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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 269/01)

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

OJ C 252, 27.8.2011

Past publications

OJ C 238, 13.8.2011

OJ C 232, 6.8.2011

OJ C 226, 30.7.2011

OJ C 219, 23.7.2011

OJ C 211, 16.7.2011

OJ C 204, 9.7.2011

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 21 July 2011 — Kingdom of Sweden v MyTravel Group plc, European Commission

(Case C-506/08 P) [1]

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Article 4(2), second indent, and Article 4(3), second subparagraph — Exceptions to the right of access concerning the protection of court proceedings and legal advice and the decision-making process — Control of concentrations — Commission documents drawn up in the context of a procedure which led to a decision declaring a concentration operation incompatible with the common market — Documents drafted following the annulment of that decision by the General Court)

(2011/C 269/02)

Language of the case: English

Parties

Appellant: Kingdom of Sweden (represented by: K. Petkovska and A. Falk, Agents)

Interveners in support of the applicant: Kingdom of Denmark (represented by: B. Weis Fogh and V. Pasternak Jørgensen, Agents), Kingdom of the Netherlands (represented by: C. Wissels and J. Langer, Agents), Republic of Finland (represented by: J. Heliskoski, Agent)

Other parties to the proceedings: MyTravel Group plc, European Commission (represented by: X. Lewis, P. Costa de Oliveira and C. O'Reilly, Agents)

Interveners in support of the Commission: Federal Republic of Germany (represented by: M. Lumma and B. Klein, Agents), French Republic (represented by: E. Belliard, G. de Bergues and A. Adam, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: E. Jenkinson and S. Ossowski, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber, Extended Composition) of 9 September 2008 in Case T-403/05 *MyTravel* v *Commission*, by which the Court of First Instance rejected an application for the annulment of the decisions of the Commission of 5 September 2005 and 12 October 2005 refusing to grant the applicant access to certain preparatory documents to the decision of 22 September 1999 declaring incompatible with the common market and the functioning of the EEA Agreement the concentration seeking full control of First Choice plc by Airtours plc (Case No IV/M.1524 Airtours/First Choice), together with documents drawn up by the Commission's services following the annulment of that decision by judgment of the Court of First Instance of 6 June 2002 in Case T-342/99

Operative part of the judgment

The Court:

1. *Sets aside point 2 of the operative part of the judgment of the Court of First Instance of the European Communities of 9 September 2008 in Case T 403/05 MyTravel v Commission;*

2. *Annuls Commission Decision D(2005) 8461 of 5 September 2005, dismissing the request by MyTravel Group plc for access to certain preparatory documents of the Commission on the control of concentrations inasmuch as it is based on the second subparagraph of Article 4(3) of 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;*

3. *Annuls Commission Decision D(2005) 9763 of 12 October 2005, partially dismissing the request by MyTravel Group plc for access to certain preparatory documents of the Commission on the control of concentrations inasmuch as it is based on the second indent of Article 4(2) and the second subparagraph of Article 4(3) of Regulation No 1049/2001;*

4. *Refers the case back to the General Court of the European Union for it to rule on the pleas in the action brought before it by MyTravel Group plc on which it did not give a ruling;*

5. *Reserves the costs.*

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[1] OJ C 55, 7.3.2009.

Judgment of the Court (Second Chamber) of 21 July 2011 — Alcoa Trasformazioni Srl v European Commission

(Case C-194/09 P) [1]

(Appeal — State aid — Preferential electricity tariff — Finding that there is no aid — Measure amended and extended — Decision to initiate the procedure under Article 88(2) EC — Existing or new aid — Regulation (EC) No 659/1999 — Article 1(b)(v) — Obligation to state reasons — Principles of legal certainty and the protection of legitimate expectations)

(2011/C 269/03)

Language of the case: English

Parties

Appellant: Alcoa Trasformazioni Srl (represented by: M. Siragusa, avvocato, T. Müller-Ibold and T. Graf, Rechtsanwälte, and F. Salerno, avocat)

Other party to the proceedings: European Commission (represented by: N. Khan, Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 25 March 2009 in Case T-332/06 *Alcoa Trasformazioni Srl* v *Commission of the European Communities*, by which that court dismissed the action seeking annulment of the Commission's decision of 19 July 2006 to initiate the procedure laid down in Article 88(2) of the EC Treaty with regard to the extension of the preferential electricity tariff regimes granted to some energy intensive industries in Italy (State Aid C 36/06 (ex NN 38/06)), in so far as it concerns the electricity tariff for the two plants producing aluminium owned by the applicant in Fusina (Veneto) and Portovesme (Sardinia)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Alcoa Trasformazioni Srl to pay the costs.*

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[1] OJ C 193, 15.8.2009.

Judgment of the Court (Fifth Chamber) of 14 July 2011 — European Commission v Italian Republic

(Case C-303/09) [1]

(Failure of a Member State to fulfil obligations — State aid — Aid to firms investing in the municipalities seriously affected by natural disasters in 2002 — Recovery)

(2011/C 269/04)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: G. Palmieri, Agent, and D. Del Gaizo and P. Gentili, avvocati)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed time limits, the measures necessary to comply with Articles 2, 5 and 6 of Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002 (notified under document No C(2004) 3893) (OJ 2005 L 100, p. 46).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the measures necessary to recover from the beneficiaries all the aid granted under the aid scheme declared incompatible with the common market by Commission Decision 2005/315/EC of 20 October 2004 on the aid scheme implemented by Italy for firms investing in municipalities seriously affected by natural disasters in 2002, the Italian Republic has failed to fulfil its obligations under Article 5 of that decision;*

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

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[1] OJ C 256, 24.10.2009.

Judgment of the Court (Grand Chamber) of 12 July 2011 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) (United Kingdom)) — L'Oréal SA and Others v eBay International AG and Others

(Case C-324/09) [1]

(Trade marks — Internet — Offer for sale, on an online marketplace targeted at consumers in the European Union, of trade-marked goods intended, by the proprietor, for sale in third States — Removal of the packaging of the goods — Directive 89/104/EEC — Regulation (EC) No 40/94 — Liability of the online-marketplace operator — Directive 2000/31/EC ('Directive on electronic commerce') — Injunctions against that operator — Directive 2004/48/EC ('Directive on the enforcement of intellectual property rights')

(2011/C 269/05)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: L'Oréal SA, Lancôme parfums et beauté & Cie SNC, Laboratoire Garnier & Cie, L'Oréal (UK) Ltd

Defendants: eBay International, eBay Europe SARL, eBay (UK) Ltd, Stephen Potts, Tracy Ratchford, Marie Ormsby, James Clarke, Joanna Clarke, Glen Fox, Rukhsana Bi

Re:

Reference for a preliminary ruling — Interpretation of Articles 5(1)(a) and 7(1) and (2) of Directive 89/104/EEC: First Council of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1), of Articles 9(1)(a) and 13(1) and (2) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), of Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1) and of Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Concept of 'placing on the market' — Samples of perfume and cosmetic products intended to be offered to consumers free of charge — Concept of the 'use' of a trade mark — Registration by a trader of a sign identical with a trade mark with a service provider operating an Internet search engine in order that, upon the sign in question being used as a search term, there should automatically appear on screen the URL of his website offering goods and services identical with those covered by the trade mark

Operative part of the judgment

1. *Where goods located in a third State, which bear a trade mark registered in a Member State of the European Union or a Community trade mark and have not previously been put on the market in the European Economic Area or, in the case of a Community trade mark, in the European Union, (i) are sold by an economic operator on an online marketplace without the consent of the trade mark proprietor to a consumer located in the territory covered by the trade mark or (ii) are offered for sale or advertised on such a marketplace targeted at consumers located in that territory, the trade mark proprietor may prevent that sale, offer for sale or advertising by virtue of the rules set out in Article 5 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, or in Article 9 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. It is the task of the national courts to assess on a case-by-case basis whether relevant factors exist, on the basis of which it may be concluded that an offer for sale or an advertisement displayed on an online marketplace accessible from the territory covered by the trade mark is targeted at consumers in that territory.*

2. *Where the proprietor of a trade mark supplies to its authorised distributors items bearing that mark, intended for demonstration to consumers in authorised retail outlets, and bottles bearing the mark from which small quantities can be taken for supply to consumers as free samples, those goods, in the absence of any evidence to the contrary, are not put on the market within the meaning of Directive 89/104 and Regulation No 40/94.*

3. *Article 5 of Directive 89/104 and Article 9 of Regulation No 40/94 must be interpreted as meaning that the proprietor of a trade mark may, by virtue of the exclusive right conferred by the mark, oppose the resale of goods such as those at issue in the main proceedings, on the ground that the person reselling the goods has removed their packaging, where the consequence of that removal is that essential information, such as information relating to the identity of the manufacturer or the person responsible for marketing the cosmetic product, is missing. Where the removal of the packaging has not resulted in the absence of that information, the trade mark proprietor may nevertheless oppose the resale of an unboxed perfume or cosmetic product bearing his trade mark, if he establishes that the removal of the packaging has damaged the image of the product and, hence, the reputation of the trade mark.*

4. *On a proper construction of Article 5(1)(a) of Directive 89/104 and Article 9(1)(a) of Regulation No 40/94, the proprietor of a trade mark is entitled to prevent an online marketplace operator from advertising — on the basis of a keyword which is identical to his trade mark and which has been selected in an internet referencing service by that operator — goods bearing that trade mark which are offered for sale on the marketplace, where the advertising does not enable reasonably well-informed and reasonably observant internet users, or enables them only with difficulty, to ascertain whether the goods concerned originate from the proprietor of the trade mark or from an undertaking economically linked to that proprietor or, on the contrary, originate from a third party.*

5. *The operator of an online marketplace does not 'use' — for the purposes of Article 5 of Directive 89/104 or Article 9 of Regulation No 40/94 — signs identical with or similar to trade marks which appear in offers for sale displayed on its site.*

6. *Article 14(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as applying to the operator of an online marketplace where that operator has not played an active role allowing it to have knowledge or control of the data stored.*

   The operator plays such a role when it provides assistance which entails, in particular, optimising the presentation of the offers for sale in question or promoting them.

   Where the operator of the online marketplace has not played an active role within the meaning of the preceding paragraph and the service provided falls, as a consequence, within the scope of Article 14(1) of Directive 2000/31, the operator none the less cannot, in a case which may result in an order to pay damages, rely on the exemption from liability provided for in that provision if it was aware of facts or circumstances on the basis of which a diligent economic operator should have realised that the offers for sale in question were unlawful and, in the event of it being so aware, failed to act expeditiously in accordance with Article 14(1)(b) of Directive 2000/31.

7. *The third sentence of Article 11 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights must be interpreted as requiring the Member States to ensure that the national courts with jurisdiction in relation to the protection of intellectual property rights are able to order the operator of an online marketplace to take measures which contribute, not only to bringing to an end infringements of those rights by users of that marketplace, but also to preventing further infringements of that kind. Those injunctions must be effective, proportionate, and dissuasive and must not create barriers to legitimate trade.*

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (Third Chamber) of 21 July 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom) — Secretary of State for Work and Pensions v Maria Dias

(Case C-325/09) ([1])

(Free movement of persons — Directive 2004/38/EC — Article 16 — Right of permanent residence — Periods completed before the date of transposition of that directive — Legal residence — Residence based solely on a residence permit issued pursuant to Directive 68/360/EEC, without the conditions governing eligibility for any right of residence having been satisfied)

(2011/C 269/06)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Secretary of State for Work and Pensions

Defendant: Maria Dias

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Article 16(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Interpretation of Article 18(1) of the EC Treaty — Right of permanent residence — Concept of legal residence — Citizen of the Union, holder of a five-year residence permit for the United Kingdom issued in accordance with Article 4(2) of Directive 68/360/EEC, whose period of residence was interrupted by a period of voluntary unemployment — Permit issued before entry into force of Directive 2004/38/EC — Taking into consideration of periods of residence completed before the date of entry into force of the directive?

Operative part of the judgment

Article 16(1) and (4) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that:

— *periods of residence completed before 30 April 2006 on the basis solely of a residence permit validly issued pursuant to Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, without the conditions governing entitlement to any right of residence having been satisfied, cannot be regarded as having been completed legally for the purposes of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38, and*

— *periods of residence of less than two consecutive years, completed on the basis solely of a residence permit validly issued pursuant to Directive 68/360, without the conditions governing entitlement to a right of residence having been satisfied, which occurred before 30 April 2006 and after a continuous period of five years' legal residence completed prior to that date, are not such as to affect the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38.*

([1]) OJ C 256, 24.10.2009.

Judgment of the Court (Third Chamber) of 21 July 2011 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Scheuten Solar Technology GmbH v Finanzamt Gelsenkirchen-Süd

(Case C-397/09) ([1])

(Taxation — Directive 2003/49/EC — Common system of taxation applicable to interest and royalty payments made between associated companies of different Member States — Business tax — Determination of the basis of assessment)

(2011/C 269/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Scheuten Solar Technology GmbH

Defendant: Finanzamt Gelsenkirchen-Süd

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ 2003 L 157, p. 49) — Whether or not interest payments are included in the basis of assessment to trade tax of the debtor company

Operative part of the judgment

Article 1(1) of Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States must be interpreted as not precluding a provision of national tax law under which loan interest paid by a company established in one Member State to an associated company in another Member State is incorporated into the basis of assessment of the business tax payable by the former company.

([1]) OJ C 312, 19.12.2009.

Judgment of the Court (Second Chamber) of 7 July 2011 (reference for a preliminary ruling from the College van Beroep voor het Bedrijfsleven — Netherlands) — IMC Securities BV v Stichting Autoriteit Financiële Markten

(Case C-445/09) ([1])

(Directive 2003/6/EC — Market manipulation — Securing prices at an abnormal or artificial level)

(2011/C 269/08)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Appellant: IMC Securities BV

Respondent: Stichting Autoriteit Financiële Markten

Re:

Reference for a preliminary ruling — College van Beroep voor het Bedrijfsleven — Interpretation of Article 1(2)(a), second indent, of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16) — Securing prices at an abnormal or artificial level — Meaning — Transactions and orders bringing about a brief fluctuation of prices

Operative part of the judgment

Article 1(2)(a), second indent, of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) must be interpreted as not requiring, in order for the price of one or more financial instruments to be considered to have been fixed at an abnormal or artificial level, that that price must maintain an abnormal or artificial level for more than a certain duration.

([1]) OJ C 24, 30.01.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (reference for a preliminary ruling from the Upper Tribunal (United Kingdom)) — Lucy Stewart v Secretary of State for Work and Pensions

(Case C-503/09) ([1])

(Social security — Regulation (EEC) No 1408/71 — Articles 4, 10 and 10a — Short-term incapacity benefit in youth — Sickness benefit or invalidity benefit — Conditions of residence, presence on the date on which the claim is made and past presence — Citizenship of the Union — Proportionality)

(2011/C 269/09)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Appellant: Lucy Stewart

Respondent: Secretary of State for Work and Pensions

Re:

Reference for a preliminary ruling — Upper Tribunal — Interpretation of Articles 10, 19, 28, 29 and 95a of 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, English Special Edition 1971 (II), p. 416) — Payments made to unemployed persons from 16 to 25 years of age who are resident in the United Kingdom and have been incapable of work for at least seven months ('short-term incapacity benefit in youth') — Classification as a sickness benefit or as an invalidity benefit — Benefit subject to a residence condition

Operative part of the judgment

1. *Short-term incapacity benefit in youth, such as that at issue in the main proceedings, is an invalidity benefit within the meaning of Article 4(1)(b) of Regulation (EEC) No 1408/71 of the Council 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, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, if it is clear that, on the date on which the claim is made, the claimant has a permanent or long-term disability.*

2. *The first subparagraph of Article 10(1) of Regulation No 1408/71, in that version, as amended by Regulation No 647/2005, precludes a Member State from making the award of short-term incapacity benefit in youth, such as that at issue in the main proceedings, subject to a condition of ordinary residence by the claimant in that State.*

   Article 21(1) TFEU precludes a Member State from making the award of such a benefit subject:

   — *to a condition of past presence of the claimant in that State to the exclusion of any other element enabling the existence of a genuine link between the claimant and that Member State to be established, or*

   — *to a condition of presence of the claimant in that State on the date on which the claim is made.*

([1]) OJ C 37, 13.2.2010.

Judgment of the Court (Fifth Chamber) of 21 July 2011 — European Commission v Portuguese Republic

(Case C-518/09) ([1])

(Failure of a Member State to fulfil obligations — Freedom of establishment and freedom to provide services — Carrying out real estate activities)

(2011/C 269/10)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: I Rogalski and P. Guerra e Andrade, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, and N. Ruiz, advogado)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 49 TFEU and 56 TFEU — Carrying out real estate activities

Operative part of the judgment

The Court:

1. *Declares that,*

   — *by permitting activities of real estate brokers to be carried out only within real estate agencies;*

   — *by requiring real estate brokerages and real estate agents established in other Member States to cover their professional liability by taking out insurance which complies with Portuguese legislation;*

   — *by requiring real estate brokerages established in other Member States to hold positive equity within the meaning of that legislation, and*

   — *by making real estate brokerages and real estate agents established in other Member States subject to the full disciplinary control of the Instituto de Construção e do Imobiliário IP,*

   the Portuguese Republic has failed to fulfil its obligations under Article 56 TFEU, and

   — *by requiring real estate brokerages to carry out exclusively real estate brokerage activities, with the exception of the management of real property on behalf of third parties, and*

   — *by requiring real estate agents to carry out exclusively real estate agency activities,*

   the Portuguese Republic has failed to fulfil its obligations under Articles 49 TFEU and 56 TFEU;

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

([1]) OJ C 37, 13.2.2010.

Judgment of the Court (Fifth Chamber) of 7 July 2011 (reference for a preliminary ruling from the Tartu ringkonnakohus — Estonia) — Rakvere Piim AS, Maag Piimatööstus AS v Veterinaar- ja Toiduamet

(Case C-523/09) ([1])

(Common agricultural policy — Fees for health inspections and controls in respect of milk production)

(2011/C 269/11)

Language of the case: Estonian

Referring court

Tartu Ringkonnakohus

Parties to the main proceedings

Applicants: Rakvere Piim AS, Maag Piimatööstus AS

Defendant: Veterinaar- ja Toiduamet

Re:

Reference for a preliminary ruling — Tartu Ringkonnakohus — Interpretation of Articles 26 and 27 of and Annexes IV and VI to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1) — Calculation of fees charged for official controls in respect of milk production — Charging of fees equivalent to the minimum rates applicable under the regulation but higher than the actual costs borne by the competent authorities for official controls

Operative part of the judgment

Article 27(3) and (4) of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules must be interpreted as enabling a Member State to levy fees at the minimum rates laid down in Annex IV, section B to that regulation without having to adopt a measure of application at national level, even though the costs borne by the competent authorities in connection with the health inspections and controls laid down in that regulation are lower than those rates, when the specified conditions for applying Article 27(6) of that regulation are not satisfied.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (First Chamber) of 21 July 2011 (reference for a preliminary ruling from the Tribunale amministrativo regionale per la Puglia — Italy) — Azienda Agro-Zootecnica Franchini Sarl, Eolica di Altamura Srl v Regione Puglia

(Case C-2/10) ([1])

(Environment — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Directive 79/409/EEC — Conservation of wild birds — Special areas of conservation forming part of the Natura 2000 European Ecological Network — Directives 2009/28/EC and 2001/77/EC — Renewable energy sources — National rules — Prohibition on the location of wind turbines not intended for self-consumption — No assessment of the environmental implications of the project)

(2011/C 269/12)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Puglia

Parties to the main proceedings

Applicants: Azienda Agro-Zootecnica Franchini Sarl, Eolica di Altamura Srl

Defendant: Regione Puglia

Re:

Reference for a preliminary ruling — Tribunale amministrativo regionale per la Puglia — Interpretation of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ 2001 L 283, p. 33), 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 2009 L 140, p. 16), Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Regional and national legislation prohibiting the location of any wind energy systems not intended for self-consumption in the sites of Community importance (SCIs) and special protection areas (SPAs) forming part of the 'Natura 2000' network — Failure to carry out an impact assessment

Operative part of the judgment

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market and 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 must be interpreted as not precluding legislation which prohibits the location of wind turbines not intended for self-consumption on sites forming part of the Natura 2000 European Ecological Network, without any requirement for a prior assessment of the environmental impact of the project on the site specifically concerned, on condition that the principles of non-discrimination and proportionality are respected.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (First Chamber) of 14 July 2011 (reference for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — the proceedings brought by Bureau national interprofessionnel du Cognac

(Joined Case C-4/10 and C-27/10) ([1])

(Regulation (EC) No 110/2008 — Geographical indications of spirit drinks — Temporal application — Trade mark incorporating a geographical indication — Use leading to a situation which may adversely affect the geographical indication — Refusal of registration or invalidation of such a mark — Direct applicability of a regulation)

(2011/C 269/13)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Proceedings brought by: Bureau national interprofessionnel du Cognac

Intervening party: Gust. Ranin Oy

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of First Council Directive 89/104 of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1988 L 40, p. 1) and Articles 16 and 23 of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16) — Relationship between the trade marks and the protected geographical indications — Registration of a figurative mark incorporating inter alia the geographical indication 'Cognac' for spirit drinks not fulfilling the conditions for use of that geographical indication.

