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COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 219/01)

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

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OJ C 160, 28.5.2011

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Rechtbank 's-Gravenhage, sitting at Zwolle-Lelystad (Netherlands) lodged on 31 March 2011 — Bibi Mohammad Imran v Minister van Buitenlandse Zaken

(Case C-155/11)

(2011/C 219/02)

Language of the case: Dutch

Referring court

Rechtbank 's-Gravenhage, sitting at Zwolle-Lelystad

Parties to the main proceedings

Appellant: Bibi Mohammad Imran

Respondent: Minister van Buitenlandse Zaken

Questions referred

1. Does Article 7(2) of the Family Reunification Directive [1] allow a Member State to refuse entry and residence to a family member, as referred to in Article 4 of the Family Reunification Directive, of a third country national lawfully residing in that Member State, exclusively on the ground that that family member has not passed the integration examination abroad as prescribed in the legislation of that Member State?

2. Is it important in answering Question 1 that the family member concerned is a mother of eight, of whom seven are minors, lawfully residing in that Member State?

3. Is it important in answering Question 1 whether, in the country of residence, accessible tuition is available to the family member in the language of that Member State?

4. Is it important in answering Question 1 whether the family member concerned, given his or her educational background and personal circumstances, particularly medical problems, would be able to pass that examination in the near future?

5. Is it important in answering Question 1 that no reviews take place in respect of the provisions of Article 5(5) and Article 17 of the Family Reunification Directive, Article 24 of the Charter or the principle of proportionality as contained in European Union law?

6. Is it important in answering Question 1 that nationals of certain other third countries are exempt, purely on the basis of their nationality, from the obligation to pass the civic examination abroad?

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[1] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

Reference for a preliminary ruling from the Rechtbank van koophandel Brussel (Belgium), lodged on 28 April 2011 — European Union, represented by the European Commission v Otis NV and Others

(Case C-199/11)

(2011/C 219/03)

Language of the case: Dutch

Referring court

Rechtbank van koophandel Brussel

Parties to the main proceedings

Applicant: European Union, represented by the European Commission

Defendants: Otis NV

Kone Belgium NV

Schindler NV

ThyssenKrupp Liften Ascenseurs NV

General Technic-Otis Sàrl

Kone Luxembourg Sàrl

Schindler Sàrl

ThyssenKrupp Ascenseurs Luxembourg Sàrl

Questions referred

1. (a) The Treaty states in Article 282, now Article [335], that the European Union is to be represented by the Commission; — Article 335 of the Treaty on the Functioning of the European Union, on the one hand, and Articles 103 and 104 of the Financial Regulation, on the other, state that, in administrative matters relating to their operation, the institutions concerned are to represent the European Union, with the possible result that [it] is the institutions, whether or not exclusively, … which may be parties to legal proceedings; — there is no doubt that receipt by contractors, etc., of payment … of inflated prices as a result of collusive practices comes within the concept of fraud; — in Belgian national law there is the principle of *'Lex specialis generalibus derogat'*; — to the extent [to which] that principle of law also finds acceptance in European law, is it then not the case that the initiative for bringing the claims (except where the Commission itself was the contracting authority) was vested in the institutions concerned?

   (b) (Subsidiary question) Ought the Commission not at least to have been conferred with authorisation by the institutions to represent them for the purpose of safeguarding their legal rights?

2. (a) Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention on Human [Rights] guarantee every person's right to a fair trial as well as the related principle that no one can be the judge in his or her own case; — is it reconcilable with that principle if the Commission, in an initial phase, acts as the competition authority and penalises the conduct complained of — namely, the formation of a cartel — as a breach of Article 81, now Article 101, of the Treaty after it has itself conducted the investigation in that regard, and subsequently, in a second phase, prepares the proceedings for seeking compensation before the national court and takes the decision to bring those proceedings, while the same Member of the Commission is responsible for both matters, which are connected, *a fortiori* as the national court seised of the matter cannot depart from the decision imposing penalties?

   (b) (Subsidiary question) If the answer to Question 2(a) is in the [negative], (there is irreconcilability), how then must the victim (the Commission and/or the institutions and/or the European Union) of an unlawful act (the formation of the cartel) assert its entitlement to compensation under European law, which is likewise a fundamental right …?

Reference for a preliminary ruling from the Arbeidsrechtbank Antwerpen (Belgium) lodged on 28 April 2011 — Anton Las v PSA Antwerp NV, previously Hesse Noord Natie NV

(Case C-202/11)

(2011/C 219/04)

Language of the case: Dutch

Referring court

Arbeidsrechtbank Antwerpen

Parties to the main proceedings

Applicant: Anton Las

Defendant: PSA Antwerp NV, previously Hesse Noord Natie NV

Question referred

Does the Decree of the Flemish Community of 19 July 1973 (B.S. 6 September 1973) infringe Article 39 of the EC Treaty concerning freedom of movement for workers within the European Union, in that it imposes an obligation on an undertaking situated in the Flemish language region when hiring a worker in the context of employment relations with an international character, to draft all documents relating to the employment relationship in Dutch, on pain of nullity?

Reference for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 28 April 2011 — nv All Projects & Developments and Others

(Case C-203/11)

(2011/C 219/05)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: nv All Projects & Developments

nv Bouw- en Coördinatiekantoor Andries

nv Belgische Gronden Reserve

nv Bouwonderneming Ooms

nv Bouwwerken Taelman

nv Brummo

nv Cordeel Zetel Temse

nv DMI Vastgoed

nv Dumobil

nv Durabrik

nv Eijssen

nv Elbeko

nv Entro

nv Extensa

nv Flanders Immo JB

nv Green Corner

nv Huysman Bouw

bvba Imano

nv Immpact Ontwikkeling

nv Invest Group Dewaele

nv Invimmo

nv Kwadraat

nv Liburni

nv Lotinvest

nv Matexi

nv Novus

nv Plan & Bouw

nv 7Senses Real Estate

nv Sibomat

nv Tradiplan

nv Uma Invest

bvba Versluys Bouwgroep

nv Villabouw Francis Bostoen

nv Willemen General Contractor

nv Wilma Project Development

nv Woningbureau Paul Huyzentruyt

Defendants: Ministerraad

Vlaamse regering

nv Immo Vivo

nv PSR Brownfield Developers

College van de Franse Gemeenschapscommissie

Franse Gemeenschapsregering

Questions referred

1. Should Articles 107 and 108 of the Treaty on the Functioning of the European Union, whether or not read in conjunction with Commission Decision 2005/842/EC [1] of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest, be interpreted as requiring that the measures contained in Articles 3.1.3, 3.1.10, 4.1.20(3)(2), 4.1.21 and 4.1.23 of the Decreet van het Vlaamse Gewest van 27 Maart 2009 betreffende het grond- en pandenbeleid (Decree of the Flemish Region of 27 March 2009 on land and buildings policy) should be notified to the European Commission before the adoption or entry into force of those provisions?

