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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2010/C 221/01)

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

OJ C 209, 31.7.2010

Past publications

OJ C 195, 17.7.2010

OJ C 179, 3.7.2010

OJ C 161, 19.6.2010

OJ C 148, 5.6.2010

OJ C 134, 22.5.2010

OJ C 113, 1.5.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 17 June 2010 — European Commission v Portuguese Republic

(Case C-105/08) [1]

(Failure of a Member State to fulfil obligations — Freedom to provide services and free movement of capital — Articles 49 EC and 56 EC and Articles 36 and 40 of the EEA Agreement — Direct taxation — Taxation of interest received — Discriminatory treatment of non-residents — Burden of proof)

(2010/C 221/02)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: R. Lyal and M. Afonso, Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, J. Menezes Leitão and C. Guerra Santos, Agents)

Intervener in support of the defendant: Republic of Lithuania (represented by: D. Kriaučiūnas and V. Kazlauskaitė-Švenčionienė, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 49 EC and 56 EC — Difference in treatment of taxation of interest paid to financial institutions depending on whether they are resident or not in Portuguese territory

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Republic of Lithuania to bear its own costs.*

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[1] OJ C 116, 9.5.2008.

Judgment of the Court (Grand Chamber) of 15 June 2010 — European Commission v Kingdom of Spain

(Case C-211/08) [1]

(Failure of a Member State to fulfil obligations — Article 49 EC — Social security — Hospital care needed during a temporary stay in another Member State — Lack of right to assistance from the competent institution to supplement that of the institution of the Member State of stay)

(2010/C 221/03)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: E. Traversa and R. Vidal Puig, acting as Agents)

Defendant: Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo, Agent)

Interveners in support of the defendant: Kingdom of Belgium (represented by M. Jacobs and L. Van den Broeck, Agents), Kingdom of Denmark (represented by J. Bering Liisberg and R. Holdgaard, Agents), Republic of Finland (represented by A. Guimaraes-Purokoski, Agent), United Kingdom of Great Britain and Northern Ireland (represented by H. Walker, Agent and M. Hoskins, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC and Article 22(1)(a)(i) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2) — Non-reimbursement of hospital costs incurred abroad — Exceptional circumstances

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Kingdom of Belgium, the Kingdom of Denmark, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 197, 2.8.2008.

Judgment of the Court (Third Chamber) of 10 June 2010 (Reference for a preliminary ruling from the Østre Landsret — Denmark) — CopyGene A/S v Skatteministeriet

(Case C-262/08) ([1])

(Sixth VAT Directive — Exemptions — Article 13A(1)(b) — Hospital and medical care — Closely related activities — Duly recognised establishments of a nature similar to hospitals or centres for medical treatment or diagnosis — Private stem cell bank — Services of collection, transportation, analysis and storage of umbilical cord blood of newborn children — Possible autologous or allogeneic use of stem cells)

(2010/C 221/04)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: CopyGene A/S

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Østre Landsret — Article 13A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), now Article 132(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemption for hospital and medical care and closely related activities — Services consisting in the collection, transportation, analysis and storage of umbilical cord blood from newborn children with a view to autologous use of stem cells, potentially closely related to possible future hospital care, supplied by a private stem cell bank

Operative part of the judgment

1. *The concept of activities 'closely related' to 'hospital and medical care' within the meaning of Article 13A(1)(b) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as meaning that it does not cover activities such as those at issue in the main proceedings consisting in the collection, transportation and analysis of umbilical cord blood and the storage of stem cells contained in it, where the medical care provided in a hospital environment to which those activities are merely potentially related has not been performed, commenced or yet envisaged;*

2. *If the services of stem cell banks such as those at issue in the main proceedings are performed by professional medical personnel, where such stem cell banks, although authorised by the competent health authorities of a Member State, within the framework of Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissue and cells, to handle human tissue and cells, do not receive any support from the public social security scheme and where the payment for those services is not covered by that scheme, Article 13A(1)(b) of Sixth Directive 77/388 does not preclude the national authorities from deciding that taxable persons such as CopyGene A/S are not 'other duly recognised establishments of a similar nature' to 'hospitals [and] centres for medical care or diagnosis' within the meaning of Article 13A(1)(b) of Sixth Directive 77/388. However, neither can that provision be interpreted as requiring, as such, the competent authorities to refuse to treat a private stem cell bank*

as an establishment 'duly recognised' for the purposes of the exemption in question. To the extent that it is necessary, it is for the referring court to determine whether the refusal of recognition for the purposes of the exemption provided for in Article 13A(1)(b) of Sixth Directive 77/388 complies with European Union law and, in particular, with the principle of fiscal neutrality.

([1]) OJ C 209, 15.08.2008.

Judgment of the Court (Fourth Chamber) of 24 June 2010 (references for preliminary rulings from the Commissione tributaria regionale di Torino — Italy) — P. Ferrero e C. SpA v Agenzia delle Entrate — Ufficio di Alba (C-338/08), General Beverage Europe BV v Agenzia delle Entrate — Ufficio di Torino 1 (C-339/08)

(Joined Cases C-338/08 and C-339/08) ([1])

(Reference for a preliminary ruling — Directive 90/435/EEC — Concept of withholding tax — Application of a levy of 5 % at the time of distribution of dividends and of the 'refund of the adjustment surtax' by an Italian subsidiary to its parent company established in the Netherlands, pursuant to a bilateral convention)

(2010/C 221/05)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale di Torino

Parties to the main proceedings

Applicants: P. Ferrero e C. SpA (C-338/08), General Beverage Europe BV (C-339/08)

Defendants: Agenzia delle Entrate — Ufficio di Alba (C-338/08), Agenzia delle Entrate — Ufficio di Torino 1 (C-339/08)

Re:

Reference for a preliminary ruling — Commissione Tributaria Regionale di Torino — Interpretation of Articles 5(1) and 7(2) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) — Concept of withholding tax — Parent company in the Netherlands receiving dividends from its subsidiary in Italy subject to the deduction of a levy of 5 % pursuant to Article 10(2) of the Convention between Italy and the Kingdom of the Netherlands for the avoidance of economic double taxation of dividends — Tax applied to the sums paid by way of 'maggiorazione di conguaglio', laid down by Article 10(3) of the Convention.

Operative part of the judgment

1. *Subject, inter alia, to determination by the referring court, as specified in paragraph 38 of this judgment, of the nature of the 'refund' of the 'adjustment surtax' at issue in the cases before it, made by an Italian company to a Netherlands company, pursuant to Article 10(3) of the Convention for the avoidance of double taxation with respect to taxes on income and on capital and for prevention of fiscal evasion (with protocol), signed at The Hague on 8 May 1990, in so far as it applies to that refund, a withholding tax such as that at issue in the cases in the main proceedings is not a withholding tax on distributed profits generally prohibited by Article 5(1) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, in the version thereof in force at the material time. However, if the referring court were to find that the 'refund' of the 'adjustment surtax' is not fiscal in nature, a withholding tax such as that at issue in the cases before it would be a withholding tax on distributed profits which is, as a rule, prohibited by Article 5(1) of Directive 90/435.*

2. *If the referring court were to regard the withholding tax at issue in the cases before it as a withholding tax on distributed profits within the meaning of Article 5(1) of Directive 90/435, that withholding tax could be held to come within the scope of Article 7(2) of that directive only if, first, that convention contained provisions intended to eliminate or mitigate the economic double taxation of dividends and, secondly, the charging of that withholding tax did not cancel out the effects thereof, a matter which it would be for the referring court to assess.*

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Second Chamber) of 24 June 2010 (reference for a preliminary ruling from the Tribunale di Treviso (Italy)) — Criminal proceedings against Luigi Pontini, Emanuele Rech, Dino Bonora, Giovanni Forato, Laura Forato, Adele Adami, Sinergie sas di Rech & C., Impresa individuale Forato Giovanni, Forato srl, Giglio srl, Impresa individuale Rech Emanuele, Ivo Colomberotto, Agenzia Veneta per i pagamenti in agricoltura — AVEPA, Agenzia per le Erogazioni in Agricoltura (AGEA), Agrirocca di Rech Emanuele, Asolat di Rech Emanuele & C.

(Case C-375/08) [1]

(Agriculture — Common organisation of the markets — Beef and veal — Regulation (EC) No 1254/1999 — Community financial aid concerning special premiums for male bovine animals and payments for extensification — Conditions for granting — Calculation of the stocking density on the holding — Meaning of 'available forage area' — Regulation (EEC) No 3887/92 and Regulation (EC) No 2419/2001 — Integrated administration and control system for certain Community aid schemes — National legislation making the grant of Community financial aid conditional upon production of a valid legal document attesting to the right to use the areas under forage)

(2010/C 221/06)

Language of the case: Italian

Referring court

Tribunale di Treviso

Parties in the main proceedings

Luigi Pontini, Emanuele Rech, Dino Bonora, Giovanni Forato, Laura Forato, Adele Adami, Sinergie sas di Rech & C., Impresa individuale Forato Giovanni, Forato srl, Giglio srl, Impresa individuale Rech Emanuele, Ivo Colomberotto, Agenzia Veneta per i pagamenti in agricoltura — AVEPA, Agenzia per le Erogazioni in Agricoltura (AGEA), Agrirocca di Rech Emanuele, Asolat di Rech Emanuele & C.

Re:

Reference for a preliminary ruling — Tribunale di Treviso — Interpretation of Council Regulation No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal (OJ 1999 L 160, p. 21) — Meaning of 'forage area' — National legislation making, in the absence of an ownership right, the grant of Community financial aid conditional upon production of a valid legal document attesting to the right to use the areas under forage.

Operative part of the judgment

The Community legislation — and, in particular, Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal — does not make the eligibility of an application for special premiums for male bovine animals or payments for extensification conditional upon the production of a valid legal document attesting to the aid applicant's right to use the forage areas to which the application relates. However, subject to compliance with the objectives pursued by the Community legislation, as well as the general principles of Community law and, in particular, the principle of proportionality, the Community legislation does not preclude Member States from imposing, under their national legislation, a requirement to produce such a document.

[1] OJ C 327, 20.12.2008.

Judgment of the Court (Second Chamber) of 17 June 2010 — Lafarge SA v European Commission, Council of the European Union

(Case C-413/08 P) [1]

(Appeal — Agreements, decisions and concerted practices — Plasterboard — Distortion of the clear sense of the evidence — Burden of proof — No proper statement of reasons — Regulation No 17 — Article 15(2) — Penalty — Repeated infringement — Stage at which the deterrent effect of the fine is to be taken into account)

(2010/C 221/07)

Language of the case: French

Parties

Appellant: Lafarge SA (represented by: A. Winckler, F. Brunet, E. Paroche, H. Kanellopoulos and C. Medina, avocats)

Other parties to the proceedings: European Commission (represented by: F. Castillo de la Torre and N. von Lingen, Agents), Council of the European Union

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 8 July 2008 in Case T-54/03 *Lafarge SA* v *Commission* rejecting the appellant's action for the annulment of the Commission's decision of 27 November 2002, which imposed a fine on the appellant pursuant to Article 81 EC — Cartel fixing prices in the plasterboard sector — Infringement of the obligation to state adequate grounds and the rules governing the burden of proof — Infringement of the principles of equal treatment and proportionality as regards the calculation of the fine — Concept of 'repeated infringement'

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Lafarge SA to pay the costs.*

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Fourth Chamber) of 17 June 2010 — European Commission v Italian Republic

(Case C-423/08) ([1])

(Failure of a Member State to fulfil obligations — Own resources — Procedures for collecting import or export duties — Failure to comply with the time-limits for entry of the own resources — Late payment of own resources relating to those duties)

(2010/C 221/08)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: A. Aresu and A. Caeiros, Agents)

Defendant: Italian Republic (represented by: I. Bruni, Agent, G. Albenzio and F. Arena, avvocati dello Stato)

Intervener in support of the defendant: Republic of Finland (represented by: J. Heliskoski, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 6, 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, on the system of the Communities' own resources (OJ 1989 L 155, p. 1), Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p.1), and Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Delay in payment of Communities' own resources in the event of subsequent recovery of import duties

Operative part of the judgment

The Court:

1. *Declares that, by failing to comply with the time-limits for entry of the Communities' own resources in the event of subsequent recovery and by delaying payment of those resources, the Italian Republic has failed to fulfil its obligations under Articles 2, 6 and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, and the same articles of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, and under Article 220 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code.*

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

3. *Orders the Republic of Finland to bear its own costs.*

([1]) OJ C 313, 6.12.2008.

Judgment of the Court (First Chamber) of 17 June 2010 — European Commission v French Republic

(Case C-492/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2006/112/EC — Value added tax — Reduced rate — Articles 96 and 98(2) — Annex III, point 15 — Legal aid — Services of lawyers — Payment in full or in part by the State)

(2010/C 221/09)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Afonso, Agent)

Defendant: French Republic (represented by: G. de Bergues and J.-S. Pilczer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 96 and 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1; 'the VAT directive') — Reduced rate of VAT — Categories of services listed in Annex III to the VAT directive which can benefit from a reduced rate — Reduction in the rate of VAT for services provided by lawyers paid by the State under the legal aid scheme

Operative part of the judgment

The Court:

1. *Declares that, in applying a reduced rate of value added tax to the supply of services by avocats, avocats au Conseil d'État et à la Cour de cassation and avoués, for which they are paid in full or in part by the State under the legal aid scheme, the French Republic has failed to fulfil its obligations under Articles 96 and 98(2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax;*

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

([1]) OJ C 19, 24.01.2009.

Judgment of the Court (Fourth Chamber) of 17 June 2010 (reference for a preliminary ruling from the Finanzgericht München — Germany) — British American Tobacco (Germany) GmbH v Hauptzollamt Schweinfurt

(Case C-550/08) ([1])

(Directive 92/12/EEC — Products subject to excise duty — Importation of raw tobacco not subject to excise duty under the inward processing procedure — Processing into cut tobacco — Movement between Member States — Accompanying document)

(2010/C 221/10)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: British American Tobacco (Germany) GmbH

Defendant: Hauptzollamt Schweinfurt

Re:

Reference for a preliminary ruling — Finanzgericht München — Interpretation of Articles 5(2) and 15(4) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Cut tobacco subject to excise duty, manufactured in a Member State under an inward processing procedure in the form of a suspension system from raw tobacco which was not subject to excise duty when it was imported into Community territory — Whether, for purposes of applying the duty-suspension arrangements to the intra-Community movement of that tobacco product, an accompanying document drawn up by the consignor in accordance with Article 18(1) of Directive 92/12/EEC is required

Operative part of the judgment

The first indent of the first subparagraph of Article 5(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products must be interpreted as meaning that products subject to excise duty (such as manufactured tobacco) which are manufactured from products not subject to excise duty (such as raw tobacco) and imported into the Community under the inward-processing procedure are to be deemed to be subject to duty-suspension arrangements, within the meaning of that provision, even though they have become products subject to excise duty only by virtue of having been processed within Community territory, with the result that they can move between Member States without the administrative authorities being entitled to insist on production of the administrative or commercial document provided for in Article 18(1) of that directive.

([1]) OJ C 69, 21.03.2009.

Judgment of the Court (Third Chamber) of 24 June 2010 — European Commission v Italian Republic

(Case C-571/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 95/59/EC — Taxes other than turnover taxes which affect the consumption of manufactured tobacco — Article 9(1) — Free determination, by manufacturers and importers, of the maximum retail selling prices of their products — National legislation imposing a minimum retail selling price for cigarettes — Justification — Protection of public health)

(2010/C 221/11)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: W. Mölls and L. Pignataro, acting as Agents)

Defendant: Italian Republic (represented by: I. Bruni, then by G. Palmieri, acting as Agents and F. Arena, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 9 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ 1995 L 291, p. 40) — Fixing minimum prices — Approval of prices.

Operative part of the judgment

The Court:

1. *Declares that, by providing for a minimum price for cigarettes, the Italian Republic has failed to fulfil its obligations under Article 9(1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco, as amended by Council Directive 2002/10/EC of 12 February 2002;*

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

([1]) OJ C 55, 7.3.2009.

Judgment of the Court (First Chamber) of 3 June 2010 (reference for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Regionalna Mitnicheska Direktsia — Plovdv v Petar Dimitrov Kalinchev

(Case C-2/09) ([1])

(Excise duties — Taxation of used vehicles — Taxation of imported used vehicles higher than that imposed on vehicles which are already in circulation in the national territory — Taxation according to the year of manufacture and mileage of the vehicles — Concept of 'similar domestic products')

(2010/C 221/12)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Regionalna Mitnicheska Direktsia — Plovdiv

Defendant: Petar Dimitrov Kalinchev

Re:

Reference for a preliminary ruling — Varhoven Administrativen Sad — Interpretation of Article 25 and Article 90, first paragraph, of the EC Treaty and of Article 3(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — National (excise) duty imposed on second-hand motor vehicles from a Member State on their introduction onto national territory, higher than the excise payable on new motor vehicles introduced onto the same national territory, which, being already in circulation, are no longer subject to excise duties on their subsequent resale as second-hand vehicles — Meaning of 'similar domestic products' — Compatibility of national legislation with Community rules

Operative part of the judgment

1. *The first subparagraph of Article 3(3) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products does not apply to a case such as the main proceedings and cannot therefore preclude a Member State from laying down provisions levying excise duty on the introduction of used motor vehicles into its territory, if that duty is not directly payable on the second-hand purchase of such vehicles which are already in the country and on which excise duty has already been paid on first introduction into the territory of the Member State, provided that such a system does not give rise to border-crossing formalities in trade between Member States.*

2. *The first paragraph of Article 110 TFEU must be interpreted as meaning that used vehicles imported into Bulgaria must be considered as similar products to used vehicles already registered in that State which were imported into that State as new vehicles, independently of their origin.*

3. *The first paragraph of Article 110 TFEU precludes a Member State from applying differing rules on the levying of excise duty on motor vehicles in circumstances such as those in the present case where that excise duty is levied differently on used vehicles imported from other Member States and used vehicles already registered in that State and which were imported into that State as new vehicles.*

([1]) OJ C 55, 7.3.2009.