Operative part of the judgment

1. *Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 is applicable to the assessment of the validity of the registration of a trade mark containing a geographical indication protected by that regulation, where registration took place before the regulation entered into force;*

2. *Articles 23 and 16 of Regulation No 110/2008 must be interpreted as meaning that:*

   — *the competent national authorities must, on the basis of Article 23(1) of Regulation No 110/2008, refuse or invalidate the registration of a mark which contains a protected geographical indication and which is not covered by the temporary derogation provided for in Article 23(2) of that regulation, where the use of that mark would lead to one of the situations referred to in Article 16 thereof;*

   — *a situation such as that referred to in the second question referred for a preliminary ruling — that is to say, the registration of a mark containing a geographical indication, or a term corresponding to that indication and its translation, in respect of spirit drinks which do not meet the specifications set for that indication — falls within the situations referred to in Article 16(a) and (b) of Regulation No 110/2008, without prejudice to the possible application of other rules laid down in Article 16.*

(1) OJ C 63, 13.3.2010.

Judgment of the Court (Fourth Chamber) of 21 July 2011 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Nickel Institute v Secretary of State for Work and Pensions

(Case C-14/10) (1)

(Environment and protection of human health — Directive 67/548/EEC — Regulation (EC) No 1272/2008 — Classification of nickel carbonates, nickel hydroxides and a number of grouped nickel substances as dangerous substances — Validity of Directives 2008/58/EC and 2009/2/EC and of Regulation (EC) No 790/2009 — Adaptation of the classifications to technical and scientific progress — Validity — Methods of assessing the intrinsic properties of those substances — Manifest error of assessment — Legal basis — Obligation to state reasons)

(2011/C 269/14)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Claimant: Nickel Institute

Defendant: Secretary of State for Work and Pensions

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Validity, so far as concerns the reclassification of nickel carbonates as carcinogenic substances, of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1) and of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1) — Inadequate assessment of the intrinsic properties of the nickel carbonates in relation to the requirements laid down in Annex VI to Directive 67/548/EEC

Operative part of the judgment

Examination of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity, first, of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances and of Commission Directive 2009/2/EC of 15 January 2009 amending, for the purpose of its adaptation to technical progress, for the 31st time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances and, second,

of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, in so far as those directives and that regulation classified as carcinogenic to man in category 1, mutagenic in category 3 and reprotoxic in category 2 substances such as certain nickel carbonates, the nickel hydroxides and other grouped nickel substances at issue in the main proceedings.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (Fourth Chamber) of 21 July 2011 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)) — Etimine SA v Secretary of State for Work and Pensions

(Case C-15/10) ([1])

(Environment and protection of human health — Directive 67/548/EEC — Regulation (EC) No 1272/2008 — Borate substances — Classification as reprotoxic substances in category 2 — Directive 2008/58/EC and Regulation (EC) No 790/2009 — Adaptation of the classifications to technical and scientific progress — Validity — Methods of assessing the intrinsic properties of those substances — Manifest error of assessment — Legal basis — Obligation to state reasons — Principle of proportionality)

(2011/C 269/15)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Claimant: Etimine SA

Defendant: Secretary of State for Work and Pensions

Intervener: Borax Europe Ltd

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Validity, so far as concerns the classification of borates as substances toxic for reproduction, of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 2008 L 246, p. 1) and of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2009 L 235, p. 1) — Incorrect assessment of the existence, as required by Annex VI to Directive 67/548/EEC, of a risk upon normal handling and use of the substance

Operative part of the judgment

Examination of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity, first, of Commission Directive 2008/58/EC of 21 August 2008 amending, for the purpose of its adaptation to technical progress, for the 30th time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances and, second, of Commission Regulation (EC) No 790/2009 of 10 August 2009 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures, in so far as that directive and that regulation classified certain borate substances as reprotoxic in category 2.

([1]) OJ C 63, 13.3.2010.

Judgment of the Court (Third Chamber) of 21 July 2011 (reference for a preliminary ruling from the Fővárosi Bíróság) — Károly Nagy v Mezőgazdasági és Vidékfejlesztési Hivatal

(Case C-21/10) ([1])

(Common agricultural policy — EAGGF financing — Regulations (EC) No 1257/1999 and (EC) No 817/2004 — Community support for rural development — Support for agri-environmental production methods — Agri-environmental aid other than 'livestock' aid, the grant of which is conditional upon a certain density of livestock — Application of the integrated administration and control system — System for the identification and registration of bovine animals — Duty of national authorities to provide information on the conditions for eligibility)

(2011/C 269/16)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicant: Károly Nagy

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal

Re:

Reference for a preliminary ruling — Fővárosi Bíróság — Interpretation of Article 22 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80), and Article 68 of Commission Regulation(EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC)

No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2004 L 153, p. 30) — Exclusion of a farmer from agri-environmental aid on the ground of failure to register animals in the integrated administration and control system for certain Community aid regimes — Failure discovered only following cross-checks provided for by that system — Application of the integrated system to agri-environmental aid which is not for animals but which is dependent on a certain density of livestock

Operative part of the judgment

1. *As regards the aid based on Article 22 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, as amended by Council Regulation (EC) No 1783/2003 of 29 September 2003, which is subject to a condition relating to the density of livestock, it is permissible under that provision and Article 68 of Commission Regulation (EC) No 817/2004 of 29 April 2004 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 for the competent authorities to carry out cross-checks with the data from the integrated administration and control system and, in particular, to rely on the data held in the database of a national system for the individual identification and registration of bovine animals, such as the Hungarian system for the individual identification and registration of bovine animals (Egységes Nyilvántartási és Azonosítási Rendszer).*

2. *It is permissible under Article 22 of Regulation No 1257/1999, as amended, and Article 68 of Regulation No 817/2004 for the competent authorities, when verifying compliance with the conditions governing eligibility for agri-environmental aid under the former provision, to check only the data held in the database of a national system for the individual identification and registration of bovine animals, such as the Hungarian system for the individual identification and registration of bovine animals, in order to refuse that aid, without necessarily having to carry out other checks.*

3. *Article 22 of Regulation No 1257/1999, as amended, and Article 68 of Regulation No 817/2004, interpreted in the light of Article 16 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Regulation No 1782/2003, place the national authorities — to the extent that, for the purposes of verifying compliance with the conditions governing eligibility for agri-environmental aid under the former provision, which is subject to a condition relating to density of livestock, those authorities check only the data in a national system for the individual identification and registration of bovine animals, such as the Hungarian system for the individual identification and registration of bovine animals — under an obligation to provide information concerning those eligibility conditions which consists in informing the farmer concerned that any animals found not to be correctly identified or registered in that national system are to count as animals found with irregularities liable to have legal consequences, such as a reduction in or exclusion from the aid concerned.*

(1) OJ C 113, 1.5.2010.

Judgment of the Court (First Chamber) of 14 July 2011 (reference for a preliminary ruling from the Højesteret — Denmark) — Viking Gas A/S v Kosan Gas A/S, formerly BP Gas A/S

(Case C-46/10) (1)

(Trade marks — Directive 89/104/EEC — Articles 5 and 7 — Gas bottles protected as a three-dimensional mark — Placing on the market by an exclusive licensee — Business activity of a competitor of the licensee consisting in the refilling of those bottles)

(2011/C 269/17)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Viking Gas A/S

Defendant: Kosan Gas A/S, formerly BP Gas A/S

Re:

Reference for a preliminary ruling — Højesteret — Interpretation of Articles 5 and 7 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) — Placing on the market, by an exclusive licensee, of a composite gas bottle the shape of which is registered as a three-dimensional national and Community trade mark constituted by its packaging — Business activity of a competitor of the licensee consisting in the refilling of the licensee's composite gas bottles and the sale of gas in those bottles after affixing to them an adhesive label indicating that the bottles have been filled by the competitor but without having removed the figurative and word marks of the exclusive licensee

Operative part of the judgment

Articles 5 and 7 of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks must be interpreted as meaning that the holder of an exclusive licence for the use of composite gas bottles intended for re-use, the shape of which is protected as a three-dimensional mark and to which the holder has affixed its own name and logo that are registered as word and figurative marks, may not prevent those bottles, after consumers have purchased them and consumed the gas initially contained in them, from being exchanged by a third party, on payment, for composite bottles filled with gas which does not come from the holder of that licence, unless that holder is able to rely on a proper reason for the purposes of Article 7(2) of Directive 89/104.

(1) OJ C 80, 27.3.2010.

Judgment of the Court (Fourth Chamber) of 7 July 2011 (reference for a preliminary ruling from the Oberste Berufungs- und Disziplinarkommission — Austria) — Gentcho Pavlov, Gregor Famira v Ausschuss der Rechtsanwaltskammer Wien

(Case C-101/10) [1]

(External relations — Association agreements — National legislation excluding, before the accession of the Republic of Bulgaria to the European Union, Bulgarian nationals from inclusion on the list of trainee lawyers — Compatibility of that legislation with the prohibition of all discrimination based on nationality, as regards working conditions, in the EC-Bulgaria Association Agreement)

(2011/C 269/18)

Language of the case: German

Referring court

Oberste Berufungs- und Disziplinarkommission

Parties to the main proceedings

Applicants: Gentcho Pavlov, Gregor Famira

Defendant: Ausschuss der Rechtsanwaltskammer Wien

Re:

Reference for a preliminary ruling — Oberste Berufungs- und Disziplinarkommission — Interpretation of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part (OJ 1994 L 358 of 31 December 1994, p. 3) — Prohibition of any discrimination based on nationality as regards working conditions — Compatibility with that article of national rules excluding, before the accession of Bulgaria to the European Union, Bulgarian nationals from registration on the list of trainee lawyers — Direct effect of that provision

Operative part of the judgment

The principle of non-discrimination set out in the first indent of Article 38(1) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, concluded and approved on behalf of the Communities by Decision 94/908/ECSC, EC, Euratom of the Council and the Commission of 19 December 1994, must be interpreted as not having precluded, before the accession of the Republic of Bulgaria to the European Union, legislation of a Member State such as Paragraph 30(1) and (5) of the Austrian Code of Lawyers (Österreichische Rechtsanwaltsordnung), in the version applicable in the main proceedings, under which a Bulgarian national, because of a nationality condition laid down by that legislation, was unable to obtain inclusion on the list of trainee lawyers and, consequently, to obtain a certificate of entitlement to appear in court.

[1] OJ C 134, 22.5.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (reference for a preliminary ruling from the High Court (Ireland)) — Patrick Kelly v National University of Ireland (University College, Dublin)

(Case C-104/10) [1]

(Directives 76/207/EEC, 97/80/EC and 2002/73/EC — Access to vocational training — Equal treatment for men and women — Rejection of candidature — Access of an applicant for vocational training to information on the qualifications of the other applicants)

(2011/C 269/19)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicant: Patrick Kelly

Defendant: National University of Ireland (University College, Dublin)

Re:

Reference for a preliminary ruling — High Court of Ireland — Interpretation of Article 4(1) of Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ 1998 L 14, p. 6), Article 4 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40) and Article 3 of Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC (OJ 2002 L 269, p. 15) — Candidate who failed to obtain a place in a vocational training course and who claims that there has been an infringement of the principle of equal treatment — Request for information concerning the qualifications of the other candidates

Operative part of the judgment

1. *Article 4(1) of Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex must be interpreted as meaning that it does not entitle an applicant for vocational training, who believes that his application was not accepted because of an infringement of the principle of equal treatment, to information held by the course provider on the qualifications of the other applicants for the course in question, in order that he may establish 'facts from which it may be presumed that there has been direct or indirect discrimination' in accordance with that provision.*

   Nevertheless, it cannot be ruled out that a refusal of disclosure by the defendant, in the context of establishing such facts, could risk compromising the achievement of the objective pursued by that directive and thus depriving Article 4(1) thereof in particular of its effectiveness. It is for the national court to ascertain whether that is the case in the main proceedings.

2. *Article 4 of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions and Article 1(3) of Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Directive 76/207 must be interpreted as meaning that they do not entitle an applicant for vocational training to information held by the course provider on the qualifications of the other applicants for the course in question, either because he believes that he has been denied access to vocational training on the basis of the same criteria as the other candidates and discriminated against on grounds of sex, referred to in Article 4 of Directive 76/207, or because that applicant complains that he was discriminated against on the grounds of sex, referred to in Article 1(3) of Directive 2002/73, in terms of accessing that vocational training.*

3. *Where an applicant for vocational training can rely on Directive 97/80 in order to obtain access to information held by the course provider on the qualifications of the other applicants for the course in question, that entitlement to access can be affected by rules of European Union law relating to confidentiality.*

4. *The obligation contained in the third paragraph of Article 267 TFEU does not differ according to whether a Member State has an adversarial or an inquisitorial legal system.*

([1]) OJ C 134, 22.5.2010.

Judgment of the Court (Fourth Chamber) of 21 July 2011 (reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium)) — Bureau d'intervention et de restitution belge (BIRB) v Beneo-Orafti SA

(Case C-150/10) ([1])

(Agriculture — Common organisation of the markets — Sugar — Nature and scope of transitional quotas allocated to an undertaking producing sugar — Possibility for an undertaking receiving restructuring aid for the marketing year 2006/2007 to use the transitional quota allocated to that undertaking — Calculation of the amount to be recovered and of the penalty to be applied in the case of non-compliance with commitments entered into under the restructuring plan — Ne bis in idem principle)

(2011/C 269/20)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Bureau d'intervention et de restitution belge (BIRB)

Defendant: Beneo-Orafti SA

Re:

Reference for a preliminary ruling — Tribunal de première instance de Bruxelles — Interpretation of Article 9 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002 (OJ 2006 L 89, p. 11) — Interpretation of Article 3 of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ 2006 L 58, p. 42) — Interpretation of Articles 26 and 27 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community (OJ 2006 L 176, p. 32) — Nature and scope of the transitional quotas allocated to an undertaking engaged in the production of sugar — Whether the grant of a transitional quota to an undertaking in receipt of restructuring aid for the marketing year 2006/2007 is compatible with the legislation of the European Union — Calculation of the amount to be recovered and of the penalty to be applied in the case of failure to meet commitments entered into under the restructuring plan

Operative part of the judgment

1. *Article 3(1)(b) of Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy must be interpreted as meaning that the term 'quota' in that provision also includes the transitional quotas within the meaning of Article 9 of Commission Regulation (EC) No 493/2006 of 27 March 2006 laying down transitional measures within the framework of the reform of the common organisation of the markets in the sugar sector, and amending Regulations (EC) No 1265/2001 and (EC) No 314/2002.*

2. *Article 3(1)(b) of Regulation No 320/2006 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the commitment to renounce the quota for the production of sugar, isoglucose and inulin syrup that has been allocated to an undertaking and assigned by it to one or more of its factories, referred to in that provision, takes effect on the date when, having regard to the information that is communicated to it or that is published in the Official Journal of the European Union, the undertaking that makes that commitment is in a position to know, as a reasonably diligent undertaking, that, in the view of the competent authorities, the conditions for obtaining the restructuring aid set out in Article 5(2) of that regulation have been fulfilled.*

3. *Articles 26(1) and 27 of Commission Regulation (EC) No 968/2006 of 27 June 2006 laying down detailed rules for the implementation of Regulation No 320/2006 and Article 15 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector must be interpreted as meaning that a production such as that at issue in the main proceedings, on the assumption that it is contrary to the commitment to renounce the quota for the production of sugar,*

isoglucose and inulin syrup that has been allocated to an undertaking and assigned by it to one or more of its factories, referred to in Article 3(1)(b) of Regulation No 320/2006, may give rise to recovery of the aid, the imposition of a penalty and the collection of the levy on surpluses, as respectively set out in those provisions. With regard to the penalty under Article 27(3) of Regulation No 968/2006, it is for the referring court to assess whether, having regard to all the circumstances of the case, the non-compliance can be regarded as having been committed intentionally or as a result of grave negligence. The principles of ne bis in idem, proportionality and non-discrimination must be interpreted as not precluding the cumulative application of those measures.

4. *Article 26(1) of Regulation No 968/2006 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, if an undertaking has complied with its commitment partially to dismantle the production facilities of the factories concerned but not its commitment to renounce the quota for the production of sugar, isoglucose and inulin syrup that has been allocated to it and assigned by it to one or more of its factories, referred to in Article 3(1)(b) of Regulation No 320/2006, the amount of the aid to be recovered is equal to the part of the aid corresponding to the commitment that has not been complied with. That part of the aid must be determined on the basis of the amounts laid down in Article 3(5) of Regulation No 320/2006.*

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (references for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany)) — Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10) v Land Hessen

(Joined Cases C-159/10 and C-160/10) ([1])

(Directive 2000/78/EC — Article 6(1) — Prohibition of discrimination on grounds of age — Compulsory retirement of prosecutors on reaching the age of 65 — Legitimate aims justifying a difference of treatment on grounds of age — Coherence of the legislation)

(2011/C 269/21)

Language of the cases: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicants: Gerhard Fuchs (C-159/10), Peter Köhler (C-160/10)

Defendant: Land Hessen

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main — Interpretation of Article 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Prohibition of discrimination on grounds of age — National rules providing for automatic retirement of civil servants at 65 — Legitimate objectives justifying differences of treatment on grounds of age

Operative part of the judgment

1. *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation does not preclude a law, such as the Law on the civil service of the Land Hessen (Hessisches Beamtengesetz), as amended by the Law of 14 December 2009, which provides for the compulsory retirement of permanent civil servants — in this instance prosecutors — at the age of 65, while allowing them to continue to work, if it is in the interests of the service that they should do so, until the maximum age of 68, provided that that law has the aim of establishing a balanced age structure in order to encourage the recruitment and promotion of young people, to improve personnel management and thereby to prevent possible disputes concerning employees' fitness to work beyond a certain age, and that it allows that aim to be achieved by appropriate and necessary means.*

2. *In order for it to be demonstrated that the measure concerned is appropriate and necessary, the measure must not appear unreasonable in the light of the aim pursued and must be supported by evidence the probative value of which it is for the national court to assess.*

3. *A law such as the Law on the civil service of the Land Hessen, as amended by the Law of 14 December 2009, which provides for the compulsory retirement of prosecutors when they reach the age of 65, does not lack coherence merely because it allows them to work until the age of 68 in certain cases or also contains provisions intended to restrict retirement before the age of 65, and other legislation of the Member State concerned provides for certain — particularly elected — civil servants to remain in post beyond that age and also the gradual raising of the retirement age from 65 to 67 years.*

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 21 July 2011 (reference for a preliminary ruling from the Court of Appeal (England and Wales) (Civil Division) (United Kingdom)) — Tural Oguz v Secretary of State for the Home Department

(Case C-186/10) ([1])

(EEC-Turkey Association Agreement — Article 41(1) of the Additional Protocol — Standstill clause — Freedom of establishment — Refusal of the application for further leave to remain from a Turkish national who had established a business in breach of the conditions of his leave to remain — Abuse of rights)

(2011/C 269/22)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: Tural Oguz

Defendant: Secretary of State for the Home Department

In the presence of: Centre for Advice on Individual Rights in Europe

Re:

Reference for a preliminary ruling — Court of Appeal (England and Wales) (Civil Division) — Interpretation of Article 41(1) of the Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force (OJ 1973 C 113, p. 17) — Standstill rule — Scope — Prohibition on Member States from introducing new restrictions on the freedom of establishment and the freedom to provide services — Turkish national who established a business in the United Kingdom after obtaining leave to remain subject to a condition that he should not engage in any business or profession without the consent of the Secretary of State — Refusal to grant further leave to remain on the ground of breach of the conditions of his previous leave to remain

Operative part of the judgment

Article 41(1) of the Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972, must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.

