ISSN 1977-091X

# Official Journal of the European Union

C 235

English edition

Information and Notices

Volume 55

4 August 2012

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EN

Price:
EUR 3

(Continued overleaf)

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(Continued overleaf)

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IV

*(Notices)*

# NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

# COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 235/01)

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

OJ C 227, 28.7.2012

**Past publications**

OJ C 217, 21.7.2012

OJ C 209, 14.7.2012

OJ C 200, 7.7.2012

OJ C 194, 30.6.2012

OJ C 184, 23.6.2012

OJ C 174, 16.6.2012

These texts are available on:

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

# GENERAL COURT

## Designation of the judge to replace the President in deciding an application

(2012/C 235/02)

On 4 July 2012, the General Court decided, in accordance with Article 106 of the Rules of Procedure, to designate Judge Prek, from 1 September 2012 to 31 August 2013, to replace the President of the General Court in deciding an application in the event that the President is absent or prevented from dealing with it.

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

## Order of the Court (Fifth Chamber) of 8 March 2012 — Longevity Health Products Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**(Case C-81/11 P)** [1]

***(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Application for Community word mark RESVEROL — Opposition by the proprietor of the earlier international word mark LESTEROL — Assessment of the likelihood of confusion — Rights of the defence)***

(2012/C 235/03)

*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) (represented by: D. Botis, Agent)

**Re:**

Appeal brought against the judgment of the General Court (Fifth Chamber) of 16 December 2010 in Case T-363/09 *Longevity Health Products* v *OHIM — Gruppo Lepetit*, by which that court dismissed an action brought by the applicant for word mark 'RESVEROL', for goods and services in Classes 3, 5 and 35, against decision R 1204/2008-2 of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 9 July 2009, dismissing the appeal lodged against the Opposition Division's decision which refused in part registration of that mark in the context of the opposition brought by the proprietor of the national word marks 'LESTEROL', for goods in Class 5

**Operative part of the order**

1. *The appeal is dismissed.*

2. *Longevity Health Products Inc. shall pay the costs.*

[1] OJ C 139, 7.5.2011.

## Order of the Court (Sixth Chamber) of 21 March 2012 — Fidelio KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**(Case C-87/11 P)** [1]

***(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Regulation (EC) No 40/94 — Article 7(1)(c) — Word mark Hallux — Refusal to register — Absolute ground for refusal — Appeal in part manifestly inadmissible and in part manifestly unfounded)***

(2012/C 235/04)

*Language of the case: German*

**Parties**

*Appellant:* Fidelio KG (represented by: M. Gail, Rechtsanwalt)

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

**Re:**

Appeal brought against the judgment of the General Court (Third Chamber) of 16 December 2010 in Case T-286/08 *Fidelio* v *OHIM*, by which the General Court dismissed the action for annulment brought against the decision of the Fourth Board of Appeal of OHIM of 21 May 2008 concerning registration of the word sign Hallux as a Community trade mark for certain goods in Classes 10 and 25 (orthopaedic articles and footwear) — Distinctive character of a word sign meaning 'big toe' in Latin

**Operative part of the order**

1. *The appeal is dismissed.*

2. *Fidelio KG shall pay the costs.*

[1] OJ C 152, 21.05.2011.

**Order of the Court (Sixth Chamber) of 1 March 2012 (reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Star Coaches s. r. o. v Finanční ředitelství pro hlavní město Prahu**

**(Case C-220/11)** [1]

***(Article 104(3), first subparagraph, of the Rules of Procedure — VAT Directive — Special tax scheme for travel agents — Supply to travel agents of a coach transport service but no other services)***

(2012/C 235/05)

*Language of the case: Czech*

**Referring court**

Nejvyšší správní soud

**Parties to the main proceedings**

*Applicant:* Star Coaches s. r. o.

*Defendant:* Finanční ředitelství pro hlavní město Prahu

**Re:**

Reference for a preliminary ruling — Nejvyšší správní soud — Interpretation of Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Application of the special scheme for travel agents to an economic operator which, without being a travel agent, supplies travel agents with a bus transport service but no other transport services

**Operative part of the order**

*A transport company which merely carries out the transport of persons by providing coach transport to travel agents and does not provide any other services such as accommodation, tour guiding or advice does not effect transactions falling within the special scheme for travel agents in Article 306 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.*

[1] OJ C 219, 23.7.2011.

**Order of the Court (Eighth Chamber) of 23 March 2012 (reference for a preliminary ruling from the Tribunal d'instance de Paris — France) — Thomson Sales Europe SA v Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)**

**(Case C-348/11)** [1]

***(Articles 92(1) and 103(1) of the Rules of Procedure — Manifest inadmissibility — Article 104(3), second subparagraph, of the Rules of Procedure — Answer admitting of no reasonable doubt — Reference for a preliminary ruling — Assessment of validity — Common commercial policy — Dumping — Importation of televisions manufactured in Thailand — Validity of the investigation carried out by the European Anti-Fraud Office (OLAF) — Validity of Regulations (EC) Nos 710/95 and 2584/98)***

(2012/C 235/06)