Judgment of the Court (Grand Chamber) of 17 June 2010 (reference for a preliminary ruling from the Fővárosi Bíróság (Republic of Hungary)) — Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal

(Case C-31/09) [1]

(Directive 2004/83/EC — Minimum standards for the qualification and status of third country nationals or stateless persons as refugees — Stateless person of Palestinian origin who has not sought protection or assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — Application for refugee status — Refusal based on a failure to meet the conditions laid down in Article 1A of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 — Right of that stateless person to be recognised as a refugee on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83)

(2010/C 221/13)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Nawras Bolbol

Defendant: Bevándorlási és Állampolgársági Hivatal

Re:

Reference for a preliminary ruling — Fővárosi Bíróság (Hungary) — Interpretation of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) — Stateless person of Palestinian origin who has not availed herself of the protection and assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), whose application seeking the grant of refugee status has been refused on the ground of failure to meet the conditions laid down in Article 1A of the Geneva Convention — Right of that stateless person to be granted refugee status on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83/EC

Operative part of the judgment

For the purposes of the first sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, a person receives protection or assistance from an agency of the United Nations other than the United Nations High Commissioner for Refugees, when that person has actually availed himself of that protection or assistance.

[1] OJ C 82, 04.04.2009.

Judgment of the Court (Third Chamber) of 10 June 2010 — European Commission v Republic of Portugal

(Case C-37/09) [1]

(Failure of a Member State to fulfil its obligations — Environment — Management of illegally disposed of waste — Directive 2006/12/EC — Directive 80/68/EEC)

(2010/C 221/14)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: B. Laignelot, S. Pardo Quintillán and P. Guerra e Andrade, acting as Agents)

Defendant: Republic of Portugal (represented by: L. Inez Fernandes, M. J. Lois and P. Lopes, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), which codified Directive 75/442/EEC on waste and Articles 3 and 5 of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43) — Landfill of waste in disused quarries — 'dos Limas, dos Linos e dos Barreiras' quarries (Lourosa) — Lack of scrutiny

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, all the measures necessary, within the framework of the management of waste illegally placed in the old quarries of Limas and Linos, situated in the commune of Lourosa, the Portuguese Republic has failed to fulfil its obligations under the terms of Articles 4 and 8 respectively of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, which codified Directive 75/442/EEC on waste and Articles 3 and 5 of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances;*

2. *Dismisses the remainder of the action;*

3. *Orders the Republic of Portugal to bear its own costs and to pay two-thirds of the costs incurred by the Commission. Orders the Commission to bear one-third of its own costs.*

([1]) OJ C 82, 4.4.2009

Judgment of the Court (Fourth Chamber) of 24 June 2010 — Barbara Becker v Harman International Industries, Inc., Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-51/09 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Word mark Barbara Becker — Opposition by the proprietor of the Community word marks BECKER and BECKER ONLINE PRO — Assessment of the likelihood of confusion — Assessment of the conceptual similarity of the signs)

(2010/C 221/15)

Language of the case: English

Parties

Appellant: Barbara Becker (represented by: P. Baronikians, Rechtsanwalt)

Other parties to the proceedings: Harman International Industries, Inc. (represented by: M. Vanhegan, Barrister), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 2 December 2008 in Case T-212/07 *Harman International Industries* v *OHIM — Becker (Barbara Becker)*, in which the Court of First Instance annulled Decision R 502/2006-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 7 March 2007 annulling the Opposition Division's decision refusing the registration of the word mark 'Barbara Becker' for goods in Class 9 in opposition proceedings brought by Harman International Industries, Inc.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 2 December 2008 in Case T-212/07 Harman International Industries v OHIM — Becker (Barbara Becker);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 82, 4.4.2009.

Judgment of the Court (First Chamber) of 10 June 2010 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Leo-Libera GmbH v Finanzamt Buchholz in der Nordheide

(Case C-58/09) ([1])

(Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Article 135(1)(i) — Exemption of betting, lotteries and other forms of gambling — Conditions and limitations — Discretionary power of the Member States)

(2010/C 221/16)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Leo-Libera GmbH

Defendant: Finanzamt Buchholz in der Nordheide

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation exempting from VAT only certain forms of betting and lotteries and excluding from that exemption all other forms of gambling

Operative part of the judgment

Article 135(1)(i) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the exercise of the discretionary power of the Member States to fix conditions and limitations on the exemption from value added tax provided for by that provision allows those States to exempt from that tax only certain forms of gambling.

([1]) OJ C 113, 16.5.2009.

Judgment of the Court (Fourth Chamber) of 17 June 2010 (reference for a preliminary ruling from the Commissione tributaria provinciale di Alessandria — Italy) — Agra Srl v Agenzia Dogane Ufficio delle Dogane di Alessandria

(Case C-75/09) ([1])

(Regulation (EEC) No 2913/92 — Community Customs Code — Article 221(3) and (4) — Post-clearance recovery of the customs debt — Limitation period — Act which could give rise to criminal court proceedings)

(2010/C 221/17)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Alessandria

Parties to the main proceedings

Applicant: Agra Srl

Defendant: Agenzia Dogane Ufficio delle Dogane di Alessandria

Re:

Reference for a preliminary ruling — Commissione Tributaria Provinciale di Alessandria — Interpretation of Article 221(3) and (4) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Recovery of the customs debt — Exceeding the time-limit for communicating the amount of duty to be recovered in the case of a debt resulting from an act that could give rise to criminal court proceedings — National legislation providing for the suspension of that time-limit until the decision given on the criminal proceedings initiated because of the act that caused the customs debt has become definitive.

Operative part of the judgment

Article 221(3) and (4) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as not precluding national legislation under which, where the failure to pay customs duty has its origins in a criminal offence, time for the purposes of the limitation period for recovery of the customs debt is to run from the date on which the order or judgment in the criminal proceedings becomes final.

([1]) OJ C 102, 1.5.2009.

Judgment of the Court (Second Chamber) of 10 June 2010 (reference for a preliminary ruling from the VAT and Duties Tribunal, Manchester — United Kingdom) — Future Health Technologies Limited v The Commissioners for Her Majesty's Revenue and Customs

(Case C-86/09) ([1])

(Value added tax — Directive 2006/112/EC — Exemptions — Article 132(1)(b) and (c) — Hospital and medical care and closely related activities — Provision of medical care in the exercise of the medical and paramedical professions — Collection, testing and processing of umbilical cord blood — Storage of stem cells — Possible future therapeutic use — Transactions comprising a bundle of features and acts)

(2010/C 221/18)

Language of the case: English

Referring court

VAT and Duties Tribunal, Manchester

Parties to the main proceedings

Appellant: Future Health Technologies Limited

Respondent: The Commissioners for Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, Manchester — Interpretation of Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax — Exemptions — Concepts of 'hospital and medical care and closely related activities' and 'the provision of medical care' — Services for collecting, transporting, analysing blood and stem cells from the umbilical cord of newborn children with a view to possible medical treatment

Operative part of the judgment

1. *Where activities consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use, are intended only to ensure that a particular resource will be available for medical treatment in the uncertain event that treatment becomes necessary but not, as such, to diagnose, treat or cure diseases or health disorders, such activities, whether taken together or separately, do not come within the concept of 'hospital and medical care' in Article 132(1)(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, or within that of 'the provision of medical care' in Article 132(1)(c) of that directive. It would be otherwise, as regards the analysis of umbilical cord blood, only if such analysis were actually intended to enable a medical diagnosis to be made, which it is for the referring court, if need be, to determine.*

2. *The concept of activities 'closely related' to 'hospital and medical care', within the meaning of Article 132(1)(b) of Directive 2006/112, is to be interpreted as not covering activities, such as those in question in the main proceedings, consisting in the dispatch of a kit for collecting blood from the umbilical cord of newborn children and in the testing and processing of that blood and, where appropriate, in the storage of stem cells contained in it for possible future therapeutic use to which those activities are merely potentially related and which has not been performed, commenced or yet envisaged.*

([1]) OJ C 102, 01.05.2009.

Judgment of the Court (Fourth Chamber) of 24 June 2010 (reference for a preliminary ruling from the Tribunale di Trani (Italy)) — Francesca Sorge v Poste Italiane SpA

(Case C-98/09) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work — Clause 8 — Details to be included in a fixed-term contract concluded for the purpose of replacing an absent worker — Reduction of the general level of protection afforded to workers — Interpretation in conformity with European Union law)

(2010/C 221/19)

Language of the case: Italian

Referring court

Tribunale di Trani

Parties to the main proceedings

Applicant: Francesca Sorge

Defendant: Poste Italiane SpA

Re:

Reference for a preliminary ruling — Tribunale di Trani — Interpretation of clause 8 of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Domestic legislation that does not provide, on the signature of a fixed-term replacement contract, for the names of the persons replaced and the reasons for their replacement to be indicated

Operative part of the judgment

1. *Clause 8(3) of the framework agreement on fixed-term work, concluded on 18 March 1999 contained in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding domestic legislation, such as that in issue in the main proceedings, which has abolished the requirement for the employer to indicate in fixed-term contracts concluded for the purpose of replacing absent workers the names of those workers and the reasons for their replacement, and which merely provides that such fixed-term contracts must be in writing and must indicate the reasons for the use of those contracts, in so far as those new conditions are*

offset by the adoption of other safeguards or protective measures or concern only a limited category of workers having entered into a fixed-term employment contract, which it is for the national court to ascertain.

2. *Because clause 8(3) of that framework agreement has no direct effect, it is for the national court, if it should be led to conclude that the national legislation at issue in the main proceedings is incompatible with European Union law, not to disapply that provision but, so far as possible, to give it an interpretation in conformity with Directive 1999/70 and with the objective pursued by that framework agreement.*

([1]) OJ C 129, 6.6.2009.

Judgment of the Court (Fourth Chamber) of 17 June 2010 (References for a preliminary ruling from the Conseil d'État — Belgium) — Terre wallonne ASBL (C-105/09), Inter-Environnement Wallonie ASBL (C-110/09) v Région wallonne

(Joined Cases C-105/09 and C-110/09) ([1])

(Directive 2001/42/EC — Assessment of the effects of certain plans and programmes on the environment — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Action programmes in respect of vulnerable zones)

(2010/C 221/20)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Terre wallonne ASBL (C-105/09), Inter-Environnement Wallonie ASBL (C-110/09)

Defendant: Région wallonne

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1) and Art 3(2) and (4) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Drawing up of management plans relating to designated vulnerable zones — Nature and scope of the obligation — Necessary assessment of the impact of the nitrogen management plan on the environment

Operative part of the judgment

An action programme adopted pursuant to Article 5(1) of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources is in principle a plan or programme covered by Article 3(2)(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment since it constitutes a 'plan' or 'programme' within the meaning of Article 2(a) of the latter directive and contains measures compliance with which is a requirement for issue of the consent that may be granted for carrying out projects listed in Annexes I and II to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997.

([1]) OJ C 129, 06.06.2009.

Judgment of the Court (Seventh Chamber) of 25 March 2010 — European Commission v Hellenic Republic

(Case C-169/09) ([1])

(Failure of Member State to fulfil obligations — Ecodesign requirements for energy-using products — Failure to transpose within the prescribed period)

(2010/C 221/21)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: S. Schønberg and M. Karanasou Apostolopoulou, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou, acting as Agent)

Re:

Failure of Member State to fulfil obligations — Failure to take, in the prescribed period, the provisions necessary to comply with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council (OJ 2005 L 191, p. 29)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005 establishing a framework for the setting of ecodesign requirements for energy-using products and amending Council Directive 92/42/EEC and Directives 96/57/EC and 2000/55/EC of the European Parliament and of the Council, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 153, 4.7.2009

Judgment of the Court (Seventh Chamber) of 24 June 2010 — European Commission v Hellenic Republic

(Case C-478/09) (1)

(Merger or division of public limited liability companies — Requirement of an independent expert's report — Failure to transpose within the prescribed period)

(2010/C 221/22)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: S. La Pergola and M. Karanasou Apostolopoulou, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou and V. Karra, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to take within the prescribed period the measures necessary to comply with Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies.

Operative part of the judgment

The Court:

1. *Declares that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;*

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

(1) OJ C 24, 30.1.2010.

Judgment of the Court (Grand Chamber) of 22 June 2010 (references for a preliminary ruling from the Cour de cassation (France)) — Proceedings against Aziz Melki (C-188/10) and Sélim Abdeli (C-189/10)

(Joined Cases C-188/10 and C-189/10) (1)

(Reference for a preliminary ruling — Article 267 TFEU — Examination of whether a national law is consistent both with European Union law and with the national constitution — National legislation granting priority to an interlocutory procedure for the review of constitutionality — Article 67 TFEU — Freedom of movement for persons — Abolition of border control at internal borders — Regulation (EC) No 562/2006 — Articles 20 and 21 — National legislation authorising identity checks in the area between the land border of France with States party to the Convention Implementing the Schengen Agreement and a line drawn 20 kilometres inside that border)

(2010/C 221/23)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Aziz Melki (C-188/10), Sélim Abdeli (C-189/10)

Re:

Reference for a preliminary ruling — Cour de cassation — Interpretation of the general principles of European Union law and Articles 67 and 267 TFEU — Mandatory requirement to first refer the matter to the Conseil constitutionnel when a provision of domestic legislation, because it is contrary to European Union law, is presumed to be in breach of the Constitution — Primacy of European Union law over national law — Freedom of movement for persons — Absence of internal border controls for persons

Operative part of the judgment

1. *Article 267 TFEU precludes Member State legislation which establishes an interlocutory procedure for the review of the constitutionality of national laws, in so far as the priority nature of that procedure prevents — both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question — all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, Article 267 TFEU does not preclude such national legislation, in so far as the other national courts or tribunals remain free:*

   — *to refer to the Court of Justice for a preliminary ruling, at whatever stage of the proceedings they consider appropriate, even at the end of the interlocutory procedure for the review of constitutionality, any question which they consider necessary,*

   — *to adopt any measure necessary to ensure provisional judicial protection of the rights conferred under the European Union legal order, and*

   — *to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to European Union law.*

   It is for the referring court to ascertain whether the national legislation at issue in the main proceedings can be interpreted in accordance with those requirements of European Union law.

2. *Article 67(2) TFEU, and Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), preclude national legislation which grants to the police authorities of the Member State in question the power to check, solely within an area of 20 kilometres from the land border of that State with States party to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 19 June 1990, the identity of any person, irrespective of his behaviour and of specific circumstances giving rise to a risk of breach of public order, in order to ascertain whether the obligations laid down by law to hold, carry and produce papers and documents are fulfilled, where that legislation does not provide the necessary framework for that power to guarantee that its practical exercise cannot have an effect equivalent to border checks.*

([1]) OJ C 161, 19.6.2010.

Appeal brought on 7 December 2009 by Goldman Management AD against the judgment delivered on 16 November 2009 in Case T-354/09

(Case C-507/09 P)

(2010/C 221/24)

Language of the case: Bulgarian

Parties

Appellant: Goldman Management AD (represented by: I. Lilkova, advokat)

Other parties to the proceedings: European Commission, Republic of Bulgaria

By Order of 6 May 2010, the Court of Justice (Seventh Chamber) declared the appeal manifestly inadmissible.

Reference for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 6 May 2010 — ADV Allround Vermittlungs AG in liquidation v Finanzamt Hamburg-Bergedorf

(Case C-218/10)

(2010/C 221/25)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: ADV Allround Vermittlungs AG in liquidation

Defendant: Finanzamt Hamburg-Bergedorf

Questions referred

1. Is the sixth indent of Article 9(2)(e) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment ('Directive 77/388') ([1]) [subsequently, Article 56(1)(f) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in the version in force until 31 December 2009 ('Directive 2006/112')] to be interpreted as meaning that 'supply of staff' also includes the supply of self-employed persons not in the employ of the trader providing the service?

2. Are Articles 17(1), 17(2)(a), 17(3)(a) and 18(1)(a) of Directive 77/388 [now Articles 167, 168(a), 169(a) and 178(a) of Directive 2006/112] to be interpreted as meaning that provision must be made in national procedural law to ensure that the taxability and liability to tax of one and the same service are assessed in the same way in relation to the trader providing the service and the trader receiving it, even where the two traders fall within the jurisdiction of different tax authorities?

Only if the answer to Question 2 is in the affirmative:

3. Are Articles 17(1), 17(2)(a), 17(3)(a) and 18(1)(a) of Directive 77/388 [now Articles 167, 168(a), 169(a) and 178(a) of Directive 2006/112] to be interpreted as meaning that the period within which the recipient of a service may apply for a deduction of the input tax connected with the service received must not expire before a decision on taxability and liability to tax which is binding on the trader providing the service has been adopted?