([1]) OJ C 179, 3.7.2010.

Judgment of the Court (Eighth Chamber) of 14 July 2011 (reference for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Paderborner Brauerei Haus Cramer KG v Hauptzollamt Bielefeld

(Case C-196/10) ([1])

(Common Customs Tariff — Combined Nomenclature — Tariff classification — Headings 2203 and 2208 — Malt beer base intended for use in the production of a mixed drink)

(2011/C 269/23)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Paderborner Brauerei Haus Cramer KG

Defendant: Hauptzollamt Bielefeld

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of the Combined Nomenclature, as amended by Commission Regulations (EC) No 2031/2001 of 6 August 2001 (OJ 2001 L 279, p. 1) and (EC) No 1832/2002 of 1 August 2002 (OJ 2002 L 290, p. 1) — Malt beer base with an alcoholic strength by volume of 14 % obtained from brewed beer which has been specially clarified and subjected to ultrafiltration and which is to be used in the making of a mixed beer drink — Classification under heading 2203 or heading 2208 of the Combined Nomenclature?

Operative part of the judgment

Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EEC) No 2587/91 of 26 July 1991, must be interpreted as meaning that a liquid described as a 'malt beer base', such as that in issue in the main proceedings, with an alcoholic strength by volume of 14 % and obtained from brewed beer which has been clarified and then subjected to ultrafiltration, by which the concentration of ingredients such as bitter substances and proteins has been reduced, must be classified under heading 2208 of the Combined Nomenclature set out in Annex I to that regulation, as amended.

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Seventh Chamber) of 21 July 2011 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Maritime Safety Agency (EMSA)

(Case C-252/10 P) ([1])

(Appeal — Public procurement — European Maritime Safety Agency (EMSA) — Call for tenders relating to the 'SafeSeaNet' application — Decision rejecting a tenderer's bid — Contract award criteria — Sub-criteria — Obligation to state reasons)

(2011/C 269/24)

Language of the case: English

Parties

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

Other party to the proceedings: European Maritime Safety Agency (EMSA) (represented by: J. Menze, acting as Agent, and by J. Stuyck and A.-M. Vandromme, advocaaten)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 2 March 2010 in Case T-70/05 (*Evropaïki Dynamiki* v *EMSA*) in so far it dismissed the appellant's application for the annulment of the decision of the European Maritime Safety Agency ('EMSA') of 6 January 2005 rejecting the tender submitted by the appellant in a tendering procedure relating to the validation of the SafeSeaNet application and its further development

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.*

([1]) OJ C 221, 14.8.2010.

Judgment of the Court (First Chamber) of 7 July 2011 (reference for a preliminary ruling from the Tribunalul Gorj (Romania)) — Iulian Andrei Nisipeanu v Direcția Generală a Finanțelor Publice Gorj, Administrația Finanțelor Publice Targu-Cărbunești, Administrația Fondului pentru Mediu

(Case C-263/10) ([1])

(Internal taxation — Article 110 TFEU — Pollution tax levied on first registration of motor vehicles)

(2011/C 269/25)

Language of the case: Romanian

Referring court

Tribunalul Gorj (Romania)

Parties to the main proceedings

Applicant: Iulian Andrei Nisipeanu

Defendants: Direcția Generală a Finanțelor Publice Gorj, Administrația Finanțelor Publice Targu-Cărbunești, Administrația Fondului pentru Mediu

Re:

Reference for a preliminary ruling — Tribunalul Gorj — Registration of second-hand vehicles previously registered in other Member States — Pollution tax on motor vehicles upon first registration in a Member State — Classification of the criterion of 'date of first registration' — Whether the national legislation is compatible with Article 110 TFEU — Whether exemption from payment of the tax, introduced for certain categories of vehicle, is lawful — Possible application of the 'polluter pays' principle

Operative part of the judgment

Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax affecting motor vehicles on their first registration in that Member State, if that fiscal measure is so designed as to discourage the putting into service, in that Member State, of second-hand vehicles bought in other Member States, without, however, discouraging the purchase of second-hand vehicles of the same age and condition on the national market.

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (Seventh Chamber) of 21 July 2011 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Telefónica de España SA v Administración del Estado

(Case C-284/10) ([1])

(Directive 97/13/EC — Common framework for general authorisations and individual licences in the field of telecommunications services — Fees and charges applicable to undertakings holding general authorisations — Article 6 — Interpretation — National legislation imposing an annual fee calculated on the basis of a percentage of gross operating income)

(2011/C 269/26)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Telefónica de España SA

Defendant: Administración del Estado

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services (in particular, Article 6 thereof) (OJ 1997 L 117, p. 15) — Fees and charges applicable to undertakings holding general authorisations — Imposition of financial payments above and beyond those authorised by the directive and for a purpose not provided for therein

Operative part of the judgment

Article 6 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services must be interpreted as not precluding legislation of a Member State introducing a fee imposed on holders of general authorisations, calculated annually and on the basis of the gross operating income of the chargeable operators, which seeks to cover the administrative costs relating to the issue, management, control and enforcement of those authorisations, to the extent that the combined revenue received by that Member State by way of such a fee does not exceed all of those administrative costs, which is a matter for the national court to ascertain.

([1]) OJ C 246, 11.9.2010.

Judgment of the Court (Fourth Chamber) of 7 July 2011 (reference for a preliminary ruling from the Curtea de Apel Bacău (Romania)) — Ministerul Justiției și Libertăților Cetățenești v Ștefan Agafiței and Others

(Case C-310/10) [1]

(Salary rights of judges — Discrimination on grounds of membership of a socio-professional category or place of work — Conditions for compensation for the harm suffered — Directives 2000/43/EC and 2000/78/EC — Inapplicability — Inadmissibility of the reference for a preliminary ruling)

(2011/C 269/27)

Language of the case: Romanian

Referring court

Curtea de Apel Bacău

Parties to the main proceedings

Applicant: Ministerul Justiției și Libertăților Cetățenești

Defendants: Ștefan Agafiței, Raluca Apetroaei, Marcel Bărbieru, Sorin Budeanu, Luminița Chiagă, Mihaela Crăciun, Sorin-Vasile Curpăn, Mihaela Dabija, Mia-Cristina Damian, Sorina Danalache, Oana-Alina Dogaru, Geanina Dorneanu, Adina-Cătălina Galavan, Gabriel Grancea, Mădălina Radu (Hobjilă), Nicolae Cătălin Iacobuț, Roxana Lăcătușu, Sergiu Lupașcu, Smaranda Maftei, Silvia Mărmureanu, Maria Oborocianu, Simona Panfil, Oana-Georgeta Pânzaru, Laurențiu Păduraru, Elena Pîrjol-Năstase, Ioana Pocovnicu, Alina Pușcașu, Cezar Ștefănescu, Roxana Ștefănescu, Ciprian Țimiraș, Cristina Vintilă

Re:

Reference for a preliminary ruling — Curtea de Apel Bacău — Interpretation of Article 15 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) — Interpretation of Article 17 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation providing for a difference in treatment as regards the salary rights of judges and public prosecutors, justified in terms of the specialised nature of the work of the public prosecutors attached to the D.N.A. (National Anti-Corruption Directorate) and the D.I.I.C.O.T. (Directorate for Investigating Organised Crime and Terrorism) — Possible discrimination, in the absence of objective criteria linked to a specific requirement of higher qualifications — Provisions of national law transposing a directive declared unconstitutional in so far as they enable the national courts to annul legislative acts regarded as discriminatory and, by way of judicial remedy, to grant salary rights for which no provision has been made by statute

Operative part of the judgment

The reference for a preliminary ruling from the Curtea de Apel Bacău (Romania) is inadmissible.

[1] OJ C 234, 28.8.2010.

Judgment of the Court (Sixth Chamber) of 21 July 2011 — Freistaat Sachsen, Land Sachsen-Anhalt v European Commission

(Case C-459/10 P) [1]

(Appeal — State aid — Aid for a training project concerning certain jobs in the new DHL centre at Leipzig-Halle airport — Action for annulment against the decision declaring part of the aid incompatible with the common market — Examination of the need for the aid — Failure to take into account the incentive effects of the aid and its positive external effects on the choice of the site)

(2011/C 269/28)

Language of the case: German

Parties

Appellants: Freistaat Sachsen, Land Sachsen-Anhalt (represented by: A. Rosenfeld, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: B. Martenczuk, agent)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 8 July 2010 in Case T-396/08 *Freistaat Sachsen and Land Sachsen-Anhalt* v *Commission*, by which the General Court dismissed the action seeking partial annulment of Decision 2008/878/EC of 2 July 2008 regarding the State aid which Germany intends to grant to DHL (OJ 2008 L 312, p. 31) — Aid for training — Decision declaring part of the aid incompatible with the common market — Incorrect examination of the need for the aid — Disregard of the positive external effects of the aid and of its incentive effects on the choice of the site

Operative part of the judgment

The Court:

1. *Dismissses the appeal;*

2. *Orders Freistaat Sachsen and Land Sachsen-Anhalt to pay the costs.*

[1] OJ C 317, 20.11.2010.

Judgment of the Court (Seventh Chamber) of 14 July 2011 (reference for a preliminary ruling from the Cour d'appel de Mons — Belgium) — État belge v Pierre Henfling, Raphaël Davin and Koenraad Tanghe, acting as administrators in the insolvency of Tiercé Franco-Belge SA

(Case C-464/10) [1]

(Taxation — Sixth VAT Directive — Article 6(4) — Exemption — Article 13(B)(f) — Gambling — Services provided by a commission agent 'buraliste' acting in his own name but on behalf of a principal operating a business of taking bets)

(2011/C 269/29)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: État belge

Defendants: Pierre Henfling, Raphaël Davin and Koenraad Tanghe, acting as administrators in the insolvency of Tiercé Franco-Belge SA

Re:

Reference for a preliminary ruling — Cour d'appel de Mons — Interpretation of Articles 6(4) and 13(B)(f), 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 L 145, p. 1) — tax exemption in respect of services supplied by a commission agent acting in its own name, but on behalf of a principal who organises supply of services referred to in that directive.

Operative part of the judgment

Articles 6(4) and 13(B)(f) 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, must be interpreted as meaning that, in so far as an economic operator acts in his own name, but on behalf of an undertaking carrying on a bet-taking business, in the collection of bets covered by the exemption from value added tax under Article 13(B)(f), that latter undertaking is to be considered, in accordance with Article 6(4), to provide that operator with a supply of bets coming under that exemption.

([1]) OJ C 346, 18.12.2010.

Order of the Court (First Chamber) of 10 June 2011 (reference for a preliminary ruling from the Rechtbank 's-Gravenhage — Netherlands) — Bibi Mohammad Imran v Minister van Buitenlandse Zaken

(Case C-155/11 PPU) ([1])

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

(2011/C 269/30)

Language of the case: Dutch

Referring court

Rechtbank 's-Gravenhage

Parties to the main proceedings

Applicant: Bibi Mohammad Imran

Defendant: Minister van Buitenlandse Zaken

Re:

Reference for a preliminary ruling — Rechtbank's-Gravenhage — Interpretation of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) — Conditions governing the exercise of that right — National legislation requiring a member of the family of a third-country national residing lawfully in the Member State concerned to pass a civic integration examination in order to be able to enter that Member State — Member of the family concerned being a mother of eight children, including seven minors, who are lawfully residing in the Member State concerned — Possibility of obtaining tuition in the third country of residence in the language of the Member State — Medical reasons or other grounds preventing the family member concerned from passing the integration examination within a reasonable period of time

Operative part of the order

It is not necessary to give a ruling on the request for a preliminary ruling submitted by the Rechtbank's-Gravenhage (Netherlands), by decision of 31 March 2011.

([1]) OJ C 219, 23.7.2011.

Order of the Court (Sixth Chamber) of 22 June 2011 (reference for a preliminary ruling from the Tribunale di Trani (Italy)) — Vino Cosimo Damiano v Poste Italiane SpA

(Case C-161/11) ([1])

(Articles 92(1), 103(1) and 104(3) of the Rules of Procedure — Social policy — Fixed-term employment contracts — Public sector — First or only contract — Derogation from the obligation to state objective reasons — Non-discrimination principle — Lack of connection to European Union law — Clear lack of jurisdiction of the Court)

(2011/C 269/31)

Language of the case: Italian

Referring court

Tribunale di Trani

Parties to the main proceedings

Applicant: Vino Cosimo Damiano

Defendant: Poste Italiane SpA

Re:

Reference for a preliminary ruling — Tribunale di Trani — Interpretation of the general European Union principles of equal treatment and non-discrimination and of Articles 20 and 21 of the Charter of Fundamental Rights — Scope of those principles — Compatibility of national legislation validating in the national legal system a clause not specifying the reason for employment on a fixed-term basis for recruitment of workers at the SpA Poste Italiane

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the first question referred for a preliminary ruling by the Tribunale di Trani (Italy) by decision of 7 February 2011.

([1]) OJ C 173, 11.6.2011.

Appeal brought on 25 February 2011 by Verein Deutsche Sprache eV against the order of the General Court (Third Chamber) delivered on 17 December 2010 in Case T-245/10 Verein Deutsche Sprache e.V. v Council of the European Union

(Case C-93/11 P)

(2011/C 269/32)

Language of the case: German

Parties

Appellant: Verein Deutsche Sprache e.V. (represented by: K.T. Bröcker, Rechtsanwalt)

Other party to the proceedings: Council of the European Union

By order of 28 June 2011 the Court of Justice of the European Union (Sixth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 9 March 2011 — Bundesrepublik Deutschland v Karen Dittrich

(Case C-124/11)

(2011/C 269/33)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: Karen Dittrich

Question referred

Does Council Directive 2000/78/EC establishing a general framework for equal treatment in employment ([1]) and occupation apply to national legislation on the grant of assistance to public servants in cases of illness?

([1]) OJ 2000 L 303, p. 16

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 9 March 2011 — Bundesrepublik Deutschland v Robert Klinke

(Case C-125/11)

(2011/C 269/34)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: Robert Klinke

Question referred

Does Council Directive 2000/78/EC establishing a general framework for equal treatment in employment ([1]) and occupation apply to national legislation on the grant of assistance to public servants in cases of illness?

([1]) OJ 2000 L 303, p. 16

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 24 March 2011 — Jörg-Detlef Müller v Bundesrepublik Deutschland

(Case C-143/11)

(2011/C 269/35)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Jörg-Detlef Müller

Defendant: Bundesrepublik Deutschland

Question referred

Does Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ([1]) apply to national legislation on the grant of assistance to public servants in cases of illness?

([1]) OJ 2000 L 303, p. 16

Reference for a preliminary ruling from the Tribunale di Bergamo lodged on 1 April 2011 — Procura della Repubblica v Ibrahim Music

(Case C-156/11)

(2011/C 269/36)

Language of the case: Italian

Referring court

Tribunale di Bergamo

Party to the main proceedings

Ibrahim Music

By order of 21 June 2011 the Court of Justice removed the case from the register.

Action brought on 18 April 2011 — European Commission v Republic of Slovenia

(Case C-185/11)

(2011/C 269/37)

Language of the case: Slovene

Parties

Applicant: European Commission (represented by: K.-Ph. Wojcik, M. Žebre and N. Yerrell, Agents)

Defendant: Republic of Slovenia

Form of order sought

The applicant claims that the Court should:

— declare that, by failing to implement, correctly and fully, in its own legal order Council Directives 73/239/EEC [1] and 92/49/EEC, [2] the Republic of Slovenia has failed to fulfil its obligations under Article 8(3) of Directive 73/239/EEC and Articles 29 and 39 of Directive 92/49/EEC, and its obligations under Articles 56 and 63 of the Treaty on the functioning of the European Union;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

The period prescribed for the transposition of Directives 73/239/EEC and 92/49/EEC expired on 1 May 2004.

[1] OJ 1973 L 228, p. 3.
[2] OJ 1992 L 228, p. 1.

Reference for a preliminary ruling from the Arbeitsgericht Passau (Germany) lodged on 16 May 2011 — Alexander Heimann v Kaiser GmbH

(Case C-229/11)

(2011/C 269/38)

Language of the case: German

Referring court

Arbeitsgericht Passau

Parties to the main proceedings

Applicant: Alexander Heimann

Defendant: Kaiser GmbH

Questions referred

1. Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [1] be interpreted as meaning that they preclude national legislation or practice according to which, if there is a reduction in the days to be worked each week as a result of a lawful order specifying short-time working, the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to reflect the ratio between the number of working days each week during the period of short-time working and the number of working days each week for a full-time worker and, as a result, during the period of short-time working, the short-time worker accrues a correspondingly reduced entitlement to annual leave?

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

   Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time be interpreted as meaning that they preclude national legislation and practice according to which, if the number of days to be worked each week is reduced to zero as a result of a lawful order specifying 'zero hours short-time working', the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to nothing and, as a result, during the period of 'zero hours short-time working', the short-time worker does not accrue any entitlement to annual leave?

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

Reference for a preliminary ruling from the Arbeitsgericht Passau (Germany) lodged on 16 May 2011 — Konstantin Toltschin v Kaiser GmbH

(Case C-230/11)

(2011/C 269/39)

Language of the case: German

Referring court

Arbeitsgericht Passau

Parties to the main proceedings

Applicant: Konstantin Toltschin

Defendant: Kaiser GmbH

Questions referred

1. Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [1] be interpreted as meaning that they preclude national legislation or practice according to which, if there is a reduction in the days to be worked each week as a result of a lawful order specifying short-time working, the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to reflect the ratio between the number of working days each week during the period of short-time working and the number of working days each week for a full-time worker and, as a result, during the period of short-time working, the short-time worker accrues a correspondingly reduced entitlement to annual leave?

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

   Must Article 31(2) of the Charter of Fundamental Rights of the European Union of 12 December 2007 or Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time be interpreted as meaning that they preclude national legislation and practice according to which, if the number of days to be worked each week is reduced to zero as a result of a lawful order specifying 'zero hours short-time working', the entitlement to paid annual leave of a worker on short-time working is adjusted pro rata to nothing and, as a result, during the period of 'zero hours short-time working', the short-time worker does not accrue any entitlement to annual leave?