*Language of the case: French*

**Referring court**

Tribunal d'instance de Paris

**Parties to the main proceedings**

*Applicant:* Thomson Sales Europe SA

*Defendant:* Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)

**Re:**

Reference for a preliminary ruling — Tribunal d'instance de Paris — Validity of Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in Malaysia, the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed (OJ 1995 L 73, p. 3) — Validity of Council Regulation (EC) No 2584/98 of 27 November 1998, amending Regulation (EC) No 710/95 (OJ 1998 L 324, p. 1) — Regulations applying a method consistent with zeroing to determine the weighted average dumping margin — Validity of the investigation carried out by the European Anti-Fraud Office (OLAF) on the origin of the televisions

**Operative part of the order**

*The examination of Questions 4 and 5 does not disclose any factor capable of affecting the validity of Council Regulation (EC) No 710/95 of 27 March 1995 imposing a definitive anti-dumping duty on imports of colour television receivers originating in [Malaysia], the People's Republic of China, the Republic of Korea, Singapore and Thailand and collecting definitively the provisional duty imposed, or Council Regulation No 2584/98 of 27 November 1998, ameding Regulation No 710/95.*

[1] OJ C 282, 24.09.2011.

## Order of the Court (Seventh Chamber) of 22 March 2012 — Maurice Emram v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Guccio Gucci SpA

**(Case C-354/11 P)** [1]

***(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Application for registration of the figurative mark G — Trade marks)***

(2012/C 235/07)

*Language of the case: French*

### Parties

*Appellant:* Maurice Emram (represented by: M. Benavï, avocat)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent), Guccio Gucci SpA (represented by: F. Jacobacci, avvocato)

### Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 10 May 2011 in Case T-187/10 *Emram* v *OHIM* dismissing the action brought against the decision of the First Board of Appeal of OHIM of 11 February 2010 (Case R 1281/2008-1) relating to opposition proceedings between Guccio Gucci SpA and Mr Emram — Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Application for Community figurative mark G — Likelihood of confusion — Distortion of the evidence — Incorrect assessment of the distinctive character — Infringement of the principle of equal treatment

### Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Emram shall pay the costs.*

[1] OJ C 282, 24.9.2011.

## Order of the Court (Sixth Chamber) of 9 March 2012 — Atlas Transport GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Atlas Air Inc.

**(Case C-406/11 P)** [1]

***(Appeal — Article 119 of the Rules of Procedure — Community trade mark — Invalidity proceedings — Admissibility before the Board of Appeal — Failure to file a statement setting out the grounds of appeal — Regulation (EC) No 40/94 — Article 59 — Regulation (EC) No 2868/95 — Rule 49(1) — Stay of proceedings — Regulation (EC) No 2868/95 — Rule 20(7)(c) — Appeal manifestly inadmissible and manifestly unfounded)***

(2012/C 235/08)

*Language of the case: German*

### Parties

*Appellant:* Atlas Transport GmbH (represented by: K. Schmidt-Hern and U. Hildebrandt, Rechtsanwälte)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), Atlas Air Inc. (represented by: R. Dissman, Agent)

### Re:

Appeal brought against the judgment of the General Court (Third Chamber) in Case T-145/08 *Atlas Transport GmbH* v *OHIM*, by which the General Court dismissed the action brought against the decision of the First Board of Appeal of OHIM of 24 January 2008 (Case R 1023/2007-1) relating to invalidity proceedings between ATLAS Air Inc. and Atlas Transport GmbH — Interpretation of Article 59 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) and of Rule 20(7)(c) of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Regulation No 40/94 (OJ 1995 L 303, p. 1) — Circumstances justifying the stay in the cancellation proceedings — Application for annulment of the mark on which the opposition is founded pending before the national court

### Operative part of the order

1. *The appeal is dismissed.*

2. *Atlas Transport GmbH is ordered to pay the costs.*

[1] OJ C 311, 22.10.2011.

**Reference for a preliminary ruling from the Tribunale di Torre Annunziata (Italy) lodged on 23 April 2012 — Lorenzo Ciampaglia v Sangita Masawan**

**(Case C-185/12)**

(2012/C 235/09)

*Language of the case: Italian*

**Referring court**

Tribunale di Torre Annunziata

**Parties to the main proceedings**

*Applicant:* Lorenzo Ciampaglia

*Defendant:* Sangita Masawan

By order of 3 May 2012, the Court of Justice declared that the reference for a preliminary ruling is manifestly inadmissible and removed the case from the register.

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**Reference for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg lodged on 8 May 2012 — Caisse nationale des prestations familiales v Fjola HLIDDAL**

**(Case C-216/12)**

(2012/C 235/10)

*Language of the case: French*

**Referring court**

Cour de cassation du Grand-Duché de Luxembourg

**Parties to the main proceedings**

*Applicant:* Caisse nationale des prestations familiales

*Respondent:* Fjola HLIDDAL

**Question referred**

Does a benefit such as the parental leave allowance provided for by Articles 306 to 308 of the [Luxembourg] Code de la Sécurité Sociale constitute a family benefit within the meaning of Article 1(u)(i) and Article 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to the members of their families moving within the Community, ([1]) as amended and updated and applicable in accordance with Annex II, Section A, (1) of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Final Act signed in Luxembourg on 21 June 1999? ([2])

([1]) OJ 1971, L 149, p. 2.
([2]) OJ 2002, L 114, p. 6.