2. Should a scheme which by law imposes a social obligation on private actors whose land subdivision or building projects are of a certain minimum size, amounting to a percentage of a minimum of 10 per cent and a maximum of 20 per cent of that land subdivision or that building project, which can be performed in kind or by the payment of a sum of [EUR] 50 000 for each social plot or dwelling not realised, be appraised against the freedom of establishment, against the freedom to provide services or against the free movement of capital, or should it be classified as a complex scheme which should be appraised against each of those freedoms?

3. Having regard to Article 2(2)(a) and (j) thereof, is Directive 2006/123/EC [2] of the European Parliament and of the Council of 12 December 2006 on services in the internal market applicable to a compulsory contribution by private actors to the delivery of social houses and apartments, which is imposed by law as a social obligation linked to every building or land subdivision authorisation sought in respect of a project of a minimum size as determined by law, where the social housing units delivered are bought at predetermined maximum prices by social housing companies to be rented out to a broad category of individuals, or, by substitution, are sold by the social housing company to individuals belonging to the same category?

4. If the third question referred is answered in the affirmative, should the concept of 'requirement to be evaluated' in Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted as meaning that it covers an obligation on private actors to contribute, in addition to, or as part of their usual activity, to the construction of social housing, and to transfer the developed units at maximum prices to, or, through substitution, through semi-public authorities, even though those private actors then have no right of initiative in the social housing market?

5. If the third question referred is answered in the affirmative, should the national court apply a penalty, and if so, what penalty, to:

   (a) the finding that a new requirement, subjected to evaluation in accordance with Article 15 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, was not specifically evaluated in accordance with Article 15(6) of that Directive;

   (b) the finding that no notification of that new requirement was given in accordance with Article 15(7) of that Directive?

6. If the third question referred is answered in the affirmative, should the concept of 'forbidden requirement' in Article 14 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted as precluding a national scheme, under the assumptions described in that Article, not only if it makes access to a service activity or the exercise of it subject to compliance with a requirement, but also if that scheme merely provides that non-compliance with that requirement will cause the financial compensation for the performance of a service prescribed by law to lapse, and that the financial guarantee supplied in regard to the performance of the service will not be reimbursed?

7. If the third question referred is answered in the affirmative, should the concept of 'competing operators' in Article 14(6) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted as meaning that it is also applicable to a public institution whose mandates can partially interfere with those of the service providers, if it takes the decisions referred to in Article 14(6) of that Directive and it is also obliged, as the final step in a cascade system, to buy the social housing units developed by a service provider in the performance of the social obligation imposed on him?

8. (a) If the third question referred is answered in the affirmative, should the concept 'authorisation scheme' in Article 4(6) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted to mean that it is applicable to certificates issued by a public institution after the initial building or land subdivision authorisation has already been given, and which are necessary in order to qualify for certain of the compensations for the performance of a social obligation which was linked by law to the original authorisation and which are also necessary in order to claim the reimbursement of the financial guarantee imposed on the service provider in favour of the public institution?

   (b) If the third question referred is answered in the affirmative, should the concept of 'authorisation scheme' in Article 4(6) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market be interpreted to mean that it is applicable to an agreement which a private actor concludes with a public institution pursuant to a legal rule in the context of the substitution of the public institution in respect of the sale of a social housing unit developed by the private actor in the performance, in kind, of a social obligation which is linked by law to a building or land subdivision authorisation, taking account of the fact that the conclusion of that agreement is a condition for the executability of the authorisation?

9. Should Articles 49 and 56 of the Treaty on the Functioning of the European Union be interpreted as precluding a scheme whereby, when a building or land subdivision authorisation is granted in respect of a project of a certain minimum size, it is linked by law to a social obligation entailing the delivery of social housing units, amounting to a certain percentage of the project, which should subsequently be sold at capped prices to, or, with substitution, by, a public institution?

10. Should Article 63 of the Treaty on the Functioning of the European Union be interpreted as precluding a scheme whereby, when a building or land subdivision authorisation is granted in respect of a project of a certain minimum size, it is linked by law to a social obligation entailing the development of social housing units, amounting to a certain percentage of the project, which should subsequently be sold at capped prices to, or, with substitution, by, a public institution?

11. Should the concept of 'public works contracts' in Article 1(2)(b) of Directive 2004/18/EC [3] of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts be interpreted to mean that it is applicable to a scheme whereby, when a building or land subdivision authorisation is granted in respect of a project of a certain minimum size, it is linked by law to a social obligation entailing the development of social housing units, amounting to a certain percentage of the project, which should subsequently be sold at capped prices to, or, with substitution, by, a public institution?

12. Should Articles 21, 45, 49, 56 and 63 of the Treaty on the Functioning of the European Union and Articles 22 and 24 of Directive 2004/38/EC [4] of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, be interpreted as precluding the scheme introduced by Book 5 of the Decreet van het Vlaamse Gewest van 27 maart 2009 betreffende het grond- en pandenbeleid, entitled 'Wonen in eigen streek' ('Living in one's own area'), namely the scheme whereby in certain so-called target municipalities the transfer of land and any constructions erected thereon is made subject to the buyer or the tenant being able to demonstrate a sufficient tie with the municipality within the meaning of Article 5.2.1(2) of that decree?

[1] OJ 2005 L 312, p. 67.
[2] OJ 2006 L 376, p. 36.
[3] OJ 2004 L 134, p. 114.
[4] OJ 2004 L 158, p. 77.

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gdańsku (Republic of Poland), lodged on 9 May 2011 — Fortuna Sp. z o.o. v Dyrektor Izby Celnej w Gdyni

(Case C-213/11)

(2011/C 219/06)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gdańsku

Parties to the main proceedings

Applicant: Fortuna Sp. z o.o.

Defendant: Dyrektor Izby Celnej w Gdyni

Question referred

Must Article 1(11) of Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [1] and of rules on Information Society services be interpreted as meaning that the term 'technical regulation', the draft of which must be communicated to the European Commission pursuant to Article 8(1) of that directive, includes a legislative measure which prohibits the alteration of authorisations for activity involving gaming on low-value-prize machines in respect of a change in the place at which that gaming is organised?

[1] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gdańsku (Republic of Poland), lodged on 9 May 2011 — Grand Sp. z o.o. v Dyrektor Izby Celnej w Gdyni

(Case C-214/11)

(2011/C 219/07)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gdańsku

Parties to the main proceedings

Applicant: Grand Sp. z o.o.

Defendant: Dyrektor Izby Celnej w Gdyni

Question referred

Must Article 1(11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [1] and of rules on Information Society services be interpreted as meaning that the term 'technical regulation', the draft of which must be communicated to the Commission pursuant to Article 8(1) of that directive, includes a legislative measure which prohibits the extension of authorisations to carry on an activity involving gaming on low-value-prize machines?