([1]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Landgericht Baden-Baden (Germany) lodged on 10 May 2010 — Staatsanwaltschaft Baden-Baden v Leo Apelt

(Case C-224/10)

(2010/C 221/26)

Language of the case: German

Referring court

Landgericht Baden-Baden

Parties to the main proceedings

Applicant: Staatsanwaltschaft Baden-Baden

Defendant: Leo Apelt

Questions referred

1. With due regard for Article 5(1)(a) of Directive 91/439/EEC ([1]), which provides for licences for category D to be issued only to drivers already entitled to drive vehicles in category B, may a Member State refuse, in accordance with Article 1 and Article 8(2) and (4) of that Directive, to recognise the validity of a driving licence issued by another Member State for categories B and D — particularly with respect to category D — if the holder of that driving licence was granted the right to drive vehicles in category B before the right to drive was withdrawn by a court in the first Member State, whereas the right to drive vehicles in category D was not granted until after that withdrawal and after the expiry of the period simultaneously set before a new licence might be issued?

2. If the first question is answered in the negative:

May the first Member State refuse to recognise the aforementioned driving licence — particularly with respect to the right to drive vehicles in category D — in application of Article 11(4) of Directive 2006/126/EC [2], according to which a Member State is required to refuse to recognise the validity of a driving licence issued by another Member State to a person whose driving licence has been withdrawn in the territory of the former Member State, if the right to drive vehicles in category B was granted on 1 March 2006 and the right to right to drive vehicles in category D was granted on 30 April 2007 and the driving licence was issued on the latter date?

[1] Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1).
[2] Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18).

Reference for a preliminary ruling from the Sozialgericht Nürnberg (Germany) lodged on 10 May 2010 — Juan Pérez García, José Arias Neira, Fernando Barrera Castro, Dolores Verdun Espinosa, successor to José Bernal Fernández v Familienkasse Nürnberg

(Case C-225/10)

(2010/C 221/27)

Language of the case: German

Referring court

Sozialgericht Nürnberg

Parties to the main proceedings

Applicants: Juan Pérez García, José Arias Neira, Fernando Barrera Castro, Dolores Verdun Espinosa, successor to José Bernal Fernández

Defendant: Familienkasse Nürnberg

Questions referred

1. Is Article 77(2)(b)(i) of Regulation (EEC) No 1408/71 [1] to be interpreted as meaning that family allowances need not be granted by the former State of employment to persons who receive pensions for old age, invalidity or an accident at work or occupational disease under the legislation of more than one Member State and whose pension entitlement is based on the legislation of the former State of employment (national pension entitlement) if provision is made in the State of residence for a comparable, higher benefit, which is, however, incompatible with another benefit for which the person concerned, having been given the choice, has opted?

2. Is Article 78(2)(b)(i) of Regulation (EEC) No 1408/71 to be interpreted as meaning that family allowances for orphans of a deceased employed or self-employed person who was subject to the legislation of several Member States and who enjoyed a notional entitlement to an orphan's pension based on the legislation of the former State of employment (potential national pension entitlement) need not be granted by the former State of employment if provision is made in the State of residence for a comparable, higher benefit, which is, however, incompatible with another benefit for which the person concerned, having been given a choice, has opted?

3. Does the same apply to a benefit under Article 77 or Article 78 of Regulation (EEC) No 1408/71 for which provision is generally made in the children's State of residence, but for which the person concerned, as someone who is not being given a choice, cannot opt?

[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 1997 L 149, p. 2)

Reference for a preliminary ruling from the Tribunal de Grande Instance de Nanterre (France) lodged on 12 May 2010 — Tereos v Directeur général des douanes et droits indirects Receveur principal des douanes et droits indirects de Gennevilliers

(Case C-234/10)

(2010/C 221/28)

Language of the case: French

Referring court

Tribunal de Grande Instance de Nanterre

Parties to the main proceedings

Applicant: Tereos

Defendant: Directeur général des douanes et droits indirects, Receveur principal des douanes et droits indirects de Gennevilliers

Questions referred

1. Must Article 15(1)(d) of Regulation No 1260/2001 ([1]) be interpreted as meaning that, for the purpose of calculating the average loss, it is necessary to divide, for all categories of sugar exported, the total amount of the actual expenditure by the total amount of the quantities exported, regardless of whether refunds have actually been paid for those quantities or not?

2. Is Regulation No 1193/2009 ([2]) invalid in the light of Article 15 of Council Regulation No 1260/2001 in so far as it fixes a production levy for sugar calculated on the basis of an average loss the calculation of which involves, as regards sugar exported in processed products, a multiplication between the unit amount of the export refund relating to those products and the total quantities exported, including the quantities exported without benefiting from a refund, and not a division of the expenditure actually incurred by the total amount of the quantities exported, with or without a refund?

([1]) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

([2]) Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1).

Reference for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 14 May 2010 — Cathy Schulz-Delzers and Pascal Schulz v Finanzamt Stuttgart III

(Case C-240/10)

(2010/C 221/29)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Cathy Schulz-Delzers and Pascal Schulz

Defendant: Finanzamt Stuttgart III

Questions referred

1. (a) Is Paragraph 3(64) of the Einkommensteuergesetz (Law on Income Tax), in the version applicable in 2005 and 2006, compatible with the freedom of movement of workers pursuant to Article 45 of the 'Consolidated Version of the Treaty on the Functioning of the European Union' (TFEU) (Article 39 of the Treaty on the Establishment of the European Community; 'EC Treaty')?

   (b) Does Paragraph 3(64) of the Einkommensteuergesetz, in the version applicable in 2005 and 2006, constitute covert discrimination on grounds of nationality prohibited by Article 18 TFEU (Article 12 EC Treaty)?

2. If the reply to the first question is in the negative: is Paragraph 3(64) of the Einkommensteuergesetz, in the version applicable in 2005 and 2006, compatible with the freedom of movement of Union citizens under Article 21 TFEU (Article 18 EC Treaty)?

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat Salzburg (Austria) lodged on 17 May 2010 — Harald Jung and Gerald Hellweger v Magistrat der Stadt Salzburg, other party to the proceedings: Finanzamt Salzburg-Stadt

(Case C-241/10)

(2010/C 221/30)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat Salzburg

Parties to the main proceedings

Applicants: Harald Jung and Gerald Hellweger

Defendant: Magistrat der Stadt Salzburg

Other party to the proceedings: Finanzamt Salzburg-Stadt

Question referred

Is Annex X of the list referred to in Article 24 of the Act of Accession of the Republic of Hungary to the European Union (1. Freedom of movement for persons) ([1]) to be interpreted as meaning that the leasing of workers from Hungary to Austria cannot be regarded as a posting of those workers and that national restrictions concerning the employment of Hungarian workers in Austria apply equally, in Austria, in respect of Hungarian workers (regularly employed in Hungary) leased by Hungarian undertakings to Austria?

([1]) OJ 2003 L 236, p. 846.

Appeal brought on 18 May 2010 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (Third Chamber) delivered on 2 March 2010 in Case T-70/05: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Maritime Safety Agency (EMSA)

(Case C-252/10 P)

(2010/C 221/31)

Language of the case: English

Parties

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

Other party to the proceedings: European Maritime Safety Agency (EMSA)

Form of order sought

The appellant claims that the Court should:

— Set aside the decision of the General Court.

— Annul the decision of EMSA to reject the bid of the Appellant, submitted by the Appellant in tendering procedure EMSA C-1/01/04, relating to the contract entitled 'SafeSeaNet Validation and further development', and to award the contract to other tenderer.

— Order EMSA to pay the Appellant's legal and other costs including those incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The Appellant maintains that the contested judgment should be set aside on the following grounds:

First, the Appellant submits that the General Court committed an error in law adopting an erroneous interpretation of the Financial Regulation ([1]), the Implementing Rules and Directive 92/50 ([2]) and especially Article 97 of the Financial Regulation, Article 138 of the Implementing Rules and article 17 par. 1 of Directive 92/50.

Second, the Appellant submits that the General Court erred in law by stating, in par 178 of its judgment, that since ED had an in-depth knowledge of the tender specifications it was in a position to deduce the relative advantages of the successful tenderer. The General Court appears herein to implicitly admit that the information provided by the contracting authority was limited. However, instead of annulling the contested decision, the General Court gives a fresh and wholly wrong interpretation of the duty to state reasons since it connects that to the personal qualities of the addressee of that decision. Moreover, the assumption of the General Court is wrong since the Appellant was unable (and remains so even today) to understand the relative advantages (if any) of the successful tenderer, especially since the General Court does not sufficiently motivate its Judgment in order to clearly identify them.

Thirdly, the Appellant considers that the General Court appears to err in law by stating with regards to the plea as to the manifest error of assessment that the Appellant limited its arguments to general assertions and consequently failed to show whether, and in what way, the alleged errors affected the final outcome of the tenders' evaluation. The court seems to contradict itself by rejecting the plea as to the insufficient statement of reasons, while at the same time, requiring ED to demonstrate 'in detail' the way the alleged errors are reflected in the evaluation committee's report.

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

([2]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts
OJ L 209, p. 1

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-León (Spain) lodged on 25 May 2010 — David Barcenilla Fernández v Gerardo García, S.L.

(Case C-256/10)

(2010/C 221/32)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-León

Parties to the main proceedings

Applicant: David Barcenilla Fernández

Defendant: Gerardo García, S.L.

Questions referred

1. Are Articles 3, 5(2), 6 and 7 of Directive 2003/10/EC [1] to be interpreted as meaning that a company in which the workers' daily noise exposure level is above 85 dbA (measured without taking account of the effect of hearing protectors) fulfils the obligations to take preventive measures laid down in that Directive in respect of physical working conditions by providing those workers with hearing protectors so that, with the level of attenuation provided by those protectors, the workers' daily noise exposure level is reduced to less than 80 dbA?

2. Is Article 5(2) of Directive 2003/10/EC to be interpreted as meaning that the 'programme of technical and/or organisational measures' which must be adopted by a company in which the workers' daily noise exposure level is above 85 dbA (measured without taking account of the effect of hearing protectors) is intended to reduce the noise exposure level to below 85 dbA?

3. If question 1 is answered in the negative, does Directive 2003/10/EC preclude a national rule or judicial approach which exempts a company from making a monetary payment, which in principle it must pay to workers affected by daily noise exposure levels of over 85 dbA, because the company has provided those workers with hearing protectors whose attenuating effect causes daily exposure to remain under 80 dbA?

[1] Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 2003 L 42, p. 38).

Reference for a preliminary ruling from the Tribunalul Dâmbovița (Romania) lodged on 25 May 2010 — Nicușor Grigore v Regia Națională a Pădurilor Romsilva — Direcția Silvică București

(Case C-258/10)

(2010/C 221/33)

Language of the case: Romanian

Referring court

Tribunalul Dâmbovița

Parties to the main proceedings

Applicant: Nicușor Grigore

Defendant: Regia Națională a Pădurilor Romsilva — Direcția Silvică București

Questions referred

1. Does the time during which a forester, who works eight hours a day under his individual contract of employment, is required to carry out wardenship duties in respect of a certain section of the forest for which he is liable to disciplinary action, the payment of compensation and civil or criminal sanctions, as the case may be, for any damage ascertained in the area under his control, regardless of the time when the damage occurs, constitute 'working time' within the meaning of Article 2(1) of Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time? [1]

2. Is the answer to question 1 different where the forester resides in accommodation provided for him within the section of the forest with the management of which he is entrusted?

3. Are the provisions of Article 6 of Directive 2003/88/CE, entitled 'Maximum weekly working time', infringed where, even though the individual contract of employment provides for a maximum working time of 8 hours a day and 40 hours a week, the forester must in fact, because of legal obligations, carry out wardenship duties on a continuous basis in respect of the section of the forest with the management of which he is entrusted?

4. In the event that question 1 is answered in the affirmative, is the employer obliged to pay wages or similar remuneration in respect of the time during which the forester is required to carry out wardenship duties?

5. In the event that question 1 is answered in the negative, what legal rules apply to the hours during which a forester is responsible for carrying out wardenship duties in respect of the forest with the management of which he is entrusted?

([1]) OJ 2003 L 299, p. 9.

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-León (Spain) lodged on 25 May 2010 — Pedro Antonio Macedo Lozano v Gerardo García, S.L.

(Case C-261/10)

(2010/C 221/34)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-León

Parties to the main proceedings

Applicant: Pedro Antonio Macedo Lozano

Defendant: Gerardo García, S.L.

Questions referred

1. Are Articles 3, 5(2), 6 and 7 of Directive 2003/10/EC ([1]) to be interpreted as meaning that a company in which the workers' daily noise exposure level is above 85 dbA (measured without taking account of the effect of hearing protectors) fulfils the obligations to take preventive measures laid down in that Directive in respect of physical working conditions by providing those workers with hearing protectors so that, with the level of attenuation provided by those protectors, the workers' daily noise exposure level is reduced to less than 80 dbA?

2. Is Article 5(2) of Directive 2003/10/EC to be interpreted as meaning that the 'programme of technical and/or organisational measures' which must be adopted by a company in which the workers' daily noise exposure level is above 85 dbA (measured without taking account of the effect of hearing protectors) is intended to reduce the noise exposure level to below 85 dbA?

3. If question 1 is answered in the negative, does Directive 2003/10/EC preclude a national rule or judicial approach which exempts a company from making a monetary payment, which in principle it must pay to workers affected by daily noise exposure levels of over 85 dbA, because the company has provided those workers with hearing protectors whose attenuating effect causes daily exposure to remain under 80 dbA?

([1]) Directive 2003/10/EC of the European Parliament and of the Council of 6 February 2003 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (noise) (Seventeenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 2003 L 42, p. 38).

Action brought on 28 May 2010 — European Commission v Kingdom of Belgium

(Case C-265/10)

(2010/C 221/35)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: P. Oliver and M. van Beek, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to implement the penalties for infringement of Regulation (EC) No 1907/2006 [1] of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, or in any event in failing to inform the Commission thereof, the Kingdom of Belgium has failed to fulfil its obligations under the provisions of Article 126 of Regulation (EC) No 1907/2006;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

As the Kingdom of Belgium has not adopted all the measures with regard to the implementation of penalties for infringement of the REACH Regulation, which should have entered into force by 1 December 2008 at the latest, or at least has failed to inform the Commission thereof, the Commission concludes that the Kingdom of Belgium has failed to fulfil its obligations under Article 126 of that regulation.

[1] OJ 2006 L 396, p. 1.

Reference for a preliminary ruling from the Tribunal de première instance de Namur (Belgium) lodged on 28 May 2010 — André Rossius v État belge — SPF Finances

(Case C-267/10)

(2010/C 221/36)

Language of the case: French

Referring court

Tribunal de première instance de Namur

Parties to the main proceedings

Applicant: André Rossius

Defendant: État belge — SPF Finances

Intervener: État belge — SPF Defence

Questions referred

First question:

Do the following provisions of European Union law:

1. Article 6 of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union signed at Maastricht on 7 February 1992, in force since 1 December 2009, under which: *'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on [12] December 2007, which shall have the same legal value as the Treaties. …'*;

2. Article 35 of the Charter of Fundamental Freedoms of the European Union [1] (OJ C 364 of 18 December 2000), under which 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment … A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities';

interpreted in accordance with the main principles on which the European Union is based, as reiterated in the preamble to the Treaty of Lisbon,

preclude a Member State, in this case Belgium, from allowing the manufacture, importation, promotion and sale of manufactured smoking tobacco to continue within its territory, even though that same State officially recognises that those products are seriously harmful to the health of those who use them and identified as being the cause of numerous disabling diseases and numerous premature deaths, a consideration which should logically justify their prohibition?

Second question:

Do the following provisions of European Union law:

1. Article 6 of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union signed at Maastricht on 7 February 1992, in force since 1 December 2009, under which: *'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on [12] December 2007, which shall have the same legal value as the Treaties. …'*; and

2. Article 35 of the Charter of Fundamental Rights of the European Union (OJ C 364 of 18 December 2000), under which 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities';

interpreted in accordance with the main principles on which the European Union is based, as reiterated in the preamble to the Treaty of Lisbon,

preclude the following provisions of Belgian law:

the Loi générale sur les douanes et accises coordonnée par arrêté royal du 18 juillet 1977 (General Law on Customs and Excise coordinated by Royal Decree of 18 July 1977) (*Moniteur belge* of 21 September 1977), confirmed by the Law of 6 July 1978, Article 1 (*Moniteur belge* of 12 August 1978);

the Loi du 10 juin 1997 relative au régime général, à la détention, à la circulation et aux contrôles des produits soumis à accise (Law of 10 June 1997 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (*Moniteur belge* of 1 August 1997);

the Loi du 3 avril 1997 relative au régime fiscal des tabacs manufacturés (Law of 3 April 1997 on the tax arrangements for manufactured tobacco) (*Moniteur belge* of 1 August 1997), amended by the Law of 26 November 2006 (*Moniteur belge* of 8 December 2006);

from authorising the Belgian State to regard manufactured smoking tobacco as a taxable base for excise duty, even though:

On the one hand, that State officially recognises that those products are seriously detrimental to the health of those who use them and identified as being the cause of numerous disabling diseases and numerous premature deaths, which should logically justify their disappearance;

On the other hand, by proceeding in that way, the State itself impedes the adoption of measures capable of actually bringing about that disappearance by attaching more importance to tax yield than to any genuinely dissuasive effect?

(1) OJ 2000, C 364, p. 1.