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**Reference for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg lodged on 8 May 2012 — Caisse nationale des prestations familiales v Bornand, Pierre-Louis**

**(Case C-217/12)**

(2012/C 235/11)

*Language of the case: French*

**Referring court**

Cour de cassation du Grand-Duché de Luxembourg

**Parties to the main proceedings**

*Applicant:* Caisse nationale des prestations familiales

*Respondent:* Bornand, Pierre-Louis

**Question referred**

Does a benefit such as the parental leave allowance provided for by Articles 306 to 308 of the [Luxembourg] Code de la Sécurité Sociale constitute a family benefit within the meaning of Article 1(u)(i) and Article 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to the members of their families moving within the Community, ([1]) as amended and updated and applicable in accordance with Annex II, Section A, (1) of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons and the Final Act signed in Luxembourg on 21 June 1999? ([2])

([1]) OJ 1971, L 149, p. 2.
([2]) OJ 2002, L 114, p. 6.

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**Reference for a preliminary ruling from the Tribunalul Argeș (Romania) lodged on 4 May 2012 — Comisariatul Județean pentru Protecția Consumatorilor Argeș v SC Volksbank România SA, SC Volksbank România SA — Sucursala Pitești, Alin Iulian Matei, Petruța Florentina Matei**

**(Case C-236/12)**

(2012/C 235/12)

*Language of the case: Romanian*

**Referring court**

Tribunalul Argeș

**Parties to the main proceedings**

*Appellant:* Comisariatul Județean pentru Protecția Consumatorilor Argeș

*Respondents:* SC Volksbank România SA, SC Volksbank România SA — Sucursala Pitești, Alin Iulian Matei, Petruța Florentina Matei

**Question referred**

Having regard to the fact that, in accordance with Article 4(2) of Directive 93/13/EEC, [1] assessment of the unfair nature of contractual terms must relate neither to the definition of the main subject-matter of the agreement nor to the adequacy [*sic*] of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language,

and

given that, under Article 2(2)(a) of Directive 2008/48/EC, [2] the definition provided in Article 3(g) of that directive of 'the total cost of the credit to the consumer', which includes all the fees which the consumer is required to pay in connection with the credit agreement, does not apply for the purposes of determining the subject-matter of a credit agreement secured by a mortgage,

can the concepts of 'main subject-matter' and/or of 'price', to which Article 4(2) of Directive 93/13/EEC refers, be interpreted as also covering, among the elements which make up the consideration owed to the credit institution, the global effective annual rate of a credit agreement, formed in particular of the interest rate, whether fixed or variable, the bank charges and other costs included and defined in the agreement?

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[1] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993, L 95, p. 29).

[2] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008, L 133, p. 66).

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## Reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 21 May 2012 — Salzburger Flughafen GmbH v Umweltsenat

**(Case C-244/12)**

(2012/C 235/13)

*Language of the case: German*

**Referring court**

Verwaltungsgerichtshof

**Parties to the main proceedings**

*Applicant:* Salzburger Flughafen GmbH

*Defendant:* Umweltsenat

*Party:* Landesumweltanwalt von Salzburg

*Further party:* Bundesministerin für Verkehr, Innovation und Technologie

**Questions referred**

1. Does Council Directive 85/337/EEC of 27 June 1985, [1] as amended by Council Directive 97/11/EC of 3 March 1997, [2] preclude a national rule by which it is established that an environmental impact assessment for infrastructure works (not concerning the runway) at an airport, that is the construction of a terminal and the extension of the airport site to construct further facilities (in particular hangars, equipment buildings and parking areas), shall only be carried out if the annual number of aircraft movements is anticipated to increase by no less than 20 000?

   In the event that Question 1 is answered in the affirmative:

2. In the absence of relevant national provisions, does Directive 85/337 require and allow for the direct application of its provisions to assess (taking due account of the objectives thereby pursued and the criteria set out in Annex III thereto) the environmental impact of a project — specified in Question 1 — which is covered by Annex II?

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[1] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

[2] Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ 1997 L 73, p. 5.

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## Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 21 May 2012 — Meliha Veli Mustafa v Direktor na fond 'Garantirani vzemania na rabotnitsite i sluzhitelnite' kam Natsionalnia osiguritelen institut

**(Case C-247/12)**

(2012/C 235/14)

*Language of the case: Bulgarian*

**Referring court**

Varhoven administrativen sad

**Parties to the main proceedings**

*Applicant:* Meliha Veli Mustafa

*Defendant:* Direktor na fond 'Garantirani vzemania na rabotnitsite i sluzhitelnite' kam Natsionalnia osiguritelen institut

**Questions referred**

1. In the light of Recital 5 of the preamble to Directive 2002/74/EC, [1] is Article 2(1) of Council Directive 80/987/EEC [2] of 20 October 1980 on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event

of the insolvency of their employer, to be interpreted as meaning that it requires the Member States to provide guarantees for employees' claims in insolvency proceedings at every stage of those proceedings until the declaration of insolvency, and not only at the opening of those proceedings?