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

Reference for a preliminary ruling from the Asylgerichtshof (Austria) lodged on 23 May 2011 — K

(Case C-245/11)

(2011/C 269/40)

Language of the case: German

Referring court

Asylgerichtshof

Parties to the main proceedings

Applicant: K

Defendant: Bundesasylamt

Questions referred

1. Must Article 15 of Regulation No 343/2003 [1] be interpreted as meaning that a Member State prima facie not responsible for examining the asylum claim of a person in accordance with the rules of Articles 6 to 14 of that regulation becomes automatically responsible if in that country the asylum-seeker has a daughter-in-law who is seriously ill and, on account of cultural factors, at risk or has grandchildren below the age of majority who, as a result of the daughter-in-law's illness, are in need of care and the asylum-seeker is both willing and able to support her daughter-in-law and grandchildren? Does the same apply even if the Member State prima facie responsible has not made a request in accordance with the second sentence of Article 15(1) of Regulation No 343/2003?

2. Must Article 3(2) of Regulation No 343/2003 be interpreted as meaning that in the circumstances mentioned in Question 1 the Member State prima facie not responsible becomes automatically responsible if the responsibility otherwise provided for by Regulation No 343/2003 will result in an infringement of Article 3 or Article 8 of the European Convention on Human Rights (ECHR) (Article 4 or Article 7 of the Charter of Fundamental Rights of the European Union)? In that case, in the accessory interpretation and application of Article 3 or Article 8 of the ECHR (Article 4 or Article 7 of the Charter), may more extensive notions of 'inhuman treatment' or 'family', at variance with the interpretation developed by the European Court of Human Rights, be applied?

[1] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

Reference for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 23 May 2011 — Erika Šujetová v Rapid life životná poisťovňa, a.s.

(Case C-252/11)

(2011/C 269/41)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: Erika Šujetová

Defendant: Rapid life životná poisťovňa, a.s.

Questions referred

1. Do Article 6(1) and Article 7(1) of Council Directive 93/13/EEC on unfair terms in consumer contracts [1] preclude the application of a provision of national law under which the court with territorial jurisdiction for the review of an arbitral award is always and only the court in whose area of jurisdiction, pursuant to an arbitration agreement or clause, the arbitration tribunal is established or the place of arbitration is situated, if the court finds that the arbitration agreement or clause is an unfair term within the meaning of Article 3(1) of the above directive?

2. If the answer to the first question is negative: do Article 6(1) and Article 7(1) of Council Directive 93/13/EEC on unfair terms in consumer contracts preclude the application of a provision of national law under which a court … upon annulling an arbitral award, is to continue the main proceedings (i.e. concerning the claim originally heard before the arbitration tribunal) without re-examining its territorial jurisdiction over such continuing proceedings, even though, if the claim against the consumer had been filed from the outset with a court and not an arbitration tribunal, the court with territorial jurisdiction for the proceedings would have been, from the outset, the court of the consumer's place of residence?

[1] OJ 1993 L 95, p. 29.

Appeal brought on 27 May 2011 by Kaimer GmbH & Co. Holding KG and Others against the judgment of the General Court (Eighth Chamber) delivered on 24 March 2011 in Case T-379/06 Kaimer GmbH & Co. Holding KG, Sanha Kaimer GmbH & Co. KG, Sanha Italia Srl. v European Commission

(Case C-264/11 P)

(2011/C 269/42)

Language of the case: German

Parties

Appellants: Kaimer GmbH & Co. Holding KG, Sanha Kaimer GmbH & Co. KG, Sanha Italia Srl. (represented by: J. Brück, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the General Court of 24 March 2011 in Case T-379/06 *Kaimer and Others* v *Commission* in so far as the action was dismissed, and annul Commission Decision C(2006) 4180 of 20 September 2006 (Case COMP/F-1/38.121 — Fittings);

— in the alternative, set aside the judgment of the General Court of 24 March 2011 in Case T-379/06 *Kaimer and Others* v *Commission* in so far as the action was dismissed, and reduce the fine imposed under Article 2 of Commission Decision C(2006) 4180 of 20 September 2006 (Case COMP/F-1/38.121 — Fittings);

— in the further alternative, refer the case back to the General Court for reconsideration;

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

Pleas in law and main arguments

The present appeal has been brought against the judgment of the General Court dismissing in part the appellants' action challenging Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings).

The appellants raise three pleas in law.

By their first plea in law, the appellants complain of the distortion of evidence by the General Court. The General Court based its assumption regarding the starting date of the infringement on a particular piece of evidence. Contrary to the clear wording of that evidence, the General Court regards it as proof of the starting date of the infringement. A correct

assessment of the evidence would suggest precisely the opposite, namely that there was uncertainty on the market about the appellants' conduct on the market. A correct assessment of the evidence is possible on the basis of the document itself, without any further evidence being required.

By their second plea in law, the appellants object to the erroneous assessment of the probative value of leniency statements. The grounds on which the second plea in law is based are twofold. First, the General Court erred in law in attributing special probative value to the leniency statements. The relevant leniency statements in the present proceedings were made by leniency applicants who had to offer the Commission added value in order to obtain the highest possible reduction in fines, resulting in an excessive tendency to apportion blame in the statements and not, therefore, in any special probative value. The General Court did not address that point in the grounds of its judgment.

Second, the General Court did not resolve an inconsistency between the individual leniency statements, as a result of which the grounds of the judgment are erroneous and incomplete. The first applicant for leniency in the proceedings did not name the appellants as participants in the infringement even though it made a full statement and, as a result, obtained full immunity from the fine. The allegations of fact vis-à-vis the appellants are based on the statements of subsequent leniency applicants. That inconsistency ought to have been resolved, particularly where the statement of the first undertaking to cooperate with the Commission is deemed to have special probative value.

By their third plea in law, the appellants allege infringement of the Charter of Fundamental Rights and of the European Convention on Human Rights ('ECHR'). The appellants regard this overriding legislation as having been infringed in two respects. First, the plausibility check carried out by the General Court in cartel fine proceedings does not satisfy the requirements of the Charter of Fundamental Rights and of the ECHR with regard to an effective legal remedy. In that context, the appellants refer to the fact that the Commission's decisions on fines are at least to some extent akin to criminal law sanctions. Moreover, the Commission's own procedure fails to meet the standards of the ECHR and the Charter of Fundamental Rights. In support of that assertion, the appellants observe that the Commission investigates the relevant facts, prosecutes undertakings and subsequently even decides on the nature and amount of the penalty. Such a procedure would be acceptable only if the Commission's decisions were subject to full review by a court. As maintained in the context of the first part of the third plea in law, however, the General Court confines itself in subsequent examinations of Commission decisions to obvious inconsistencies and does not make its own direct findings of fact.

Reference for a preliminary ruling from the Hamburgisches Oberverwaltungsgericht (Germany) lodged on 31 May 2011 — Atilla Gülbahce v Freie und Hansestadt Hamburg

(Case C-268/11)

(2011/C 269/43)

Language of the case: German

Referring court

Hamburgisches Oberverwaltungsgericht

Parties to the main proceedings

Applicant: Atilla Gülbahce

Defendant: Freie und Hansestadt Hamburg

Questions referred

1. Is Article 10(1) of Decision No 1/80 ([1]) to be interpreted as meaning

   (a) that a Turkish worker who has been duly granted a permit to take up employment in the territory of a Member State for a particular period (which may be unlimited) that extends beyond the duration of his residence permit ('overrunning work permit') may exercise his rights under that permit for the whole of that period provided that this is not precluded on grounds relating to the protection of a legitimate national interest such as public policy, public security or public health,

   (b) and that a Member State is prohibited from refusing a priori to recognise that permit as having any effect on his residence status on the basis of national provisions in force at the time when the permit was granted which make the work permit dependent on the residence permit (in accordance with the judgments in Case C-416/96 *El-Yassini* [1999] ECR I-1209, paragraph 3 of the summary of the judgment, paragraphs 62 to 65 of the grounds, concerning the scope of Article 40(1) of the EEC-Morocco Agreement, and Case C-97/05 *Gattoussi* [2006] ECR I-11917, paragraph 2 of the summary of the judgment, paragraphs 36 to 43 of the grounds, concerning the scope of Article 64(1) of the EC-Tunisia Euro-Mediterranean Agreement)?

   If that question is to be answered in the affirmative:

2. Is Article 13 of Decision No 1/80 to be interpreted as meaning that the standstill clause also prohibits a Member State, by means of a legislative provision (in this case, the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the Residence, Gainful Employment and Integration of Foreign Nationals in Federal Territory) of 30 July 2004), from depriving a Turkish worker duly registered as belonging to its labour force of the possibility of relying on a breach of the principle of non-discrimination contained in Article 10(1) of Decision No 1/80 by reason of a work permit previously granted to him for a period extending beyond the duration of the residence permit?

If that question is to be answered in the affirmative:

3. Is Article 10(1) of Decision No 1/80 be interpreted as meaning that the principle of non-discrimination there laid down does not in any event prohibit the national authorities, in accordance with national provisions, from withdrawing, after their period of validity has expired, residence permits of limited duration wrongfully granted to a Turkish worker under national law for such periods of time during which the Turkish worker actually made use of a work permit of unlimited duration which had previously been duly granted to him and was in employment?

4. Is Article 10(1) of Decision No 1/80 further to be interpreted as meaning that that provision covers only employment in which a Turkish worker who is in possession of a work permit which has been duly granted to him by the national authorities for an unlimited period and without restrictions *ratione materiae* is engaged at the time when his residence permit, which has been granted for a limited period for a different purpose, expires, and that a Turkish worker in that situation cannot therefore ask the national authorities, even after having permanently left that employment, to grant him further right of residence for the purposes of new employment — which may be taken up after an interval of time needed to look for another job?

5. Is Article 10(1) of Decision No 1/80 further to be interpreted as meaning that the principle of non-discrimination (only) bars the national authorities of the host Member State from taking measures, after the last-issued residence permit has expired, to repatriate a Turkish national duly registered as belonging to its labour force to whom it originally granted specific rights in relation to employment which were more extensive than his rights of residence, in so far as such measures do not serve to protect a legitimate national interest, but does not require them to issue a residence permit?

([1]) Decision 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association

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Reference for a preliminary ruling from the Baranya Megyei Bíróság lodged on 3 June 2011 — Mecsek-Gabona Kft. v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

(Case C-273/11)

(2011/C 269/44)

Language of the case: Hungarian

Referring court

Baranya Megyei Bíróság

Parties to the main proceedings

Applicant: Mecsek-Gabona Kft.

Defendant: Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

Questions referred

1. Is Article 138(1) of Directive 2006/112 ([1]) to be interpreted as meaning that the sale of a product is exempt from VAT if the product is sold to a buyer who is registered for VAT in another Member State at the time when the sale contract is concluded, and the buyer concludes the sale contract in respect of the product in such a way that the right of disposal and right of ownership are transferred to the buyer upon loading onto the mode of transportation, and the buyer assumes the obligation of transportation to the other Member State?

2. In order to make a VAT-exempt sale, is it sufficient for the seller to satisfy himself that the goods sold are transported by foreign-registered vehicles, and that he is in possession of the CMRs returned by the buyer, or must he ensure that the product sold has crossed the national border and has been transported within Community territory?

3. Can the fact of a VAT-exempt sale of a product be called into question purely on the basis that the tax authority of another Member State retrospectively revokes the buyer's Community tax number with effect from a date prior to the sale of the product?

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

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 June 2011 — GfBk Gesellschaft für Börsenkommunikation mbH v Finanzamt Bayreuth

(Case C-275/11)

(2011/C 269/45)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: GfBk Gesellschaft für Börsenkommunikation mbH

Defendant: Finanzamt Bayreuth

Questions referred

For the purpose of interpreting the term 'management of special investment funds' within the meaning of Article 13B(d)(6) of Directive 77/388/EEC, ([1]) is the service provided by the third-party manager of a special investment fund sufficiently specific and hence exempt from taxation only if

(a) the manager performs a management function and not only an advisory function or if

(b) the service differs in nature from other services by reason of a characteristic feature that qualifies for tax exemption under this provision or if

(c) the manager operates on the basis of a delegation of functions under Article 5g of Directive 85/611/EEC, [2] as amended?

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[1] 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).

[2] Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses (OJ 2002 L 41, p. 20).

Reference for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 6 June 2011 — Concepción Salgado González v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

(Case C-282/11)

(2011/C 269/46)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Galicia

Parties to the main proceedings

Applicant: Concepción Salgado González

Defendants: Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

Questions referred

1. Is it in accordance with the Community objectives set out in Article 48 of the Treaty on the Functioning of the European Union and in Article 3 of Regulation No 1408/71/EEC, [1] of 14 June, and with the wording of Annex VI(D)(4) to Regulation No 1408/71/EEC of 14 June, on the application of social security schemes to employed persons, to self-employed persons and their families moving within the European Union to interpret Annex VI(D)(4) to the effect that, for the calculation of the theoretical Spanish benefit carried out on the basis of the actual contributions of the insured person, during the years immediately preceding payment of the last contribution to the Spanish Social Security, the sum thus obtained is divided by 210, that divider being established by the calculation of the basis for determination of the retirement pension in accordance with Article 162(1) of the General Law on Social Security?

2. (if the first question should be answered in the negative): Is it in accordance with the Community objectives set out in Article 48 of the Treaty on the Functioning of the European Union and Article 3 of Regulation No 1408/71/EEC, of 14 June, and with the wording of Annex VI(D)(4) of Regulation No 1408/71/EEC of 14 June, on the application of social security schemes to employed persons, to self-employed persons and their families moving within the European Union to interpret the said Annex VI(D)(4) to the effect that, for the calculation of the theoretical Spanish benefit carried out on the basis of the actual contributions of the insured person, during the years immediately preceding payment of the last contribution to the Spanish Social Security, the sum thus obtained is divided by the number of years of contribution in Spain?

3. (in the event of a negative response to the first question and whatever the answer to the first question, whether affirmative or negative): Is Annex (XI)(G)(3)(a) of Regulation (EC) No 883/2004 [2] of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems applicable by analogy, in the case described in these proceedings, with the aim of satisfying the Community objectives set out in Article 48 of the Treaty on the Functioning of the European Union and Article 3 of Regulation No 1408/71/EEC of 14 June, on the application of social security schemes to employed persons, to self-employed persons and their families moving within the European Union, and, as a result, is it possible to cover the contribution period in Portugal with the basis of contributions in Spain closest in time to that period, taking into account the evolution of consumer prices?

4. (if the first, second and third questions are all answered in the negative): What, if none of the previously mentioned interpretations were held to be wholly or partly correct, would be the interpretation of Annex VI(D)(4) of Regulation No 1408/71/EEC of 14 June, on the application of social security schemes to employed persons, to self-employed persons and their families moving within the European Union that, being useful for the resolution of the dispute described in these proceedings, is most in accordance with the Community objectives set out in Article 48 of the Treaty on the Functioning of the European Union and Article 3 of Regulation No 1408/71/EEC, of 14 June and with the actual wording of Annex VI(D)(4)?

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[1] OJ 1971 L 149, p. 2

[2] OJ 2004 L 166, p. 1

Reference for a preliminary ruling from the Bundeskommunikationssenat (Austria) lodged on 8 June 2011 — Sky Österreich GmbH v Österreichischer Rundfunk

(Case C-283/11)

(2011/C 269/47)

Language of the case: German

Referring court

Bundeskommunikationssenat

Parties to the main proceedings

Applicant: Sky Österreich GmbH

Defendant: Österreichischer Rundfunk

Question referred

Is Article 15(6) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) [1] compatible with Articles 17 and 16 of the Charter of Fundamental Rights of the European Union and with Article 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No 1 to the ECHR)?

[1] OJ 2010 L 95, p. 1.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 15 June 2011 — Staatssecretaris van Financiën v Gemeente Vlaardingen

(Case C-299/11)

(2011/C 269/48)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Gemeente Vlaardingen

Question referred

Must Article 5(7)(a) of the Sixth Directive, [1] read in conjunction with Article 5(5) and Article 11(A)(1)(b) of the Sixth Directive, be interpreted as meaning that, upon the occupation of immovable property by a taxable person for exempt purposes, a Member State may charge VAT in a case where:

— that immovable property consists of a (building) work completed on the taxable person's own land and to his own order by a third person for consideration, and

— that land was previously used by the taxable person for (the same) exempt business purposes, and the taxable person did not previously enjoy a VAT deduction in respect of that same land,

with the result that (the value of that) same land becomes included in the VAT charge?

[1] Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization 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).

Appeal brought on 20 June 2011 by Deichmann SE against the judgment of the General Court (Seventh Chamber) delivered on 13 April 2011 in Case T-202/09 Deichmann SE v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-307/11 P)

(2011/C 269/49)

Language of the case: German

Parties

Appellant: Deichmann SE (represented by: O. Rauscher, Rechtsanwalt)

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

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of the European Union of 13 April 2011 in Case T-202/09;

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 April 2009 in Case R 224/2007-4;

— Order OHIM to pay the costs.

Pleas in law and main arguments

The present appeal is against the judgment of the General Court by which that court dismissed the appellant's action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 3 April 2009 concerning the rejection of its application for registration of a figurative mark which represents an angle edged with dotted lines. The protection of the mark was sought in respect of Classes 10 ('Orthopaedic footwear') and 25 ('Footwear') of the Nice Agreement.

The contested decision infringes Article 7(1)(b) and the first sentence of Article [76(1)] of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark ('Regulation No 207/2009').

It is based on the incorrect assumption that the mere possibility or likelihood of non-distinctive use of the sign in question is sufficient to reject the mark's having any distinctive character altogether. In fact the not remote possibility of use which is distinctive is *per se* sufficient to overcome the ground for refusal of lack of distinctive character. That follows from a comparison of Article 7(1)(b) of Regulation No 207/2009 with the wording of Article 7(1)(c) of Regulation No 207/2009 and constitutes a principle which has in the meantime become well-established in the case-law of the German Bundesgerichtshof (Federal Court of Justice) and Bundespatentgericht (Federal Patents Court).

In the case of (orthopaedic) footwear a sign is inter alia perceived as an indication of origin if it — as is normal in characterising footwear — is affixed to the rear of the middle part of the insole sock, to a label or to a shoebox. Against the background of those obvious possibilities for use, the General Court's assumption that the mark for which protection is sought consists of the representation of a component of the product itself cannot be accepted.

Furthermore, the General Court failed in the present case to examine the obvious practice of characterisation in the sport and leisure shoes sector, which the appellant explained, although it was obliged to do so on the basis of the principle, laid down in the first sentence of Article [76(1)] of Regulation No 207/2009, that OHIM is obliged to examine the facts of its own motion.

Lastly, the General Court was not entitled to find that the mark in question had no distinctive character on the ground that it was for the appellant to provide specific and substantiated information to establish that the mark applied for has distinctive character.

Appeal brought on 20 June 2011 by Smart Technologies ULC against the judgment of the General Court (Second Chamber) delivered on 13 April 2011 in Case T-523/09: Smart Technologies ULC v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-311/11 P)

(2011/C 269/50)

Language of the case: English

Parties

Appellant: Smart Technologies ULC (represented by: M. Edenborough QC, T. Elias, Barrister, R. Harrison, Solicitor)

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

Form of order sought

The appellant seeks an order that:

— the Judgment of 13 April 2011 in Case T-523/09 Smart Technologies v OHIM (WIR MACHEN DAS BESONDERE EINFACH) be set aside;

— The Decision of the Board of Appeal of OHIM of 29 September 2009 be altered to state that the mark applied for possesses sufficient distinctive character such that no objection to its registration may be raised under Article 7(1)(b) of Regulation No. 207/2009;

— In the alternative, that the Decision of the Second Board of Appeal of OHIM of 29 September 2009 be annulled;

— The Defendant pay to the Appellant the Appellant's costs of and occasioned by this appeal and of the proceedings before the General Court and the Board of Appeal.