[1] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

Reference for a preliminary ruling from the Sąd Okręgowy we Wrocławiu (Poland) lodged on 9 May 2011 — Iwona Szyrocka v SIGER Technologie GmbH

(Case C-215/11)

(2011/C 219/08)

Language of the case: Polish

Referring court

Sąd Okręgowy we Wrocławiu

Parties to the main proceedings

Claimant: Iwona Szyrocka

Defendant: SIGER Technologie GmbH

Question referred

1. Is Article 7 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure [1] to be interpreted as:

   (a) governing exhaustively all the requirements which must be met by an application for a European order for payment, or

   (b) determining only the minimum requirements for such an application and requiring that the provisions of national law be applied to the formal requirements for an application in the case of matters not governed by that provision?

2. If Question 1(b) is answered in the affirmative, where the application does not meet the formal requirements laid down in the law of the Member State (for example, the copy of the application intended for the opposing party has not been attached or the value of the subject-matter of the dispute is not specified), must a request for the claimant to complete the application be made pursuant to provisions of national law, in accordance with Article 26 of Regulation No 1896/2006, or pursuant to Article 9 thereof?

3. Is Article 4 of Regulation No 1896/2006 to be interpreted as meaning that the features of a pecuniary claim that are referred to in that provision, that is to say the fact that it is of a specific amount and has fallen due at the time when the application for a European order for payment is submitted, relate only to the principal claim or also to the claim for default interest?

4. On a correct interpretation of Article 7(2)(c) of Regulation No 1896/2006, where the law of a Member State does not provide for the automatic addition of interest is it possible, in a European order for payment procedure, to demand in addition to the principal:

   (a) all interest, including that known as 'open interest' (calculated from the day on which it falls due expressed as a specific date to a day of payment not specified by date, for example, 'from 20 March 2011 to the day of payment');

   (b) only interest calculated from the day on which it falls due expressed as a specific date to the day on which the application is submitted or the order for payment is issued;

   (c) only interest calculated from the day on which it falls due expressed as a specific date to the day on which the application is submitted?

5. If Question 4(a) is answered in the affirmative, how must the court's decision on interest be formulated in the order for payment form, in accordance with Regulation No 1896/2006?

6. If Question 4(b) is answered in the affirmative, who must indicate the amount of interest: the party concerned or the court of its own motion?

7. If Question 4(c) is answered in the affirmative, does the party concerned have an obligation to indicate the amount of calculated interest in the application?

8. If the claimant does not calculate the interest claimed up until the day on which the application is submitted, must the court calculate that amount of its own motion, or must it then request the party concerned to complete the application pursuant to Article 9 of Regulation No 1896/2006?

[1] OJ 2006 L 399, p. 1.

Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Gdańsku (Republic of Poland), lodged on 11 May 2011 — Forta Sp. z o.o. v Dyrektor Izby Celnej w Gdyni

(Case C-217/11)

(2011/C 219/09)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Gdańsku

Parties to the main proceedings

Applicant: Forta Sp. z o.o.

Defendant: Dyrektor Izby Celnej w Gdyni

Question referred

Must Article 1(11) of Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [1] and of rules on Information Society services be interpreted as meaning that the term 'technical regulation', the draft of which must be communicated to the Commission pursuant to Article 8(1) of that directive, includes a legislative measure which prohibits the issuing of authorisations to carry on an activity involving gaming on low-value-prize machines?

[1] Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37), as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 217, p. 18).

Reference for a preliminary ruling from the Nejvyšší Správní Soud (Czech Republic) lodged on 11 May 2011 — Star Coaches s.r.o. v Finanční ředitelství pro hlavní město Prahu

(Case C-220/11)

(2011/C 219/10)

Language of the case: Czech

Referring court

Nejvyšší Správní Soud

Parties to the main proceedings

Applicant: Star Coaches, s.r.o.

Defendant: Finanční ředitelství pro hlavní město Prahu

Questions referred

1. Does Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] refer only to supplies made by travel agents to end users of a travel service (travellers) or also to supplies made to other persons (customers)?

2. Should a transport company which merely provides transport of persons by providing bus transport to travel agencies (not directly to travellers) and which does not provide any other services (accommodation, information, consultancy etc.) be regarded as a travel agent for the purposes of Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax?

[1] OJ 2006 L 347, p. 1.

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland), lodged on 13 May 2011 — BGŻ Leasing Sp. z o. o. v Dyrektor Izby Skarbowej w Warszawie

(Case C-224/11)

(2011/C 219/11)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant and appellant: BGŻ Leasing Sp. z o. o.

Defendant and respondent: Dyrektor Izby Skarbowej w Warszawie

Questions referred

(a) Must Article 2(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] be interpreted as meaning that the service providing insurance for a leased item and the leasing service are to be treated as separate services or as one single, comprehensive, composite leasing service?

(b) If the answer to the first question is that the service providing insurance for a leased item and the leasing service are to be treated as separate services, must Article 135(1)(a) of Directive 2006/112, in conjunction with Article 28 thereof, be interpreted as meaning that the service providing insurance for a leased item is to be exempt in the case where the lessor insures that item and charges the costs of that insurance to the lessee?

[1] OJ 2006 L 347, p. 1.

Appeal brought on 20 May 2011 by Caixa Geral de Depósitos S.A against the judgment delivered on 3 March 2011 by the General Court (Eighth Chamber) in Case T-401/07 *Caixa Geral de Depósitos v Commission*

(Case C-242/11 P)

(2011/C 219/12)

Language of the case: Portuguese

Parties

Appellant: Caixa Geral de Depósitos S.A. ('CGD') (represented by N. Ruiz, advogado)

Other parties to the proceedings: European Commission, Portuguese Republic

Form of order sought

— The appellant claims that the Court should set aside the judgment of the General Court in Case T-401/07 and, consequently, consider its action for annulment to have been brought in due form and to be admissible, refer the case back to the General Court for the latter to assess the claim for annulment in part of the contested decision and order the Commission to pay EUR 1 925 858,61 together with default interest and to pay the costs incurred by the appellant;

— Or, in the alternative, the appellant claims that the Court should set aside the judgment of the General Court in Case T-401/07 and, consequently, consider its action for annulment to have been brought in due form and to be admissible, giving a final ruling on the dispute and allowing the claims made by the appellant at first instance.

Pleas in law and main arguments

The appellant raises three pleas in support of its appeal:

1. **The first and principal plea, relating to the appellant's capacity to bring proceedings and to infringement of Article 263 TFEU**

The appellant takes the view that it is directly and individually concerned by the contested decision ([1]) for it (the appellant), as well as being the operational intermediary, is actually the credit institution that, on its own behalf and at its own risk, in accordance with the decision approving the subsidy and with the agreement concluded with the Commission in order to give effect to that decision, concluded the loan contracts with the final beneficiaries from which the interest credits are derived that are the subject of the subsidy granted by the ERDF.

In addition, the assistance having been granted to CGD in order to offset the subsidies for the interest that that final beneficiaries must pay it, the General Court did not properly consider the question whether the Member State to which the contested decision was addressed might prevent the latter from having any effect in the CGD's legal sphere, given that the hypothesis in which the State would make up the EDRF contribution in default is merely theoretical.