2. Is Article 2(1) of Directive 80/987, as amended by Directive 2002/74, infringed by a provision of national law which enables the guarantee institution to satisfy employees' outstanding claims arising from employment relationships only in so far as those claims arise before the date of the registration of the decision to open the insolvency proceedings, if, by that decision, the activity of the employing company is not terminated and the company is not declared insolvent?

3. If the answers to the previous questions are in the affirmative: Is Article 2(1) of Directive 80/987, as amended by Directive 2002/74, directly applicable, and can it be applied directly by national courts?

4. If the answers to the previous questions are in the affirmative: In the absence of specific national rules on the period within which a request can be made for the guarantee institution to satisfy employees' claims arising before the date of the registration of the decision declaring the employer insolvent (and terminating his activity), may the period of 30 days laid down in national law for the exercise of that right be applied in other cases, in accordance with the principle of effectiveness, the period being deemed to begin on the date on which the decision on the declaration of insolvency is entered in the register of companies?

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([1]) Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ L 270, p. 10.

([2]) Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, OJ 1980 L 283, p. 23.

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## Appeal brought on 1 June 2012 by Guillermo Cañas against the order of the General Court (Third Chamber) delivered on 26 March 2012 in Case T-508/09 Cañas v Commission

**(Case C-269/12 P)**

(2012/C 235/15)

*Language of the case: French*

### Parties

*Appellant:* Guillermo Cañas (represented by: Y. Bonnard, avocat)

*Other parties to the proceedings:* European Commission, World Anti-Doping Agency, ATP Tour Inc.

### Form of order sought

— Annul the order delivered on 26 March 2012 by the General Court in Case T-508/09;

— Order the General Court to examine the action for annulment lodged on 22 December 2009 by Guillermo Cañas;

— Dismiss any other head of claim submitted by any opposing party;

— Order all the opposing parties to pay Guillermo Cañas' costs.

### Pleas in law and main arguments

The appellant sets out three grounds of appeal against the General Court's decision.

First, the appellant submits that the General Court failed to have regard to the right of an undertaking which is temporarily excluded from a market to bring an action against the shelving of a complaint in respect of an infringement of competition law by making that undertaking's *locus standi* conditional on the immediate advantage which that action for annulment would secure for it. The annulment of the shelving of a complaint never in the appellant's view tends in itself to secure an immediate advantage for the applicant as it can lead only to the examination of the complaint, without any guarantee of the outcome.

Secondly, the appellant submits that the General Court erred in holding that his *locus standi* was lost because he is still adversely affected by the anti-competitive obstacles complained of. He takes the view that, despite the fact that he has ended his career in sports, he still has *locus standi*, namely an interest in securing the annulment of the Commission's decision to shelve his complaint without taking any further action on it and in a declaration on the Commission's part that the obstacles complained of are unlawful, these being the prior stages necessary for making a claim for damages against the World Anti-Doping Agency, ATP Tour Inc. and the International Council of Arbitration for Sport.

Thirdly, the appellant submits that the General Court held that the annulment of the shelving of his complaint would have no effect on his right to make a claim for damages against the undertakings that he has complained about since the administrative procedure before the Commission cannot preclude an action before the competent civil courts. However, that argument is based on an error of fact inasmuch as the decision of the Court of Arbitration for Sport of 23 May 2007 found that the obstacles complained of were not contrary to European Union competition law, which is the reason why, in the absence of a favourable decision on the part of the Commission, it was impossible for the appellant to make a claim for damages.

**Appeal brought on 1 June 2012 by the European Commission against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 21 March 2012 in Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV, T-62/06 RENV and T-69/06 RENV Ireland and Others v Commission**

**(Case C-272/12 P)**

(2012/C 235/16)

*Language of the case: French*

**Parties**

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

*Other parties to the proceedings:* French Republic, Ireland, Italian Republic, Eurallumina SpA, Aughinish Alumina Ltd

**Form of order sought**

— set aside the judgment of the General Court (Fourth Chamber, Extended Composition) of 21 March 2012, notified to the Commission on 23 March 2012, in Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV, T-62/06 RENV and T-69/06 RENV *Ireland and Others* v *Commission*,

— refer the cases back to the General Court for reconsideration,

— reserve the costs.

**Pleas in law and main arguments**

The Commission has brought an appeal before the Court of Justice against the judgment delivered on 21 March 2012 in Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV, T-62/06 RENV and T-69/06 RENV *Ireland and Others* v *Commission* by which the General Court annulled Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia implemented by France, Ireland and Italy. ([1])

The appellant raises five pleas in law in support of its appeal, based on a lack of jurisdiction of the General Court, a breach of procedure before the General Court which adversely affects the interests of the Commission and infringement of European Union law.

First, the General Court made errors of law by raising, of its own motion, in the five joined cases, a plea alleging infringement of Article 87(1) EC on the basis that the national measures at issue are not imputable to the Member States. In any event, in Cases T-56/06 RENV and T-60/06 RENV, it raised, of its own motion, the pleas alleging infringement of the principle of legal certainty and/or the presumption of legality attaching to European Union measures in order to annul the Commission's decision in its entirety, although those pleas had only been put forward to oppose the order for recovery.