Reference for a preliminary ruling from the Tribunal de première instance de Namur (Belgium) lodged on 28 May 2010 — Marc Collard v État belge — SPF Finances

(Case C-268/10)

(2010/C 221/37)

Language of the case: French

Referring court

Tribunal de première instance de Namur

Parties to the main proceedings

Applicant: Marc Collard

Defendant: État belge — SPF Finances

Intervener: État belge — SPF Defence

Questions referred

First question:

'Do the following provisions of European Union law:

— Article 6 of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union signed at Maastricht on 7 February 1992, in force since 1 December 2009, under which: *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on [12] December 2007, which shall have the same legal value as the Treaties. …"*;

— Article 35 of the Charter of Fundamental Freedoms of the European Union (OJ C 364 of 18 December 2000), under which "Everyone has the right of access to preventive health care and the right to benefit from medical treatment. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities";

interpreted in accordance with the main principles on which the European Union is based, as reiterated in the preamble to the Treaty of Lisbon,

preclude a Member State, in this case Belgium, from allowing the manufacture, importation, promotion and sale of manufactured smoking tobacco to continue within its territory, even though that same State officially recognises that those products are seriously harmful to the health of those who use them and identified as being the cause of numerous disabling diseases and numerous premature deaths, a consideration which should logically justify their prohibition?'

Second question:

'Do the following provisions of European Union law:

1. Article 6 of the Treaty of Lisbon of 13 December 2007 amending the Treaty on European Union signed at Maastricht on 7 February 1992, in force since 1 December 2009, under which: *"The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on [12] December 2007, which shall have the same legal value as the Treaties. …"*; and

2. Article 35 of the Charter of Fundamental Rights of the European Union ([1]) (OJ C 364 of 18 December 2000), under which "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities";

interpreted in accordance with the main principles on which the European Union is based, as reiterated in the preamble to the Treaty of Lisbon,

preclude the following provisions of Belgian law:

the Loi générale sur les douanes et accises coordonnée par arrêté royal du 18 juillet 1977 (General Law on Customs and Excise coordinated by Royal Decree of 18 July 1977) (*Moniteur belge* of 21 September 1977), confirmed by the Law of 6 July 1978, Article 1 (*Moniteur belge* of 12 August 1978);

the Loi du 10 juin 1997 relative au régime général, à la détention, à la circulation et aux contrôles des produits soumis à accise (Law of 10 June 1997 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (*Moniteur belge* of 1 August 1997);

the Loi du 3 avril 1997 relative au régime fiscal des tabacs manufacturés (Law of 3 April 1997 on the tax arrangements for manufactured tobacco) (*Moniteur belge* of 1 August 1997), amended by the Law of 26 November 2006 (*Moniteur belge* of 8 December 2006);

from authorising the Belgian State to regard manufactured smoking tobacco as a taxable base for excise duty, even though:

On the one hand, that State officially recognises that those products are seriously detrimental to the health of those who use them and identified as being the cause of numerous disabling diseases and numerous premature deaths, which should logically justify their disappearance;

On the other hand, by proceeding in that way, the State itself impedes the adoption of measures capable of actually bringing about that disappearance by attaching more importance to tax yield than to any genuinely dissuasive effect?'

([1]) OJ 2000, C 364, p. 1.

Reference for a preliminary ruling from the Tribunal administratif de Montreuil (France) lodged on 28 May 2010 — Société Accor Services France v Le Chèque Déjeuner CCR, Etablissement Public de Santé de Ville-Evrard

(Case C-269/10)

(2010/C 221/38)

Language of the case: French

Referring court

Tribunal administratif de Montreuil

Parties to the main proceedings

Applicant: Société Accor Services France

Defendants: Le Chèque Déjeuner CCR, Etablissement Public de Santé de Ville-Evrard

Question referred

Are the provisions of Article 53 of the Code des marchés publics (Public Procurement Code) compatible with those of Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1] and the Treaty on the Functioning of the European Union?

[1] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contract (OJ 2004 L 134, p. 114).

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 31 May 2010 — Lotta Gistö

(Case C-270/10)

(2010/C 221/39)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lotta Gistö

Other party: Veronsaajien oikeudenvalvontayksikkö

Question referred

Is Article 14 of the Protocol [1] to be interpreted in Lotta Gistö's case as meaning that, in accordance with the provisions of the Protocol, her residence for tax purposes in 2007 is still Finland, or does the Protocol mean in this case that ultimately, however, the provisions of the domestic legislation of the Member State decide the question of general tax liability in a Member State, in this case Finland?

[1] Protocol (No 36) on the privileges and immunities of the European Communities (1965), OJ 2006 C 321 E, p. 318.

Reference for a preliminary ruling from the Diikitiko Efetio Thessalonikis (Greece) lodged on 31 May 2010 — Suzanna Verkizi-Nikolakaki v Anotato Simvoulio Epilogis Prosopikou (ASEP) and Aristotelian University of Thessaloniki

(Case C-272/10)

(2010/C 221/40)

Language of the case: Greek

Referring court

Diikitiko Efetio Thessalonikis

Parties to the main proceedings

Applicant: Suzanna Verkizi-Nikolakaki

Defendant: Anotato Simvoulio Epilogis Prosopikou (ASEP) and Aristotelian University of Thessaloniki

Questions referred

1. Is Article 11(2) of Presidential Decree 164/2004, which provides that, in order to establish that the preconditions for conversion of fixed-term contracts to contracts of indefinite duration are met, the employee must submit an application to the relevant body, containing information establishing satisfaction of the said preconditions, within two months of the entry into force thereof, in keeping with the purpose of Article 139(2) EC and the effectiveness, in accordance with the third paragraph of Article 249 EC, of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work, in view of the fact that the cut-off deadline causes employees to lose their right to convert their contracts if an application is not submitted by the two-month deadline?

2. In view of the purpose of Council Directive 1999/70/EC of 28 June 1999 pursuant to Article 139(2) EC, does it suffice that the two-month deadline set for dealing with the number of employees subject to the provisions of Article 11 of Presidential Decree 164/2004, in order to put the objectives of the said directive into practical effect, in accordance with the third paragraph of Article 249 EC, was publicised simply by publication of the provisions of Article 11 of Presidential Decree 164/2004 in the Government Gazette?

3. Does the failure to extend the two-month deadline, compared with extensions to similar deadlines set in similar legislative measures which predate Presidential Decree 164/2004, reduce the general level of protection of employees, in breach of clause 8.3 of [the annex to] Council Directive 1999/70/EC of 28 June 1999?

Reference for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) lodged on 1 June 2010 — David Montoya Medina v Fondo de Garantía Salarial and Universidad de Alicante

(Case C-273/10)

(2010/C 221/41)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana

Parties to the main proceedings

Applicant: David Montoya Medina

Defendants: Fondo de Garantía Salarial and Universidad de Alicante

Question referred

Are rules of the kind set out in Decree 174/2002 of 15 October of the Valencian Government on the regulation and remuneration of teaching and research staff employed in Valencian public universities and on additional remuneration of university teaching staff contrary to the principle of non-discrimination laid down in Clause 4 of the framework agreement annexed to Council Directive 1999/70/EC [1] of 28 June 1999, in so far as they do not recognise the right of post-doctoral assistant lecturers on fixed-term contracts (*profesores ayudantes doctores*) to receive a length-of-service supplement in the form of three-yearly increments when that same supplement is granted to post-doctoral lecturers on contracts of indefinite duration (*profesores contratados doctores*)?

[1] Concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP
OJ L 175, p. 43

Action brought on 1 June 2010 — European Commission v Republic of Hungary

(Case C-274/10)

(2010/C 221/42)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: D. Triantafyllou and B.D. Simon, Agents)

Defendant: Republic of Hungary

Form of order sought

— a declaration that the Republic of Hungary has failed to fulfil its obligations under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] by requiring taxable persons whose tax declaration for a given tax period records an 'excess' within the meaning of Article 183 of that directive to carry forward that excess or a part of it to the following tax year where the taxable person has not paid the supplier the full amount for the purchase in question, and by creating a situation, as a result of that requirement, where certain taxable persons whose tax declarations regularly record such an 'excess' may be required more than once to carry forward the excess to the following tax year.

— order Republic of Hungary to pay the costs.

Pleas in law and main arguments

The subject of this application is the provision of Hungarian tax law under which, at the end of the tax year, taxable persons may apply for the refund of excess value added tax ('VAT') only in so far as that excess exceeds the amount of the VAT payable on transactions which have not yet actually been paid for. Thus, the consequence of the contested Hungarian legislation is that a taxable person may not apply for a refund of the part of the excess corresponding to the VAT chargeable on purchases which have not been paid for but must carry it forward to the following tax year. If, at the end of the tax year, the amount of the excess VAT declared is less than or equal to the amount of the VAT chargeable on purchases not paid for, the taxable person must carry forward the whole of the excess VAT to the following tax year. The same procedure must be followed at the end of the following tax year: the legislation places no temporal limit on the procedure with the result that it is possible for a taxable person to be required to carry forward excess VAT indefinitely.

The Commission does not dispute that Article 183 of Directive 2006/112 ('the directive') grants the Member States a discretion as to whether to carry forward or refund excess VAT. However the Member States may only exercise that discretion in accordance with the principles of the common system of VAT as a whole and in particular the principle of tax neutrality. As a provision which impedes the full application of the principle of tax neutrality, Article 183 of the directive, which allows Member States to carry forward a VAT excess to the following year once, must be interpreted narrowly and may not serve as a basis for the adoption of national provisions contrary to the principle of tax neutrality or the purpose of the deduction mechanism.

In accordance with the principle of neutrality, the purpose of the deduction mechanism is to free a trader entirely from the burden of VAT which he has to pay or has paid in the course of any of his business transactions. That principle precludes the Member States from imposing requirements for the refund of excess VAT which entail a burden on the taxable person and affect that person's financial position or liquidity or commercial decisions. The withholding of the VAT excess allowed by the contested Hungarian provision has such negative effects on the taxable person for two reasons.

First, because a surplus of deductible VAT over VAT to be paid must be regarded as an amount due to the taxable person and the postponement of payment of that amount reduces the profitability or liquidity of the taxable person and increases his commercial risk. The taxable person must pay the VAT due on the goods or services supplied by him even if they have not been paid for, while he may only obtain a refund of the VAT he paid on the goods and services supplied to him if he actually paid for them.

Second, the withholding of the VAT excess constitutes a burden not only for the taxable person in the position of seeking a refund but also on the taxable person who is the other party to the taxable transaction, that is to say, the seller. The decrease in the buyer's liquidity leads to an increasing risk that the seller will not receive the consideration for the goods or services supplied or will receive it late, while, regardless of whether he does or not, the seller is required to hand over the VAT on his supply of goods or services.

In the view of the Commission, the fact that the legislation places a burden on taxable persons cannot be offset by the imposition of further burdens on taxable persons. The balance which the legislation seeks to attain can only be achieved if, to offset the burden falling on the taxable person in the position of debtor, that is to say, to offset the obligation to pay the tax, it provides for the possibility for the taxable person in the position of creditor to obtain a refund of the VAT paid when he was in the position of debtor.

Finally, given that Article 183 of the directive only provides for the excess VAT to be carried forward once '*to the following tax year*' the contested Hungarian legislation breaches that article in that it does not provide for the taxable person to obtain a refund of the excess at the latest by the end of the second tax year. Moreover, the Hungarian legislation which, essentially, by reducing the buyer's liquidity, is in its turn reducing the likelihood of the refund being made and does not guarantee that the taxable person will ever recover the excess. If the taxable person ceases activity without paying for all purchases made because he is insolvent, there is no means of recovering the VAT chargeable on transactions which were not paid for as the State will ultimately retain it.

Having regard to the foregoing arguments, the Commission takes the view that the Hungarian legislature has exceeded the discretion granted to it and has infringed Article 183 of the directive by adopting legislation on the requirements to be met for the refund of excess VAT which infringes the principle of tax neutrality and allows the excess to be carried forward year after year.

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

Action brought on 9 June 2010 — European Commission v Portuguese Republic

(Case C-286/10)

(2010/C 221/43)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and M. van Beek, Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/47/EC [1] of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector and, in any event, by failing to communicate such measures to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 5 of the Directive.

— Order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 26 July 2008.

[1] OJ 2005 L 195, p. 15.

Reference for a preliminary ruling from the Tribunal administratif (Luxembourg) lodged on 10 June 2010 — Tankreederei I SA v Directeur de l'Administration des Contributions Directes

(Case C-287/10)

(2010/C 221/44)

Language of the case: French

Referring court

Tribunal administratif

Parties to the main proceedings

Applicant: Tankreederei I SA

Defendant: Directeur de l'Administration des Contributions Directes

Question referred

Do Articles 49 EC and 56 EC preclude the provisions of the first paragraph of Article 152 bis of the amended Law of 4 December 1967 on income tax, insofar as, under those provisions, Luxembourg taxpayers are granted a tax credit for investments only if the investments are made in an establishment situated in the Grand-Duchy and are intended to remain there on a permanent basis, and only if they are physically used on Luxembourg territory?

Action brought on 11 June 2010 — European Commission v Italian Republic

(Case C-291/10)

(2010/C 221/45)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: M. van Beek and S. Mortoni, acting as Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/47/EC [1] of 18 July 2005 on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector or, in any event, by failing to communicate those measures to the Commission, the Italian Republic has failed to fulfil its obligations under Article 5 of that directive;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The deadline for transposing Directive 2005/47/EC into national law expired on 26 July 2008.

[1] OJ L 195, 27/07/2005, p. 15.

Reference for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 15 June 2010 — Andrejs Eglītis and Edvards Ratnieks v Ekonomikas Ministrija

(Case C-294/10)

(2010/C 221/46)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Andrejs Eglītis, Edvards Ratnieks

Defendant: Latvijas Republikas Ekonomikas Ministrija

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 [1] of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, to be interpreted as meaning that an air carrier is required, in order to be found to have taken all reasonable measures to avoid extraordinary circumstances, to organise its resources in good time so that it is possible to operate a programmed flight once the unforeseen extraordinary circumstances have ceased to obtain, that is to say, during a certain period following the scheduled departure time?

2. If the first question is answered in the affirmative, does Article 6(1) of Regulation No 261/2004 apply for the purpose of determining the minimum 'reserve time' which the air carrier, when organising its resources at the appropriate time, must provide for as a possible foreseeable delay in the event that extraordinary circumstances arise?

[1] OJ 2004 L 46, p. 1.

Reference for a preliminary ruling from the Lietuvos Vyriausiasis Administracinis Teismas (Republic of Lithuania), lodged on 15 June 2010 — Genovaitė Valčiukienė, Julija Pekelienė, the public organisation 'The Lithuanian Green Movement', Petras Girinskis and Laurynas Arimantas Lašas v Municipal Council of the District of Pakruojas, the Šiauliai Centre for Public Health and the Šiauliai Regional Department for Environmental Protection

(Case C-295/10)

(2010/C 221/47)

Language of the case: Lithuanian

Referring court

Lietuvos Vyriausiasis Administracinis Teismas (Supreme Administrative Court of Lithuania)

Parties to the main proceedings

Appellants: Genovaitė Valčiukienė, Julija Pekelienė, the public organisation 'The Lithuanian Green Movement', Petras Girinskis and Laurynas Arimantas Lašas

Respondents: Municipal Council of the District of Pakruojas, the Šiauliai Centre for Public Health and the Šiauliai Regional Department for Environmental Protection

Other parties to the proceedings: the private companies 'Sofita' and 'Oltas', the office of the Governor of the Šiauliai Region, Rimvydas Gasparavičius and Rimantas Pašakinskas

Questions referred

1. Can the determination that a strategic assessment of effects on the environment need not be carried out in the case of documents relating to land planning at local level, in the detailed conclusions of which only one subject of economic activity is mentioned, as laid down in the legislation of the Republic of Lithuania, inter alia in point 3.4 of Decree No 967 of the Government of the Republic of Lithuania of 18 August 2004 'confirming the schedule governing the procedure for the strategic assessment of the environmental effects of plans and programmes', be regarded as a specification of types of plans and programmes within the meaning of Article 3(5) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment? [1]

2. Are the provisions of national law applicable in the present case, which provide that, in each specific case in which the potential significance of effects on the environment is not determined, a strategic assessment of the effects on the environment of land planning documents applied to small areas of land at local level, as in the present case, is not to be carried out solely on the basis that reference is made in those documents to one subject of economic activity, compatible with the requirements of Article 3(2)(a), 3(3) and 3(5) of Directive 2001/42?

3. Are the provisions of Directive 2001/42, including Article 11(1) thereof, to be construed as meaning that in circumstances such as those obtaining in the present case, in which an environmental impact assessment was carried out pursuant to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, [2] the requirements of Directive 2001/42 are not applicable?

4. Does the scope of application of Article 11(2) of Directive 2001/42 encompass Directive 85/337?

5. If the answer to Question 4 is in the affirmative, does the fact that an assessment has been carried out pursuant to Directive 85/337 mean that the obligation to carry out an assessment of effects on the environment pursuant to the requirements of Directive 2001/42, in a situation such as that which has arisen in the present case, would be regarded as constituting duplication of assessment within the meaning of Article 11(2) of Directive 2001/42?

6. If the answer to Question 5 is in the affirmative, does Directive 2001/42, including Article 11(2) thereof, place Member States under an obligation to provide in national law for joint or coordinated requirements governing the assessment to be carried out pursuant to Directive 2001/42 and Directive 85/337 with a view to avoiding duplication of assessment?

[1] OJ 2001 L 197, p. 30.
[2] OJ 1985 L 175, p. 40.

