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IV

*(Notices)*

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

# COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 355/01)

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

OJ C 343, 10.11.2012

**Past publications**

OJ C 331, 27.10.2012

OJ C 319, 20.10.2012

OJ C 311, 13.10.2012

OJ C 303, 6.10.2012

OJ C 295, 29.9.2012

OJ C 287, 22.9.2012

These texts are available on:

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

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

## Judgment of the Court (Fourth Chamber) of 6 September 2012 — European Commission v Portuguese Republic

**(Case C-38/10)** [1]

***(Failure of a Member State to fulfil obligations — Article 49 TFEU — Tax legislation — Transfer of residence for tax purposes — Transfer of assets — Immediate exit tax)***

(2012/C 355/02)

*Language of the case: Portuguese*

### Parties

*Applicant:* European Commission (represented by: R. Lyal, G. Braga da Cruz and P. Guerra e Andrade, acting as Agents)

*Defendant:* Portuguese Republic (represented by: L. Fernandes and J. Menezes Leitão, acting as Agents)

*Interveners in support of the defendant:* Kingdom of Denmark (represented by: C. Vang, acting as Agent), Federal Republic of Germany (represented by: C. Blaschke and K. Petersen, acting as Agents), Kingdom of Spain (represented by: M. Muñoz Pérez and A. Rubio González, acting as Agents), French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by: C. Wissels and M. de Ree, acting as Agents), Republic of Finland (represented by: J. Heliskoski, acting as Agent), Kingdom of Sweden (represented by: A. Falk and S. Johannesson, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: S. Hathaway and A. Robinson, acting as Agents)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 TFEU and of Article 31 of the EEA Agreement — Provisions of tax legislation by virtue of which companies ceasing to be resident for tax purposes in Portugal or transferring their assets to another State must immediately pay an exit tax

### Operative part of the judgment

*The Court:*

1. *Declares that, by adopting and maintaining in force Articles 76 A and 76 B of the Corporation Tax Code (Código do Imposto sobre o Rendimento das Pessoas Colectivas), which are applicable in the case of transfer, by a Portuguese company, of its registered office and its effective management to another Member State or in the case of transfer, by a company not resident in Portugal, of some or all of the assets attached to a Portuguese permanent establishment from Portugal to another Member State, and which prescribe the immediate taxation of unrealised capital gains relating to the assets concerned but not of unrealised capital gains resulting from purely national operations, the Portuguese Republic has failed to fulfil its obligations under Article 49 TFEU;*

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

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

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[1] OJ C 80, 27.3.2010.

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## Judgment of the Court (Grand Chamber) of 11 September 2012 (reference for a preliminary ruling from the Simvoulio tis Epikratias — Greece) — Nomarchiaki Aftodioikisi Aitoloakarnanias and Others v Ipourgos Perivallontos and Others

**(Case C-43/10)** [1]

***(Reference for a preliminary ruling — Directives 85/337/EEC, 92/43/EEC, 2000/60/EC and 2001/42/EC — Community action in the field of water policy — Diversion of the course of a river — Meaning of the time-limit for production of river basin management plans)***

(2012/C 355/03)

*Language of the case: Greek*

### Referring court

Simvoulio tis Epikratias

### Parties to the main proceedings

*Applicants:* Nomarchiaki Aftodioikisi Aitoloakarnanias, Dimos Agriniou, Dimos Iniadon, Emporiko kai Viomikhaniko Epimelitirio Aitoloakarnanias, Enosi Agrotikon Sinetairismon Agriniou, Aitoliki Etairia Prostasias Topiou kai Perivallontos, Elliniki Ornithologiki Etairia, Elliniki Etairia gia tin Prostasia tou Perivallontos kai tis Politistikis Klironomias, Dimos Mesolongiou, Dimos Aitolikou, Dimos Inakhou, Topiki Enosi Dimon kai Kinotiton Nomou Aitoloakarnanias, Pagkosmio Tamio gia ti Fisi WWF Ellas

*Defendants:* Ipourgos Perivallontos, Khorotaxias kai Dimosion Ergon, Ipourgos Esoterikon, Dimosias Diikisis kai Apokentrosis, Ipourgos Ikonomias kai Ikonomikon, Ipourgos Anaptixis, Ipourgos Agrotikis Anaptixis kai Trofimon, Ipourgos Politismou

**Re:**

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — Works to divert a river — Meaning of the time-limit for the production of river basin management plans for the purposes of Article 13(6) of the directive

**Operative part of the judgment**

1. *Articles 13(6) and 24(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as respectively fixing 22 December 2009 as the date of expiry of the period allowed to Member States for the publication of river basin management plans and 22 December 2003 as the date of expiry of the maximum period available to the Member States for the transposition of that directive, in particular Articles 3 to 6, 9, 13 and 15 thereof.*