Secondly, in deciding, contrary to what was held by the Court of Justice in its judgment in Case C-89/08 P *Commission* v *Ireland and Others* [2009] ECR I-11245, that the concept of distortion of competition possesses the same scope and meaning concerning State aid and the harmonisation of the laws of the Member States relating to taxes, the General Court made errors of law and, in particular, infringed the second paragraph of Article 61 of the Statute of the Court of Justice, under which, when the Court annuls a decision of the General Court and refers the case back to the latter for judgment, the General Court is bound by the points of law decided by the Court of Justice.

Thirdly, by taking the view that the exemptions at issue do not constitute State aid because they had been authorised by the Council under the rules on tax harmonisation, that they are not thus imputable to Member States and that they are, therefore, not subject to the procedure for monitoring aid established by the treaty, the General Court made errors of law in determining the respective jurisdictions of the Council and the Commission, as well as in determining the relationships between tax harmonisation and monitoring of State aid, and infringed Articles 87 and 88 EC and the principle of institutional balance.

Fourthly, the General Court interpreted *contra legem* Council Decision 2001/224/EC of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes. ([2]) According to the appellant, the General Court based its interpretation on the Council's response to a question from the Court, in infringement of the rules governing the interpretation of the acts of the institutions, and distorted the meaning of that response of the Council.

Finally, in so far as it is based on the infringement of the principle of legal certainty, the principle of the presumption of legality and the principle of good administration, the judgment of the General Court is vitiated by a defective statement of reasons or tainted with the same defects as those identified in the second, third and fourth pleas.

([1]) OJ 2006 L 119, p. 12
([2]) OJ 2001 L 84, p. 23

**Reference for a preliminary ruling from the Cour de cassation (France) lodged on 4 June 2012 — Directeur général des douanes et droits indirects, Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières v Harry Winston SARL**

**(Case C-273/12)**

(2012/C 235/17)

*Language of the case: French*

**Referring court**

Cour de cassation (Supreme Court)

**Parties to the main proceedings**

*Applicants:* Directeur général des douanes et droits indirects (Director-General of Customs and Indirect Taxes), Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières (Head of the Investigation Agency of the National Directorate of Customs Information and Inquiries)

*Defendant:* Harry Winston SARL

**Questions referred**

1. Is Article 206 of Council Regulation No 2913/92 92 of 12 October 1992 establishing the Community Customs Code ([1]) to be interpreted as meaning that the theft, in the circumstances of the present case, of goods held under the customs warehousing procedure constitutes the irretrievable loss of the goods and a case of force majeure, with the consequence that, in that situation, no customs debt on importation is deemed to have been incurred?

2. Is the theft of goods held under the customs warehousing procedure such as to give rise to the chargeable event and to cause the value added tax to become chargeable pursuant to Article 71 of [Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax]? ([2])

([1]) OJ 1992 L 302, p. 1.
([2]) OJ 2006 L 347, p. 1.

**Reference for a preliminary ruling from the Latvijas Republikas Augstākās tiesas Senāts (Latvia) lodged on 1 June 2012 — Vitālijs Drozdovs v AAS 'Baltikums'**

**(Case C-277/12)**

(2012/C 235/18)

*Language of the case: Latvian*

**Referring court**

Latvijas Republikas Augstākās tiesas Senāts

**Parties to the main proceedings**

*Applicant:* Vitālijs Drozdovs

*Defendant:* AAS 'Baltikums'

**Questions referred**

1. Is compensation for non-material damage included in the amount of compulsory protection for personal injuries laid down in Article 3 of Council Directive 72/166/EEC ([1]) of 24 April 1972, the First Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, and in [Article 1(2)] of Council Directive 84/5/EEC ([2]) of 30 December 1983, the Second Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles?

2. If the first question is answered in the affirmative, must Article 3 of Council Directive 72/166/EEC of 24 April 1972, the First Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, and [Article 1(2)] of Council Directive 84/5/EEC of 30 December 1983, the Second Directive on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, be interpreted as meaning that those provisions preclude legislation of a Member State whereby civil liability applicable in that State — the maximum amount of compensation for non-material damage — is limited by the establishment of a limit that is substantially lower than the limit laid down for the insurer's liability in the directives and in national law?

([1]) OJ 1972 L 103, p. 1.
([2]) OJ 1984 L 8, p. 17.

**Appeal brought on 6 June 2012 by the Council of the European Union against the judgment of the General Court (Fourth Chamber) delivered on 21 March 2012 in Joined Cases T-439/10 and T-440/10 Fulmen and Mahmoudian v Council**

**(Case C-280/12 P)**

(2012/C 235/19)

*Language of the case: French*

**Parties**

*Appellant:* Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute, acting as Agents)

*Other parties to the proceedings:* Fulmen, Fereydoun Mahmoudian, European Commission

**Form of order sought**

— Set aside the judgment of the General Court (Fourth Chamber) delivered on 21 March 2012 in Joined Cases T-439/10 and T-440/10;

— Give a final ruling on the dispute and dismiss the actions brought by Fulmen and Mr Mahmoudian against the measures of the Council at issue;

— Order Fulmen and Mr Mahmoudian to pay the costs incurred by the Council at first instance and in connection with the present appeal.