2. **Second and ancillary plea, relating to the infringement of European Union law by the General Court in considering unfounded the claims of the Portuguese Republic in its judgment of 3 March 2011 in Case T-387/07 *Portugal* v *Commission***

The appellant maintains that the judgment in Case T-387/07 did not duly consider whether the contested decision was marred by want of reasoning or by incorrect reasoning, for: (a) the contested decision established no clear connection between the two allegations made against the applicants and the amount to which the assistance granted by the ERDF must finally be reduced; and (b) the General Court ended by basing the lawfulness of the contested decision on reasons different from those relied by the Commission as grounds for reducing the assistance granted by the ERDF.

The judgment in Case T-387/07 is also marred by an error of law, in that it replaces by its own reasoning that of the contested decision.

3. **Third and ancillary plea, relating to whether expenditure was regularly incurred and to infringement of Article 21(1) of Regulation No 4253/88** ([2]) **and of the agreement**

The appellant maintains that the judgment in Case T-387/07 failed to assess properly whether the contested decision was vitiated by the following defects: (a) error of fact and of law too, inasmuch as it assumes that the subsidies for interest on the loans forming part of the SGAIA (global grant for local development) may be paid by the intermediary to the final beneficiaries; (b) error of law, in that it holds it to be impossible for the conditions laid down in Article 13(3) of Regulation No 2052/88 ([3]) to be considered to be satisfied later when the total subsidy was computed; (c) error of law, in that the judgment considers that the SGAIA must follow a closure procedure ensuring that the sums corresponding to the subsidies for interest falling due should be debited from the special account and/or deposited in a second special bank account until 31 December 2001, failing which the corresponding expenditure might not be considered incurred by that date; (d) error of law, in that it considers that the SGAIA must follow a closure procedure ensuring that the sums corresponding to the subsidies for interest falling due on 31 December 2001 should be advanced to the final beneficiaries and, consequently, debited from the special account by 31 December 2001, failing which the corresponding expenditure might not be considered incurred by that date.

([1]) Commission Decision C(2007) 3772 of 31 July 2007 reducing the financial assistance granted by the European Regional Development Fund (ERDF) to the global grant for local development in Portugal by Commission Decision C(95) 1769 of the European Commission of 28 July 1995.

([2]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

([3]) Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

Action brought on 20 May 2011 — European Commission v Hellenic Republic

(Case C-244/11)

(2011/C 219/13)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and E. Montaguti)

Defendant: Hellenic Republic

Form of order sought

— declare that, by enacting the approval requirements which are laid down in Article 11(1), in conjunction with Article 11(2), of Greek Law 3631/2008 and the approval requirements which are laid down in Article 11(3) of that Law, the Hellenic Republic has failed to fulfil its obligations under Article 63 of the Treaty on the Functioning of the European Union concerning the free movement of capital and Article 49 of the Treaty on the Functioning of the European Union concerning freedom of establishment;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that the requirement for prior approval of the Inter-Ministerial Privatisation Committee in order to acquire voting rights from 20 % or more of the total share capital in companies of national strategic importance, as laid down in Article 11(1), in conjunction with Article 11(2), of Law 3613/2008, restricts the free movement of capital (Article 63 of the Treaty on the Functioning of the European Union) and freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union). Although those measures, as the Greek Government asserts, are non-discriminatory, they may deter economic operators from investment of their capital in companies of national strategic importance and therefore also from establishment in Greece.

The Commission further contends that Article 11(3) of Law 3613/2008 which provides for the mechanism of *ex post* control by the Minister for Economic Affairs and Finance in respect of certain company matters of decisive importance restricts the free movement of capital (Article 63 of the Treaty on the Functioning of the European Union) and freedom of establishment (Article 49 of the Treaty on the Functioning of the European Union), since it enables the State to render important decisions of the company invalid, on the basis of subsequent administrative grounds which are not known in advance. Therefore, the shareholders' discretion to implement their decisions is restricted, and their actual participation in the management and control of companies of national strategic importance — and consequently also their establishment in Greece — are hindered.

The Greek Government maintains that the Law at issue is restricted to just the privatisation of six companies of national strategic importance over which the State has control. The Commission, on the other hand, considers that in principle the Law's scope remains unclear, because neither the companies targeted nor the sectors which fall within the scope of the new system are specified in the Law, with the result that the Law remains equivocal not only as to its present but also as to its future scope and therefore does not provide the requisite legal certainty.

The Greek Government submits that the sole aim of the Law is to safeguard the public interest and to ensure that services are provided and networks operate continuously and smoothly. However, the Commission submits that the aim of the Law is, additionally, to safeguard the ability of the State to choose a strategic investor for companies of national strategic importance, to improve their competitiveness, and to ensure privatisation of companies of strategic importance for the national economy under transparent conditions. The Commission observes that, even if the provisions in question can be justified on the basis of reasons in the public interest, contrary to the case-law of the Court of Justice according to which systems of approval *'must be based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned, and all persons affected by a restrictive measure of that type must have a legal remedy available to them'*, [1] the criteria which they lay down for the grant of approval are **inappropriate** for achieving the objective that is referred to in the Law. The privatisation criteria (conferral of prior approval but also *ex post* control with the possibility of annulment of the company's decisions) which the provisions in question lay down are not clear, objective and precisely defined in the Law, and they do not have any relationship with the objectives pursued by the Law whilst they confer a broad discretion on the authorities, resulting in the subsequent imposition of additional restrictions on the privatisation of companies of national strategic importance, in the possible selective restriction of access of investors to privatised companies and market sectors, and in inability of the judicial authorities to review the way in which the administrative authorities have exercised the powers conferred upon them by the Law.

The Commission submits that the Hellenic Republic has not put forward sufficient explanation or arguments to justify enactment of the foregoing restrictions and therefore Article 11(1), in conjunction with Article 11(2), and Article 11(3) of Law 3631/2008, in laying down, respectively, the system of prior approval and the system of *ex post* control, infringe Articles 63 and 49 of the Treaty on the Functioning of the European Union.

[1] See Case C-205/99 *Analir and Others*, paragraph 38; Case C-380/05 *Centro Europa 7*, paragraph 116; Case C-367/98 *Commission* v *Portugal*, paragraph 50; Case C-483/99 *Commission* v *France*, paragraph 46; and Case C-463/00 *Commission* v *Spain*, paragraph 69.