2. *Directive 2000/60 must be interpreted as meaning that:*

   — *it does not preclude, in principle, a provision of national law whereby consent is given, prior to 22 December 2009, to a transfer of water from one river basin to another or from one river basin district to another where the managements plans for the river basin districts concerned were not yet adopted by the competent national authorities;*

   — *such a transfer must not be such as seriously to jeopardise the realisation of the objectives laid down by that directive;*

   — *however, to the extent that that transfer is liable to have adverse effects on water of the kind stated in Article 4(7) of that directive, consent may be given to it, at the very least if the conditions set out in Article 4(7)(a) to (d) are satisfied, and*

   — *the fact that it is impossible for the receiving river basin or river basin district to meet from its own water resources its needs in terms of drinking water, electricity production or irrigation is not a sine qua non for such a transfer of water to be compatible with that directive provided that the conditions listed above are satisfied.*

3. *The fact that a national parliament approves management plans for river basins, such as the plans at issue in the main proceedings, where no procedure for public information, consultation or participation has been implemented does not fall within the scope of Article 14 of Directive 2000/60, and in particular the scope of Article 14(1) thereof.*

4. *Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, and in particular Article 1(5) thereof, must be interpreted as not precluding legislation such as Law 3481/2006, adopted by the Greek Parliament on 2 August 2006, which approves a project for the partial diversion of the waters of a river such as that at issue in the main proceedings on the basis of an environmental impact assessment for that project which had served as the basis for an administrative decision adopted on the conclusion of a procedure which complied with the obligations in terms of public information and participation laid down by that directive, even where that decision was annulled by court order, provided that that legislation constitutes a specific legislative act, so that the objectives of that directive can be achieved through the legislative process. It is for the national court to determine whether those two conditions have been complied with.*

5. *A project for the partial diversion of the waters of a river, such as that at issue in the main proceedings, is not to be regarded as a plan or programme falling within the scope of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.*

6. *The areas which were listed in the national list of sites of Community importance transmitted to the European Commission pursuant to the second subparagraph of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and were then included in the list of SCIs adopted by Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region were entitled, after notification of Decision 2006/613 to the Member State concerned, to the protection of that directive before that decision was published. In particular, after that notification, the Member State concerned also had to take the protective measures laid down in Article 6(2) to (4) of the directive.*

7. *Directive 92/43, and in particular Article 6(3) and (4) thereof, must be interpreted as precluding development consent being given to a project for the diversion of water which is not directly connected with or necessary to the conservation of a special protection area, but likely to have a significant effect on that special protection area, in the absence of information or of reliable and updated data concerning the birds in that area.*

8. *Directive 92/43, and in particular Article 6(4) thereof, must be interpreted as meaning that grounds linked, on the one hand, to irrigation and, on the other, to the supply of drinking water, relied on in support of a project for the diversion of water, may constitute imperative reasons of overriding public interest capable of justifying the implementation of a project which adversely affects the integrity of the sites concerned. Where such a project adversely affects the integrity of a site of Community*

*importance hosting a priority natural habitat type and/or a priority species, its implementation may, in principle, be justified by grounds linked with the supply of drinking water. In some circumstances, it might be justified by reference to beneficial consequences of primary importance which irrigation has for the environment. On the other hand, irrigation cannot, in principle, qualify as a consideration relating to human health and public safety, justifying the implementation of a project such as that at issue in the main proceedings.*

9. *Under Directive 92/43, and in particular the first sentence of the first subparagraph of Article 6(4) thereof, for the purposes of determining the adequacy of compensatory measures account should be taken of the extent of the diversion of water and the scale of the works involved in that diversion.*

10. *Directive 92/43, and in particular the first subparagraph of Article 6(4) thereof, interpreted in the light of the objective of sustainable development, as enshrined in Article 6 EC, permits, in relation to sites which are part of the Natura 2000 network, the conversion of a natural fluvial ecosystem into a largely man-made fluvial and lacustrine ecosystem provided that the conditions referred to in that provision of the directive are satisfied.*

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([1]) OJ C 100, 17.04.2010.