**Pleas in law and main arguments**

The Council submits that the judgment of the General Court in the abovementioned cases is marred by errors of law and that that judgment should therefore be set aside by the Court.

The Council maintains that the General Court erred in law in holding that it had to adduce evidence to substantiate its statement of the reasons for the imposition of restrictive measures against the company Fulmen, namely that that company was involved in the installation of electrical equipment on the Qom/Fordoo (Iran) nuclear site.

In that regard, the Council submits, first, that the General Court erred in law in holding that it had to require the Member State which proposed designating Fulmen to present evidence and information although that evidence comes from confidential sources. Secondly, the Council submits that the General Court erred in law in holding that that Court could take account of confidential evidence which is not communicated to the lawyers of the parties concerned, although Article 67(3) of the Rules of Procedure of the General Court does not provide for that possibility.

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**Reference for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 6 June 2012 — Trento Sviluppo Srl and Centrale Adriatica Soc. coop. v AGCM**

**(Case C-281/12)**

(2012/C 235/20)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Appellants:* Trento Sviluppo srl, Centrale Adriatica Soc. coop.

*Respondent:* Autorità Garante della Concorrenza e del Mercato (AGCM)

**Question referred**

Is Article 6(1) of Directive 2005/29/EC, [1] as regards the part in which the Italian-language version uses the words 'e in ogni caso', to be understood as meaning that, in order for the existence of a misleading commercial practice to be established, it is sufficient if even only one of the elements referred to in the first part of that paragraph is present, or that, in order for the existence of such a commercial practice to be established, it is also necessary for the additional element to be present, that is to say, the commercial practice must be likely to interfere with a transactional decision adopted by a consumer?

[1] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22).

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**Reference for a preliminary ruling from the Conseil d'État (Belgium) lodged on 7 June 2012 — Aboubacar Diakite v Commissaire général aux réfugiés et aux apatrides**

**(Case C-285/12)**

(2012/C 235/21)

*Language of the case: French*

**Referring court**

Conseil d'État

**Parties to the main proceedings**

*Applicant:* Aboubacar Diakite

*Defendant:* Commissaire général aux réfugiés et aux apatrides

**Question referred**

Must Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees, or as persons who otherwise need international protection and the content of the protection granted, [1] be interpreted as meaning that that provision offers protection only in a situation of 'internal armed conflict', as interpreted by international humanitarian law and, in particular, by reference to Common Article 3 of the four Geneva Conventions of 12 August 1949 (for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, on the Treatment of Prisoners of War, and on the Protection of Civilian Persons in Time of War, respectively)?

If the concept of 'internal armed conflict' referred to in Article 15(c) of Directive 2004/83 is to be given an interpretation independent of Common Article 3 of the four Geneva Conventions of 12 August 1949, what, in that case, are the criteria for determining whether such an 'internal armed conflict' exists?

[1] OJ 2004 L 304, p. 12.

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**Order of the President of the Fifth Chamber of the Court of 7 March 2012 — European Commission v Republic of Poland**

**(Case C-542/10)** [1]

(2012/C 235/22)

*Language of the case: Polish*

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

[1] C 30, 29.1.2011.

**Order of the President of the Fourth Chamber of the Court of 28 March 2012 (reference for a preliminary ruling from the Tribunal Administratif de Saint-Denis de la Réunion — France) — Clément Amedée v Garde des sceaux, Ministre de la justice et des libertés, Ministre du budget, des comptes publics, de la fonction publique et de la réforme de l'État**

**(Case C-572/10)** [1]

(2012/C 235/23)

*Language of the case: French*

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

[1] OJ C 72, 5.3.2011.

**Order of the President of the Court of 20 March 2012 — Stichting Nederlandse Publieke Omroep, formerly Nederlandse Omroep Stichting (NOS) v European Commission**

**(Joined Cases C-104/11 P and C-105/11 P)** [1]

(2012/C 235/24)

*Language of the case: Dutch*

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

[1] OJ C 238, 13.8.2011.

**Order of the President of the Court of 19 April 2012 — European Commission v Republic of Malta**

**(Case C-178/11)** [1]

(2012/C 235/25)

*Language of the case: English*

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

[1] OJ C 179, 18.6.2011.

**Order of the President of the Court of 29 March 2012 — European Commission v Kingdom of Denmark**

**(Case C-323/11)** [1]

(2012/C 235/26)

*Language of the case: Danish*

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

[1] OJ C 282, 24.9.2011.

**Order of the President of the Court of 19 April 2012 (reference for a preliminary ruling from the Hajdú-Bihar Megyei Bíróság — Hungary) — IBIS Srl v PARTIUM '70 Műanyagipari Zrt**

**(Case C-490/11)** [1]

(2012/C 235/27)

*Language of the case: Hungarian*

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

[1] OJ C 370, 17.12.2011.

**Order of the President of the Court of 24 April 2012 — ThyssenKrupp Liften Ascenseurs NV v European Commission**

**(Case C-516/11 P)** [1]

(2012/C 235/28)

*Language of the case: Dutch*

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

[1] OJ C 355, 3.12.2011.