Appeal brought on 23 May 2011 by the Portuguese Republic against the judgment delivered by the General Court (Eighth Chamber) on 3 March 2011 in Case T-387/07 Portugal v Commission

(Case C-246/11 P)

(2011/C 219/14)

Language of the case: Portuguese

Parties

Appellant: Portuguese Republic (represented by: L. Inez Fernandes, S. Rodrigues and A. Gattini, agents)

Other party to the proceedings: European Commission

Form of order sought

The Portuguese Republic claims that the Court should:

— Set aside the judgment of the General Court of the European Union in Case T-387/07 and, as a consequence:

— refer the case back to the General Court of the European Union to adjudicate on the application for annulment of Article 1 of Decision C(2007) 3772 of 31 July 2007, ([1]) pursuant to Article 263 of the Treaty on the Functioning of the European Union, in accordance with the form of order sought at first instance;

— order the Commission to pay the costs of the appeal proceedings and the proceedings at first instance;

or, in the alternative, in accordance with Article 61 of the Statute of the Court of Justice and Article 113 of the Rules of Procedure of the Court of Justice, the Court of Justice is asked to set aside the judgment of the General Court in Case T-387/07 and give final judgment in the case, granting the form of order sought by the Portuguese Republic at first instance and, thereby

— annul Article 1 of Decision C(2007) 3772, pursuant to Article 263 of the Treaty on the Functioning of the European Union, in accordance with the form of order sought at first instance; and

— order the Commission to pay the costs of the appeal proceedings and the proceedings at first instance.

Pleas in law and main arguments

Decision C(2007) 3772 is of direct concern to the Portuguese Republic. The reasons given for the decision infringe the principles of legality, proportionality, legitimate expectations and legal certainty, since the SGAIA [global grant for local development] decision was implemented in accordance with the legal framework applicable to it, as is apparent from the agreement concluded between the European Commission (EC) and the Caixa Geral de Depósitos (CGD).

Accordingly, the Portuguese Republic brings the present appeal on grounds of infringement of European Union law for the following reasons:

1. failure to state grounds or incorrect grounds;

2. the expenditure was implemented in a regular manner; infringement of Article 21(1) of Regulation (EEC) No 4253/88 ([2]) and the agreement.

([1]) Commission Decision C(20027) 3772 of 31 July 2007 reducing the financial assistance granted by the European Regional Development Fund (ERDF) towards the global grant for local development in Portugal pursuant to Commission Decision C(95) 1769 of 28 July 1995.

([2]) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria), lodged on 25 May 2011 — Murat Dereci, Vishaka Heiml, Alban Kokollari, Izunna Emmanuel Maduike and Dragica Stevic v Bundesminister für Inneres

(Case C-256/11)

(2011/C 219/15)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Claimants: Murat Dereci, Vishaka Heiml, Alban Kokollari, Izunna Emmanuel Maduike and Dragica Stevic

Defendant: Bundesminister für Inneres

Questions referred

1. (a) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — whose spouse and minor children are Union citizens — residence in the Member State of residence of the spouse and children, who are nationals of that Member State, even in the case where those Union citizens are not dependent on the national of a non-member country for their subsistence? (*Dereci* case)

(b) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — whose spouse is a Union citizen — residence in the Member State of residence of that spouse, who is a national of that Member State, even in the case where that Union citizen is not dependent on the national of a non-member country for his or her subsistence? (*Heiml* and *Maduike* cases)

(c) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — who has reached the age of majority and whose mother is a Union citizen — residence in the Member State of residence of the mother, who is a national of that Member State, even in the case where it is not the Union citizen who is dependent on the national of a non-member country for her subsistence but rather that national of a non-member country who is dependent on the Union citizen for his subsistence? (*Kokollari* case)

(d) Is Article 20 TFEU to be interpreted as precluding a Member State from refusing to grant to a national of a non-member country — who has reached the age of majority and whose father is a Union citizen — residence in the Member State of residence of the father, who is a national of that Member State, even in the case where it is not the Union citizen who is dependent on the national of a non-member country for his subsistence but rather the national of a non-member country who receives subsistence support from the Union citizen? (*Stevic* case)

2. If any of the questions under 1 is to be answered in the affirmative:

   Does the obligation on the Member States under Article 20 TFEU to grant residence to nationals of non-member countries relate to a right of residence which follows directly from European Union law, or is it sufficient that the Member State grants the right of residence to the national of a non-member country on the basis of its law establishing such a right?

3. (a) If, according to the answer to Question 2, a right of residence exists by virtue of European Union law:

   Under what conditions, exceptionally, does the right of residence which follows from European Union law not exist, or under what conditions may the national of a non-member country be deprived of the right of residence?

   (b) If, according to the answer to Question 2, it should be sufficient for the national of a non-member country to be granted the right of residence on the basis of the law of the Member State concerned which establishes such a right:

   Under what conditions may the national of a non-member country be denied the right of residence, notwithstanding an obligation in principle on the Member State to enable that person to acquire residence?

4. In the event that Article 20 TFEU does not prevent a national of a non-member country, as in the situation of Mr Dereci, from being denied residence in the Member State:

   Does Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, drawn up by of the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, or Article 41 ([1]) of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, which, according to Article 62 thereof, forms an integral part of the Agreement establishing an Association between the European Economic Community and Turkey, preclude, in a case such as that of Mr Dereci, the subjection of the initial entry of a Turkish national to stricter national rules than those which previously applied to the initial entry of Turkish nationals, even though those national provisions which had facilitated the initial entry did not enter into force until after the date on which the aforementioned provisions concerning the association with Turkey entered into force in the Member State in question?

([1]) OJ 1972 L 293, p. 4.

Action brought on 3 June 2011 — Kingdom of Spain v Council of the European Union

(Case C-274/11)

(2011/C 219/16)

Language of the case: Spanish

Parties

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

Defendant: Council of the European Union

Form of order sought

— annul Council Decision 2011/167/EU; ([1])

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

Pleas in law and main arguments

1. ***Misuse of powers since recourse was had to enhanced cooperation*** although the purpose is not to achieve integration of all the Member States — the mechanism having been used instead to avoid negotiating with a Member State, imposing upon it an opt-out solution — and although the objectives pursued in this instance could have been achieved by means of a special agreement as provided for in Article 142 of the European Patent Convention. ([2])

2. ***Failure to respect the judicial system of the EU*** in that no dispute resolution system is provided for in relation to certain legal rights subject to EU law.

3. ***In the alternative***, should the Court find that it is appropriate in this instance to have recourse to enhanced cooperation and that it is possible to establish substantive rules for legal rights subject to EU law without making provision for a dispute resolution system in relation to those rights, the Kingdom of Spain submits that the necessary conditions for enhanced cooperation are not met for the following reasons:

   3.1. ***infringement of Article 20(1) TEU***, since in this instance enhanced cooperation is not a last resort and does not fulfil the objectives provided for in the TEU and since areas are referred to which are not within the scope of enhanced cooperation as they are exclusive competence of the EU.

   3.2. ***infringement of Article 326 TFEU***, since enhanced cooperation in this instance infringes the principle of non-discrimination and undermines the internal market and economic, social and territorial cohesion, constituting discrimination in trade between Member States and distorting competition between them.

   3.3. ***infringement of Article 327 TFEU***, since the enhanced cooperation does not respect the rights of the Kingdom of Spain, which is not participating in it.

([1]) Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53).

([2]) Convention on the Grant of European Patents of 5 October 1973.