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**Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg**

**(Case C-262/10)** ([1])

***(Community Customs Code — Regulation (EEC) No 2913/92 — Article 204(1)(a) — Inward processing procedure — System of suspension — Incurrence of a customs debt — Non-fulfilment of an obligation to supply the bill of discharge within the prescribed period)***

(2012/C 355/04)

*Language of the case: German*

**Referring court**

Bundesfinanzhof

**Parties to the main proceedings**

*Applicant:* Döhler Neuenkirchen GmbH

*Defendant:* Hauptzollamt Oldenburg

**Re:**

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), and of Article 859(9) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p 1), as amended by Commission Regulation (EC) No 993/2001 (OJ 2001 L 141, p. 1) — Failure to fulfil the obligation to supply, within the prescribed time-limit, the bill of discharge in an inward processing procedure — Whether permissible for a customs debt to be incurred in respect of the entire quantity of the goods covered by the inward processing procedure as punishment for that failure

**Operative part of the judgment**

*Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that the non-fulfilment of the obligation to submit the bill of discharge to the supervising office within 30 days of the expiry of the period for discharging the relevant procedure laid down in the first indent of the first subparagraph of Article 521(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92, as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007, gives rise to a customs debt in respect of the entire quantity of the imported goods covered by the bill of discharge, including those re-exported outside the territory of the European Union, where the conditions set out in Article 859(9) of Regulation No 2454/93 are not considered to be fulfilled.*

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([1]) OJ C 246, 11.9.2010.

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**Judgment of the Court (Third Chamber) of 6 September 2012 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Eurogate Distribution GmbH v Hauptzollamt Hamburg-Stadt**

**(Case C-28/11)** ([1])

***(Community Customs Code — Regulation (EEC) No 2913/92 — Article 204(1)(a) — Customs warehousing procedure — Customs debt incurred through non-fulfilment of an obligation — Delayed entry in stock records of information concerning the removal of goods from a customs warehouse)***

(2012/C 355/05)

*Language of the case: German*

**Referring court**

Finanzgericht Hamburg

**Parties to the main proceedings**

*Applicant:* Eurogate Distribution GmbH

*Defendant:* Hauptzollamt Hamburg-Stadt

**Re:**

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992, establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Delayed entry in stock records of information concerning the removal of goods from a customs warehouse — Whether arising of the customs debt admissible as the penalty for that failure

**Operative part of the judgment**

*Article 204(1)(a) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that, in the case of non-Community goods, non-fulfilment of the obligation to enter the removal of the goods from the customs warehouse in the appropriate stock records, at the latest when the goods leave the customs warehouse, gives rise to a customs debt in respect of those goods, even if they have been re-exported.*

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([1]) OJ C 238, 13.8.2011.

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**Judgment of the Court (Fourth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Pioneer Hi Bred Italia Srl v Ministero delle Politiche agricole alimentari e forestali**

**(Case C-36/11)** ([1])

***(Agriculture — Genetically modified organisms — Council Directive 2002/53/EC — Common catalogue of varieties of agricultural plant species — Genetically modified organisms accepted for inclusion in the common catalogue — Regulation (EC) No 1829/2003 — Article 20 — Existing products — Directive 2001/18/EC — Article 26a — Measures to avoid the unintended presence of genetically modified organisms — National measures prohibiting the cultivation of genetically modified organisms accepted for inclusion in the common catalogue and authorised as existing products pending measures based on Article 26a of Directive 2001/18/EC)***

(2012/C 355/06)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Applicant:* Pioneer Hi Bred Italia Srl

*Defendant:* Ministero delle Politiche agricole alimentari e forestali

**Re:**

Reference for a preliminary ruling — Consiglio di Stato — Second Chamber — Interpretation of Articles 16, 19, 22 and 26a of Directive 2001/18/EC of the Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) — Interpretation of Article 19 of Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species (OJ 2002 L 193, p. 1) — Application for authorisation to cultivate GMOs listed in the European common catalogue — Refused by the competent authority because of the lack of internal general measures governing such matters.

**Operative part of the judgment**

1. *The cultivation of genetically modified organisms such as the MON 810 maize varieties cannot be made subject to a national authorisation procedure when the use and marketing of those varieties are authorised pursuant to Article 20 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed and those varieties have been accepted for inclusion in the common catalogue provided for in Council Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species, as amended by Regulation No 1829/2003;*

2. *Article 26a of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, as amended by Directive 2008/27/EC of the European Parliament and of the Council of 11 March 2008, does not entitle a Member State to prohibit in a general manner the cultivation on its territory of such genetically modified organisms pending the adoption of coexistence measures to avoid the unintended presence of genetically modified organisms in other crops.*

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([1]) OJ C 89, 19.3.2011.