Reference for a preliminary ruling from the Amtsgericht Stuttgart (Germany) lodged on 16 June 2010 — Bianca Purrucker v Guillermo Vallés Pérez

(Case C-296/10)

(2010/C 221/48)

Language of the case: German

Referring court

Amtsgericht Stuttgart

Parties to the main proceedings

Applicant: Bianca Purrucker

Defendant: Guillermo Vallés Pérez

Questions referred

1. Is Article 19(2) of Council Regulation (EC) No 2201/2003 ('Brussels IIA') [1] applicable if the court of a Member State first seised by one party to resolve matters of parental responsibility is called upon to grant only provisional measures and the court of another Member State subsequently seised by the other party in the same cause of action is called upon to rule on the substance of the matter?

2. Is that provision also applicable if a ruling in the isolated proceedings for provisional measures in one Member State is not capable of recognition in another Member State within the meaning of Article 21 of Regulation No 2201/2003?

3. Is the seising of a court in a Member State for isolated provisional measures to be equated to seising as to the substance of the matter within the meaning of Article 19(2) of Regulation No 2201/2003 if under the national rules of procedure of that State a subsequent action

to resolve the issue as to the substance of the matter must be brought in that court within a specified period in order to avoid procedural disadvantages?

(1) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000; OJ 2003 L388, p. 1.

Reference for a preliminary ruling from the Højesteret (Denmark), lodged on 18 June 2010 — Infopaq International A/S v Danske Dagblades Forening

(Case C-302/10)

(2010/C 221/49)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Appellant: Infopaq International A/S

Respondent: Danske Dagblades Forening

Questions referred

1. Is the stage of the technological process at which temporary acts of reproduction take place relevant to whether they constitute 'an integral and essential part of a technological process' (see Article 5(1) of the Infosoc Directive (1))?

2. Can temporary acts of reproduction be an 'integral and essential part of a technological process' if they consist of manual scanning of entire newspaper articles whereby the latter are transformed from a printed medium into a digital medium?

   Is it relevant to the answer to the question whether the 11 words are stored after the data capture process is terminated?

3. Does 'lawful use' (see Article 5(1) of the Infosoc Directive) include any form of use which does not require the copyright holder's consent?

4. Does 'lawful use' (see Article 5(1) of the Infosoc Directive) include the scanning by a commercial business of entire newspaper articles and subsequent processing of the reproduction, for use in the business's summary writing, even where the rightholder has not given consent to those acts, if the other requirements in the provision are satisfied?

   Is it relevant to the answer to the question whether the 11 words are stored after the data capture process is terminated?

5. What criteria should be used to assess whether temporary acts of reproduction have 'independent economic significance' (see Article 5(1) of the Infosoc Directive) if the other requirements in the provision are satisfied?

6. Can the user's efficiency gains from temporary acts of reproduction be taken into account in assessing whether the acts have independent economic significance (see Article 5(1) of the Infosoc Directive)?

7. Can the scanning by a commercial business of entire newspaper articles and the subsequent processing of the reproduction be regarded as constituting 'certain special cases which do not conflict with a normal exploitation' of the newspaper articles and 'not unreasonably [prejudicing] the legitimate interests of the rightholder' (see Article 5(5)), if the requirements in Article 5(1) of the directive are satisfied?

   Is it relevant to the answer to the question whether the 11 words are stored after the data capture process is terminated?

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

Action brought on 25 June 2010 — European Commission v Republic of Estonia

(Case C-306/10)

(2010/C 221/50)

Language of the case: Estonian

Parties

Applicant: European Commission (represented by E. Randvere and M. van Beek, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2005/47/EC of 18 July 2005 ([1]) on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector, and by failing to ensure that the social partners enter into a corresponding agreement, or by failing to notify the Commission thereof, the Republic of Estonia has failed to fulfil its obligations under the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive into national law expired on 27 July 2008.

([1]) OJ 2005 L 195, p. 15.

GENERAL COURT

Judgment of the General Court of 25 June 2010 — Imperial Chemical Industries v Commission

(Case T-66/01) [1]

(Competition — Abuse of dominant position — Market for soda ash in the United Kingdom — Decision finding an infringement of Article 82 EC — Commission's power to impose a fine or sanction — Reasonable time — Essential procedural requirements — Res judicata — Existence of the dominant position — Abuse of the dominant position — Effect on trade between Member States — Fine — Gravity and duration of the infringement — Mitigating circumstances)

(2010/C 221/51)

Language of the case: English

Parties

Applicant: Imperial Chemical Industries Ltd, formerly Imperial Chemical Industries plc (London, United Kingdom) (represented by: D. Vaughan QC, D. Anderson QC and S. Lee, Barrister, and by S. Turner, S. Berwick and R. Coles, Solicitors, and then by D. Vaughan QC, S. Berwick, Solicitor, S. Lee and S. Ford, Barristers)

Defendant: European Commission (represented by: J. Currall and P. Oliver, Agents, and by J. Flynn QC and C. West, Barrister)

Re:

Application for annulment of Commission Decision 2003/7/EC of 13 December 2000 relating to a proceeding under Article 82 [EC] (Case COMP/33.133-D: Soda ash — ICI) (OJ 2003 L 10, p. 33) or, in the alternative, for cancellation or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Commission Decision 2003/7/EC of 13 December 2000 relating to a proceeding under Article 82 [EC] (Case COMP/33.133-D: Soda ash — ICI) in so far as it states that Imperial Chemical Industries Ltd infringed Article 82 EC in 1983;*

2. *Sets the amount of the fine imposed on Imperial Chemical Industries in Article 2 of Decision 2003/7 at EUR 8 million;*

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

4. *Orders Imperial Chemical Industries to pay four fifths of its own costs and four fifths of those incurred by the European Commission;*

5. *Orders the European Commission to pay one fifth of its own costs and one fifth of those incurred by Imperial Chemical Industries.*

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[1] OJ C 150, 19.5.2001.

Judgment of the General Court of 1 July 2010 — AstraZeneca v Commission

(Case T-321/05) [1]

(Competition — Abuse of dominant position — Market in anti-ulcer medicines — Decision finding an infringement of Article 82 EC — Market definition — Significant competitive constraints — Abuse of procedures relating to supplementary protection certificates for medicinal products and of marketing authorisation procedures for medicinal products — Misleading representations — Deregistration of marketing authorisations — Obstacles to the marketing of generic medicinal products and to parallel imports — Fines)

(2010/C 221/52)

Language of the case: English

Parties

Applicants: AstraZeneca AB (Södertälje, Sweden); and AstraZeneca plc (London, United Kingdom) (represented initially by M. Brealey QC, M. Hoskins, D. Jowell, Barristers, F. Murphy, G. Sproul, I. MacCallum and C. Brown, Solicitors, and subsequently by M. Brealey, M. Hoskins, D. Jowell, F. Murphy and C. Brown, and lastly by M. Brealey, M. Hoskins, D. Jowell and F. Murphy)

Defendant: European Commission (represented initially by F. Castillo de la Torre, É. Gippini Fournier and A. Whelan, and subsequently by F. Castillo de la Torre, É. Gippini Fournier and J. Bourke, Agents)

Intervener in support of the applicants: European Federation of Pharmaceutical Industries and Associations (EFPIA) (Geneva, Switzerland)

Re:

Application for annulment of Commission Decision C(2005) 1757 final of 15 June 2005 relating to a proceeding under Article 82 [EC] and Article 54 of the EEA Agreement (Case COMP/A.37.507/F3 — AstraZeneca)

Operative part of the judgment

The Court:

1. *Annuls Article 1(2) of Commission Decision C(2005) 1757 final of 15 June 2005 relating to a proceeding under Article 82 [EC] and Article 54 of the EEA Agreement (Case COMP/A.37.507/F3 — AstraZeneca) in so far as it finds that AstraZeneca AB and AstraZeneca plc infringed Article 82 EC and Article 54 of the EEA Agreement by requesting the deregistration of the Losec capsule marketing authorisations in Denmark and Norway in combination with the withdrawal from the market of Losec capsules and the launch of Losec MUPS tablets in those two countries, inasmuch as it was found that those actions were capable of restricting parallel imports of Losec capsules in those countries;*

2. *Sets the fine imposed by Article 2 of that decision jointly and severally on AstraZeneca AB and AstraZeneca plc at EUR 40 250 000 and the fine imposed by that article on AstraZeneca AB at 12 250 000 euros;*

3. *Dismisses the remainder of the application;*

4. *Orders AstraZeneca AB and AstraZeneca plc to bear 90 % of their own costs and to pay 90 % of the costs of the European Commission, with the exception of the Commission's costs incurred in connection with the intervention of the European Federation of Pharmaceutical Industries and Associations (EFPIA);*

5. *Orders the EFPIA to bear its own costs;*

6. *Orders the Commission to bear its own costs incurred in connection with the intervention of the EFPIA, 10 % of the remainder of its own costs and to pay 10 % of the costs of AstraZeneca AB and AstraZeneca plc.*

(1) OJ C 271, 29.10.2005.

Judgment of the General Court of 7 July 2010 — Commission v Hellenic Ventures and Others

(Case T-44/06) (1)

(Arbitration clause — Action for the creation and development of seed-capital funds — Termination of the contract — Action against the members of a company — Inadmissibility — Reimbursement of advances — Interest)

(2010/C 221/53)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia, acting as Agent, and S. Khatzigiannis, lawyer)

Defendants: Hellenic Ventures — Elliniki Etairia Epikheirimatikis Protovoulias AE (Athens, Greece); Konstantinos Katsigiannis (Athens); Panagiotis Khronopoulos (Athens); and Nikolaos Poulakos (Athens) (represented by: V. Khristianos and V. Vlassi, lawyers)

Re:

Action under Article 238 EC by which the Commission seeks an order that the defendants reimburse an advance paid under a contract entitled 'Seed Fund 601', concluded between the Commission and the defendant company

Operative part of the judgment

The Court:

1. *Orders Hellenic Ventures — Elliniki Etairia Epikheirimatikis Protovoulias AE to pay the European Commission the sum of EUR 70 000, together with late-payment interest calculated at the Belgian statutory rate from 25 April 1999 until payment in full of the debt;*

2. *Dismisses the remainder of the action;*

3. *Orders Hellenic Ventures to pay the costs, with the exception of those incurred by Konstantinos Katsigiannis, Panagiotis Khronopoulos, and Nikolaos Poulakos;*

4. *Orders the Commission to pay the costs of Konstantinos Katsigiannis, Panagiotis Khronopoulos, and Nikolaos Poulakos.*

(1) OJ C 86, 8.4.2006.

Judgment of the General Court of 7 July 2010 — Agrofert Holding v Commission

(Case T-111/07) [1]

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to a procedure concerning a merger between undertakings — Refusal to grant access)

(2010/C 221/54)

Language of the case: English

Parties

Applicant: Agrofert Holding a.s. (Pyšelská, Czech Republic) (represented by: R. Pokorný and D. Šalek, lawyers)

Defendant: European Commission (represented by: X. Lewis and P. Costa de Oliveira, and subsequently by P. Costa de Oliveira and V. Bottka, acting as Agents)

Interveners in support of the applicant: Kingdom of Sweden (represented initially by A. Kruse and S. Johannesson, and subsequently by S. Johannesson, Agents), Republic of Finland (represented by J. Himmanen, A. Guimaraes-Purokoski, J. Heliskoski and M. Pere, Agents), Kingdom of Denmark (represented by B. Weis Fogh, Agent)

Intervener in support of the defendant: Polski Koncern Naftowy Orlen SA, (Płock, Poland), (represented by S. Sołtysiński, K. Michałowska and M. Olechowski, lawyers)

Re:

Action for annulment of, first, the Commission's decision of 2 August 2006 refusing the applicant access to documents concerning the notification and pre notification procedure in relation to the acquisition of Unipetrol by Polski Koncern Naftowy Orlen SA (COMP/M.3543) and, second, Commission Decision D(2007) 1360 of 13 February 2007 confirming that refusal

Operative part of the judgment

The Court:

1. *Declares that the head of claim seeking annulment of the reply of the European Commission of 2 August 2006 and that requesting the Court to order the Commission to provide the applicant with the documents requested are inadmissible;*

2. *Annuls Commission Decision D(2007) 1360 of 13 February 2007 refusing access to documents in Case COMP/M.3543 concerning the merger between Polski Koncern Naftowy Orlen SA and Unipetrol, exchanged between the Commission and the notifying parties and between the Commission and third parties, and refusing access to the internal documents and legal advice drawn up in that case;*

3. *Orders the Commission to pay the costs;*

4. *Orders the Kingdom of Sweden, the Republic of Finland, the Kingdom of Denmark and Polski Koncern Naftowy Orlen to bear their own respective costs.*

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[1] OJ C 129, 9.6.2007.

Judgment of the General Court of 6 July 2010 — Ryanair v Commission

(Case T-342/07) [1]

(Competition — Concentrations — Air transport — Decision declaring a concentration to be incompatible with the common market — Assessment of the effects of the concentration on competition — Barriers to entry — Efficiency gains — Commitments)

(2010/C 221/55)

Language of the case: English

Parties

Applicant: Ryanair Holdings plc (Dublin, Ireland) (represented by: J. Swift QC, V. Power, A. McCarthy and D. Hull, Solicitors, and G. Berrisch, lawyer)

Defendant: European Commission (represented by: X. Lewis and S. Noë, Agents)

Interveners in support of the defendant: Aer Lingus Group plc (Dublin) (represented initially by A. Burnside, Solicitor, B. van de Walle de Ghelcke and T. Snels, lawyers, and subsequently by A. Burnside and B. van de Walle de Ghelcke)

and

Ireland (represented by D. O'Hagan and J. Buttimore, acting as Agents, and M. Cush, D. Barniville and N. Travers, lawyers)

Re:

Application for the annulment of Commission Decision C(2007) 3104 of 27 June 2007 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case COMP/M.4439 — Ryanair/Aer Lingus)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ryanair Holdings plc to bear its own costs and to pay the costs incurred by the European Commission and Aer Lingus Group plc;*

3. *Orders Ireland to bear its own costs.*

([1]) OJ C 269, 10.11.2007.

Judgment of the General Court of 6 July 2010 — Aer Lingus Group v Commission

(Case T-411/07) ([1])

(Competition — Concentrations — Decision declaring a concentration incompatible with the common market — Concept of concentration — Disposal of all the shares acquired, so as to restore the situation prevailing before the implementation of the concentration — Refusal to order appropriate measures — Lack of competence of the Commission)

(2010/C 221/56)

Language of the case: English

Parties

Applicant: Aer Lingus Group plc (Dublin, Ireland) (represented by: A. Burnside, Solicitor, B. van de Walle de Ghelcke and T. Snels, lawyers, and subsequently by A. Burnside and B. van de Walle de Ghelcke)

Defendant: European Commission (represented by: X. Lewis, É. Gippini Fournier and S. Noë, Agents)

Intervener in support of the defendant: Ryanair Holdings plc (Dublin), (represented by J. Swift QC, V. Power, A. McCarthy, D. Hull, Solicitors, and G. Berrisch, lawyer)

Re:

Application for annulment of Commission Decision C(2007) 4600 of 11 October 2007 rejecting the applicant's request to initiate proceedings under Article 8(4) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1), and to adopt interim measures under Article 8(5) of that regulation

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aer Lingus Group plc to bear it own costs and those incurred by the Commission and Ryanair Holdings plc, including those relating to the interim proceedings.*

([1]) OJ C 8, 12.1.2008.

Judgment of the General Court of 1 July 2010 — Italian Republic v Commission

(Case T-53/08) ([1])

(State aid — Compensation for expropriation on grounds of public interest — Temporal extension of a preferential tariff for the supply of electricity — Decision declaring the aid incompatible with the common market — Concept of advantage — Principle of audi alteram partem)

(2010/C 221/57)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, lawyer)

Defendant: European Commission (represented by: C. Giolito and G. Conte, Agents)

Re:

Application for annulment of Commission Decision 2008/408/EC of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (OJ 2008 L 144, p. 37)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

(1) OJ C 79, 29.3.2008.

Judgment of the General Court of 1 July 2010 — ThyssenKrupp Acciai Speciali Terni v Commission

(Case T-62/08) (1)

(State aid — Compensation for expropriation on grounds of public interest — Temporal extension of a preferential tariff for the supply of electricity — Decision declaring the aid incompatible with the common market — Concept of advantage — Principle of the protection of legitimate expectations — Aid measure put into effect)

(2010/C 221/58)

Language of the case: Italian

Parties

Applicant: ThyssenKrupp Acciai Speciali Terni SpA (Terni, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino and G. Barone, lawyers)

Defendant: European Commission (represented by: C. Giolito and G. Conte, Agents)

Re:

Application for annulment of Commission Decision 2008/408/EC of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (OJ 2008 L 144, p. 37)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders ThyssenKrupp Acciai Speciali Terni SpA to pay the costs.*

(1) OJ C 92, 12.4.2008.

Judgment of the General Court of 1 July 2010 — Cementir Italia v Commission

(Case T-63/08) (1)

(State aid — Compensation for expropriation on grounds of public interest — Temporal extension of a preferential tariff for the supply of electricity — Decision declaring the aid incompatible with the common market and ordering its recovery — Concept of advantage — Principle of the protection of legitimate expectations — Aid measure put into effect)

(2010/C 221/59)

Language of the case: Italian

Parties

Applicant: Cementir Italia Srl (Rome, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino and G. Barone, lawyers)

Defendant: European Commission (represented by: C. Giolito and G. Conte, agents)

Re:

Application for annulment of Decision 2008/408/EC of the Commission of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (OJ 2008 L 144, p. 37)

Operative part of the judgment

The Court:

1. *Dismisses the application.*

2. *Orders Cementir Italia Srl to pay the costs.*

(1) OJ C 92, 12.4.2008.