GENERAL COURT

Judgment of the General Court of 8 June 2011 — Commission v Marcuccio

(Case T-20/09) [1]

(Appeal — Civil service — Officials — Invalidity pension — Action declared founded in part at first instance on the grounds of failure to state the reasons for the contested decision — Article 78 of the Staff Regulations — Retirement on grounds of invalidity — Invalidity Committee)

(2011/C 219/17)

Language of the case: Italian

Parties

Appellant: European Commmission (represented by: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

Other party to the proceedings: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-41/06 *Marcuccio* v *Commission*, not published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-41/06 Marcuccio v Commission in so far as the Civil Service Tribunal annulled the decision of the European Commission of 30 May 2005 by which Mr Marcuccio was retired on grounds of invalidity and granted an invalidity allowance, in so far as it ordered the Commission to pay to Mr Marcuccio the sum of EUR 3 000 and in so far as it divided the costs on the basis of the annulment and order for payment (paragraphs 1, 2, 4 and 5 of the operative part of the judgment).*

2. *Refers the case back to the Civil Service Tribunal.*

3. *Costs reserved.*

[1] OJ C 55, 7.3.2009.

Judgment of the General Court of 15 June 2011 — V v Commission

(Case T-510/09) [1]

(Appeal — Civil service — Recruitment — Refusal of appointment on grounds of failure to meet physical fitness requirements necessary for the performance of the functions — Duty on the Civil Service Tribunal to state reasons)

(2011/C 219/18)

Language of the case: French

Parties

Appellant: V (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Other party to the proceedings: European Commission (represented by: J. Curral and D. Martin, acting as Agents)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (First Chamber) of 21 October 2009 in Case F-33/08 V v *Commission* ECR II-0000 seeking the annulment of that judgment.

Operative part of the judgment

The Court:

1. *Annuls the judgment of the European Union Civil Service Tribunal of 21 October 2009 in Case F-33/08 V v Commission to the extent that the Civil Service Tribunal omitted to rule on a plea in law raised by Ms V at the hearing, alleging that the president of the medical committee was not enrolled in the Belgian Medical Association;*

2. *Dismisses the remainder of the appeal;*

3. *Dismisses the action brought by Ms V before the Civil Service Tribunal in Case F-33/08;*

4. *Orders Ms V to bear her own costs and those incurred by the European Commission at the present instance. Further orders the costs incurred at first instance, in the case which gave rise to the judgment in V v Commission, to be borne in accordance with the ruling given in paragraphs 2 and 3 of the operative part thereof.*

[1] OJ C 161, 19.6.2010.

Judgment of the General Court of 14 June 2011 — Sphere Time v OHIM — Punch (Watch attached to a lanyard)

(Case T-68/10) [1]

(Community design — Invalidity proceedings — Registered Community design representing a watch attached to a lanyard — Prior design — Disclosure of prior design — Individual character — Misuse of powers — Articles 4, 6, 7 and 61 to 63 of Regulation (EC) No 6/2002)

(2011/C 219/19)

Language of the case: English

Parties

Applicant: Sphere Time (Windhof, Luxembourg) (represented by: C. Jäger, N. Gehlsen and M.-C. Simon, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Punch SAS (Nice, France)

Re:

ACTION brought against the decision of the Third Board of Appeal of OHIM of 2 December 2009 (case R 1130/2008-3), concerning invalidity proceedings between Punch SAS and Sphere Time.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Sphere Time to pay the costs.*

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[1] OJ C 100, 17.4.2010.

Judgment of the General Court of 15 June 2011 — Graf-Syteco v OHIM — Teco Electric & Machinery (SYTECO)

(Case T-229/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark SYTECO — Earlier figurative national and Benelux marks TECO — Relative grounds for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Partial refusal to register)

(2011/C 219/20)

Language of the case: German

Parties

Applicant: Graf-Syteco GmbH & Co. KG (Tuningen, Germany) (represented by: T. Kieser, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Teco Electric & Machinery Co. Ltd (Taipei, Taiwan)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 18 February 2010 (Case R 230/2009-1) concerning opposition proceedings between Teco Electric & Machinery Co. Ltd and Graf-Syteco GmbH & Co. KG

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Graf-Syteco GmbH & Co. KG to pay the costs.*

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[1] OJ C 195, 17.7.2010.

Judgment of the General Court of 8 June 2011 — Bamba v Council

(Case T-86/11) [1]

(Common foreign and security policy — Restrictive measures adopted in view of the situation in Côte d'Ivoire — Freezing of funds — Obligation to state reasons)

(2011/C 219/21)

Language of the case: French

Parties

Applicant: Nadiany Bamba (Abidjan, Côte d'Ivoire) (represented by: P. Haïk and J. Laffont, lawyers)

Defendant: Council of the European Union (represented by: B. Driessen and A. Vitro, Agents)

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

Re:

APPLICATION for annulment of Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire (OJ 2011 L 11, p. 36) and of Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1), in so far as they concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire, and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire, in so far as they concern Ms Nadiany Bamba;*

2. *Maintains the effects of Decision 2011/18 in respect of Ms Bamba until the annulment of Regulation No 25/2011 takes effect;*

3. *Orders the Council of the European Union to pay, in addition to its own costs, those incurred by Ms Bamba;*

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

([1]) OJ C 95, 26.3.2011.

Order of the President of the General Court of 9 June 2011 — Eurallumina v Commission

(Case T-62/06 RENV R)

(Application for interim measures — State aid — Decision declaring the aid incompatible with the common market and ordering its recovery — Application for suspension of operation — No urgency)

(2011/C 219/22)

Language of the case: English

Parties

Applicant: Eurallumina SpA (Portoscuso, Italy) (represented by: R. Denton and L. Martin Alegi, Solicitors)

Defendant: European Commission (represented by: V. Di Bucci, N. Khan, D. Grespan and K. Walkerová, Agents)

Re:

Application for suspension of operation of Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy (OJ 2006 L 119, p. 12) in so far as it concerns the applicant

Operative part of the order

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

2. *Costs are reserved.*

Order of the General Court of 24 May 2011 — Nuova Agricast v Commission

(Case T-373/08) ([1])

(Non-contractual liability — Aid scheme under Italian legislation — Scheme declared compatible with the common market — Transitional measure — Exclusion of certain undertakings — Principle of the protection of legitimate expectations — Sufficiently serious breach of a rule of law conferring rights on individuals — Absence — Clear lack of jurisdiction — Action manifestly devoid of any basis in law)

(2011/C 219/23)

Language of the case: Italian

Parties

Applicant: Nuova Agricast Srl (Cerignola, Italy) (represented by: M.A. Calabrese, lawyer)

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

Re:

Action for non-contractual liability seeking compensation for damage allegedly suffered by the applicant as a result of the Commission's adopting the decision of 12 July 2000 not to raise objections to a State aid scheme in the form of aid for investment in disadvantaged regions of Italy (Aid No 715/99 — Italy (SG 2000 D/105754) and by reason of the Commission's conduct prior to the adoption of that decision.