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**Judgment of the Court (Second Chamber) of 6 September 2012 — European Commission v Kingdom of Belgium**

**(Case C-150/11)** ([1])

***(Failure of a Member State to fulfil obligations — Directive 1999/37/EC — Registration documents for vehicles — Vehicles previously registered in another Member State — Change of ownership — Requirement of a roadworthiness test — Requirement of production of a certificate of conformity — Roadworthiness test carried out in another Member State — Non-recognition — Lack of justification)***

(2012/C 355/07)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: O. Beynet and A. Marghelis, acting as Agents)

*Defendant:* Kingdom of Belgium (represented by: T. Materne and J.-C. Halleux, acting as Agents, and by F. Libert and S. Rodrigues, avocats)

**Re:**

Failure of a Member State to fulfil obligations — Infringement of Article 34 TFEU and of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles (OJ 1999 L 138, p. 57) — National legislation requiring the production of a certificate of conformity of a vehicle for the purpose of a roadworthiness test prior to the registration of a vehicle which was previously registered in another Member State — Non-recognition of the results of the roadworthiness tests carried out in other Member States — Restriction on the free movement of goods — Absence of justifications

**Operative part of the judgment**

*The Court:*

1. *Declares that, by requiring systematically, in addition to production of a certificate of registration, production of a vehicle's certificate of conformity, for the purpose of a roadworthiness test prior to the registration of a vehicle previously registered in another Member State, and by making such vehicles, when there is a change of ownership, subject to a roadworthiness test prior to their registration, without taking into account the results of the roadworthiness test carried out in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of Council Directive 1999/37/EC of 29 April 1999 on the registration documents for vehicles, as amended by Council Directive 2006/103/EC of 20 November 2006, and under Article 34 TFEU;*

2. *Orders the Kingdom of Belgium to pay the costs.*

---

([1]) OJ C 160, 28.5.2011.

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## Judgment of the Court (Fourth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Daniela Mühlleitner v Ahmad Yusufi, Wadat Yusufi

**(Case C-190/11)** ([1])

***(Jurisdiction in civil and commercial matters — Jurisdiction over consumer contracts — Regulation (EC) No 44/2001 — Article 15(1)(c) — Possible limitation of that jurisdiction to distance contracts)***

(2012/C 355/08)

*Language of the case: German*

**Referring court**

Oberster Gerichtshof

**Parties to the main proceedings**

*Applicant:* Daniela Mühlleitner

*Defendants:* Ahmad Yusufi, Wadat Yusufi

**Re:**

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 15(1)(c) of 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) — Jurisdiction over consumer contracts — Possible limitation of that jurisdiction to distance contracts

**Operative part of the judgment**

*Article 15(1)(c) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as not requiring the contract between the consumer and the trader to be concluded at a distance.*

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([1]) OJ C 204, 9.7.2011.

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## Judgment of the Court (Second Chamber) of 6 September 2012 (reference for a preliminary ruling from the Baranya Megyei Bíróság — Hungary) — Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

**(Case C-273/11)** ([1])

***(VAT — Directive 2006/112/EC — Article 138(1) — Conditions of exemption for intra-Community transactions characterised by the obligation on the purchaser to ensure, as from the time of their loading, the transport of the goods of which it disposes as owner — Obligation on the vendor to prove that the goods have physically left the territory of the Member State of supply — Removal from the register, with retroactive effect, of the customer's VAT identification number)***

(2012/C 355/09)

*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

**Re:**

Reference for a preliminary ruling — Baranya Megyei Bíróság — Interpretation of Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Conditions of exemption for intra-Community transactions characterised by the obligation on the purchaser to ensure, as from the time of their loading, the transport of the goods of which it may dispose as owner — Obligation on the taxable person to prove that the goods have been transported to another Member State and that, as a result of that transport, they have physically left the territory of the Member State of supply

**Operative part of the judgment**

1. *Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/88/EU of 7 December 2010, is to be interpreted as not precluding, in circumstances such as those of the case before the referring court, refusal to grant a vendor the right to the VAT exemption for an intra-Community supply, provided that it has been established, on the basis of objective evidence, that the vendor has failed to fulfil its obligations as regards evidence, or that it knew or should have known that the transaction which it carried out was part of a tax fraud committed by the purchaser, and that it had not taken every reasonable step within its power to prevent its own participation in that fraud.*

2. *A vendor may not be refused the VAT exemption for an intra-Community supply, in accordance with Article 138(1) of Directive 2006/112, as amended by Directive 2010/88, solely on the ground that the tax authority of another Member State has removed the purchaser's VAT identification number from the register, with retroactive effect from a date prior to the sale of the goods even though the number was removed after the goods had been supplied.*

---

([1]) OJ C 269, 10.9.2011.

---

**Judgment of the Court (Fourth Chamber) of 6 September 2012 (reference for a preliminary ruling from the Tribunal administratif (Luxembourg)) — DI. VI. Finanziaria SAPA di Diego della Valle & C. v Administration des contributions en matière d'impôts**

**(Case C-380/11)** ([1])

***(Freedom of establishment — Article 49 TFEU — Tax legislation — Capital tax — Conditions for granting a reduction in capital tax — Situation where a company is no longer liable to capital tax following transfer of its seat to another Member State — Restriction — Justification — Overriding reasons in the public interest)***

(2012/C 355/10)

*Language of the case: French*

**Referring court**

Tribunal administratif

**Parties to the main proceedings**

*Applicant:* DI. VI. Finanziaria SAPA di Diego della Valle & C.