Pleas in law and main arguments

The Appellant contests the Judgment of the General Court on the following grounds:

— The General Court did not analyse the distinctiveness of the Appellant's application on its own terms, but by reference as to whether it was or was not a 'mere' advertising slogan. The Appellant submits that this is wrong in law and that the correct approach is to analyse distinctiveness by reference to the relevant goods and service and the relevant public. To conclude that there is no distinctive character in the Application because the Application is a mere advertising slogan is to carry out the wrong test as set out in established case law.

— The General Court erred in law by considering that it is harder to establish distinctiveness in relation to an advertising slogan than in relation to any other form of word mark.

— The General Court erred in law in asserting that it was entitled to assume as a well-known fact a matter which required to be proved by evidence, i.e. that consumers do not accord trade mark value to marketing claims.

— The Appellant finally submits that a mark need have only a minimum degree of distinctive character in order to render refusal under Article 7(1)(b) of Council Regulation (EC) n° 207/2009 [1] on the Community trade mark inapplicable.

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

Reference for a preliminary ruling from the Rechtbank Breda (Netherlands) lodged on 27 June 2011 — A. T. G. M. Van de Ven & M. A. H. T. Van de Ven-Janssen v Koninklijke Luchtvaart Maatschappij N.V.

(Case C-315/11)

(2011/C 269/51)

Language of the case: Dutch

Referring court

Rechtbank Breda

Parties to the main proceedings

Applicants: A. T. G. M. Van de Ven

M. A. H. T. Van de Ven-Janssen

Defendant: Koninklijke Luchtvaart Maatschappij N.V.

Questions referred

1. Is a right to compensation in case of delay, as described in Article 7 of Regulation No 261/2004, [1] consistent with the last sentence of Article 29 of the Montreal Convention, [2] given the fact that, according to the first sentence of Article 29 of the Montreal Convention, actions for damages founded in contract, in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in the Montreal Convention?

2. If a right to compensation in case of delay, as described in Article 7 of Regulation No 261/2004, is not consistent with Article 29 of the Montreal Convention, are any limitations then imposed in respect of the moment when the ruling of the Court of Justice enters into effect as regards the present case and/or in general?

([1]) Regulation (EC) No 261/2004 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 (OJ 2004 L 46, p. 1)

([2]) See Council Decision 2001/539/EC of 5 April 2001 on the conclusion by the European Community of the Convention for the Unification of Certain Rules for International Carriage by Air (the Montreal Convention) (OJ 2001 L 194, p. 38)

Appeal brought on 22 June 2011 by Longevity Health Products, Inc. against the order of the General Court (Second Chamber) delivered on 15/04/2011 in Case T-96/11: Longevity Health Products, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-316/11 P)

(2011/C 269/52)

Language of the case: English

Parties

Appellant: Longevity Health Products, Inc. (represented by: J. Korab, Rechtsanwalt)

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

Form of order sought

The applicant claims that the Court should:

— Admit the complaint filed by the company Longevity Health Products, Inc.;

— Annul the decision of the General Court of April 15, 2011, T-96/11;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

The applicant submits that the contested order should be annulled on the following grounds:

— The reasoning of the General Court is defective;

— The General Court did not consider the arguments advanced by the holder of the trade mark.

Reference for a preliminary ruling from the Landesarbeitsgericht Berlin-Brandenburg (Germany) lodged on 27 June 2011 — Rainer Reimann v Philipp Halter GmbH & Co. Sprengunternehmen KG

(Case C-317/11)

(2011/C 269/53)

Language of the case: German

Referring court

Landesarbeitsgericht Berlin-Brandenburg

Parties to the main proceedings

Applicant: Rainer Reimann

Defendant: Philipp Halter GmbH & Co. Sprengunternehmen KG

Questions referred

1. Do Article 31 of the Charter of Fundamental Rights and Article 7(1) of Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time ([1]) preclude a national rule such as the one in Paragraph 13(2) of the Bundesurlaubsgesetz (Federal law on leave), pursuant to which in certain trades the duration of the annual minimum leave of four weeks may be reduced by means of collective agreement?

2. Do Article 31 of the Charter of Fundamental Rights and Article 7(1) of Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time preclude a rule in a national collective agreement such as that in the Bundesrahmentarifvertrag Bau (Collective agreement laying down a general framework for the construction industry), pursuant to which a leave entitlement does not accrue in those years in which a certain total gross wage is not earned as a result of illness?

3. If the first and second questions are answered in the affirmative:

   Is a rule such as that in Paragraph 13(2) of the Bundesurlaubsgesetz inapplicable in those circumstances?

4. If the first to third questions are answered in the affirmative:

   Should legitimate expectations be protected with regard to the validity of the rule in Paragraph 13(2) of the Bundesurlaubsgesetz and the rules of the Bundesrahmentarifvertrag Bau, if periods prior to 1 December 2009, when the Treaty of Lisbon and the Charter of Fundamental Rights came into force, are affected? Should the parties to the Bundesrahmentarifvertrag Bau collective agreement be granted a period in which they may agree another rule themselves?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Reference for a preliminary ruling from the Förvaltningsrätten i Falun (Sweden) lodged on 27 June 2011 — Daimler AG v Skatteverket

(Case C-318/11)

(2011/C 269/54)

Language of the case: Swedish

Referring court

Förvaltningsrätten i Falun

Parties to the main proceedings

Applicant: Daimler AG

Defendant: Skatteverket

Questions referred

1. How is the expression 'fixed establishment from which business transactions are effected' to be interpreted in an assessment on the basis of the relevant provisions of European Union law? [1]

2. Is a taxable person who has the seat of his economic activity in another Member State and whose activity principally consists of the manufacture and sale of cars, who has carried out winter testing of car models at installations in Sweden, to be regarded as having had a fixed establishment in Sweden from which business transactions have been effected where that person has acquired goods and services that were received and used at testing installations in Sweden without having his own staff permanently stationed in Sweden and where the testing activity is necessary to the performance of the person's economic activity in another Member State?

3. Does it affect the answer to question 2 if the taxable person has a wholly-owned Swedish subsidiary, the purpose of which is almost exclusively to supply the person with various services for that testing activity?

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1), Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ L 331, 27.12.1979, p. 11), Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State (OJ L 44, 20.2.2008, p. 23).

Reference for a preliminary ruling from the Förvaltningsrätten i Falun (Sweden) lodged on 27 June 2011 — Widex A/S v Skatteverket

(Case C-319/11)

(2011/C 269/55)

Language of the case: Swedish

Referring court

Förvaltningsrätten i Falun

Parties to the main proceedings

Applicant: Widex A/S

Defendant: Skatteverket

Questions referred

1. How is the expression 'fixed establishment from which business transactions are effected' to be interpreted in an assessment on the basis of the relevant provisions of European Union law? [1]

2. Is a taxable person who has the seat of his economic activity in another Member State and whose activity consists inter alia of the manufacture and sale of hearing aids to be regarded, by virtue of carrying out research in audiology from a research division in Sweden, as having had a fixed establishment in Sweden from which business transactions have been effected where that person has acquired goods and services that were received and used at the research division in question in Sweden?

[1] Articles 170 and 171 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), Articles 1 and 2 of Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes –Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

Reference for a preliminary ruling from the Sąd Rejonowy w Koszalinie (Republic of Poland), lodged on 28 June 2011 — Krystyna Alder and Ewald Alder v Sabina Orłowska and Czesław Orłowski

(Case C-325/11)

(2011/C 269/56)

Language of the case: Polish

Referring court

Sąd Rejonowy w Koszalinie

Parties to the main proceedings

Claimants: Krystyna Alder, Ewald Alder

Defendants: Sabina Orłowska, Czesław Orłowski

Question referred

Are Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extra-judicial documents in civil or commercial matters [1] and Article 18 of the Treaty on the Functioning of the European Union to be interpreted as meaning that it is permissible to place in the case file, deeming them to have been effectively served, court documents which are addressed to a party whose place of residence or habitual abode is in another Member State, if that party has failed to appoint a representative who is authorised to accept service and is resident in the Member State in which the court proceedings are being conducted?

[1] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 29 June 2011 — J.J. Komen en Zonen Beheer Heerhugowaard B.V. v Staatssecretaris van Financiën

(Case C-326/11)

(2011/C 269/57)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: J.J. Komen en Zonen Beheer Heerhugowaard B.V.

Respondent: Staatssecretaris van Financiën

Question referred

Must Article 13B(g), in conjunction with Article 4(3)(a), of the Sixth Directive [1] be interpreted as meaning that the supply of a building in respect of which, prior to its supply, the vendor had transformation work carried out with a view to the creation of a new building (refurbishment), work which was continued and completed by the purchaser after its supply, is not exempt from VAT?

[1] 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).

Appeal brought on 28 June 2011 by Alder Capital Ltd against the judgment of the General Court (Eighth Chamber) delivered on 13 April 2011 in Case T-209/09: Alder Capital Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gimv Nederland BV

(Case C-328/11 P)

(2011/C 269/58)

Language of the case: English

Parties

Appellant: Alder Capital Ltd (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Gimv Nederland BV

Form of order sought

The appellant requests the Court of Justice to make the following orders:

— The judgment of the General Court of 13 April 2011 in Case T-209/09 and the decision of the Second Board of Appeal of the Office of 20 February 2009 in Case R 486/2008-2 are annulled.

— The costs of the proceedings before the Board of Appeal of the Office, before the General Court and before this Court shall be borne by the Office and by the Intervener.

Pleas in law and main arguments

The Appellant claims that the contested judgment must be annulled on three separate grounds.

The principal ground is that the General Court committed legal error when it held that the Board of Appeal was required, as a matter of law, to review the claim for a declaration of invalidity as it had been presented to the Office's Invalidity Division. The Appellant's claim is that the scope of review was limited to the subject matter of the appeal brought by the Appellant.

The subsidiary grounds are:

— that the General Court committed legal error in dismissing the Appellants' arguments as 'irrelevant' that the Intervener infringed applicable financial services authorisation and regulation and anti-money laundering laws and regulations in offering the services for which its mark 'Halder' was used in Germany (infringement of Article 56 (2) and (3) CTMR in conjunction with Article 15 CTMR), and

— that the General Court committed legal error in concluding that there was a likelihood of confusion even though the degree of attention of the public was 'very high' (infringement of Article 8 (l)(b) CTMR).

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Prorail NV v Xpedys NV and Others

(Case C-332/11)

(2011/C 269/59)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Prorail NV

Respondents: Xpedys NV

FAG Kugelfischer GmbH

D B Schenker Rail Nederland NV

Nationale Maatschappij der Belgische Spoorwegen NV

Question referred

Must Articles 1 and 17 of Council Regulation (EC) No 1206/2001 [1] of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, in the light, inter alia, of European legislation concerning the recognition and enforcement of judgments in civil or commercial matters, and of the principle expressed in Article 33(1) [2] that a judgment given in a Member State is to be recognised in the other Member States without any special procedure being required, be interpreted as meaning that the court which orders an investigation by a judicial expert whose task is to be carried out partly in the territory of the Member State to which the court belongs, but partly also in another Member State, must, for the direct performance of the latter part of the task, make use only and therefore exclusively of the method created by Regulation No 1206/2001 as referred to in Article 17 thereof, or as meaning that the judicial expert assigned by that country may also be charged with an investigation which is to be partly carried out in another Member State of the European Union, outside the provisions of Regulation No 1206/2001?

[1] OJ 2001 L 174, p. 1.

[2] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Hof van Cassatie van België (Belgium) lodged on 30 June 2011 — Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra) v Belgische Staat

(Case C-333/11)

(2011/C 269/60)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Appellant: Koninklijke Federatie van Belgische Transporteurs en Logistieke Dienstverleners (Febetra)

Respondent: Belgische Staat

Questions referred

1. Must Article 37 of the TIR Convention and the second subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93 [1] of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code be interpreted as meaning that, in the absence of an official finding as to the place where the offence or irregularity was committed, and of any proof to the contrary furnished within the specified period by the guarantor, the Member State where the existence of the offence or irregularity is detected is deemed to be the Member State where the offence or irregularity was committed, even if it is possible, on the basis of the place where the TIR carnet was accepted and where the goods were sealed, without further investigation, to ascertain via which Member State situated at the external border of the Community the goods were unlawfully introduced into the Community?

2. If the first question is answered in the negative, must the same Articles, in conjunction with Articles 6(1) and 7(1) of Council Directive 92/12/EEC [2] of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, be interpreted as meaning that the Member State situated at the external border of the Community where the goods were unlawfully introduced is also competent to collect the excise duty when the goods have in the meantime been taken to another Member State, where they were discovered, confiscated and forfeited?

[1] OJ 1993 L 253, p. 1.

[2] OJ 1992 L 76, p. 1.

Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab DAB

(Case C-335/11)

(2011/C 269/61)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicant: HK Danmark, acting on behalf of Jette Ring

Defendant: Dansk almennyttigt Boligselskab DAB

Questions referred

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* [1] covered by the concept of disability within the meaning of the directive?

   (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?

   (c) Can a condition caused by a medically diagnosed temporary illness be covered by the concept of disability within the meaning of the directive?

2. Should a permanent reduction in functional capacity which does not entail a need for special aids or the like but means only that the person concerned is not capable of working full-time be regarded as a disability in the sense in which that term is used in Council Directive 2000/78/EC [2]?

3. Is a reduction in working hours among the measures covered by Article 5 of Directive 2000/78/EC?

4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where

   (a) the absence was caused by the disability

   or

   (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

[1] [2006] ECR I-6467.
[2] OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Cour d'appel de Lyon (France), lodged on 1 July 2011 — Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects v Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

(Case C-336/11)

(2011/C 269/62)

Language of the case: French

Referring court

Cour d'appel de Lyon

Parties to the main proceedings

Appellants: Receveur principal des douanes de Roissy Sud, Receveur principal de la recette des douanes de Lyon Aéroport, Direction régionale des douanes et droits indirects de Lyon, Administration des douanes et droits indirects

Respondents: Société Rohm & Haas Electronic Materials CMP Europe GmbH, Rohm & Haas Europe s. à r.l., Société Rohm & Haas Europe Trading APS-UK Branch

Question referred

Should the combined nomenclature [set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, [1] as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006 [2] and Commission Regulation (EC) No 1214/2007 of 20 September 2007 [3]] be interpreted as meaning that polishing pads, intended for a polishing machine for working semiconductor materials — as such coming under tariff heading 8460 — imported separately from the machine, in the form of discs perforated in the centre, made up of a hard polyurethane layer, a layer of polyurethane foam, an adhesive layer and a protective plastic film, which do not contain any metal part or any abrasive substance and are used to polish 'wafers', in association with an abrasive liquid, and must be replaced at a frequency determined by their level of wear, come under tariff heading 8466 […], as parts or accessories suitable for use solely or principally with the machines classified under headings 8456 to 8465, or, on the basis of their constituent material, under tariff heading [3919], as self-adhesive flat shapes made of plastic?

[1] OJ 1987 L 256, p. 1.
[2] OJ 2006 L 301, p. 1.
[3] OJ 2007 L 286, p. 1.

Reference for a preliminary ruling from the Sø- og Handelsret (Denmark) lodged on 1 July 2011 — HK Danmark, acting on behalf of Lone Skouboe Werge v Pro Display A/S in liquidation

(Case C-337/11)

(2011/C 269/63)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicant: HK Danmark, acting on behalf of Lone Skouboe Werge

Defendant: Pro Display A/S in liquidation

Questions referred

1. (a) Is any person who, because of physical, mental or psychological injuries, cannot or can only to a limited extent carry out his work in a period that satisfies the requirement as to duration specified in paragraph 45 of the judgment of the Court of Justice in Case C-13/05 *Navas* ([1]) covered by the concept of disability within the meaning of the directive?

   (b) Can a condition caused by a medically diagnosed incurable illness be covered by the concept of disability within the meaning of the directive?

   (c) Can a condition caused by a medically diagnosed temporary illness be covered by the concept of disability within the meaning of the directive?

2. Should a permanent reduction in functional capacity which does not entail a need for special aids or the like but means only that the person concerned is not capable of working full-time be regarded as a disability in the sense in which that term is used in Council Directive 2000/78/EC ([2])?

3. Is a reduction in working hours among the measures covered by Article 5 of Directive 2000/78/EC?

4. Does Council Directive 2000/78/EC preclude the application of a provision of national law under which an employer is entitled to dismiss an employee with a shortened notice period where the employee has received his salary during periods of illness for a total of 120 days during a period of 12 consecutive months, in the case of an employee who must be regarded as disabled within the meaning of the directive, where

   (a) the absence was caused by the disability

   or

   (b) the absence was due to the fact that the employer did not implement the measures appropriate in the specific situation to enable a person with a disability to perform his work?

([1]) [2006] ECR I-6467.
([2]) OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi v Direction des résidents à l'étranger et des services généraux

(Case C-338/11)

(2011/C 269/64)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Société Santander Asset Management SGIIC SA, on behalf of FIM Santander Top 25 Euro Fi

Defendant: Direction des résidents à l'étranger et des services généraux

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal administratif de Montreuil (France) lodged on 4 July 2011 — Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-339/11)

(2011/C 269/65)

Language of the case: French

Referring court

Tribunal administratif de Montreuil

Parties to the main proceedings

Applicant: Santander Asset Management SGIIC SA, on behalf of Cartera Mobiliaria SA SICAV

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Kapitalanlagegesellschaft mbH, on behalf of Alltri Inka v Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'État

(Case C-340/11)

(2011/C 269/66)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Kapitalanlagegesellschaft mbH, on behalf of Alltri Inka

Defendant: Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'État

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Allianz Global Investors Kapitalanlagegesellschaft mbH, on behalf of DBI-Fonds APT No 737 v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-341/11)

(2011/C 269/67)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Allianz Global Investors Kapitalanlagegesellschaft mbH, on behalf of DBI-Fonds APT No 737

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — SICAV KBC Select Immo v Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'Etat

(Case C-342/11)

(2011/C 269/68)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: SICAV KBC Select Immo

Defendant: Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — SGSS Deutschland Kapitalanlagegesellschaft mbH v Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'Etat

(Case C-343/11)

(2011/C 269/69)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: SGSS Deutschland Kapitalanlagegesellschaft mbH

Defendant: Ministre du budget, des comptes publiques, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — International Values Series of the DFA Investment Trust Company v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-344/11)

(2011/C 269/70)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: International Values Series of the DFA Investment Trust Company

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Continental Small Company Series of the DFA Investment Trust Company v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-345/11)

(2011/C 269/71)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Continental Small Company Series of the DFA Investment Trust Company

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratrif de Montreuil (France) lodged on 4 July 2011 — SICAV GA Fund B v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-346/11)

(2011/C 269/72)

Language of the case: French

Referring court

Tribunal Administratrif de Montreuil

Parties to the main proceedings

Applicant: SICAV GA Fund B

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Tribunal Administratif de Montreuil (France) lodged on 4 July 2011 — Generali Investments Deutschland Kapitalanlagegesellschaft mbH, on behalf of AMB Generali Aktien Euroland v Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

(Case C-347/11)

(2011/C 269/73)

Language of the case: French

Referring court

Tribunal Administratif de Montreuil

Parties to the main proceedings

Applicant: Generali Investments Deutschland Kapitalanlagegesellschaft mbH, on behalf of AMB Generali Aktien Euroland

Defendant: Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'Etat

Questions referred

1. Must the situation of the shareholders be taken into account together with that of undertakings for collective investments in transferable securities (UCITS)?