**Order of the President of the Court of 24 April 2012 — ThyssenKrupp Liften BV v European Commission**

**(Case C-519/11 P)** [1]

(2012/C 235/29)

*Language of the case: Dutch*

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

[1] OJ C 355, 3.12.2011.

**Order of the President of the Court of 19 April 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Trianon Productie BV v Revillon Chocolatier SAS**

**(Case C-2/12)** [1]

(2012/C 235/30)

*Language of the case: Dutch*

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

[1] OJ C 98, 31.3.2012.

# GENERAL COURT

## Judgment of the General Court of 27 June 2012 — Hearst Communications, Inc., v OHIM — Vida Estética (COSMOBELLEZA)

**(Case T-344/09)** [1]

***(Community trade mark — Opposition proceedings — Application for Community word mark COSMOBELLEZA — Earlier national and international word and figurative marks COSMO, COSMOPOLITAN, COSMOTEST, COSMOPOLITAN TELEVISION and THE COSMOPOLITAN SHOW — Non registered marks and trade names COSMO and COSMOPOLITAN — Relative grounds for refusal — No likelihood of confusion — No similarity between the marks — Article 8(1)(b) of Regulation (EC) No 207/2009)***

(2012/C 235/31)

*Language of the case: English*

**Parties**

*Applicant:* Hearst Communications, Inc., (New York, United States) (represented by: A. Nordemann, C. Czychowski and A. Nordemann-Schiffel, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by C. Bartos, and subsequently by V. Melgar, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Vida Estética, SL (Barcelona, Spain) (represented by: A.I. Alejos Cutuli, lawyer)

**Re:**

Action against the decision of the Second Board of Appeal of OHIM of 4 June 2009 (Case R 770/2007-2) relating to opposition proceedings between Hearst Communications, Inc. and Vida Estética, SL

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Hearst Communications, Inc. to pay the costs.*

[1] OJ C 256, 24.10.2009.

## Judgment of the General Court of 27 June 2012 — Bolloré v Commission

**(Case T-372/10)** [1]

***(Competition — Cartels — Carbonless paper market — Price-fixing — Decision finding an infringement of Article 101 TFEU — Decision taken following the annulment of a first decision — Imputation of the infringement to the parent company, as directly responsible — Nullum crimen, nulla poena sine lege — Legal certainty — Individual nature of penalties — Fair hearing — Equal treatment — Reasonable time — Rights of the defence — Fines — Limitation period — Mitigating circumstances — Cooperation)***

(2012/C 235/32)

*Language of the case: French*

**Parties**

*Applicant:* Bolloré (Ergué-Gabéric, France) (represented by: P. Gassenbach, C. Lemaire and O. de Juvigny, lawyers)

*Defendant:* European Commission (represented by: W. Mölls, F. Castillo de la Torre and R. Sauer, Agents, assisted by N. Coutrelis, lawyer)

**Re:**

Application for annulment or alteration of Commission Decision C(2010) 4160 final of 23 June 2010, relating to proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/36.212 — Carbonless paper).

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Bolloré to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 301, 6.11.2010.

## Action brought on 23 December 2011 — H-Holding v Parliament

**(Case T-672/11)**

(2012/C 235/33)

*Language of the case: German*

**Parties**

*Applicant:* H-Holding AG (Cham, Switzerland) (represented by: R. Závodný, lawyer)

*Defendant:* European Parliament

**Form of order sought**

— Recognise that the applicant has suffered damage as a result of the defendant's failure to act on the applicant's petition of 24 August 2011;

— determine that the European Union is responsible for compliance with the rules relating to the funding of political parties at European level;

— require the defendant to authorise the European Anti-Fraud Office (OLAF) to carry out a financial audit in relation to a Czech political party;

— require the defendant to initiate proceedings against the Czech Republic;

— order the defendant to pay compensation;

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

**Pleas in law and main arguments**

In support of the action, the applicant submits that the defendant has failed to take action in relation to the applicant's petition of 24 August 2011 concerning the funding of a Czech political party.

## Action brought on 5 June 2012 — Vestel Iberia v Commission

**(Case T-249/12)**

(2012/C 235/34)

*Language of the case: English*

**Parties**

*Applicant:* Vestel Iberia, SL (Madrid, Spain) (represented by: P. De Baere and P. Muñiz, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul Commission Decision COM(2010) 22 final of 18 January 2010 finding that post-clearance entry in the accounts of import duties is justified and remission of those duties is not justified in a particular case (REM 02/08), notified to the applicant on 12 April 2012;

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging

   — that import duties were entered in the account contrary to Article 220(2)(b) Community Customs Code (CCC) ([1]), since the defendant erroneously considered that anti-dumping regulations adopted against imports from third countries are automatically applicable to goods in free circulation in the EU-Turkey customs union, and as a result, the defendant erroneously failed to inform traders that the AD Regulation concerned was also applicable to goods in free circulation in the EU-Turkey customs union. Alternatively, the Turkish authorities committed an error when they confirmed that the anti-dumping duties imposed on goods from third countries were not applicable to goods in free circulation in the EU-Turkey customs union. Furthermore, the Spanish customs authorities also committed an error since they assumed that goods accompanied by an A.TR certificate could not be subject to any additional duties or trade protection measures, and failed to inform economic operator that their imports from Turkey could be subject to trade measures, even if such goods were in free circulation.