*Defendant:* Administration des contributions en matière d'impôts

**Re:**

Reference for a preliminary ruling — Tribunal administratif — Interpretation of Article 49 TFEU — Freedom of establishment — Tax legislation — Capital tax — National legislation making the grant of a reduction in capital tax conditional upon remaining liable to that tax in the Member State concerned for the next five tax years — Situation where a company is no longer liable for capital tax following the transfer of its seat to another Member State

**Operative part of the judgment**

*Article 49 TFEU must be interpreted, in circumstances such as those at issue in the main proceedings, as precluding legislation of a Member State which makes the grant of a reduction in capital tax conditional upon remaining liable to that tax for the next five tax years.*

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([1]) OJ C 298, 8.10.2011.

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**Judgment of the Court (Eighth Chamber) of 6 September 2012 — Prezes Urzędu Komunikacji Elektronicznej and Republic of Poland v European Commission**

**(Joined Cases C-422/11 P and C-423/11 P)** ([1])

***(Appeals — Actions for annulment — Rejection of the appeal as inadmissible — Representation before the Courts of the European Union — Lawyer — Independence)***

(2012/C 355/11)

*Language of the case: Polish*

**Parties**

*Appellants:* Prezes Urzędu Komunikacji Elektronicznej (represented by: D. Dziedzic-Chojnacka and D. Pawłowska, radcowie prawni), Republic of Poland (represented by: M. Szpunar, A. Kraińska and D. Lutostańska, acting as Agents)

*Other party to the proceedings:* European Commission (represented by: G. Braun and A. Stobiecka-Kuik, acting as Agents)

**Re:**

Appeals brought against the order of the General Court (Seventh Chamber) of 23 May 2011 in Case T-226/10 *Prezes Urzędu Komunikacji Elektronicznej* v *Commission* by which the Court declared inadmissible the action of the Prezes Urzędu Komunikacji Elektronicznej for annulment of Commission Decision C(2010) 1234 of 3 March 2010, adopted pursuant to Article 7(4) of Directive 2002/21/EC of the European Parliament and of the Council (OJ 2002 L 108, p. 33), ordering the Polish regulatory authority in the field of electronic communications services and postal services to withdraw two notified draft measures concerning the national wholesale market for IP traffic exchange (IP transit) (Case PL/2009/1019) and the wholesale market for IP peering with the network of Telekomunikacja Polska S.A. (TP) (Case PL/2009/1020) — Incorrect interpretation of the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice, in conjunction with the first paragraph of Article 53 of the Statute, and also with the sixth paragraph of Article 254 of the FEU Treaty and

Article 113 of the Rules of Procedure — Infringement of Article 67(1) of the FEU Treaty, in conjunction with Article 113 of the Rules of Procedure — Infringement of Article 5(1) and (2) of the EU Treaty, in conjunction with Article 4(1) of the EU Treaty and Article 113 of the Rules of Procedure — Infringement of Article 5(4) of the EU Treaty, in conjunction with Article 113 of the Rules of Procedure — Failure to state reasons — Inadmissibility of an action in the event of representation by lawyers in an employment relationship with the party

**Operative part of the judgment**

*The Court:*

1. *Dismisses the appeals;*

2. *Orders the Prezes Urzędu Komunikacji Elektronicznej and the Republic of Poland to pay the costs.*

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([1]) OJ C 311, 22.10.2011.

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**Judgment of the Court (Second Chamber) of 19 July 2012 (reference for a preliminary ruling from the Raad van State — Netherlands) — A. Adil v Minister voor Immigratie, Integratie en Asiel**

**(Case C-278/12 PPU)** ([1])

***(Area of freedom, security and justice — Regulation (EC) No 562/2006 — Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) — Articles 20 and 21 — Abolition of border control at internal borders — Checks within the territory — Measures having an equivalent effect to border checks — National legislation authorising checks of identity, nationality and residence status by officials responsible for border surveillance and monitoring of foreign nationals in a 20 kilometre area extending from the common border with other State parties to the Convention implementing the Schengen Agreement — Checks intended to combat illegal residence — Legislation laying down certain conditions and guarantees concerning, inter alia, the frequency and intensity of the checks)***

(2012/C 355/12)

