifest error of assessment. The applicant argues that the Commission manifestly erred in reaching its conclusion that Aer Lingus' bid did not offer competitive constraints that were at least 'essentially similar' to those offered by Virgin's bid. The Commission erred both in its appraisal of the competitive constraints that the competing bids offered on the London Heathrow — Edinburgh route, and in its appraisal of the benefits that

would flow from awarding all of the routes to a single carrier rather than awarding the London Heathrow — Edinburgh route to Aer Lingus and the remaining routes to Virgin.

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

(²) Person appointed in the framework of the IAG's acquisition of bmi in order to perform the functions of monitoring IAG's fulfilment of the Commitments

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 19 February 2013 — BB v Commission

(Case F-17/11) ⁽¹⁾

(Civil Service — Contractual agent — Non-renewal of a fixed term contract — Action for annulment — Action for damages)

(2013/C 101/61)

Language of the case: French

Parties

Applicant: BB (represented by: A. Blot, lawyer)

Defendant: European Commission (represented by: J. Currall and G. Berscheid, Agents)

Re:

Application to annul the decision of the defendant not to renew the contract of the applicant.

Operative part of the judgment

The Tribunal:

1. *The application is dismissed*
2. *The Commission shall bear its own costs and pay one third of the costs incurred by BB.*
3. *BB shall bear two-thirds of his own costs.*

⁽¹⁾ OJ C 186, 25.6.2011, p. 33.

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