2. If so, what are the conditions under which the withholding tax at issue may be regarded as consistent with the principle of free movement of capital?

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 7 July 2011 — O, S

(Case C-356/11)

(2011/C 269/74)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellants: O, S

Other party: Maahanmuuttovirasto

Questions referred

1. Does Article 20 TFEU preclude a third-country national from being refused a residence permit because of lack of means of subsistence in a family situation in which a child who is a citizen of the Union is cared for by his spouse and the third-country national is not that child's parent or carer?

2. If the answer to Question 1 is in the negative, must the effect of Article 20 TFEU be assessed differently if the third-country national who does not have a residence permit, his spouse, and the child who is cared for by the spouse and has Union citizenship live together?

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 7 July 2011 — Maahanmuuttovirasto

(Case C-357/11)

(2011/C 269/75)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Appellant: Maahanmuuttovirasto

Other party: L

Questions referred

1. Does Article 20 TFEU preclude a third-country national from being refused a residence permit because of lack of means of subsistence in a family situation in which his spouse is the carer of a child who is a citizen of the Union and the third-country national is not that child's parent or carer and does not live with his spouse or with that child?

2. If the answer to Question 1 is in the negative, must the effect of Article 20 TFEU be assessed differently if the third-country national who does not have a residence permit, and does not live in Finland, and his spouse have a child, in their joint care and living in Finland, who is a third-country national?

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 8 July 2011 — Lapin elinkeino-, liikenne- ja ympäristö- keskuksen liikenne ja infrastruktuuri vastuualue

(Case C-358/11)

(2011/C 269/76)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lapin elinkeino-, liikenne- ja ympäristö- keskuksen liikenne ja infrastruktuuri vastuualue

Other parties: Lapin luonnonsuojelupiiri ry and Lapin elinkeino-, liikenne- ja ympäristö- keskuksen ympäristö ja luonnonvarat vastuualue

Questions referred

1. Is it possible to deduce directly from the fact that waste is classified as dangerous waste that the use of such a substance or object leads to overall adverse environmental or human health impacts within the meaning of Article 6(1)(d) of Waste Directive 2008/98/EC? May hazardous waste also cease to be waste if it fulfils the requirements laid down in Article 6(1) of Waste Directive 2008/98/EC?

2. In interpreting the concept of waste and, in particular, assessing the obligation to dispose of a substance or an object, is it relevant that the re-use of the object which is the subject of the assessment is authorised under certain conditions by Annex XVII as referred to in Article 67 of the REACH Regulation? If that is the case, what weight is to be given to that fact?

3. Has Article 67 of the REACH Regulation harmonised the requirements concerning the manufacture, placing on the market or use within the meaning of Article 128(2) of that regulation so that the use of the preparations or objects mentioned in Annex XVII cannot be prevented by national rules on environmental protection unless those restrictions have been published in the inventory compiled by the Commission, as provided for in Article 67(3) of the REACH Regulation?

4. Is the list in Point 19(4)(b) in Annex XVII to the REACH Regulation of the uses of CCA-treated wood to be interpreted as meaning that that inventory exhaustively lists all the possible uses?

5. Can the use of the wood at issue as underlay and duckboards for a hiking trail be treated in the same way as the uses listed in the inventory referred to in question 4 above, so that the use in question may be permitted on the basis of Point 19(4)(b) of Annex XVII to the REACH Regulation if the other conditions are met?

6. Which factors are to be taken into account in order to assess whether repeated skin contact within the meaning of Point 19(4)(d) of Annex XVII to the REACH Regulation is possible?

7. Does the word 'possible' in the point mentioned in question 6 above mean that repeated skin contact is theoretically possible or that repeated skin contact is actually possible to some extent?

Reference for a preliminary ruling from the Elegktiko Sinedrio (Court of Auditors) (Greece) lodged on 7 July 2011 — Commissioner of the Court of Auditors at the Ministry of Culture and Tourism v Audit Service of the Ministry of Culture and Tourism and Konstantinos Antonopoulos

(Case C-363/11)

(2011/C 269/77)

Language of the case: Greek

Referring court

Elegktiko Sinedrio (Court of Auditors)

Parties to the main proceedings

Applicant: Commissioner of the Court of Auditors at the Ministry of Culture and Tourism

Defendant: Audit Service of the Ministry of Culture and Tourism and Konstantinos Antonopoulos

Questions referred

1. Does payment or non-payment of remuneration to a worker during leave of absence from work on trade union business constitute a working condition or employment condition under European Union law ('EU law') and, in particular, do provisions of law allowing unpaid leave for union business to be granted to workers with a fixed-term employment relationship in the public sector who do not hold an established post and who are officials of a trade union organisation introduce a 'working condition' within the meaning of Article 137(1)(b) EC and an 'employment condition' in accordance with Clause 4(1) of the framework agreement [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP] or does this question come within the areas of pay and the right of association to which EU law does not apply?

2. If the answer to Question 1 is in the affirmative, is a worker with a private-law employment relationship of indefinite duration with the civil service who holds an established post and is employed on the same work as a worker with a private-law fixed-term employment relationship who does not hold an established post 'comparable' to that worker within the meaning of Clauses 3(2) and 4(1), of the framework agreement or does the fact that the national Constitution (Article 103) and its implementing laws provide for a special employment regime for such workers (terms of employment and specific safeguards in accordance with Article 103(3) of the Constitution) suffice to classify them as not 'comparable' to workers with a private-law fixed-term employment relationship who do not hold an established post?

3. If the answers to Questions 1 and 2 are in the affirmative:

   (a) If the effect of a combination of national legislative provisions is that public sector employees with an employment relationship of indefinite duration who hold an established post and who are officials of a second-level trade union organisation receive paid leave (up to nine days a month) for trade union business, while workers in the same service with a fixed-term employment relationship who do not hold an established post but who do have the same trade union status receive unpaid leave of the same duration for trade union business, does the distinction in question constitute less favourable treatment of the second category of workers within the meaning of Clause 4(1) of the framework agreement and

   (b) Do the fixed term of the employment relationship of the second category of workers and the fact that that category is distinct in terms of the employment regime in general (terms of recruitment, promotion and termination of the employment relationship) constitute objective grounds that might justify that discrimination?

4. Does the distinction at issue between trade union officials who are workers with a contract of indefinite duration and who hold an established position in the civil service and fixed-term workers with the same trade union status who do not hold an established post in the same service infringe the principle of non-discrimination in the pursuit of trade union rights in accordance with Articles 12, 20, 21 and 28

of the Charter of Fundamental Rights of the European Union or can that distinction be justified on the grounds that the two categories of workers have a different employment status?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 13 July 2011 — Panellinios Sindesmos Viomikhanion Metapiisis Kapnou v Ipourgos Ikonomias kai Ikonomikon and Ipourgos Agrotikis Anaptixis kai Trofimon

(Case C-373/11)

(2011/C 269/78)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Panellinios Sindesmos Viomikhanion Metapiisis Kapnou

Defendants: Ipourgos Ikonomias kai Ikonomikon and Ipourgos Agrotikis Anaptixis kai Trofimon

Question referred

Is Article 69 of Regulation No 1782/2003, under which the Member States are permitted to set different retention percentages, up to the limit of 10 % of the component of national ceilings referred to in Article 41, for the making of an additional payment to producers, while observing the criteria set out in the third paragraph of Article 69, compatible, in permitting this differentiation as regards the retention percentage, with Articles 2 EC, 32 EC and 34 EC and with the objectives of ensuring a stable income for producers and maintaining rural areas?

Appeal brought on 21 June 2011 by Longevity Health Products, Inc. against the order of the General Court (Second Chamber) delivered on 15 April 2011 in Case T-95/11: Longevity Health Products v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-378/11 P)

(2011/C 269/79)

Language of the case: English

Parties

Appellant: Longevity Health Products, Inc. (represented by: J. Korab, Rechtsanwalt)

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

Form of order sought

The applicant claims that the Court should:

— Admit the complaint filed by the company Longevity Health Products, Inc.;

— Annul the decision of the General Court of April 15, 2011, T-95/11;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

The applicant submits that the contested order should be annulled on the following grounds:

— The reasoning of the General Court is defective;

— The General Court did not consider the arguments advanced by the holder of the trade mark.

Order of the President of the Court of 1 July 2011 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — G.A.P. Peeters-van Maasdijk v Raad van Bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-455/10) [1]

(2011/C 269/80)

Language of the case: Dutch

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

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[1] OJ C 328, 4.12.2010.

Order of the President of the Court of 6 July 2011 — European Commission v Republic of Estonia

(Case C-16/11) [1]

(2011/C 269/81)

Language of the case: Estonian

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

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[1] OJ C 63, 26.2.2011.

Order of the President of the Court of 15 June 2011 — European Commission v Republic of Poland

(Case C-20/11) [1]

(2011/C 269/82)

Language of the case: Polish

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

[1] OJ C 80, 12.3.2011.

Order of the President of the Court of 6 July 2011 (reference for a preliminary ruling from the Tribunale di Milano (Italy)) — Procura della Repubblica v Assane Samb

(Case C-43/11) [1]

(2011/C 269/83)

Language of the case: Italian

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

[1] OJ C 113, 9.4.2011.

Order of the President of the Court of 7 July 2011 (reference for a preliminary ruling from the Tribunale di Frosinone (Italy)) — Procura della Repubblica v Patrick Conteh

(Case C-169/11) [1]

(2011/C 269/84)

Language of the case: Italian

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

[1] OJ C 173, 11.6.2011.

Order of the President of the Court of 6 July 2011 (reference for a preliminary ruling from the Tribunale di Treviso — Italy) — Procura della Repubblica v Elena Vermisheva

(Case C-187/11) [1]

(2011/C 269/85)

Language of the case: Italian

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

[1] OJ C 211, 16.7.2011.

GENERAL COURT

Judgment of the General Court of 14 July 2011 — Freistaat Sachsen v Commission

(Case T-357/02 RENV) [1]

(State aid — Aid granted by the authorities of the Free State of Saxony — Aid for coaching, participation in fairs, cooperation and design promotion — Decision declaring the aid scheme in part compatible and in part incompatible with the common market — Aid scheme for small and medium-sized enterprises — Failure to exercise discretion — Obligation to state reasons)

(2011/C 269/86)

Language of the case: German

Parties

Applicant: Freistaat Sachsen (Germany) (represented by: T. Lübbig, lawyer)

Defendant: European Commission (represented by: K. Gross, V. Kreuschitz and T. Maxian Rusche, acting as Agents)

Re:

Action for annulment of the second paragraph of Article 2 and of Articles 3 and 4 of Commission Decision 2003/226/EC of 24 September 2002 on an aid scheme which the Federal Republic of Germany is planning to implement — 'Guidelines on assistance for SMEs — Improving business efficiency in Saxony': Subprogrammes 1 (Coaching), 4 (Participation in fairs), 5 (Cooperation) and 7 (Design promotion) (OJ 2003 L 91, p. 13)

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Freistaat Sachsen (Germany) to bear its own costs and to pay the costs incurred by the European Commission both before the General Court and before the Court of Justice.*

[1] OJ C 31, 8.2.2003.

Judgment of the General Court of 14 July 2011 — Arkema France v Commission

(Case T-189/06) [1]

(Competition — Agreements, decisions and concerted practices — Hydrogen peroxide and sodium perborate — Decision finding an infringement of Article 81 EC — Imputability of the infringement — Obligation to state the reasons on which the decision is based — Equal treatment — Principle of sound administration — Fines — Leniency Notice)

(2011/C 269/87)

Language of the case: French

Parties

Applicant: Arkema France SA (Colombes, France) (represented initially by A. Winckler, S. Sorinas Jimeno and P. Geffriaud, and subsequently by S. Sorinas Jimeno and E. Jégou, lawyers)

Defendant: European Commission (represented initially by F. Arbault and O. Beynet, and subsequently by V. Bottka, P.J. Van Nuffel and B. Gencarelli, Agents)

Re:

Action for partial annulment of Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 — Hydrogen peroxide and perborate), in so far as that decision concerns the applicant and, in the alternative, for annulment or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Arkema France SA to pay the costs.*

[1] OJ C 212, 2.9.2006.

Judgment of the General Court of 14 July 2011 — Total and Elf Aquitaine v Commission

(Case T-190/06) [1]

(Competition — Agreements, decisions and concerted practices — Hydrogen peroxide and sodium perborate — Decision finding an infringement of Article 81 EC — Imputability of the infringement — Rights of the defence — Presumption of innocence — Obligation to state the reasons on which the decision is based — Equal treatment — Principle that penalties must fit the offence — Principle of nullum crimen, nulla poena sine lege — Principle of sound administration — Legal certainty — Misuse of powers — Fines)

(2011/C 269/88)

Language of the case: French

Parties

Applicants: Total SA (Courbevoie, France) and Elf Aquitaine SA (Courbevoie, France) (represented by: É. Morgan de Rivery, A. Noël-Baron and E. Lagathu, lawyers)

Defendant: European Commission (represented initially by F. Arbault and O. Beynet, and subsequently by V. Bottka, P.J. Van Nuffel and B. Gencarelli, Agents)

Re:

Action for partial annulment of Commission Decision C(2006) 1766 final of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.620 — Hydrogen peroxide and perborate) and, in the alternative, for amendment of Article 2(i) of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Total SA and Elf Aquitaine SA to pay the costs.*

([1]) OJ C 212, 2.9.2006.

Judgment of the General Court of 13 July 2011 — Shell Petroleum and Others v Commission

(Case T-38/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Imputability of the offending conduct — Fines — Gravity of the infringement — Aggravating circumstances)

(2011/C 269/89)

Language of the case: English

Parties

Applicants: Shell Petroleum NV (The Hague, Netherlands); Shell Nederland BV (The Hague); and Shell Nederland Chemie BV (Rotterdam, Netherlands) (represented initially by: T. Snoep and J. Brockhoff, and subsequently by T. Snoep and S. Chamalaun, lawyers)

Defendant: European Commission (represented initially by: M. Kellerbauer, V. Bottka and J. Samnadda, and subsequently by M. Kellerbauer and V. Bottka, Agents)

Re:

Application for annulment, so far as Shell Petroleum NV and Shell Nederland BV are concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, annulment or reduction of the fine imposed on Shell Petroleum, Shell Nederland and Shell Nederland Chemie BV.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Shell Petroleum NV, Shell Nederland BV and Shell Nederland Chemie BV to pay the costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the General Court of 13 July 2011 — ENI v Commission

(Case T-39/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Imputability of the offending conduct — Fines — Gravity of the infringement — Aggravating circumstances)

(2011/C 269/90)

Language of the case: Italian

Parties

Applicant: ENI SpA (Rome, Italy) (represented by: G.M. Roberti and I. Perego, lawyers)

Defendant: European Commission (represented by: V. Di Bucci, G. Conte and V. Bottka, Agents)

Re:

Application for annulment, so far as ENI SpA is concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, annulment or reduction of the fine imposed on ENI.

Operative part of the judgment

The Court:

1. *Annuls Article 2(c) of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as it sets the amount of the fine imposed on ENI SpA at EUR 272,25 million;*

2. *Sets the amount of the fine imposed on ENI at EUR 181,5 million;*

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

4. *Orders the parties to bear their own costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the General Court of 13 July 2011 — Dow Chemical and Others v Commission

(Case T-42/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Imputability of the offending conduct — Fines — Gravity and duration of the infringement — Aggravating circumstances)

(2011/C 269/91)

Language of the case: English

Parties

Applicants: The Dow Chemical Company (Midland, Michigan, United States); Dow Deutschland Inc. (Schwalbach, Germany); Dow Deutschland Anlagengesellschaft mbH (Schwalbach); and Dow Europe GmbH (Horgen, Switzerland) (represented initially by: D. Schroeder, P. Matthey and T. Graf, and subsequently by D. Schroeder and T. Graf, lawyers)

Defendant: European Commission (represented initially by: M. Kellerbauer, V. Bottka and J. Samnadda, and subsequently by M. Kellerbauer, V. Bottka and V. Di Bucci, Agents)

Re:

Application for annulment, so far as The Dow Chemical Company is concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or annulment, so far as Dow Deutschland Inc. is concerned, of Article 1 of that decision or reduction, so far as all the applicants are concerned, of the fine imposed on them.

Operative part of the judgment

The Court:

1. *Annuls Article 1(b) of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as Dow Deutschland Inc. is found to have participated in the infringement at issue from 1 July 1996 to 27 November 2001 instead of from 2 September 1996 to 27 November 2001;*

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

3. *Orders The Dow Chemical Company, Dow Deutschland, Dow Deutschland Anlagengesellschaft mbH and Dow Europe GmbH to bear their own costs and to pay nine tenths of the costs incurred by the European Commission;*

4. *Orders the Commission to bear one tenth of its own costs.*

([1]) OJ C 82, 14.4.2007.

Judgment of the General Court of 13 July 2011 — Kaučuk v Commission

(Case T-44/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Participation in the cartel — Imputability of the offending conduct — Fines — Gravity and duration of the infringement — Attenuating circumstances)

(2011/C 269/92)

Language of the case: English

Parties

Applicant: Kaučuk a.s. (Kralupy nad Vltavou, Czech Republic) (represented initially by: M. Powell and K. Kuik, and subsequently by M. Powell, Solicitors)

Defendant: European Commission (represented initially by: M. Kellerbauer, V. Bottka and O. Weber, and subsequently by M. Kellerbauer, V. Bottka and V. Di Bucci, Agents)

Re:

Application for annulment, so far as Kaučuk a.s. is concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, annulment or reduction of the fine imposed on Kaučuk.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as it concerns Kaučuk a.s.;*

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

([1]) OJ C 82, 14.4.2007.

Judgment of the General Court of 13 July 2011 — Unipetrol v Commission

(Case T-45/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Participation in the cartel — Imputability of the offending conduct — Fines)

(2011/C 269/93)

Language of the case: English

Parties

Applicant: Unipetrol a.s. (Prague, Czech Republic) (represented by: J. Matějček and I. Janda, lawyers)

Defendant: European Commission (represented initially by: M. Kellerbauer, V. Bottka and O. Weber, and subsequently by M. Kellerbauer, V. Bottka and V. Di Bucci, Agents)

Re:

Application for annulment, so far as Unipetrol a.s. is concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, for the exercise of the General Court's unlimited jurisdiction.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as it concerns Unipetrol a.s.;*

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

([1]) OJ C 82, 14.4.2007.

Judgment of the General Court of 13 July 2011 — Trade-Stomil v Commission

(Case T-53/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Participation in the cartel — Imputability of the offending conduct — Fines — Gravity and duration of the infringement — Attenuating circumstances)

(2011/C 269/94)

Language of the case: English

Parties

Applicant: Trade-Stomil sp. z o.o. (Łódź, Poland) (represented by: F. Carlin, Barrister, and E. Batchelor, Solicitor)

Defendant: European Commission (represented initially by: X. Lewis and V. Bottka, and subsequently by V. Bottka and V. Di Bucci, Agents)

Re:

Application for annulment, so far as Trade-Stomil sp. z o.o. is concerned, of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, annulment or reduction of the fine imposed on Trade-Stomil.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as it concerns Trade-Stomil sp. z o.o.;*

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

([1]) OJ C 95, 28.4.2007.