*Language of the case: Dutch*

**Referring court**

Raad van State

**Parties to the main proceedings**

*Applicant:* Atiqullah Adil

*Defendant:* Minister voor Immigratie, Integratie en Asiel

**Re:**

Reference for a preliminary ruling — Raad van State — Interpretation of Article 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2006 L 105, p. 1) — Abolition of checks at internal borders — Possibility, for a Member State, to carry out police checks within its territory, in an area between the land border of that State with neighbouring countries and a line 20 km inside that border — Checks linked to establishing compliance with the rules governing residence — Whether such checks may be carried out solely on the basis of general information relating to the unlawful presence of nationals of non-member countries within the control area or whether it is necessary to have specific evidence of the irregularity of the situation of the person who is the subject of the check — Whether rules are permissible which establish certain quantitative criteria relating to the maximum number of checks which may be carried out within a given period

**Operative part of the judgment**

*Articles 20 and 21 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres inside the land border between a Member State and the State parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed at Schengen on 19 June 1990, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the Member State concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency.*

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([1]) OJ C 287, 22.9.2012.

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**Reference for a preliminary ruling from the Krajský súd v Prešove (Prešov Regional Court) lodged on 3 August 2012 — G.I.C. Cash, a.s. v Marián Gunčaga**

**(Case C-373/12)**

(2012/C 355/13)

*Language of the case: Slovak*

**Referring court**

Krajský súd v Prešove

**Parties to the main proceedings**

*Applicant:* G.I.C. Cash, a.s.

*Defendant:* Marián Gunčaga

**Questions referred**

1. Is Article 47 of the Charter of Fundamental Rights of the European Union ([1]) ('the Charter'), in conjunction with Article 38 thereof, together with Article 6(1) and Article 7(1) of Council Directive 93/13/EEC ([2]) on unfair terms in consumer contracts, to be interpreted as meaning that, where a court in a dispute on a consumer contract is assessing whether a contract term is unacceptable and a court of another Member State has already manifestly held, in comparable factual circumstances, that a contract term with a similar or identical content is unacceptable, the consumer has the right that the court, for the purposes of the assessment of whether the contract term at issue is unacceptable, takes into account that judgment of the court of the other Member State?

2. Where the answer to the first question is in the affirmative, does the court infringe the fundamental right of the consumer under Article 47 of the Charter in conjunction with Article 38 thereof where it does not take into account the manifest judgment of the court of the other Member State on the unacceptability of a contract term with a similar or identical content?

([1]) OJ C 364, 18.12.2000, p. 1.
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

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**Appeal brought on 22 August 2012 by Fruit of the Loom, Inc. against the judgment of the General Court (Fifth Chamber) delivered on 21 June 2012 in Case T-514/10: Fruit of the Loom, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case C-392/12 P)**

(2012/C 355/14)

*Language of the case: English*

**Parties**

*Appellant:* Fruit of the Loom, Inc. (represented by: S. Malynicz, Barrister, V. Marsland, Solicitor)

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

**Form of order sought**

The appellant seeks the following Order:

— The judgment of the General Court in Case T-514/10 dated 21 June 2012 shall be annulled.

— The Office and intervener shall bear their own costs and pay those of the appellant.

**Pleas in law and main arguments**

The General Court failed to appreciate that under Article 15(l)(a) CTMR ([1]) there were in effect three stages to the inquiry. First, it is necessary to consider the distinctive character of the mark as registered. Secondly it is necessary to consider the distinctive character of the marks as used. Thirdly it is necessary to consider whether the distinctive character of the mark as registered is altered. Had the General Court properly applied this approach to the evidence it would have realised that the evidence of use satisfied Article 15(1)(a) CTMR.

The General Court imposed an erroneous rule of interpretation of Community trade marks whereby if consumers within a Member State do not understand a word element of a trade mark (either because it is an obscure word in another Community Language or because it is not similar to a word in their own language) that element is nonetheless to be regarded as being of equal distinctiveness to a word element that they do understand and which is itself distinctive.

The General Court failed to consider or apply by analogy the Court's case law concerning use in the context of acquired distinctive character under Article 7 CTMR which is to the effect that the distinctive character of a mark may be acquired in consequence of the use of that mark as part of or in conjunction with a registered trade nark in accordance with Case C-353/03 Société des Produits Nestlé S.A. v Mars UK Limited [2005] ECR I-06135.

The General Court distorted the facts concerning the appellant's use of the word FRUIT in its informal dealings with customers. Contrary to the General Court's finding, such use was not purely internal and did amount to genuine use of the mark.

The General Court distorted the facts concerning the appellant's use of the mark FRUIT as part of its website at www.fruit.com. Contrary to the General Court's finding, such use was in order to promote goods and was genuine.