Operative part of the order

1. *The action is dismissed.*

2. *Nuova Agricast Srl shall pay the costs.*

([1]) OJ C 285, 8.11.2008.

Order of the General Court of 27 May 2011 — Danzeisen v Commission

(Case T-242/10) ([1])

(Action for annulment — Regulation No 271/2010 — Action rendered devoid of purpose — No need to adjudicate)

(2011/C 219/24)

Language of the case: German

Parties

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

Defendant: European Commission (represented by: G. von Rintelen, F.W. Bulst and M. Vollkommer, acting as Agents)

Re:

Annulment in part of 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)

Operative part of the order

1. *There is no longer any need to adjudicate on the present action.*

2. *Each party shall bear its own costs.*

([1]) OJ C 221, 14.8.2010.

Order of the President of the General Court of 10 June 2011 — Companhia Previdente v Commission

(Case T-414/10 R)

(Interim measures — Competition — Commission decision imposing a fine — Bank guarantee — Application to suspend the operation of a measure — Financial loss — Lack of exceptional circumstances — Lack of urgency)

(2011/C 219/25)

Language of the case: Portuguese

Parties

Applicant: Companhia Previdente — Sociedade de Controle de Participações Financeiras S.A. (Lisbon, Portugal) (represented by: D. Proença de Carvalho and J. Caimoto Duarte, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre. V. Bottka and P. Costa de Olivera, Agents, assisted by M. J. Marques Mendes, lawyer)

Re:

Application to suspend the operation of Commission Decision C(2010) 4387 final of 30 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.344 — Pre-stressing steel) and to dispense the applicant from the obligation to establish a bank guarantee so as to avoid immediate recovery of the fine imposed under Article 2 of that decision.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 9 June 2011 — DTS Distribuidora de Televisión Digital v Commission

(Case T-533/10 R)

(Interim measures — State aid — Alteration of the funding scheme of the Spanish radio and television broadcasting organisation (RTVE) — Commission decision declaring the new funding scheme compatible with the internal market — Application for suspension of operation — No urgency)

(2011/C 219/26)

Language of the case: Spanish

Parties

Applicant: DTS Distribuidora de Televisión Digital, SA (Madrid, Spain) (represented by: H. Brokelmann and M. Ganino, lawyers)

Defendant: European Commission (represented by: G. Valero Jordana and C. Urraca Caviedes, Agents)

Parties intervening in support of the defendant: Kingdom of Spain (represented by: J. Rodríguez Cárcamo, abogado del Estado) and Corporación de Radio y Televisión Española, SA (RTVE) (Madrid, Spain) (represented by A. Martínez Sánchez, A. Vázquez-Guillén Fernández de la Riva and J. Rodríguez Ordóñez, lawyers)

Re:

Application for suspension of the operation of Commission Decision 2011/1/EU of 20 July 2010 on the State aid scheme C 38/09 (ex NN 58/09) which Spain is planning to implement for RTVE (OJ 2011 L 1, p. 9)

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 9 June 2011 — GRP Security v Court of Auditors

(Case T-87/11 R)

(Interim measures — Public service contracts — Finding that there were irregularities in certain documents provided by the successful tenderer — Decisions imposing administrative sanctions on the successful tenderer and unilateral termination of the contract — Application for suspension of the operation of a measure — Lack of urgency)

(2011/C 219/27)

Language of the case: French

Parties

Applicant: GRP Security (Bretrange, Luxembourg) (represented by: G. Osch, lawyer)

Defendant: Court of Auditors of the European Union (represented by: T. Kennedy, J.-M. Steiner and J. Vermer, lawyers)

Re:

Suspension of the operation of the decisions of the Court of Auditors of 14 January 2011 by which, first, the Court of Auditors claimed payment from the applicant of damages in the amount of EUR 16 000 and reserved the right to claim further amounts by way of damages and, secondly, imposed on the applicant the administrative penalty of exclusion from contracts and subsidies financed by the budget of the European Union for a provisional period of three months.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 20 May 2011 — European Goldfields v Commission

(Case T-261/11)

(2011/C 219/28)

Language of the case: English

Parties

Applicant: European Goldfields Ltd (Whitehorse, Canada) (represented by: K. Adamantopoulos, E. Petritsi, E. Trova and P. Skouris, lawyers)

Defendant: European Commission

Form of order sought

— Annul European Commission's Decision of 23 February 2011 in case C 48/2008 (ex NN 61/2008), regarding State aid which Greece has implemented in favour of Ellinikos Xryssos, in particular Articles 1 to 5 thereof; and

— Order the defendant to bear the costs occasioned by the applicant in the course of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed several manifest errors in establishing and assessing the underlying facts of the case that materially affected the Commission's application and interpretation of the condition of the existence of an economic advantage to Ellinikos Xryssos, pursuant to Article 107(1) TFEU.

2. Second plea in law, alleging that the Commission committed manifest errors in law in its application and interpretation of the State aid definition element relating to the existence of an economic advantage, pursuant to Article 107(1) TFEU, as the Commission erroneously applied, or misapplied, the relevant market economy investor principle.

3. Third plea in law, alleging that the Commission committed several manifest errors in law in its application and interpretation of the condition of the existence of an economic advantage, pursuant to Article 107(1) TFEU, by establishing such an economic advantage by reference to the Commission's own unfounded, selective and arbitrary arguments regarding the alleged value of the transferred assets.

4. Fourth plea in law, alleging that the Commission committed manifest errors in law in the application and interpretation of the condition of the existence of an economic advantage, pursuant to Article 107 (1) TFEU, as it erroneously found that the alleged waiver of taxes in favour of Ellinikos Xryssos constituted an economic advantage.

5. Fifth plea in law, alleging that the Commission infringed essential procedural requirements and misused its power, resulting in a breach of its obligation to carry out a diligent and impartial examination of the case.

Action brought on 20 May 2011 — Ellinikos Chrysos v Commission

(Case T-262/11)

(2011/C 219/29)

Language of the case: English

Parties

Applicant: Ellinikos Chrysos AE (Kifissia, Greece) (represented by: K. Adamantopoulos, E. Petritsi, E. Trova and P. Skouris, lawyers)

Defendant: European Commission

Form of order sought

— Annul European Commission's Decision of 23 February 2011 in case C 48/2008 (ex NN 61/2008), regarding State aid which Greece has implemented in favour of Ellinikos Xryssos, in particular Articles 1 to 5 thereof; and

— Order the defendant to bear the costs occasioned by the applicant in the course of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission committed several manifest errors in establishing and assessing the underlying facts of the case that materially affected the Commission's application and interpretation of the condition of the existence of an economic advantage to Ellinikos Xryssos, pursuant to Article 107(1) TFEU.

2. Second plea in law, alleging that the Commission committed manifest errors in law in its application and interpretation of the State aid definition element relating to the existence of an economic advantage, pursuant to Article 107(1) TFEU, as the Commission erroneously applied, or misapplied, the relevant market economy investor principle.