Judgment of the General Court of 13 July 2011 — Polimeri Europa v Commission

(Case T-59/07) ([1])

(Competition — Agreements, decisions and concerted practices — Market in butadiene rubber and emulsion styrene butadiene rubber — Decision finding an infringement of Article 81 EC — Imputability of the offending conduct — Single infringement — Proof of the existence of the cartel — Fines — Gravity and duration of the infringement — Aggravating circumstances)

(2011/C 269/95)

Language of the case: Italian

Parties

Applicant: Polimeri Europa SpA (Brindisi, Italy) (represented by: M. Siragusa and F. Moretti, lawyers)

Defendant: European Commission (represented by: V. Di Bucci, G. Conte and V. Bottka, Agents)

Re:

Application for annulment of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) or, in the alternative, annulment or reduction of the fine imposed on Polimeri Europa SpA.

Operative part of the judgment

The Court:

1. *Annuls Article 2(c) of Commission Decision C(2006) 5700 final of 29 November 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F/38.638 — Butadiene Rubber and Emulsion Styrene Butadiene Rubber) in so far as it sets the amount of the fine imposed on Polimeri Europa SpA at EUR 272,25 million;*

2. *Sets the amount of the fine imposed on Polimeri Europa at EUR 181,5 million;*

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

4. *Orders the parties to bear their own costs.*

(1) OJ C 95, 28.4.2007.

Judgment of the General Court of 13 July 2011 — Schindler Holding and Others v Commission

(Case T-138/07) (1)

(Competition — Agreements, decisions and concerted practices — Market for the installation and maintenance of elevators and escalators — Decision finding an infringement of Article 81 EC — Bid-rigging — Market sharing — Price fixing)

(2011/C 269/96)

Language of the case: German

Parties

Applicants: Schindler Holding Ltd (Hergiswil, Switzerland); Schindler Management AG (Ebikon, Switzerland); Schindler SA (Brussels, Belgium); Schindler Deutschland Holding GmbH (Berlin, Germany); Schindler Sàrl (Luxembourg, Luxembourg); and Schindler Liften BV (The Hague, Netherlands) (represented by: R. Bechtold, W. Bosch, U. Soltész and S. Hirsbrunner, lawyers)

Defendant: European Commission (represented by: K. Mojzesowicz and R. Sauer, Agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Simm and G. Kimberley, Agents)

Re:

Application for annulment of Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 — Elevators and Escalators) or, in the alternative, reduction of the amounts of the fines imposed on the applicants.

Operative part of the judgment

The Court:

1. *Declares that it is unnecessary to rule on the action in so far as it has been brought by Schindler Management AG;*

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

3. *Orders Schindler Holding Ltd, Schindler SA, Schindler Deutschland Holding GmbH, Schindler Sàrl and Schindler Liften BV to pay the costs;*

4. *Orders Schindler Management to bear its own costs;*

5. *Orders the Council of the European Union to bear its own costs.*

(1) OJ C 155, 7.7.2007.

Judgment of the General Court of 13 July 2011 — General Technic-Otis and Others v Commission

(Cases T-141/07, T-142/07, T-145/07 and T-146/07) (1)

(Competition — Agreements, decisions and concerted practices — Market for the installation and maintenance of elevators and escalators — Decision finding an infringement of Article 81 EC — Bid-rigging — Market sharing — Price fixing)

(2011/C 269/97)

Languages of the case: French and English

Parties

Applicants: General Technic-Otis Sàrl (Howald, Luxembourg) (represented initially by M. Nosbusch and subsequently by A. Winckler, lawyers, and J. Temple Lang, Solicitor) (Case T-141/07); General Technic Sàrl (Howald) (represented by: M. Nosbusch) (Case T-142/07); Otis SA (Dilbeek, Belgium), Otis GmbH & Co. OHG, (Berlin, Germany), Otis BV (Amersfoort, Netherlands), and Otis Elevator Company (Farmington, Connecticut, United States) (represented by: A. Winckler and J. Temple Lang) (Case T-145/07); and United Technologies Corporation (Wilmington, Delaware, United States) (represented by: A. Winckler and J. Temple Lang) (Case T-146/07)

Defendant: European Commission (represented in Cases T-141/07 and T-142/07, by A. Bouquet and R. Sauer, acting as Agents, and by A. Condomines, lawyer, and, in Cases T-145/07 and T-146/07, by A. Bouquet, R. Sauer and J. Bourke, acting as Agents, and by A. Condomines)

Re:

Applications for annulment of Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E 1/38.823 — Elevators and Escalators) or, in the alternative, reduction of the amounts of the fines imposed on the applicants.

Operative part of the judgment

The Court:

1. *Joins Cases T-141/07, T-142/07, T-145/07 and T-146/07 for the purposes of this judgment;*

2. *Dismisses the actions;*

3. *In Case T-141/07, orders General Technic-Otis Sàrl to pay the costs;*

4. *In Case T-142/07, orders General Technic Sàrl to pay the costs;*

5. *In Case T-145/07, orders Otis SA, Otis GmbH & Co. OHG, Otis BV and Otis Elevator Company to pay the costs;*

6. *In Case T-146/07, orders United Technologies Corporation to pay the costs.*

(1) OJ C 140, 23.6.2007.

Judgment of the General Court of 13 July 2011 — ThyssenKrupp Liften Ascenseurs and Others v Commission

(Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07) [1]

(Competition — Agreements, decisions and concerted practices — Market for the installation and maintenance of elevators and escalators — Decision finding an infringement of Article 81 EC — Bid-rigging — Market sharing — Price fixing)

(2011/C 269/98)

Language of the case: Dutch and German

Parties

Applicants: ThyssenKrupp Liften Ascenseurs NV (Brussels, Belgium) (represented, initially, by V. Turner and D. Mes and, subsequently, by O.W. Brouwer and J. Blockx, lawyers) (Case T-144/07); ThyssenKrupp Aufzüge GmbH (Neuhausen auf den Fildern, Germany) (represented, initially, by U. Itzen and K. Blau-Hansen, subsequently, by U. Itzen, K. Blau-Hansen and S. Thomas, and, finally, by K. Blau-Hansen and S. Thomas, lawyers) (Case T-147/07); ThyssenKrupp Fahrtreppen GmbH (Hamburg, Germany) (represented, initially, by U. Itzen and K. Blau-Hansen, subsequently, by U. Itzen, K. Blau-Hansen and S. Thomas, and, finally, by K. Blau-Hansen and S. Thomas, lawyers) (Case T-147/07); ThyssenKrupp Ascenseurs Luxembourg Sàrl (Howald, Luxembourg) (represented by: K. Beckmann, S. Dethof and U. Itzen, lawyers) (Case T-148/07); ThyssenKrupp Elevator AG (Düsseldorf, Germany) (represented by: T. Klose and J. Ziebarth, lawyers) (Case T-149/07); ThyssenKrupp AG (Duisberg, Germany) (represented, initially, by M. Klusmann and S. Thomas, lawyers, and, subsequently, by M. Klusmann) (Case T-150/07); ThyssenKrupp Liften BV (Krimpen aan den Ijssel, Netherlands) (represented by: O.W. Brouwer and A. Stoffer, lawyers) (Case T-154/07)

Defendant: European Commission (represented, in Cases T-144/07 and T-154/07, by A. Bouquet and R. Sauer, Agents, and by F. Wijckmans and F. Tuytschaever, lawyers; in Cases T-147/07 and T-148/07, initially, by R. Sauer and O. Weber and, subsequently, by R. Sauer and K. Mojzesowicz, Agents; and, in Cases T-149/07 and T-150/07, by R. Sauer and K. Mojzesowicz, Agents)

Re:

Application for annulment of Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 — Elevators and Escalators) or, in the alternative, reduction of the amount of the fines imposed on the applicants.

Operative part of the judgment

The Court:

1. *Joins Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 for the purposes of this judgment;*

2. *Annuls Article 2, paragraph 1, fourth indent, paragraph 2, fourth indent, paragraph 3, fourth indent, and paragraph 4, fourth indent, of Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E-1/38.823 — Elevators and Escalators);*

3. *In Cases T-144/07, T-149/07 and T-150/07, sets the amount of the fine imposed on ThyssenKrupp Liften Ascenseurs NV, ThyssenKrupp Elevator AG and ThyssenKrupp AG in Article 2(1), fourth indent, of Decision C(2007) 512 for the infringement in Belgium at EUR 45 738 000;*

4. *In Cases T-147/07, T-149/07 and T-150/07, sets the amount of the fine imposed on ThyssenKrupp Aufzüge GmbH, ThyssenKrupp Fahrtreppen GmbH, ThyssenKrupp Elevator and ThyssenKrupp in Article 2(2), fourth indent, of Decision C(2007) 512 for the infringement in Germany at EUR 249 480 000;*

5. *In Cases T-148/07, T-149/07 and T-150/07, sets the amount of the fine imposed on ThyssenKrupp Ascenseurs Luxembourg Sàrl, ThyssenKrupp Elevator and ThyssenKrupp in Article 2(3), fourth indent, of Decision C(2007) 512 for the infringement in Luxembourg at EUR 8 910 000;*

6. *In Cases T-150/07 and T-154/07, sets the amount of the fine imposed on ThyssenKrupp Liften BV and ThyssenKrupp in Article 2(4), fourth indent, of Decision C(2007) 512 for the infringement in the Netherlands at EUR 15 651 900;*

7. *Dismisses the actions as to the remainder;*

8. *In each case, orders the applicants to bear three-quarters of their own costs and to pay three-quarters of the costs incurred by the European Commission. The Commission is ordered to bear one-quarter of its own costs and to pay one-quarter of the applicants' costs.*

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[1] OJ C 155, 7.7.2007.

Judgment of the General Court of 13 July 2011 — Kone and Others v Commission

(Case T-151/07) [1]

(Competition — Agreements, decisions and concerted practices — Market for the installation and maintenance of elevators and escalators — Decision finding an infringement of Article 81 EC — Bid-rigging — Market sharing — Price fixing)

(2011/C 269/99)

Language of the case: English

Parties

Applicants: Kone Oyj (Helsinki, Finland); Kone GmbH (Hanover, Germany); and Kone BV (Voorburg, Netherlands) (represented by: T. Vinje, Solicitor, D. Paemen, J. Schindler, B. Nijs, A. Tomtsis, lawyers, J. Flynn QC and D. Scannell, Barrister)

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

Re:

Application for annulment of Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 [EC] (Case COMP/E 1/38.823 — Elevators and Escalators) or, in the alternative, reduction of the amount of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kone Oyj, Kone GmbH and Kone BV to pay the costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the General Court of 15 July 2011 — Zino Davidoff v OHIM — Kleinakis kai SIA (GOOD LIFE)

(Case T-108/08) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark GOOD LIFE — Earlier national word mark GOOD LIFE — Genuine use of the earlier mark — Duty of diligence — Article 74(1) of Regulation (EC) No 40/94 (now Article 76(1) of Regulation (EC) No 207/2009))

(2011/C 269/100)

Language of the case: English

Parties

Applicant: Zino Davidoff SA (Fribourg, Switzerland) (represented by: H. Kunz-Hallstein and R. Kunz-Hallstein, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke and J. Laporta Insa, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: I. Kleinakis kai SIA OE (Athens, Greece) (represented by: K. Siotou, lawyer)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 30 November 2007 (Case R 298/2007-2), relating to opposition proceedings between I. Kleinakis kai SIA OE and Zino Davidoff SA.

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 November 2007 (Case R 298/2007-2);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Zino Davidoff SA;*

3. *Orders I. Kleinakis kai SIA OE to bear its own costs.*

([1]) OJ C 116, 9.5.2008.

Judgment of the General Court of 13 July 2011 — Greece v Commission

(Case T-81/09) ([1])

(ERDF — Reduction of financial assistance — Operational programme falling within Objective No 1 (1994-1999), 'Accessibility and Trunk roads' in Greece — Delegation of auxiliary tasks by the Commission to third parties — Rate of financial correction — Commission discretion — Review by the courts)

(2011/C 269/101)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: initially M. Tassopoulou, agent, assisted by C. Meïdanis and E. Lampadarios, lawyers, then P. Mylonopoulos and K. Boskovits, agents, assisted by G. Michailopoulos, lawyer)

Defendant: European Commission (represented by: A. Steiblytė and D. Triantafyllou, agents)

Re:

Action for annulment of Commission Decision C(2008) 8573 of 15 December 2008 reducing the financial assistance of the European Regional Development Fund (ERDF) granted to Greece, amounting to EUR 30 104 470,47 in respect of the operational programme 'Accessibility and Trunk Roads' by Commission Decision C(94) 3579 of 16 December 1994, authorising financial assistance from the ERDF.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2008) 8573 of 15 December 2008 reducing the financial assistance of the European Regional Development Fund (ERDF) granted to Greece in so far as it provides, first, a correction amounting to EUR 506 303 in respect of the project 'Isthmos — Galota' and, second, a correction amounting to EUR 684 343 in respect of the project 'Polymylos crossroads' (contract 928)';*

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

3. *Orders the Hellenic Republic to bear its own costs and 80 % of the costs incurred by the European Commission;*

4. *Orders the European Commission to bear 20 % of its own costs.*

([1]) OJ C 129, 6.6.2009.

Judgment of the General Court of 14 July 2011 — Winzer Pharma v OHIM — Alcon (OFTAL CUSI)

(Case T-160/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark OFTAL CUSI — Earlier Community word mark Ophtal — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 269/102)

Language of the case: Spanish

Parties

Applicant: Dr Robert Winzer Pharma GmbH (Berlin, Germany) (represented by: S. Schneller, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Alcon Inc. (Hünenberg, Switzerland) (represented by: M. Vidal-Quadras Trias de Bes, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 February 2009 (Case R 1471/2007-1) concerning opposition proceedings between Dr Robert Winzer Pharma GmbH and Alcon Inc.

Operative part of the judgment

The Court:

1. *Dimisses the action;*

2. *Orders Dr Robert Winzer Pharma GmbH to bear its own costs and those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and of Alcon Inc.*

([1]) OJ C 167 of 18.7.2009.

Judgment of the General Court of 15 July 2011 — Ergo Versicherungsgruppe v OHIM — Société de développement et de recherche industrielle (ERGO)

(Case T-220/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ERGO — Earlier Community word mark URGO — 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))

(2011/C 269/103)

Language of the case: German

Parties

Applicant: Ergo Versicherungsgruppe AG (Düsseldorf, Germany) (represented by: V. von Bomhard, A.W. Renck, T. Dolde and J. Pause, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Société de développement et de recherche industrielle (Chenôve, France) (represented by: K. Dröge, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 (Case R 515/2008-4) relating to opposition proceedings between Société de développement et de recherche industrielle and Ergo Versicherungsgruppe AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Versicherungsgruppe AG to pay the costs.*

([1]) OJ C 180, 1.8.2009.

Judgment of the General Court of 15 July 2011 — Ergo Versicherungsgruppe v OHIM — Société de développement et de recherche industrielle (ERGO Group)

(Case T-221/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ERGO Group — Earlier Community word mark URGO — 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))

(2011/C 269/104)

Language of the case: German

Parties

Applicant: Ergo Versicherungsgruppe AG (Düsseldorf, Germany) (represented by: V. von Bomhard, A.W. Renck, T. Dolde and J. Pause, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Société de développement et de recherche industrielle (Chenôve, France) (represented by: K. Dröge, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 March 2009 (Case R 520/2008-4) relating to opposition proceedings between Société de développement et de recherche industrielle and Ergo Versicherungsgruppe AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Versicherungsgruppe AG to pay the costs.*

([1]) OJ C 180, 1.8.2009.

Judgment of the General Court of 13 July 2011 — Evonik Industries v OHIM (Purple rectangle with a rounded side)

(Case T-499/09) ([1])

(Community trade mark — Application for a Community figurative mark representing a purple rectangle with a rounded side — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 269/105)

Language of the case: German

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented initially by S. Stürmann, then by S. Stürmann and G. Schneider, and subsequently by S. Stürmann and R. Manea, Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 2 October 2009 (Case R 491/2009-4) concerning an application for registration as a Community trade mark of a purple rectangle with a rounded side.

Operative part of the order

The Court:

1. *Dismisses the action;*

2. *Orders Evonik Industries AG to pay the costs.*

([1]) OJ C 37, 13.2.2010.

Judgment of the General Court of 13 July 2011 — Inter IKEA Systems v OHIM — Meteor Controls (GLÄNSA)

(Case T-88/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark GLÄNSA — Earlier Community word mark GLANZ — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2011/C 269/106)

Language of the case: English

Parties

Applicant: Inter IKEA Systems BV (Delft, Netherlands) (represented by: J. Gulliksson, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Meteor Controls International Ltd (Cookstown, United Kingdom)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 1 December 2009 (Case R 529/2009-2) in relation to opposition proceedings between Meteor Controls International Ltd and Inter IKEA Systems BV

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Inter IKEA Systems BV to pay the costs.*

([1]) OJ C 113, 1.5.2010.

Judgment of the General Court of 14 July 2011 — ratiopharm v OHIM — Nycomed (ZUFAL)

(Case T-222/10) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark ZUFAL — Earlier Community word mark ZURCAL — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009 — Restriction of the goods designated in the trade mark application — Article 43(1) of Regulation No 207/2009)

(2011/C 269/107)

Language of the case: German

Parties

Applicant: ratiopharm GmbH (Ulm, Germany) (represented by: S. Völker, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Nycomed GmbH (Konstanz, Germany) (represented by: A. Ferchland, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 March 2010 (Case R 874/2008-4) relating to opposition proceedings between Nycomed GmbH and ratiopharm GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders ratiopharm GmbH to pay the costs.*

([1]) OJ C 195, 17.7.2010.

Order of the President of the General Court of 12 July 2011 — Emme v Commission

(Case T-422/10 R)

(Interim measures — Competition — Commission decision imposing a fine — Bank guarantee — Application to suspend the operation of a measure — Financial loss — No exceptional circumstances — No urgency)

(2011/C 269/108)

Language of the case: Italian

Parties

Applicant: Emme Holding SpA (Pescara, Italy) (represented by: G. Visconti, E. Vassallo di Castiglione, M. Siragusa, M. Beretta and P. Ferrari, lawyers)

Defendant: European Commission (represented by: B. Gencarelli, V. Bottka and P. Manzini, Agents)

Re:

Application to suspend the operation of Article 2 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 — Prestressing steel) and to dispense the applicant from the obligation to provide 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 13 July 2011 — SIR v Council

(Case T-142/11 R)

(Applications for interim measures — Common foreign and security policy — Restrictive measures taken in view of the situation in Côte d'Ivoire — Freezing of funds — Application for suspension of operation of a measure — No need to adjudicate in the main proceedings — No need to adjudicate)

(2011/C 269/109)

Language of the case: French

Parties

Applicant: Société ivoirienne de raffinage (SIR) (Abidjan, Côte d'Ivoire) (represented by: M. Ceccaldi, lawyer)

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

Re:

Application for interim measures seeking, in accordance with Article 278 TFEU, suspension of the operation, first, 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, secondly, 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)

Operative part of the order

1. *There is no longer any need to rule on the application for interim measures.*

2. *The Council of the European Union shall pay the costs.*

Order of the President of the General Court of 13 July 2011 — Petroci v Council

(Case T-160/11 R)

(Interim measures — Common Foreign and Security Policy — Restrictive measures taken in view of the situation in Côte d'Ivoire — Freezing of funds — Application for suspension of operation of a measure — No need to adjudicate in the main proceedings — No need to adjudicate)

(2011/C 269/110)

Language of the case: French

Parties

Applicant: Société nationale d'opérations pétrolières de la Côte d'Ivoire Holding (Petroci Holding) (Abidjan, Côte d'Ivoire) (represented by: M. Ceccaldi, lawyer)

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

Re:

Application for interim measures seeking, under Article 278 TFEU, suspension of operation of (i) 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 (ii) 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).