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

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**Reference for a preliminary ruling from the Tribunale di Fermo (Italy) lodged on 29 August 2012 — Criminal proceedings against M**

**(Case C-398/12)**

(2012/C 355/15)

*Language of the case: Italian*

**Referring court**

Tribunale di Fermo

**Party/parties to the main proceedings**

M

**Question referred**

Does a final judgment of no case to answer given by a Member State of the European Union party to the Convention implementing the Schengen Agreement (CISA), ([1]) following an extensive preliminary investigation as part of investigations in connection with proceedings which could be re-activated in the event of fresh evidence, preclude the initiation or conduct of proceedings in respect of the same facts and the same person in another Contracting State.

([1]) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders; OJ 2000 L 239, p. 19.

## Action brought on 7 September 2012 — European Commission v Italian Republic

**(Case C-411/12)**

(2012/C 355/16)

*Language of the case: Italian*

**Parties**

*Applicant:* European Commission (represented by: B. Stromsky, S. Thomas and D. Grespan, acting as Agents)

*Defendant:* Italian Republic

**Form of order sought**

— Declare that, by failing to adopt, within the prescribed period, all the measures necessary to abolish the State aid scheme found to be unlawful and incompatible with the common market by Commission Decision 2011/746/EU of 23 February 2011 on State aid granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA (State aid measures C 38/B/2004 (ex NN 58/2004) and C 13/2006 (ex N 587/2005) (notified under document C(2011) 956 on 24 February 2012 and published in OJ 2011 L 309, pp. 1 to 22), the Italian Republic has failed to fulfil its obligations under Articles 3, 4 and 5 of that decision and under the TFEU Treaty;

— Order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The period allowed by the decision for recovery of the State aid declared unlawful expired on 24 June 2011. Furthermore, the defendant was required to notify the Commission, by 24 April 2001, of the total amount of aid to be recovered and the measures taken and planned to comply with the decision.

At the date on which the present proceedings were brought, the defendant had not yet adopted the measures necessary to recover the aid granted to the recipient undertakings or communicated to the Commission all the information requested.

## Appeal brought on 13 September 2012 by Bolloré against the judgment delivered by the General Court (Second Chamber) on 27 June 2012 in Case T-372/10 Bolloré v Commission

**(Case C-414/12 P)**

(2012/C 355/17)

*Language of the case: French*

**Parties**

*Appellant:* Bolloré (represented by: P. Gassenbach, C. Lemaire and O. de Juvigny, lawyers)

*Other party to the proceedings:* European Commission

**Form of order sought**

— Set aside the judgment appealed against on the ground that the General Court infringed the principle of equal treatment and the obligation to state reasons in drawing no inferences from the fact that Bolloré was penalised as a parent company, unlike Stora, which was in a similar position;

— set aside the judgment appealed against on the ground that the General Court infringed Article 41 of the Charter of fundamental rights of the European Union ('the Charter') and Article 6 of the European Convention for the Protection of Human Rights ('ECHR'), the obligation to state reasons and the obligation of non-distortion, Bolloré's rights of defence, the effects of the annulment of Decision 2004/337/EC, ([1]) the principle of *res judicata* and Article 48(2) of the General Court's Rules of Procedure, in holding that judgment in the case against Bolloré was delivered within a reasonable time and that Bolloré was able to defend itself against the complaints notified against it;

— set aside the judgment appealed against on the ground that the General Court infringed the principles of proportionality and fairness in refusing to reduce the amount of the fine incurred due to the factual and procedural context of the present proceedings;

— rule definitively in Case T-372/10 in accordance with Article 61 of the Statute of the Court of Justice and, accordingly, set aside the judgment appealed against in so far as it concerns Bolloré or, in any event, in the exercise of its full jurisdiction, reduce the amount imposed on Bolloré by the Commission and upheld by the General Court;

— should the Court not rule on the present case, reserve costs and refer the case back to the General Court for re-examination, in accordance with the Court's ruling;

— lastly, order the Commission to pay the costs of the proceedings before the General Court and the Court of Justice, pursuant to Article 69 of the Rules of Procedure.

**Pleas in law and main arguments**

The appellant puts forward three pleas in law in support of its appeal.

By its first plea, divided into two parts, the appellant argues that the General Court infringed the principle of equal treatment and the obligation to state reasons by failing to draw any inferences from the fact that it had been penalised for the conduct of its former subsidiary, unlike Stora, which was in a similar position.

By its second plea, divided into four parts, it argues that the General Court infringed Article 41 of the Charter, Article 6 of the ECHR, the obligation to state reasons and the obligation of non-distortion, the appellant's rights of defence, the effects of the annulment of Decision 2004/337, the principle of *res judicata* and Article 48(2) of the General Court's Rules of Procedure, in holding that Bolloré's right to have its case heard and judged within a reasonable time had not been infringed.

By its third plea, the appellant argues that the General Court infringed the principles of proportionality and fairness in failing to take account of the factual and procedural context of the present proceedings and in refusing to reduce the amount of the fine incurred.