2. Second plea in law, alleging

   — that the error committed by the competent customs authorities could not have been reasonably detected by the person liable for payment, having acted in good faith and having complied with all the provisions laid down by legislation in force as regards the customs declaration.

3. Third plea in law, alleging

   — that the applicant finds itself in a special situation of Article 239 CCC, and that no deception or obvious negligence can be attributed to him pursuant to Article 239 CCC.

([1]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, p. 1)

## Action brought on 7 June 2012 — UTi Worldwide and Others v Commission

**(Case T-264/12)**

(2012/C 235/35)

*Language of the case: English*

**Parties**

*Applicants:* UTi Worldwide, Inc. (Tortola, British Virgin Islands), UTi Nederland BV (Schiphol, Netherlands) and UTI Worldwide (UK) Ltd (Reading, United Kingdom) (represented by: P. Kirch, lawyer)

*Defendant:* European Commission

**Form of order sought**

— Annul Article 1 and 2 of Commission Decision C(2012) 1959 Final of 28 March 2012, in Case COMP/39.462 — 'Freight Forwarders' — insofar as it relates to the applicants;

— In the alternative, annul Article 2 of the Decision of 28 March 2012, insofar as it concerns the applicants, and set aside or reduce the amount of the fine accordingly;

— Ensure the Court's finding and ruling on UTi Nederland and UTi UK fully apply to UTi Worldwide Inc., as parent company not involved in the facts of the case leading to the Decision but liable for its subsidiaries pursuant to the terms of the Decision; and

— Order the defendant to pay all costs.

**Pleas in law and main arguments**

In support of the action, the applicants rely on two pleas in law, each of which has three branches.

1. First plea in law, in support of the first part of the form of order sought, alleging that the applicants did not infringe Article 101 TFEU and Article 53 of the EEA Agreements:

   — The Commission committed manifest error by including applicants in the alleged Automated Manifest System ('AMS') cartel and failing to properly assess facts and conduct a complete and correct analysis of its own evidentiary record, as:

      — The Commission incorrectly analyses facts in its own evidentiary record;

      — The Decision misstates the scope of the discussion held in the framework of the association Freight Forward International ('FFI');

      — FFI members did not agree on a price or a range of prices;

      — Applicants and other forwarders selectively imposed AMS fees for competitive advantage;

      — The Commission ignored clear evidence that applicants' membership in FFI did not demonstrate applicants' involvement in the AMS fee cartel; and

      — The Commission ignores clear evidence that applicants independently set their AMS fee based on air cargo carriers' AMS fees and other factors of market pricing.

   — The Commission fails to establish that applicants participated in any agreement to distort competition within the meaning of Article 101(1) TFEU and Article 53 of the EEA Agreement, as:

      — Applicants' presence at six FFI meetings and conference call does not meet the legal standard for violation of Article 101 TFEU; and

      — The Decision contains no evidence that applicants participated in any bilateral or multilateral discussions outside of FFI regarding the AMS fee.

   — The AMS fee had no 'appreciable effect "on competition, as:

      — The AMS fee was a minuscule component of the total shipment price; and

      — The AMS fee was inevitable based on the air cargo carriers" decision to introduce a fee and thus had no appreciable effect on the market.

2. Second plea in law, in support of the second part of the form of order sought alleging that that the Commission's Decision on the fine violates Article 23(3) of Council Regulation (EC) No 1/2003 ([1]), the Commission's own guideline on fines ([2]), and the principle of proportionality and includes a calculation error:

   — The Commission fails to apply the concept of "gravity" within the meaning of Article 23(3) of Council Regulation (EC) No 1/2003 and Article 19 and 20 of the guidelines on fines, as:

      — There was absence of any effective involvement of applicants in the alleged infringement;

      — There was absence of effective implementation of the alleged infringement; and

      — There was absence of individualisation of the actions of applicants with regard to the overall behaviour of all undertakings concerned.

— The Commission has violated the principle of proportionality, as:

— The application of the 16 % rate is disproportionate with regard to the law and the facts of the case;

— The calculations based on the entire market in freight forwarding services is disproportionate;

— The application of the duration coefficient is disproportionate; and

— The inclusion of an additional amount in the basic amount is disproportionate.

— The Commission's fine imposed on UTi Worldwide Inc., individually as parent company, is artificially and erroneously inflated by the Commission's mathematical formula.

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

([2]) Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2)

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

**Action brought on 15 June 2012 — ZZ v EASA**

**(Case F-62/12)**

(2012/C 235/36)

*Language of the case: French*

**Parties**

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

*Defendant:* European Aviation Safety Agency (EASA)

**Subject-matter and description of the proceedings**

Annulment of the decision to calculate accredited pension rights acquired before entry into service on the basis of the new General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011.

**Form of order sought**

— declare unlawful Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations;

— annul the decision to apply, to the applicant's request for transfer of pension rights, the parameters referred to in the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— order the European Aviation Safety Agency to pay the costs.

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