Judgment of the General Court of 1 July 2010 — Nuova Terni Industrie Chimiche v Commission

(Case T-64/08) ([1])

(State aid — Compensation for expropriation on grounds of public interest — Temporal extension of a preferential tariff for the supply of electricity — Decision declaring the aid incompatible with the common market and ordering its recovery — Concept of advantage — Principle of the protection of legitimate expectations — Aid measure put into effect)

(2010/C 221/60)

Language of the case: Italian

Parties

Applicant: Nuova Terni Industrie Chimiche SpA (Milan, Italy) (represented by: T. Salonico, G. Pellegrino, G. Pellegrino and G. Barone, lawyers)

Defendant: European Commission (represented by: C. Giolito and G. Conte, agents)

Re:

Application for annulment of Commission Decision 2008/408/EC of 20 November 2007 on the State aid C 36/A/06 (ex NN 38/06) implemented by Italy in favour of ThyssenKrupp, Cementir and Nuova Terni Industrie Chimiche (OJ 2008 L 144, p. 37)

Operative part of the judgment

The Court:

1. *Dismisses the application.*

2. *Order Terni Industrie Chimiche SpA to pay the costs.*

([1]) OJ C 92, 12.4.2008.

Judgment of the General Court of 2 July 2010 — Kerstens v Commission

(Case T-266/08 P) ([1])

(Appeal — Staff case — Officials — Change of posting — Article 7 of the Staff Regulations — Interests of the service — Distortion of facts and evidence — Obligation on the Civil Service Tribunal to state reasons — Rights of the defence)

(2010/C 221/61)

Language of the case: French

Parties

Appellant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Other party to the proceedings: European Commission (represented by: K. Herrmann and M. G. Berscheid, agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 8 May 2008 in Case F-119/06 *Kerstens* v *Commission* seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Petrus Kerstens to bear his own costs as well as the costs incurred by the Commission in the appeal proceedings.*

([1]) OJ C 247, 27.9.2008.

Judgment of the General Court of 1 July 2010 — BNP Paribas and BNL v European Commission

(Case T-335/08) [1]

(State aid — Measures taken by the Italian authorities concerning certain restructured banks — Scheme for the realignment of the value of assets for tax purposes — Decision classifying the aid scheme as incompatible with the common market and ordering recovery of the aid — Action for annulment — Individual concern — Admissibility — Concept of State aid — Advantage — Selective nature — Obligation to state reasons)

(2010/C 221/62)

Language of the case: Italian

Parties

Applicant: BNP Paribas (Paris, France) and Banca Nazionale del Lavoro SpA (BNL) (Rome, Italy) (represented by: R. Silvestri, G. Escalar and M. Todino, lawyers)

Defendant: European Commission (represented by: V. Di Bucci and E. Righini, Agents)

Re:

Application for annulment of Commission Decision 2008/711/EC of 11 March 2008 on State aid C 15/07 (ex NN 20/07) implemented by Italy on the tax incentives in favour of certain restructured banks (OJ 2008 L 237, p. 70)

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders BNP Paribas and Banca Nazionale del Lavoro SpA (BNL) to pay the costs.*

[1] OJ C 272, 25.10.2008.

Judgment of the General Court of 30 June 2010 — Matratzen Concord v OHIM — Barranco Schnitzler and Barranco Rodriguez (MATRATZEN CONCORD)

(Case T-351/08) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark MATRATZEN CONCORD — Earlier national word mark MATRATZEN — Relative ground for refusal — Evidence of use of the earlier mark — Obligation to state the reasons on which a decision is based — Article 73 of Regulation (EC) No 40/94 (now Article 75 of Regulation (EC) No 207/2009))

(2010/C 221/63)

Language of the case: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: J. Albrecht, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Pablo Barranco Schnitzler and Mariano Barranco Rodriguez (Sant Just Desvern, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 30 May 2008 (Case R 1034/2007-2), relating to opposition proceedings between (i) Pablo Barranco Schnitzler and Mariano Barranco Rodriguez and (ii) Matratzen Concord GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 May 2008 (Case R 1034/2007-2);*

2. *Orders OHIM to pay the costs.*

[1] OJ C 285, 8.11.2008.

Judgment of the General Court of 25 June 2010 — MIP Metro v OHIM — CBT Comunicación Multimedia (Metromeet)

(Case T-407/08) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark 'Metromeet' — Earlier national word mark 'meeting metro' — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 221/64)

Language of the case: German

Parties

Applicant: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J.-C. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: CBT Comunicación Multimedia, SL (Getxo, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 June 2008 (Case R 387/2007-1) relating to opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and CBT Comunicación Multimedia, SL.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 June 2008 (Case R 387/2007-1) concerning opposition proceedings between MIP Metro Group Intellectual Property GmbH & Co. KG and CBT Comunicación Multimedia, SL.*

2. *Orders OHIM to pay the costs.*

[1] OJ C 327, 20.12.2008.

Judgment of the General Court of 2 July 2010 — Lafili v Commission

(Case T-485/08 P) [1]

(Appeal — Staff case — Officials — Admissibility — Concept of the party who was unsuccessful at first instance — Promotion — Classification in grade and step — Multiplication factor greater than one — Conversion to seniority in step — Article 7 of Annex XIII of the Staff Regulations)

(2010/C 221/65)

Language of the case: French

Parties

Appellant: Paul Lafili (Genk, Belgium) (represented by: L. Levi, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall, H. Krämer and K. Herrmann, agents)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (Second Chamber) of 4 September 2008 in Case F-22/07 *Lafili* v *Commission* seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Paul Lafili to bear his own costs as well as the costs incurred by the European Commission in the appeal proceedings.*

[1] OJ C 19, 24.1.2009.

Judgment of the General Court of 7 July 2010 — mPAY24 GmbH v OHIM — Ultra (M PAY)

(Case T-557/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark M PAY — Earlier Community and national word marks MPAY24 — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 221/66)

Language of the case: English

Parties

Applicant: mPAY24 GmbH (Vienna, Austria) (represented by: H-G. Zeiner, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Ultra d.o.o. Proizvodnja elektronskih naprav (Zagorje ob Savi, Slovenia)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 September 2008 (Case R 221/2007-1) relating to opposition proceedings between mPAY24 GmbH and Ultra d.o.o. Proizvodnja elektronskih naprav.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 September 2008 (Case R 221/2007-1) in so far as that decision dismissed the opposition brought by mPAY24 GmbH;*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 1 July 2010 — M6 and TF1 v Commission

(Joined Cases T-568/08 and T-573/08) ([1])

(State aid — Public service broadcasting — Aid which the French Republic is intending to grant in favour of France Télévisions — Capital funding of EUR 150 million — Decision not to raise objections — Service of general economic interest — Criterion of proportionality — No serious difficulties)

(2010/C 221/67)

Language of the case: French

Parties

Applicants: Métropole télévision (M6) (Neuilly-sur-Seine, France) (represented by: O. Freget, N. Chahid-Nouraï, R. Lazerges and M. Potel, lawyers); and Télévision française 1 SA (TF1) (Boulogne-Billancourt, France) (represented by: J.-P. Hordies and C. Smits, lawyers)

Defendant: European Commission (represented by: B. Stromsky and B. Martenczuk, Agents)

Intervener in support of the applicants: Canal + (Issy-les-Moulineaux, France) (represented by: E. Guillaume, lawyer)

Interveners in support of the defendant: The French Republic (represented by: G. de Bergues and A.-L. Vendrolini, and then by G. de Bergues and L. Butel, Agents); and France Télévisions (Paris, France) (represented by: J.-P. Gunther, D. Tayar, A. Giraud and S. Snoeck, lawyers)

Re:

Applications for annulment of Commission Decision C(2008) 3506 final of 16 July 2008 relating to the proposed grant, by the French Republic, of capital funding of EUR 150 million to France Télévisions SA, and applications for an order that the Commission open a formal investigation procedure.

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *Orders Métropole télévision (M6) to bear its own costs in Case T-568/08 and pay those incurred by the European Commission and France Télévisions in that case;*

3. *Orders Télévision française 1 SA (TF1) to bear its own costs in Case T-573/08 and pay those incurred by the European Commission and France Télévisions in that case;*

4. *The French Republic and Canal + shall each bear their own costs in Cases T-568/08 and T-573/08.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 7 July 2010 — Commission v Antiche Terre

(Case T-51/09) ([1])

(Arbitration clause — Programme concerning the promotion of energy technologies for Europe (Thermie) — Contract concerning the project for the building in Umbertide (Italy) of an electricity generating plant using an innovative agro-forestry biomass combustion technology — Substantial amendment to the conditions for performance of the contract — Termination — Reimbursement of sums paid — Interest)

(2010/C 221/68)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: V Joris, acting as Agent, and A. dal Ferro, lawyer)

Defendant: Antiche Terre Soc. Coop. rl Società Agricola Cooperativa (Arezzo, Italy) (represented by: L. Defalque and P. Van Leynseele, lawyers)

Re:

Action brought by the Commission under Article 238 EC seeking an order that Antiche Terre reimburse the sums paid by the Community in performance of contract no BM/188/96 of 23 December 1996, concluded with three companies, including Antiche Terre, under the Thermie programme

Operative part of the judgment

The Court:

1. *Orders Antiche Terre Soc. Coop. rl Società Agricola Cooperativa to pay the European Commission the sum of EUR 479 332,40, together with late-payment interest at the Italian statutory rate, calculated in accordance with the rates applicable from 4 January 2004 until payment in full of the debt, after deduction of the sum of EUR 461 979 recovered by the Commission following the implementation on 25 January 2005 of the bank guarantee of which it was beneficiary;*

2. *Dismisses the remainder of the action;*

3. *Orders Antiche Terre to pay the costs.*

([1]) OJ C 82, 4.4.2009.

Judgment of the General Court of 7 July 2010 — Herhof v OHIM — Stabilator(stabilator)

(Case T-60/09) ([1])

(Community trade mark — Opposition proceedings — Application for community figurative mark stabilator — Earlier Community word mark STABILAT — Relative ground for refusal — No likelihood of confusion — No similarity of goods and services — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 221/69)

Language of the case: German.

Parties

Applicant: Herhof-Verwaltungsgesellschaft mbH (Solms, Germany) (represented by: A. Zinnecker and T. Bösling, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Stabilator sp. z o.o. (Gdynia, Poland) (represented by: M. Kacprzak, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 16 December 2008 (Cases R 483/2008-4 and R 705/2008-4), relating to opposition proceedings between Herhof-Verwaltungsgesellschaft mbH and Stabilator sp. z o.o.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Herhof-Verwaltungsgesellschaft mbH to pay the costs.*

(1) OJ C 102, of 1.5.2009.

Judgment of the General Court of 7 July 2010 — Valigeria Roncato v OHIM –Roncato (CARLO RONCATO)

(Case T-124/09) (1)

(Community trade mark — Opposition proceedings — Application for community word mark CARLO RONCATO — Unregistered national figurative and word marks RV RONCATO and RONCATO — Earlier national figurative and word marks RV RONCATO and RONCATO — No likelihood of unfair advantage being taken of the distinctive character and repute of the earlier marks — Due cause for the use of the mark applied for — Relative grounds for refusal — Article 8(4) and (5) of Regulation (EC) No 40/94 (now Article 8(4) and (5) of Regulation (EC) No 207/2009))

(2010/C 221/70)

Language of the case: Italian

Parties

Applicant: Valigeria Roncato SpA (Campodarsego, Italy) (represented by: P. Perani and P. Pozzi, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Roncato Srl (Campodarsego) (represented by: M. Cartella and M. Fazzini, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 January 2009 (Cases R 237/2008-1 and R 236/2008-1) relating to opposition proceedings between Valigeria Roncato SpA and Roncato Srl.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Valigeria Roncato SpA to pay the costs.*

(1) OJ C 129, of 6.6.2009.

Order of the General Court of 9 June 2010 — BASF Plant Science and Others v European Commission

(Case T-293/08) (1)

(Approximation of laws — Deliberate release into the environment of genetically modified organisms — Authorisation procedure for placing on the market — Failure to adopt a decision — Action for failure to act — Action deprived of purpose — No need to adjudicate)

(2010/C 221/71)

Language of the case: English

Parties

Applicants: BASF Plant Science GmbH (Ludwigshafen, Germany), Plant Science Sweden AB (Svalöv, Sweden), Amylogene HB (Svalöv), and BASF Plant Science Co. GmbH, formerly BASF Plant Science Holding GmbH (Ludwigshafen) (represented by: D. Waelbroeck and U. Zinsmeister, lawyers, and D. Slater, Solicitor)

Defendant: European Commission (represented by: C. O'Reilly and C. Zadra, acting as Agents)

Intervening Party: Kingdom of Denmark (represented by J. Bering Liisberg and R. Holdgaard, acting as Agents)

Re:

Application for a declaration that, by failing to adopt a decision with regard to the applicants' notification relating to the placing of a genetically modified Amflora potato on the market, the Commission failed to fulfil its obligations under Article 18(1) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) and under Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23)

Operative part of the order

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

2. *The parties shall bear their own costs.*

([1]) OJ C 272, 25.10.2008.

Order of the General Court of 29 June 2010 — Mauerhofer v Commission

(Case T-515/08) ([1])

(Multiple framework contract 'Commission 2007' — Recruitment of experts in the context of actions relating to aid granted to non-member countries — Tasks requiring expertise — Commission measure relating to the number of billable days' work — Action for annulment — No challengeable act — Inadmissibility — Action for damages — Causal link — Action manifestly lacking any foundation in law)

(2010/C 221/72)

Language of the case: English

Parties

Applicant: Volker Mauerhofer (Vienna, Austria) (represented by: J. Schartmüller, lawyer)

Defendant: European Commission (represented by: S. Boelaert, Agent)

Re:

Application for, first, annulment of the Commission's administrative order of 9 September 2008 amending specific contract 2007/146271, which had been concluded between the Commission and the framework contractor for the project 'Value Chain Mapping Analysis' carried out in Bosnia and Herzegovina, by reducing the number of days' work carried out by the applicant — under a contract between him and the framework contractor — for which the framework contractor could bill the Commission, and second, the award of damages

Operative part of the order

1. *The action is dismissed.*

2. *Volker Mauerhofer shall pay the costs.*

([1]) OJ C 44, 21.2.2009.

Order of the General Court of 16 June 2010 — Biocaps v Commission

(Case T-24/09) ([1])

(Competition — Administrative procedure — Decision ordering an inspection — Article 20(4) of Regulation (EC) No 1/2003 — Existence of the addressee of the decision — Action manifestly unfounded in law)

(2010/C 221/73)

Language of the case: French

Parties

Applicant: Biocaps (Orsay, France) (represented by: Y.-R. Guillou, H. Speyart van Woerden and T. Verstraeten, lawyers)

Defendant: European Commission (represented by: A. Bouquet and É. Gippini Fournier, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 6524 of 29 October 2008, in Case COMP/39510, ordering Laboratoire Champagnat Desmounlins Philippakis, and all of the entities controlled directly or indirectly by it, to submit to an inspection pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2002 L 1, p. 1).

Operative part of the order

1. *The action is dismissed as manifestly unfounded in law;*

2. *Biocaps is ordered to bear its own costs and those incurred by the European Commission.*

([1]) OJ C 55, 7.3.2009.

Order of the General Court of 21 June 2010 — Meister v OHIM

(Case T-284/09 P) ([1])

(Appeal — Public service — Officials — Staff report — Late drawing up of assessment reports — Subject-matter of the action at first instance — Late reply to complaints — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2010/C 221/74)

Language of the case: German

Parties

Appellant: Herbert Meister (Muchamiel, Spain) (represented by: H.-J Zimmermann, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: I. de Medrano Caballero and G. Faedo, Agents, and D. Waelbroeck and E. Winter, lawyers)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 18 May 2009 in Joined Cases F-138/06 and F-37/08 *Meister* v *OHIM* [2009], not yet published in the ECR, seeking to have that judgment set aside.

Operative part of the order

1. *The appeal is dismissed;*

2. *Herbert Meister shall bear his own costs and pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in connection with these proceedings.*

([1]) OJ C 244, 10.10.2009.

Order of the General Court of 17 June 2010 — Jurašinović v Council

(Case T-359/09) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Reports of observers sent by the European Union to the Knin region (Croatia) — Interim measure — Inadmissibility — Implied refusal of access — Interest in bringing proceedings — Explicit decision adopted after the action was brought — No need to adjudicate)

(2010/C 221/75)

Language of the case: French

Parties

Applicant: Ivan Jurašinović (Angers, France) (represented by: A. Beguin, lawyer)

Defendant: Council of the European Union (represented by: C. Fekete and K. Zieleśkiewicz, Agents)

Re:

First, application for annulment of the decision of the Council of the European Union of 17 June 2009 refusing the applicant access to the reports of European Union observers in Croatia, in the Knin zone, from 1 to 31 August 1995, and to the documents entitled 'ECMM RC Knin Log reports', and for annulment of the implied refusal decision adopted on confirmatory application and, second, application seeking a declaration that the Council be ordered to authorise access, in electronic form, to the documents requested.

Operative part of the order

1. *There is no longer any need to adjudicate on the heads of claim in the action brought by Ivan Jurašinović for annulment of the implied decision of the Council of the European Union rejecting his confirmatory application for access to the reports of European Union observers in Croatia, in the Knin zone, from 1 to 31 August 1995, and to the documents entitled 'ECMM RC Knin Log reports';*

2. *The remainder of the application is dismissed as inadmissible;*

3. *The parties shall bear their own costs.*

([1]) OJ C 267, 7.11.2009.