Operative part of the order

1. *There is no longer any need to adjudicate on the application for interim measures.*

2. *The Council of the European Union shall pay the costs.*

Action brought on 20 June 2011 — Brainlab v OHIM (BrainLAB)

(Case T-326/11)

(2011/C 269/111)

Language of the case: German

Parties

Applicant: Brainlab AG (Feldkirchen, Germany) (represented by J. Bauer, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 April 2011 in Case R 1596/2010-4;

— Refer the case back to the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) for a decision on the question whether all due care was taken in respect of the renewal of the relevant Community trade mark BrainLAB, No 1 290 113;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark BrainLAB for goods and services in Classes 9, 10 and 42

Decision of the department 'Register and associated databases': Dismissal of the application for *restitutio in integrum* as regards the time-limit for filing the request for renewal and paying the renewal fee

Decision of the Board of Appeal: Dismissal of the application for *restitutio in integrum* and finding that Community trade mark No 1 290 113 had expired

Pleas in law: Infringement of Article 81 of Regulation No 207/2009 as it was not possible for any of the parties, in spite of all due care required by the circumstances having been taken, to comply with a time-limit vis-à-vis the defendant, as a result of which the loss of a right occurred and the two-month time-limit for the filing of the application for *restitutio in integrum* was complied with.

Action brought on 20 June 2011 — Vinci Energies Schweiz v OHIM — Estavis (Yellow representation of the Brandenburg Gate)

(Case T-327/11)

(2011/C 269/112)

Language in which the application was lodged: German

Parties

Applicant: Vinci Energies Schweiz AG (Zurich, Switzerland) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: Estavis AG (Berlin, 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 31 March 2011 in Case R 231/2010-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Estavis AG

Community trade mark concerned: Representation of the Brandenburg Gate claiming the colour honey yellow for goods and services in Classes 6, 7, 9, 11, 35, 36, 37, 38, 40, 41 and 42 — application No 6 585 871

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

Mark or sign cited in opposition: the figurative mark 'ETAVIS' for goods and services in Classes 6, 7, 9, 11, 35, 37, 38, 40, 41, 42 and 45

Decision of the Opposition Division: the opposition was partially upheld

Decision of the Board of Appeal: the Opposition Division's decision was annulled and the opposition was rejected

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 as there is likelihood of confusion between the marks at issue due to the at least average distinctive character of the mark on which the opposition is based and the identical nature or high degree of similarity of the signs at issue.

Action brought on 21 June 2011 — Leifheit v OHIM (EcoPerfect)

(Case T-328/11)

(2011/C 269/113)

Language of the case: German

Parties

Applicant: Leifheit AG (Nassau, Germany) (represented by G. Hasselblatt, lawyer)

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

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 31 March 2011 (Case R 1658/2010-1) and admit for publication in its entirety the Community trade mark 'EcoPerfect' (application No 8708745);

— Order OHIM to bear its own costs and to pay those incurred by the applicant.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'EcoPerfect' for goods in class 21 — application No 8708745.

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 since the Community trade mark applied for, 'EcoPerfect', is not descriptive of the goods in class 21, nor does it lack any distinctive character.

Action brought on 24 June 2011 — Wessang v OHIM — Greinwald (star foods)

(Case T-333/11)

(2011/C 269/114)

Language in which the application was lodged: French

Parties

Applicant: Nicolas Wessang (Zimmerbach, France) (represented by: A. Grolée, lawyer)

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

Other party to the proceedings before the Board of Appeal: Greinwald GmbH (Kempten, Germany)

Form of order sought

— Annul the decision of the Board of Appeal of OHIM of 15 April 2011;

— Declare and hold that OHIM is to adopt the measures required to comply with the present judgment annulling the abovementioned decision and therefore uphold the opposition brought by Mr Nicolas Wessang on 26 September 2005 against the application for registration of the mark STAR FOODS + design No 4 105 615;

— Order Greinwald GmbH and OHIM jointly and severally, and *in solidum*, to pay all the costs and expenses incurred by Mr Nicolas Wessang in the opposition proceedings, the appeal proceedings and the present proceedings;

— Order Greinwald GmbH to pay all the cost and expenses which it has incurred in the opposition proceedings, the appeal proceedings and the present proceedings;

— Order OHIM to pay all the cost and expenses which it has incurred in the opposition proceedings, the appeal proceedings and the present proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Greinwald GmbH.

Community trade mark concerned: Figurative mark 'star foods' for goods in Classes 29, 30 and 32 — application for registration No 4 105 615.

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

Mark or sign cited in opposition: Community figurative and word marks 'STAR SNACKS' for goods in Classes 29, 30 and 31.

Decision of the Opposition Division: Upholding the opposition.

Decision of the Board of Appeal: Rejection of the opposition; decision taken following the judgment of the General Court of 11 May 2010 in Case T-492/08 *Wessang* v *OHIM — Greinwald (star foods).*

Pleas in law: The applicant submits that the General Court held that there was a likelihood of confusion between the two marks at issue and that, therefore, the Board of Appeal had limited powers following the judgment of the General Court. The applicant thus submits that the Board of Appeal exceeded its powers in re-trying the matter in its entirety.

Action brought on 5 July 2011 — Segovia Bonet v OHIM — IES (IES)

(Case T-355/11)

(2011/C 269/115)

Language in which the application was lodged: English

Parties

Applicant(s): Jorge Segovia Bonet (Madrid, Spain) (represented by: M.E. López Camba and J.L. Rivas Zurdo, lawyers)

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

Other party to the proceedings before the Board of Appeal: IES Insurance Engineering Services Srl (Milan, Italy)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 March 2011 in case R 749/2010-2; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'IES', for services in classes 35, 36, 41, 42 and 45 — Community trade mark application No 6787345

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

Mark or sign cited in opposition: UK trade mark registration No 2358802 of the figurative mark 'IES', for services in class 41

Decision of the Opposition Division: Upheld partially the opposition

Decision of the Board of Appeal: Dismissed the appeal and confirmed the decision of the Opposition Division

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that there was no likelihood of confusion between the earlier trademark and the contested community trade mark application as (i) the compared signs are confusingly similar, in particular from a phonetic point of view; and (ii) the services designated by the earlier registration are complementary to those designated by the contested Community trade mark application.

Action brought on 1 July 2011 — Restoin v OHIM — (EQUIPMENT)

(Case T-356/11)

(2011/C 269/116)

Language of the case: French

Parties

Applicant: Christian Restoin (Paris, France) (represented by A. Alcaraz, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of 14 April 2011 in Case R 1430/2010-4;

— Order OHIM to pay the costs incurred by Mr Christian Restoin.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'EQUIPMENT' for goods and services in Classes 3, 9, 14, 18, 25 and 35 — application for registration No 8 722 076.

Decision of the Examiner: Rejection of the application for registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) of Regulation No 207/2009, since the sign applied for is distinctive as regards the perception which the relevant public would have of it and as regards the goods and services for which registration is sought, and of Article 75 of that regulation, since the reasons of the Board of Appeal (i) cannot be all-encompassing, the goods covered not being sufficient homogenous, and (ii) are not coherent.

Action brought on 6 July 2011 — Hand Held Products v OHIM — Orange Brand Services (DOLPHIN)

(Case T-361/11)

(2011/C 269/117)

Language in which the application was lodged: English

Parties

Applicant: Hand Held Products, Inc. (Wilmington, United States) (represented by: J. Güell Serra and M. Curell Aguilà, lawyers)

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

Other party to the proceedings before the Board of Appeal: Orange Brand Services Ltd (Bristol, United Kingdom)

Form of order sought

— Partially annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 April 2011 in case R 1443/2010-1, and reject CTM application No 5046231; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'DOLPHIN', for inter alia goods in class 9 — Community trade mark application No 5046231

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

Mark or sign cited in opposition: Community trade mark registration No 936229 of the word mark 'DOLPHIN', for goods in class 9

Decision of the Opposition Division: Upheld the opposition for part of the contested goods

Decision of the Board of Appeal: Partially annulled the decision of the Opposition division

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed to make a global analysis of the relevant factors but merely rejected the opposition on the basis that the goods are different, establishing minimal differences between them, and without giving the adequate weight in the comparative analysis to the identity in the signs 'DOLPHIN'.

Action brought on 6 July 2011 — Bial — Portela & Ca v OHIM — Isdin (ZEBEXIR)

(Case T-366/11)

(2011/C 269/118)

Language in which the application was lodged: English

Parties

Applicant: Bial — Portela & Ca, SA (São Mamede do Coronado, Portugal) (represented by: B. Braga da Cruz and J. M. Pimenta, lawyers)

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

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

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 6 April 2011 in case R 1212/2009-1;

— Order the defendant to refuse the grant of the registration of Community trade mark No 6809008 'ZEBEXIR'; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'ZEBEXIR', for goods in classes 3 and 5 — Community trade mark application No 6809008

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

Mark or sign cited in opposition: Community trade mark registration No 3424223 of the word mark 'ZEBINIX', for goods and services in classes 3, 5 and 42

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 the trademarks in question were not confusingly similar.

Action brought on 11 July 2011 — Monier Roofing Components v OHIM (CLIMA COMFORT)

(Case T-371/11)

(2011/C 269/119)

Language of the case: German

Parties

Applicant: Monier Roofing Components GmbH (Oberursel, Germany) (represented by F. Ekey, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 April 2011 in Case R 2026/2010-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'CLIMA COMFORT' for goods in class 17 — application No 9175324.

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) and Articles 75 and 76 of Regulation No 207/2009 in so far as (i) the Board of Appeal proceeded on the basis of erroneous physical findings, without hearing the applicant in that respect; (ii) the Board of Appeal was under a duty to establish the facts of its own motion; and (iii) the Board of Appeal erred in its assessment of the quality and intended purpose of the goods in question and in its findings as to the significance of the sign 'CLIMA COMFORT' in relation to the goods in question.

Action brought on 15 July 2011 — Basic v OHIM — Repsol YPF (basic)

(Case T-372/11)

(2011/C 269/120)

Language in which the application was lodged: English

Parties

Applicant: Basic Aktiengesellschaft Lebensmittelhandel (Munich, Germany) (represented by: D. Altenburg, lawyer)

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

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

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 31 March 2011 in case R 1440/2010-1;

— Dismiss the appeal in case No R 1440/2010-1 regarding ruling on opposition No B 1384694

— Order the defendant to pay the costs of this proceeding.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'basic', in yellow, blue and red, for goods and services in classes 3, 4, 5, 16, 18, 21, 25, 28, 29, 30, 31, 32, 33, 35, 39, 43, 44 and 45 — Community trade mark application No 6752811

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

Mark or sign cited in opposition: Community trade mark registration No 5648159 of the figurative mark 'BASIC', for services in classes 35, 37 and 39

Decision of the Opposition Division: Upheld the opposition for part of the contested services in class 35 and all the contested services in class 39. The opposition was rejected for the remaining services in class 35

Decision of the Board of Appeal: Annulled the decision of the Opposition Division to the extent it rejected the opposition for part of the services in class 35. Rejected the CTM application for these services and dismissed the appeal for the remaining services in class 35

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed the existence of a likelihood of confusion between the applied mark and the opposed mark.

Action brought on 18 July 2011 — Langguth Erben v OHIM (MEDINET)

(Case T-378/11)

(2011/C 269/121)

Language of the case: German

Parties

Applicant: Franz Wilhelm Langguth Erben GmbH & Co. KG (Traben-Trarbach, Germany) (represented by R. Kunze and G. Würtenberger, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of 10 May 2011 in Case R 1598/2010-4 relating to Community trade mark application No 8 786 485;

— Order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark 'MEDINET' for goods in Class 33 — application No 8 786 485

Decision of the Examiner: the registration of the mark with seniority of earlier national and international marks was refused

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Articles 34, 75 and 77 of Regulation No 207/2009 as the Board of Appeal (i) refused to register the seniority in an unlawful manner; (ii) did not examine the applicant's submissions in respect of Board of Appeal decisions regarding claims of priority and seniority; and (iii) did not fix a date for oral proceedings.

Action brought on 21 July 2011 — Hüttenwerke Krupp Mannesmann and Others v Commission

(Case T-379/11)

(2011/C 269/122)

Language of the case: German

Parties

Applicants: Hüttenwerke Krupp Mannesmann GmbH (Duisburg, Germany), ROGESA Roheisengesellschaft Saar mbH (Dillingen, Germany), Salzgitter Flachstahl GmbH (Salzgitter, Germany), Thyssenkrupp Steel Europe AG (Duisburg, Germany) and voestalpine Stahl GmbH (Linz, Austria) (represented by: S. Altenschmidt and C. Dittrich, lawyers)

Defendant: European Commission

Form of order sought

— annul the Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (C(2011) 2772) (OJ 2011 L 130, p. 1);

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

Pleas in law and main arguments

The applicants challenge the Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council. ([1]) They submit that this decision should be set aside in its entirety.

In support of their action, the applicants put forward six pleas in law:

1. First plea in law: the product benchmark for sintered ore breaches Article 10a of Directive 2003/87/EC ([2])

The applicants invoke the illegality of the conditions governing product benchmarks set out in Annex I to the contested decision.

— Incompatibility with Article 10a(2) of Directive 2003/87

The applicants submit that the determination of the product benchmark for sintered ore breaches Article 10a(2) of Directive 2003/87 on the ground that the Commission included a plant for the production of pellets when establishing the average performance of the 10 % most efficient installations in a sector or subsector in the European Union as the starting point for determining the product benchmark. Pellets, however, are a different product from sintered ore, and for that reason plants producing pellets ought not to have been taken into account for the purpose of determining the 10 % most efficient sinter installations.

— Incompatibility with Article 10a(1) of Directive 2003/87

The determination of the product benchmark for sintered ore is also at variance with Article 10a(1) of Directive 2003/87, as the Commission corrected data when determining the product benchmark for sintered ore. This, it is submitted, is not in line with the criteria for determining benchmarks which are laid down in Article 10a(1) of Directive 2003/87.

2. Second plea in law: the product benchmark for hot metal breaches Article 10a of Directive 2003/87

The determination of the product benchmark for hot metal, the applicants submit, also breaches Article 10a of Directive 2003/87, as the Commission did not take into account the full carbon content of the residual gases resulting from iron and steel production in respect of their use for electricity generation, but carried out reductions in the amount of approximately 25 %. It follows from the wording of the second sentence of the third subparagraph of Article 10a(1) of Directive 2003/87, from the general structure and purpose of that directive, and from its historical construction, that the Commission is not entitled to carry out such reductions.

3. Third plea in law: breach of the obligation under the second paragraph of Article 296 TFEU to state reasons

The applicants submit further that the Commission has failed to provide adequate reasons for its decision. The reasons given for the determination of the benchmarks are, it is submitted, deficient. Nor has the Commission provided proper grounds for the reservations which it has expressed concerning possible distortions of competition. This amounts to a breach of the second paragraph of Article 296 TFEU.

4. Fourth plea in law: infringement of the principle of proportionality

The contested decision, the applicants submit, also infringes the principle of proportionality with regard to the determination of the benchmarks for sintered ore and hot metal.

5. Fifth plea in law: infringement of the principle of equal treatment

The applicants further allege an infringement of the principle of equality.

6. Sixth plea in law: need for a declaration that the contested decision is invalid in its entirety

The applicants express the view that the decision must be annulled in its entirety on the ground that, in the event of a declaration of invalidity confined exclusively to the benchmarks for sintered ore and hot metal, a fallback method would, pursuant to the rule in Article 10(2)(b) of the contested decision, in conjunction with Article 3(c) thereof, automatically become applicable for the allocation of free allowances. This, the applicants submit, would have the result of affecting them even more adversely than if the Commission's incorrect benchmark values were to be applied for sintered ore and hot metal.

(1) OJ 2011 L 130, p. 1.

(2) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 21 July 2011 — Eurofer v Commission

(Case T-381/11)

(2011/C 269/123)

Language of the case: German

Parties

Applicant: Europäischer Wirtschaftsverband der Eisen- und Stahlindustrie (Eurofer) ASBL (Luxembourg, Luxembourg) (represented by: S. Altenschmidt and C. Dittrich, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (C(2011) 2772, OJ 2011 L 130, p. 1),

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

Pleas in law and main arguments

The applicant is challenging the Commission's Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council. (1) It claims that that decision should be annulled in its entirety.

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

1. First plea in law, alleging infringement of the product benchmark for hot metal, in breach of Article 10a of Directive 2003/87/EC (2)

The applicant claims that the requirements for product benchmarks laid down in Annex I to the contested decision are illegal.

The applicant claims that the determination of the product benchmark for hot metal infringes Article 10a of Directive 2003/87, since the Commission failed to take account of the full carbon content which is emitted during the production of iron and steel by including their use for the production of electricity, but applied a reduction of approximately 25 %. It follows from the wording of the second sentence of the third paragraph of Article 10a(1) of Directive 2003/87, the scheme as well as the objective and the historical interpretation of the Directive that the Commission is not entitled to apply such reductions.

2. Second plea in law, alleging infringement of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU

The applicant further claims that the Commission failed to provide a sufficient statement of reasons for its decision. The reasoning on the determination of the benchmarks is defective. Moreover, the Commission's reservations with regard to possible distortions of competition were not properly reasoned. This amounts to an infringement of the second paragraph of Article 296 TFEU.

3. Third plea in law, alleging breach of the principle of proportionality

   The contested decision also infringes the principle of proportionality as regards the determination of the product benchmark for hot metal.

4. Fourth plea in law, alleging breach of the principle of equal treatment

   In addition, the applicant alleges breach of the principle of equal treatment.

5. Fifth plea in law, alleging that it is necessary to annul the contested decision in its entirety

   The applicant is of the view that the contested decision should be annulled in its entirety, since annulment limited exclusively to the benchmark for hot metal would automatically lead to application of a fall-back method for the allocation of free allowances pursuant to Article 10(2)(b) in conjunction with Article 3(c) of the contested decision. This would place the applicant in an even worse position than if the Commission's incorrect benchmark values for hot metal were applied.

([1]) OJ 2011 L 130, p. 1.

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 21 July 2011 — Evonik Industries v OHIM — Bornemann (EVONIK)

(Case T-390/11)

(2011/C 269/124)

Language in which the application was lodged: German

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

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

Other party to the proceedings before the Board of Appeal: Johann Heinrich Bornemann GmbH — Geschäftsbereich Kunststofftechnik Obernkirchen (Obernkirchen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision (of the Second Board of Appeal) of 19 April 2011 (Case R 1802/2010-2) in so far as it denies international mark No 918 426 'EVONIK' protection within the European Union;

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'EVONIK' for goods and services in Classes 1, 2, 3, 4, 5, 6, 7, 9, 11, 16, 17, 19, 35, 37, 39, 40, 41 and 42 — International registration number 918 426.

Proprietor of the mark or sign cited in the opposition proceedings: Johann Heinrich Bornemann GmbH — Geschäftsbereich Kunststofftechnik Obernkirchen.

Mark or sign cited in opposition: Community word mark 'EVO' for goods and services in Classes 7, 37 and 42.

Decision of the Opposition Division: Opposition partially upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) and Articles 75 and 76 of Regulation No 207/2009 since, (i) there is no likelihood of confusion between the opposing marks, (ii) the Board of Appeal based its decision on grounds on which the applicant could not voice its opinion, and (iii) the Board of Appeal based its decision on arguments which were not raised by the opponent in the proceedings.

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