3. Third plea in law, alleging that the Commission committed several manifest errors in law in its application and interpretation of the condition of the existence of an economic advantage, pursuant to Article 107(1) TFEU, by establishing such an economic advantage by reference to the Commission's own unfounded, selective and arbitrary arguments regarding the alleged value of the transferred assets.

4. Fourth plea in law, alleging that the Commission committed manifest errors in law in the application and interpretation of the condition of the existence of an economic advantage, pursuant to Article 107 (1) TFEU, as it erroneously found that the alleged waiver of taxes in favour of Ellinikos Xryssos constituted an economic advantage.

5. Fifth plea in law, alleging that the Commission infringed essential procedural requirements and misused its power, resulting in a breach of its obligation to carry out a diligent and impartial examination of the case.

Action brought on 19 May 2011 — Elmaghraby v Council

(Case T-265/11)

(2011/C 219/30)

Language of the case: English

Parties

Applicant: Ahmed Alaeldin Amin Abdelmaksoud Elmaghraby (Cairo, Egypt) (represented by: D. Pannick, QC (Queen's Counsel), R. Lööf, Barrister, and M. O'Kane, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul, in so far as it concerns the applicant, Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63);

— Annul, in so far as it concerns the applicant, Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4), implementing Council Decision 2011/172/CFSP;

— Order the defendant to pay damages in sum of EUR 5 000; and

— Order the defendant to bear the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Article 29 TEU is an erroneous and/or insufficient legal basis for Council Decision 2011/172/CFSP, as:

   — The aforementioned Decision does not pursue a foreign policy objective;

   — The adoption of such Decision (and of Council Regulation (EU) No 270/2011) constitutes an abuse of power; and

   — The inclusion of the applicant in the Annex to Council Decision 2011/172/CFSP (and the corresponding Regulation) was irrational.

2. Second plea in law, alleging that the inclusion of the applicant within the ambit of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011 violates his right to effective judicial protection.

3. Third plea in law, alleging that the inclusion of the applicant within the ambit of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011 violates the principle of proportionality.

4. Fourth plea in law, alleging that the applicant has suffered damages as a direct result of the adoption of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011, which fall to be made good by the Union.

Action brought on 19 May 2011 — El Gazaerly v Council

(Case T-266/11)

(2011/C 219/31)

Language of the case: English

Parties

Applicant: Naglaa Abdallah El Gazaerly (London, United Kingdom) (represented by: D. Pannick, QC (Queen's Counsel), R. Lööf, Barrister, and M. O'Kane, Solicitor)

Defendant: Council of the European Union

Form of order sought

— Annul, in so far as it concerns the applicant, Council Decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 63);

— Annul, in so far as it concerns the applicant, Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4), implementing Council Decision 2011/172/CFSP;

— Order the defendant to pay damages in sum of EUR 10 000; and

— Order the defendant to bear the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Article 29 TEU is an erroneous and/or insufficient legal basis for Council Decision 2011/172/CFSP, as:

   — The aforementioned Decision does not pursue a foreign policy objective;

   — The adoption of such Decision (and of Council Regulation (EU) No 270/2011) constitutes an abuse of power; and

   — The inclusion of the applicant in the Annex to Council Decision 2011/172/CFSP (and the corresponding Regulation) was irrational.

2. Second plea in law, alleging that the inclusion of the applicant within the ambit of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011 violates his right to effective judicial protection.

3. Third plea in law, alleging that the inclusion of the applicant within the ambit of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011 violates the principle of proportionality.

4. Fourth plea in law, alleging that the applicant has suffered damages as a direct result of the adoption of Council Decision 2011/172/CFSP and Council Regulation (EU) No 270/2011, which fall to be made good by the Union.

Action brought on 25 May 2011 — ClientEarth and others/Commission

(Case T-278/11)

(2011/C 219/32)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom), Friends of the Earth Europe (Amsterdam, Netherlands), Stichting Fern (Leiden, Netherlands); and Stichting Corporate Europe Observatory (Amsterdam, Netherlands) (represented by: P. Kirch, lawyer)

Defendant: European Commission

Form of order sought

— Declare the Commission in violation of Regulation No 1049/2001 ([1]);

— Declare the Commission in violation of the Aarhus Convention ([2]);

— Declare the Commission in violation of Regulation No 1367/2006 ([3]);

— Annul the Decision under Article 8(3) of Regulation No 1049/2001, by which there was an implied negative decision the failure by the Commission to reply within the prescribed time-limits to the applicants' confirmatory application;

— Grant injunctive relief as provided for by the Aarhus Convention Article 9(4) ordering the Commission to provide within a set timeframe access to all requested documents, unless protected under an absolute exception in Article 4(1) of Regulation No 1049/2001;

— Order the Commission to pay the applicants' costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

The applicants request the annulment of the Commission's refusal of their request to grant access to documents related to the voluntary certification schemes seeking recognition from the Commission under Article 18 of Directive 2009/28 ([4]).

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

1. First plea in law, alleging a violation of Article 8(2) of regulation No 1049/2001 due to the Commission's failure to provide a reply within the prescribed time and to give detailed reasons for requesting an extension.

2. Second plea in law, alleging a violation of Articles 8(1) and 8(2) of regulation No 1049/2001 due to the Commission's failure to reply within the extended time limit.

3. Third plea in law, alleging a violation of Articles 7 and 8 of regulation No 1049/2001 due to the Commission's failure to provide detailed reasons for withholding each document.

4. Fourth plea in law, alleging a violation of Articles 6, 7 and 8 of regulation No 1049/2001 due to the Commission's failure to provide a concrete, individual assessment of the content of each document.

5. Fifth plea in law, alleging a violation of Article 4(4) of the Aarhus Convention, Article 4(2) of regulation No 1049/2001 and Article 6 of Regulation No 1367/2006 due to the reliance upon the exception for the protection of commercial interests.

6. Sixth plea in law, alleging a violation of Article 4 of the Aarhus Convention, Article 4(3) of regulation No 1049/2001 and Article 6 of Regulation No 1367/2006 due to the application of the exception that the disclosure of the documents would seriously undermine the institution's decision-making process.

7. Seventh plea in law, alleging a violation of Article 4(6) and 4(7) of Regulation No 1049/2001 in that the Commission failed to assess which part of the documents could or could not be disclosed and failed to assess the period of application of the applicable exception.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).
([2]) UN/ECE Convention on access to information, public participation in decision making and access to justice in environmental matters.
([3]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, p. 13).
([4]) Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ L 140, p. 16).

Order of the General Court of 17 May 2011 — Evropaïki Dynamiki v ECHA

(Case T-542/08) ([1])

(2011/C 219/33)

Language of the case: English

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

([1]) OJ C 44, 21.2.2009.

Order of the General Court of 7 June 2011 — Arcelor Mittal Espãna v Commission

(Case T-399/10) ([1])

(2011/C 219/34)

Language of the case: English

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

([1]) OJ C 301, 6.11.2010

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