Order of the President of the General Court of 30 June 2010 — Victoria Sánchez v Parliament and Commission

(Affaire T-61/10 R)

(Application for interim measures — Disregard of formal requirements — Not admissible)

(2010/C 221/76)

Language of the case: Spanish

Parties

Applicant: Fernando Marcelino Victoria Sánchez (Seville, Spain) (represented initially by N. Domínguez Varela, then by P. Suarez Plácido, lawyers)

Defendants: European Parliament (represented by N. Lorenz, N. Görlitz and P. López-Carceller, acting as Agents); and European Commission (represented by L. Lozano Palacios and I. Martínez del Peral, acting as Agents)

Re:

Application for interim measures to safeguard the applicant's physical safety, his fundamental rights and those of European citizens who might be affected.

Operative part

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

2) *The costs are reserved.*

Appeal brought on 21 May 2010 by Y against the judgment of the Civil Service Tribunal delivered on 7 October 2009 in Case F-29/08, Y v Commission

(Case T-493/09 P)

(2010/C 221/77)

Language of the case: French

Parties

Appellant: Y (Brussels, Belgium) (represented by J. Van Rossum, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— annul the judgment of the Civil Service Tribunal of 7 October 2009 (Case F-29/08 *Y* v *Commission*) dismissing the applicant's action;

— annul the decision of 24 May 2007 to dismiss the applicant;

— order the Commission to pay him the remuneration which he would have continued to receive if his contract had not been prematurely terminated, together with all the allowances to which he is entitled;

— order the Commission to pay him compensation of EUR 500 000 in respect of the non-material damage which he has suffered;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present appeal, the applicant seeks the annulment of the judgment of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-29/08 *Y* v *Commission*, dismissing the action by which the applicant had sought, on the one hand, the annulment of the decision of the Commission to dismiss the applicant and, on the other, damages.

In support of his appeal, the applicant submits that the CST erred in law:

— by considering that the Commission did not have the obligation of consulting the Reports Committee when the decision of the Commission of 7 April 2004 laying down General Implementing Provisions on the procedures governing the engagement and the use of contract staff requires such consultation;

— by considering that the applicant was validly dismissed when he had not been able to submit his observations on the opinion of the Reports Committee, which was not sent to him;

— by ruling that the failure to send the opinion of the Reports Committee to the applicant did not infringe his rights of the defence;

— by considering that the decision to dismiss was not based on the opinion of the Reports Committee, when that very report was expressly referred to in the grounds of the decision to dismiss;

— by taking the view that the decision to dismiss was correctly founded when it was based on complaints and facts which preceded the applicant's entry into service as a contractual agent; and

— by considering that the decision to dismiss did not constitute disciplinary action when the alleged inadequate conduct of the applicant gave rise to a disciplinary procedure concerning the same facts and the same conduct as that on the basis of which the decision to dismiss was justified.

Action brought on 27 May 2010 — Danzeisen v Commission

(Case T-242/10)

(2010/C 221/78)

Language of the case: German

Parties

Applicant: Werner Danzeisen (Eichstetten, Germany) (represented by: H. Schmidt, lawyer)

Defendant: European Commission

Form of order sought

— annul Commission Regulation (EU) No 271/2010, in so far as it amends Regulation (EC) No 889/2008 to the extent that paragraph 9 of Part A of Annex XI concerning the organic logo of the EU referred to in Article 57 provides in a legally binding way that use of the logo is to be 'in accordance with the rules accompanying its registration … in the Benelux Office for Intellectual Property', in particular in so far as those rules (the regulations on the collective mark) provide

— in Article 2(4), that nobody, including the applicant, may use the EU organic logo 'without empowerment from the bodies designed or recognised in accordance with the Community regulations';

— in Article 4, for exclusion of liability, the European Union giving no warranty for the use of the EU organic logo in the European Union, except to the extent of its corporate existence and of its underlying entitlement to the organic farming mark, that is to say a limitation of the European Union's liability to the legal identity of the European Union and its entitlement to the registration of the mark;

— in the second sentence of Article 7(2), that the collective mark regulations on use and management of the EU organic logo and European Union and national legislation can coexist, but 'that in case of conflict concerning the use of the organic farming mark, the provisions of the present regulations on use and management' shall be applied and take precedence over the other rules, in particular those contained in Regulation (EU) No 271/2010;

— in Article 9(3), that the EU organic logo may not be used in any manner that is derogatory to or critical of the European Union or of the collective mark regulations which accompanied its registration in the Benelux Office for Intellectual Property;

— in Article 12(1), that the European Union reserves its right to verify all marketing and promotion materials bearing the organic farming mark and periodically to send out requests for samples;

— in Article 15(1), that the interpretation of the provisions of the collective mark regulations is reserved to the European Union, and by extension to its legal representative, the European Commission, and is thus not subject to the jurisdiction of the Courts of the European Union;

— in Article 15(2), that the regulations on the use and management of the EU organic logo are governed by Belgian law;

— order the defendant to pay the necessary costs incurred by the applicant.

Pleas in law and main arguments

The applicant challenges the new version of Annex XI of Regulation (EC) No 889/2008 [1] introduced by Regulation (EU) No 271/2010. [2]

In support of its action, the applicant claims first that there is an infringement of the third sentence of Article 297(1) TFEU, since Annex XI Part A, paragraph 9 of Regulation No 889/2008 in the version of Regulation No 271/2010 refers to the Commission regulations on the collective mark which accompanied the registration of the European logo for organic products in the Benelux Office for Intellectual Property and those regulations were not published in the Official Journal, although they have the same binding legal effects as the text of the Commission Regulation itself.

Second, the applicant claims that the automatic cross-reference to the Commission's regulations on the collective mark gives the Commission the opportunity to alter the actual meaning of Regulation No 271/2010 at will, excluding the Member States, and thereby circumventing and undermining the legitimacy of the legislative measure conferred by the participation of the Member States.

Third, the applicant complains that the regulations on the collective mark provide that nobody may use the European Union logo for organic products without being empowered to do so by the bodies designed or recognised in accordance with European Union regulations. According to the applicant, that is not in conformity with Article 24(2) and Article 25(1) of Regulation (EC) No 834/2007 [3] because those provisions provide for a right for organic holdings to use the European Union logo for organic products for organic products which comply with the regulation.

Fourth, the applicant claims that the regulations on the collective mark provide for an exclusion of liability for the European Commission by which it also releases itself unlawfully from its legal obligation to avoid harm being caused to the applicant.

Fifth, the applicant argues that the provisions of the collective mark regulations provide in the case of coexistence of its provisions with the other legislative measures of the European Union and of national laws that in the case of conflict the regulations will always take precedence, meaning that the primacy of European Union law is not observed.

Sixth, the applicant complains that the regulations on the collective mark preclude him from using the European Union logo for organic products in any manner critical of the European Union. His fundamental right to freedom of expression is thereby infringed, arbitrarily and without justification.

Seventh, the applicant claims that the regulations on the collective mark provide that the European Commission may request samples from users of the European Union logo for organic products and may verify them, giving the Commission direct rights to intervene with regard to undertakings and departing from the division of competences with regard to the Member States.

Eighth, the applicant complains about the registration of the European Union logo for organic products by the European Union as a collective mark, because that is inter alia incompatible with Regulation No 834/2007.

Ninth, the applicant argues that in the regulations on the collective mark the Commission reserves the right to interpret those regulations itself, thereby infringing the monopoly on interpretation of the Court of Justice.

It is finally arbitrary that the regulations on the collective mark lay down that Belgian law also applies to the applicant.

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[1] Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1)

[2] Commission Regulation (EU) No 271/2010 of 24 March 2010 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards the organic production logo of the European Union (OJ 2010 L 84, p. 19)

[3] Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1)

Action brought on 26 May 2010 — Tsakiris-Mallas v OHIM — Seven (7 Seven Fashion Shoes)

(Case T-244/10)

(2010/C 221/79)

Language in which the application was lodged: Greek

Parties

Applicant: Tsakiris-Mallas A.E. (Argiroupoli Attiki, Greece) (represented by: N. Simantiras, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Seven S.p.A. (Turin, Italy)

Form of order sought from the General Court

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs)of 22 March 2010 in Case R 1045/2009-2

— order that the application No 544581 for registration as a community trade mark of the figurative mark '7 Seven Fashion Shoes' for goods in Classes 18 and 25 be accepted, and

— order the parties opposing these proceedings to pay the costs, including the costs relating to the opposition and appeal proceedings before OHIM

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: the figurative mark '7 Seven Fashion Shoes' for goods in Classes 18 and 25 (application for registration No 5445481)

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

Mark or sign cited in opposition: Italian figurative mark '7Seven', registration No 769 296, for goods in Classes 14, 16 and 18; and Italian figurative mark registration No 928116 for goods in Classes 16 and 18

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and rejection of the application for registration for goods in Class 18

Pleas in law: Infringement of Article 8(1)(a) and (b) of Council Regulation (EC) No 207/2009, since the Board of Appeal erred in finding that there is a likelihood of confusion between the marks at issue; infringement of Article 65(2), read with Article 8(5) of Council Regulation (EC) No 207/2009; infringement of Article 65(2) read in conjunction with Article 8(5) of Council Regulation (EC) No 207/2009 since the Board of Appeal entirely failed to examine the question to what extent Article 8(5) of the regulation did or did not apply.

Appeal brought on 9 June 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal delivered on 25 March 2010 in Case F-102/08, Marcuccio v Commission

(Case T-256/10 P)

(2010/C 221/80)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— In any event, set aside in its entirety and without exception the order under appeal.

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible.

— Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.

— Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.

— In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 25 March 2010. That order dismissed as partly manifestly inadmissible and partly manifestly unfounded an action seeking a declaration that there was no legal basis for or, in the alternative, the annulment of the Commission's decision refusing to send to the appellant a copy of the photographs taken when his personal effects were removed from his lodgings in Luanda (Angola) and to destroy every document relating to that removal, together with an order that the Commission pay compensation to the appellant for the damage resulting from the fact that it proceeded with the removal against the appellant's will.

In support of his claims, the appellant alleges a total failure to state reasons and infringement of rules governing evidence, the principle of the equality of the parties before the Community judicature, Article 94 of the Rules of Procedure of the CST, the Commission's duty to have regard for the welfare of the appellant and the duty of sound administration.

The appellant also submits that the CST failed to give a ruling on three of his claims.

Action brought on 4 June 2010 — Italy v Commission

(Case T-257/10)

(2010/C 221/81)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 24 March 2010 (C(2010) 1711 final) concerning State aid No C 4/2003 (ex NN 102/2002);

— order the Commission to pay the costs.

Pleas in law and main arguments

The Italian Republic contests before the General Court the Commission's decision of 24 March 2010 (C(2010) 1711 final), concerning State aid No C 4/2003 (ex NN 102/2002), notified by letter of 25 March 2010 (SG Greffe (2010) D/4224. That decision — which was adopted following the judgment of the Court of Justice in Case C-494/06 P *Commission* v *Italy and WAM* [2009] ECR I-3639, dismissing the Commission's appeal against the judgment by which the General Court had upheld the actions brought by Italy and by WAM against Commission Decision 2006/177/EC concerning State aid C 4/2003 (ex NN 102/2002) granted by Italy in favour of WAM — categorised as incompatible with the common market the measures relating to the interest rate subsidies granted to WAM SpA under Law 394/81 concerning measures in support of Italian exports in 1995 and 2000.

In support of its action, the Italian Republic submits:

First plea in law. Infringement of Article 4(5) and (6) of Regulation (EC) No 659/99 [1] and of the principle *ne bis in idem*. In this connection it is stated that the Commission's earlier decision, adopted in 2004, concerning the same aid was retrospectively annulled in its entirety by the General Court and the Court of Justice. That implied silent assent to the aid with effect from the decision to initiate a formal investigation in January 2003. The principle *ne bis in idem* also applies.

Second plea in law. Infringement of Article 108(2) and (3) TFEU and Articles 4, 6, 7, 10, 13 and 20 of Regulation (EC) 659/99. According to the Italian Republic, the new decision contains an entirely fresh examination of the aid in question. It should therefore have been adopted by means of a formal investigation procedure in the course of which both the Member State concerned and the interested parties were given an opportunity to make known their views.

Third plea in law. Contravention of the authority of *res iudicata*. In the view of the Italian Republic, the judgments of the General Court and of the Court of Justice regarding the earlier aid have the authority of *res iudicata* in relation to the fact that the aid does not facilitate exports but rather eases the cost burden of business penetration of third markets, and the fact that simple generalised references to the principles governing State aid which has a direct impact on the internal market are not enough by way of reasons to substantiate a decision on aid which has a direct impact on a third market and, what is more, a market of scant importance. As it is, in the new decision the Commission has ignored the *res iudicata* and paid no more than lip service to those principles.

Fourth plea in law. Breach of the principle of *audi alteram partem* and infringement of Article 20 of Regulation (EC) No 659/99. Lack of a preliminary investigation. The Italian Republic states in this connection that the 'preliminary investigation' on the basis of which the new decision was adopted took the form of a 2009 university research paper on the recipient undertaking, which the Commission neither sent to the interested parties nor discussed with them before adopting the new decision.

Fifth plea in law. Infringement of Article 107(1) TFEU and Articles 1(1)(d) and 2 of Regulation (EC) No 1998/2006. Contravention of *res iudicata*. Logical inconsistency in the decision. According to the Italian Republic, the aid in question fell within the scope of Regulation No 1998/2006 on 'de minimis' aid, in that it was worth less than EUR 200 000 over three years. For that reason, the aid did not constitute State aid and did not need to be notified. Regulation No 1998/2006 applied because it was a matter of *res iudicata* that the aid was not export aid.

Sixth plea in law. Infringement of Article 107(3)(c) and (e) TFEU and Article 4(1) and (2) of Regulation (EC) No 70/2001. In any event, the aid was compatible with the common market pursuant to Article 107(3)(c) TFEU because it was intended to promote the internationalisation of Community undertakings. The decision failed to consider that point.

Seventh plea in law. Infringement of Article 14 of Regulation (EC) No 659/99 and breach of the principle of proportionality. In any event, the aid to be recovered has been over-estimated: the actual aid is equal to the difference between the preferential rate and the reference rate at the time of the individual payments of the instalments, not to the difference between the preferential rate and the reference rate in effect at the (much earlier) time at which the financing was granted.

The Italian Republic also alleges breach of the duty to state reasons and of the principle of the protection of legitimate expectations.

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

Action brought on 7 June 2010 — Microban International and Microban (Europe) v Commission

(Case T-262/10)

(2010/C 221/82)

Language of the case: English

Parties

Applicants: Microban International Ltd. (Huntersville, United States) and Microban (Europe) Ltd. (Heath Hayes, United Kingdom) (represented by: M. S. Rydelski, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision No 2010/169 of 19 March 2010 concerning the non-inclusion of 2,4,4-'trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC (OJ 2010 L 75, p. 25); and

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

Pleas in law and main arguments

By means of its application, the applicants seek, pursuant to Article 263 TFEU, the annulment of Commission Decision No 2010/169 of 19 March 2010 concerning the non-inclusion of 2,4,4-'trichloro-2'-hydroxydiphenyl ether in the Union list of additives which may be used in the manufacture of plastic materials and articles intended to come into contact with foodstuffs under Directive 2002/72/EC ([1]) (OJ 2010 L 75, p. 25), notified under document C(2010) 1613.

In support of its submissions, the applicants put forward the following pleas in law:

Firstly, that the contested Decision is not in accordance with the authorisation procedure under the framework Regulation ([2]) as it lacks an adequate legal basis for its adoption.

Secondly, the Decision adopted by the defendant not to include the product concerned in the Union list of additives without a risk management decision, solely based on the withdrawal of the original application for authorisation, is in breach of the authorisation procedure for the product concerned.

Thirdly, the defendant violated the applicants' legitimate expectations by not providing for the opportunity to replace the original applicant for the product concerned.

Finally, the procedure leading up to the contested Decision was not in compliance with general principles of EU law, such as the principles of sound administration, transparency and legal certainty.

([1]) Commission Directive 2002/72/EC of 6 August 2002 relating to plastic materials and articles intended to come into contact with foodstuffs (OJ 2002 L 220, p. 18)

([2]) Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ 2004 L 338, p. 4).

Action brought on 16 June 2010 — Spain v Commission

(Case T-263/10)

(2010/C 221/83)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 8 April 2010 declaring the suspension of the interim payment application submitted by the Kingdom of Spain on 17 December 2009 on the grounds stated in Section I of the legal reasoning set out in the originating application;

— uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is directed against the decision of the Commission to interrupt the payment deadline of the interim payment application submitted by the Kingdom of Spain on 17 December 2009. That interim payment application, for a total amount of EUR 2 717 227,26, relates to the Operational Programme for Community Assistance from the European Social Fund in the framework of the Regional Competitiveness and Employment Objective for the Autonomous Community of the Balearics (CCI 2007ES052PO005).

In support of its claims the applicant relies on the following pleas in law:

— Infringement of Article 91(1)(a) of Council Regulation (EC) No 1083/2006 ([1]) of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund, since the Commission, without any report from a national or Community audit body to suggest the existence of a significant deficiency in the functioning of the management and control systems, and in the absence of any such deficiency, by means of the contested decision interrupted the payment deadline of the interim payment application submitted by the Kingdom of Spain.

— Infringement of the control strategy approved by the Commission, in as much as the Commission interrupted the payment deadline for that interim payment on the ground that the absence of systems audits constitutes a significant delay in the implementation of the strategy, when that strategy enabled the Kingdom of Spain to submit those systems audits until 30 June 2010.

— Infringement of the principle of legal certainty, since the Commission claims that the Kingdom of Spain failed to produce the systems audits in advance of the timetable agreed with the Commission itself, a requirement which therefore the Spanish authorities could not have foreseen.

— Infringement of the principle of protection of legitimate expectations, since the national authorities acted in reliance on auditing timetables which the Commission had approved in the strategy, timetables which were being met, without any indication from the Commission at any time that this represented any deficiency in the management and control system.

— Infringement of the principle of proportionality, since the measure adopted by the Commission is disproportionate and contrary to efficient financial management, and there are other less onerous legal instruments capable of attaining the same objective.

— Lastly, the Kingdom of Spain claims default interest under Article 87(2) of Regulation 1083/2006, Article 83 of Regulation 1605/2002 ([2]) and Article 106(5) of Commission Regulation 2342/2002. ([3])

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).
([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).
([3]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

Action brought on 16 June 2010 — Spain v Commission

(Case T-264/10)

(2010/C 221/84)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: Mrs Nuria Díaz Abad, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 10 May 2010 declaring the suspension of the interim payment application submitted by Spain on 18 December 2009 on the grounds stated in Section 1 of the legal reasoning set out in the originating application;

— Uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the Commission's decision to interrupt the payment deadline in respect of the interim payment application submitted by Spain on 18 December 2009. That interim payment application, for a total amount of EUR 37 320 854,12, relates to the Operational Programme for Community Assistance of the European Social Fund for Fighting Discrimination in the framework of the Objectives of Convergence and Regional Competitiveness and Employment in Spain (CCI 2007ES05UPO002).

The pleas in law and main arguments are the same as those already raised in Case T-263/10 *Spain* v *Commission*.

Action brought on 16 June 2010 — Spain v Commission

(Case T-265/10)

(2010/C 221/85)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: Mrs Nuria Díaz Abad, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 15 April 2010 declaring the suspension of the interim payment application submitted by Spain on 11 December 2009 on the grounds stated in Section I of the legal reasoning set out in the originating application;

— Uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the Commission's decision to interrupt the payment deadline in respect of the interim payment application submitted by Spain on 11 December 2009. That interim payment application, for a total amount of EUR 27 754 408,38,relates to the Operational Programmes for Community Assistance of the European Social Fund in the framework of the Objectives of Convergence for the Autonomous Community of Galicia (CCI 2007ES051PO004).

The pleas in law and main arguments are the same as those already raised in Case T-263/10 *Spain* v *Commission*.

Action brought on 16 June 2010 — Spain v Commission

(Case T-266/10)

(2010/C 221/86)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: Mrs Nuria Díaz Abdal, lawyer)

Defendant: European Commission

Form of order sought

— Annul the European Commission's decision of 11 May 2010 declaring the suspension of the interim payment application submitted by Spain on 10 December 2009 on the grounds stated in Part I of the legal reasoning set out in the originating application;

— Uphold the claim that the European Commission should pay interest on account of the delay in the actual payment of the interim sums applied for and improperly suspended;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the Commission's decision to interrupt the payment deadline in respect of the interim payment application submitted by Spain on 10 December 2009. That interim payment application, for a total amount of EUR 6 509 540,26, relates to the Operational Programme for Community Assistance of the European Social Fund in the framework of the Objectives of Convergence for the Basque Country (CCI 2007ES052PO010).

The pleas in law and main arguments are the same as those already raised in Case T-263/10 *Spain* v *Commission*.

Action brought on 8 June 2010 — Conceria Kara v OHIM (KARA)

(Case T-270/10)

(2010/C 221/87)

Language in which the application was lodged: Italian

Parties

Applicant: Conceria Kara Srl (Trezzano sul Naviglio, Italy) (represented by: P. Picciolini, lawyer)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: Dima — Gida Tekstil Deri Insaat Maden Turizm Orman Urünleri Sanayi Ve Ticaret Ltd Sti

Form of order sought

— Annulment of the decision of the Second Board of Appeal of 29 March 2010 on the appeal against the decision of the Opposition Division in Case B 1171453 in proceedings brought by Conceria Kara rejecting Community trade mark application No 5346457.

Pleas in law and main arguments

Applicant for a Community trade mark: DIMA — TEKSTIL DERI INSAAT MADEM TURIZM ORMAN URÜNLERE SANAYI VE TICARET LTD. STI.

Community trade mark concerned: Word mark 'KARRA' for goods and services in Classes 3, 9, 18, 20, 24, 25 and 35.

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

Mark or sign cited in opposition: Italian figurative marks 'KARA' (No 765 532, for goods in Class 35, and No 761 972 for goods and services in Classes 18 and 25), Community figurative trade mark No 887 810 ('KARA') for goods in, inter alia, Classes 18 and 25, and the business name of the Italian company 'CONCERIA KARA S.R.L.', the right to the use of which is claimed in relation to the same goods and services for earlier marks.

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

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Failure to state reasons and misinterpretation and misapplication of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 16 June 2010 — H v Council and Others

(Case T-271/10)

(2010/C 221/88)

Language of the case: English

Parties

Applicant: H (Catania, Italy) (represented by: C. Mereu and M. Velardo, lawyers)

Defendants: Council of the European Union, European Commission and European Union Police Mission in Bosnia and Herzegovina ("EUPM")

Form of order sought

— Annul the Contested Decision of 7 April 2010 and, if needed, the Decision of 30 April 2010;

— Order the defendants to pay the damages suffered by the applicant, assessed at 30 000,00 Euro; and

— Order the defendants to pay the costs of the proceedings, as well as an interest of 8 %.

Pleas in law and main arguments

By means of its application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of the Decision rendered by the European Union Police Mission (EUPM) in Bosnia and Herzegovina of 7 April 2010 and, if necessary, of the subsequent confirmation Decision of 30 April 2010, where it was decided to reassign the applicant from the main headquarters of the Mission in Sarajevo to the Regional Office in Banja Luka, as well as the downgrading of the applicant. Furthermore, the applicant seeks, pursuant to Article 340 TFEU, the award of damages in the amount of 30 000,00 Euro.

The applicant submits that the General Court has jurisdiction to rule in this case following the Order of the Civil Service Tribunal of 9 October 2006 in case F-53/06 *Gualtieri* v *Commission*.

In support of its submissions, the applicant puts forward the following pleas in law:

Firstly, the applicant claims misuse of powers, as there was no objective reason justifying the redeployment.

Secondly, the applicant claims that the Contested Decision is flawed for lack of motivation, as the European Union Police Mission in Bosnia and Herzegovina did not substantiate the operational reasons underlying the redeployment.

Thirdly, there has been a manifest error of appraisal, as there was no need to urgently redeploy a prosecutor to the Regional Office in Banja Luka.

In addition, there has been an infringement of Council Decision No 2009/906/CFSP of 8 December 2009 [1] as the Head of Mission was not entitled to reassign the staff but only to provide the management of the staff on a daily basis.

Finally, the applicant seeks the award of damages due to moral harassment.

(1) Council Decision 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) (OJ 2009 L 322, p. 22).

Action brought on 18 June 2010 — Olive Line International v OHIM — O. International (O·LIVE)

(Case T-273/10)

(2010/C 221/89)

Language in which the application was lodged: English

Parties

Applicant: Olive Line International, S.L. (Madrid, Spain) (represented by: P. Koch Moreno, lawyer)

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

Other party to the proceedings before the Board of Appeal: O. International, S.r.l (Spoleto, Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 April 2010 in case R 4/2009-4;

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

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, should it become an intervening party in this case.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'O·LIVE', for goods and services in classes 3 and 44 — Community trade mark application No 5715008

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

Mark or sign cited: Community trade mark registration No 5086657 of the figurative mark 'Olive Line', for goods in classes 3, 29 and 30; Spanish trade mark registration No 2741533 of the figurative mark 'Olive Line', for goods in classes 3, 29 and 30; Spanish trade mark registration No 2525564 of the word mark 'Olive Line', for goods in class 3

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that there was not a likelihood of confusion between the concerned trade marks.

Action brought on 21 June 2010 — Wesergold Getränkeindustrie v OHIM — Lidl Stiftung (WESTERN GOLD)

(Case T-278/10)

(2010/C 221/90)

Language in which the application was lodged: German

Parties

Applicant: Wesergold Getränkeindustrie GmbH & Co. KG (Rinteln, Germany) (represented by: P. Goldenbaum, I. Rohr und T. Melchert, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Lidl Stiftung & Co. KG (Neckarsulm, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 March 2010 in Case R 770/2009-1;

— Order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Lidl Stiftung & Co KG.

Community trade mark concerned: Word mark WESTERN GOLD for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Wesergold Getränkeindustrie GmbH & Co. KG

Mark or sign cited in opposition: a national and Community word mark WeserGold for goods in Classes 29, 31 and 32; a national and international word mark Wesergold for goods in Classes 29, 31 and 32 und a national word mark WESERGOLD for goods in Class 32.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal allowed, decision of the Opposition Division annulled.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 ([1]), as there is a likelihood of confusion between the marks at issue, infringement of Article 64(1) of Regulation (EC) No 207/2009, because the Board of Appeal did not remit the case or examine the substance of the opposition, also infringement of Article 75(2) of Regulation (EC) No 207/2009 on the basis of infringement of the applicant's right to be heard, also infringement of Article 75(1) of Regulation (EC) No 207/2009 because the Board of Appeal failed to state the reasons for its decision.

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

Action brought on 30 June 2010 — Fondation de l'Institut de Recherche Idiap v European Commission

(Case T-286/10)

(2010/C 221/91)

Language of the case: French

Parties

Applicant: Fondation de l'Institut de Recherche Idiap (represented by: G. Chapus-Rapin, lawyer)

Defendant: European Commission

Form of order sought

— first, order that this action should have suspensory effect;

— principally,

— declare the action admissible;

— allow the action;

— consequently,

— annul the European Commission's decision of 11 May 2010

— declare eligible to be met by European Union external funding the costs of IDIAP researchers holding permanent contracts working on the AMIDA, BACS and DIRAC programmes;

— order that IDIAP is not obliged to repay EUR 98 042,45 in respect of DIRAC and EUR 251 505,76 in respect of AMIDA;

— order the European Commission to pay all the costs of the proceedings;

— order the European Commission to pay the expenses and fees of the lawyer acting for IDIAP;

— alternatively,

— declare the action admissible;

— allow the action;

— consequently,

— annul the European Commission's decision of 11 May 2010;

— order the European Commission to undertake a fresh audit of IDIAP and to assign it to an institution other than Treureva;

— order the European Commission to pay the expenses and fees of the lawyer acting for IDIAP.

Pleas in law and main arguments

By this action, based on an arbitration clause, the applicant asks in essence that the General Court declare the eligibility of costs incurred in respect of researchers holding permanent employment contracts in relation to the AMIDA, BACS and DIRAC contracts within the framework of the specific research and technological development and demonstration programmes 'Integrating and Strengthening the European Research Area (2002-2006)' and 'Information Society Technologies (2000-2006)'.

In support of its action, the applicant claims that:

— the European Commission's interpretation of the AMIDA, BACS and DIRAC contracts, to the effect that costs in respect of permanent employment contracts of researchers are ineligible ordinary operating costs and not additional costs linked to the projects, is arbitrary or at least unfounded, since:

— the model contract on which the AMIDA, BACS and DIRAC contracts are based does not exclude permanent employment contracts from eligible costs;

— the link between researchers' employment contracts and the AMIDA, BACS and DIRAC project is expressly mentioned in the employment contracts;

— the researchers' employment contracts exist solely because of the projects, the applicant having no funds of its own to pay the researchers outside of the projects;

— the best way of ensuring that researchers can be released at the end of a project is a permanent contract, since under Swiss law (where the applicant is established) such a contract can be terminated at any time without cause on a brief period of notice;

— the Commission's interpretation is contrary to the principles of good faith and protection of legitimate expectations, since that interpretation has been gradually altered;

— alternatively, the audit procedure which is the subject of the contested decision is vitiated by irremediable defects which demand its annulment.

Order of the General Court of 18 June 2010 — Ecolean Research & Development v OHIM (CAPS)

(Case T-452/07) [1]

(2010/C 221/92)

Language of the case: Swedish

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

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[1] OJ C 51, 23.2.2008.

Order of the General Court of 18 June 2010 — Global Digital Disc v Commission

(Case T-96/08) ([1])

(2010/C 221/93)

Language of the case: German

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

([1]) OJ C 107, 26.4.2008.

Order of the General Court of 16 June 2010 — CPS Color Group v OHIM-Fema Farben and Putze (TEMACOLOR)

(Case T-295/08) ([1])

(2010/C 221/94)

Language of the case: English

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

([1]) OJ C 247, 27.9.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (1st Chamber) of 9 June 2010 — Marcuccio v Commission

(Case F-56/09) [1]

(Staff cases — Officials — Action for damages — Access of the administration to an official's lodgings — Respect for the home and private life)

(2010/C 221/95)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, then by G. Cipressa and L. Mansullo, lawyers)

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

Re:

Application for annulment of the Commission's decision to reject the applicant's application seeking, first, compensation for the harm allegedly suffered because agents of the Commission entered his lodgings in Luanda on 8 April 2002 and, secondly, the provision of copies of the photos taken at that time and the destruction of all documentation connected with that event.

Operative part of the judgment

The Tribunal:

1. *Orders the European Commission to pay Mr Marcuccio EUR 5 000;*

2. *Annuls the European Commission's decision of 11 September 2008, in so far as it rejected Mr Marcuccio's application of 24 April 2008 that he be sent photographs, that photographs be destroyed and that he be provided with information relating to the destruction of the photographs;*

3. *Dismisses the rest of the claims in the application;*

4. *Orders the European Commission, in addition to bearing its own costs, to pay one quarter of Mr Marcuccio's costs;*

5. *Orders Mr Marcuccio to pay three quarters of his own costs.*

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[1] OJ C 205, 29.8.2009, p. 48.

Action brought on 11 June 2010 — Kaser/Commission

(Case F-45/10)

(2010/C 221/96)

Language of the case: English

Parties

Applicant: Ferdinand Kaser (Brussels, Belgium) (represented by: M. Schober, lawyer)

Defendant: European Commission

The subject matter and description of the proceedings

First, annulment of the Decision of the European Commission CMS 07/046 removing applicant from his post, without reduction of the pension rights, witch took effect on 15 August 2009 and the annulment of all decisions taken against the applicant in the period between September 2003 until the removing from the post and, second, a claim for damages.

Form of order sought

The applicant claim that the Court should:

— Annul the Decision CMS 07/046 due to harassment, mismanagement and the abuse of the fundamental right to be heard;

— annul all decisions taken by the Appointing Authority against the applicant between the period September 2003 until the removing from the post due to harassment and mismanagement due to the abuse of the right of the applicant to be heard;

— enable a hearing of the applicant according to Article 7(1) and Article 24 of the Staff Regulations, and to refer to the submitted requests in February 2008 and March 2008;

— grant a symbolic compensation of one (1) Euro to the applicant in order to compensate his moral and professional prejudice he suffered as exposed in the present complaint, as far as the objective of such a complaint is not money but recognition of dignity and professional reputation of the applicant.

Action brought on 18 June 2010 — Hecq v Commission

(Case F-47/10)

(2010/C 221/97)

Language of the case: French

Parties

Applicant: André Hecq (Chaumont-Gistoux, Belgium) (represented by: L. Vogel, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the Commission decisions refusing to accept that the applicant suffers from partial permanent invalidity within the meaning of Article 73 of the Staff Regulations and making him liable for part of the fees and expenses incurred during the proceedings of the medical committee

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision adopted by the appointing authority on 5 March 2010 (and communicated by electronic mail of 8 March 2010), rejecting the complaint brought by the applicant, dated 9 December 2009, against two administrative decisions dated 7 September 2009 which, respectively, contain a definitive refusal to accept that the applicant suffers from any form of invalidity, under Article 73 of the Staff Regulations, and which furthermore require the applicant to pay half of the fees and expenses of the doctor who presided over the medical committee, amounting to EUR 500 (subsequently reduced to EUR 300), and to also pay all (then, subsequently, a quota of 60 %) of the fees and expenses of the doctor who represented him in connection with the proceedings of that medical committee;

— also annul those decisions dated 7 September 2009;

— order the European Commission to pay the costs.

Action brought on 24 June 2010 — De Nicola v EIB

(Case F-49/10)

(2010/C 221/98)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Application for annulment of the decision communicated to the applicant on 11 May 2009 insofar as it essentially obstructed the attempted amicable settlement of the matter by rejecting by implication the claim for reimbursement of medical expenses for laser therapy treatment, and an order that the defendant pay to the applicant the sum of EUR 3 000 together with interest, monetary inflation to be taken into account in fixing the amount awarded.

Form of order sought

— Annul the measure communicated by e-mail on 11 May 2010.

— Order the EIB to pay to the applicant the sum of EUR 3 000, expenditure for the laser therapy treatment undergone in 2007, together with compensation for monetary inflation and interest on the amount awarded.

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

Action brought on 3 July 2010 — Merhzaoui v Council

(Case F-52/10)

(2010/C 221/99)

Language of the case: French

Parties

Applicant: Mohamed Merhzaoui (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision of 12 May 2010 establishing the applicant's definitive staff report for the period from 1 January 2008 to 30 June 2009.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision of 12 May 2010 establishing the applicant's definitive staff report for the 2008-2009 period;

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

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