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([1]) Commission Decision of 17 October 2001 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case COMP/M.2187 — *CVC* v *Lenzing*) (OJ 2004 L 82, p. 20).

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## Action brought on 13 September 2012 — European Commission v Kingdom of Belgium

**(Case C-421/12)**

(2012/C 355/18)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: M. van Beek and M. Owsiany-Hornung, acting as Agents)

*Defendant:* Kingdom of Belgium

**Form of order sought**

— Declare that:

— by excluding from the scope of the Law of 5 June 2007 transposing Directive 2005/29/EC on unfair commercial practices ([1]) members of a profession and dentists and physiotherapists, the Kingdom of Belgium has failed to fulfil its obligations under Article 3, combined with Article 2(b) and (d) of that directive;

— by maintaining in force Articles 20, 21 and 29 of the Law of 6 April 2010 on market practices and consumer protection, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of Directive 2005/29/EC on unfair commercial practices;

— by maintaining in force the third subparagraph of Article 4(1) of the Law of 25 June 1993 on the exercise and organisation of travelling trading and fairground activities as inserted by Article 7 of the Law of 4 July 2005 modifying the Law of 25 June 1993 on the exercise of travelling trading activities and the organisation of public markets, and point 4 of Article 5(1) of the Royal Decree of 24 September 2006 concerning the exercise and organisation of travelling trading activities, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of Directive 2005/29/EC on unfair commercial practices.

— Order the Kingdom of Belgium to pay the costs.

**Pleas in law and main arguments**

The period for transposition of Directive 2005/29/EC expired on 12 June 2007.

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([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 ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

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## Reference for a preliminary ruling from the Kammarrätten i Stockholm, Migrationsöverdomstolen (Sweden) lodged on 17 September 2012 — Flora May Reyes v Migrationsverket

**(Case C-423/12)**

(2012/C 355/19)

*Language of the case: Swedish*

**Referring court**

Kammarrätten i Stockholm, Migrationsöverdomstolen

**Parties to the main proceedings**

*Applicant:* Flora May Reyes

*Defendant:* Migrationsverket

**Questions referred**

1. Can Article 2(2)(c) of Directive 2004/38 [1] be interpreted as meaning that a Member State, on certain conditions, can require a direct descendant who is 21 years old or older — in order to be regarded as dependent and thus come within the definition of a family member under Article 2(2)(c) of Directive 2004/38 — to have tried to obtain employment, help with supporting himself from the authorities of his country of origin and/or otherwise support himself but that that has not been possible?

2. In interpreting the term 'dependent' in Article 2(2)(c) of Directive 2004/38, does any significance attach to the fact that a relative — due to personal circumstances such as age, education and health — is deemed to be well placed to obtain employment and in addition intends to start work in the Member State, which would mean that the conditions for him to be regarded as a relative who is a dependant under the provision are no longer met?

[1] 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 (Text with EEA relevance) (OJ 2004 L 158, p. 77).

## Action brought on 19 September 2012 — European Commission v European Parliament, Council of the European Union

**(Case C-427/12)**

(2012/C 355/20)

*Language of the case: French*

**Parties**

*Applicant:* European Commission (represented by: B. Smulders, C. Zadra and E. Manhaeve, acting as Agents)

*Defendants:* European Parliament, Council of the European Union

**Form of order sought**

— Annul Article 80(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products [1] insofar as it provides for the adoption of measures establishing the fees payable to the European Chemicals Agency (ECHA) by an implementing act under Article 291 TFEU and not by a delegated act in accordance with Article 290 TFEU;

— Maintain the effects of the provision annulled and of all acts adopted on the basis thereof until the entry into force, within a reasonable period, of a new provision intended to replace it;

— Order the defendants to pay the costs.

In the alternative, in the event that the Court were to consider that this application for partial annulment is not admissible,

— Annul that regulation in its entirety;

— Maintain the effects of the abovementioned regulation and of all acts adopted on the basis thereof until the entry into force, within a reasonable period, of a new regulation intended to replace it;

— Order the defendants to pay the costs.

**Pleas in law and main arguments**

The Commission raises a single plea in law in support of its action, alleging infringement of the Treaty and, in particular, of the system of attribution of the regulatory powers which the European Union legislature may attribute to the Commission pursuant to Article 290 and 291 TFEU.

The Commission submits that the Council and the Parliament erred in deciding to confer on the Commission implementing powers on the basis of Article 291 TFEU in order to establish the fees payable to the European Chemicals Agency. In the Commission's opinion, the act which it is called upon to adopt on the basis of Article 80(1) of Regulation (EU) No 528/2012 is in fact a delegated act within the meaning of Article 290 TFEU, in as much as it seeks to supplement certain non-essential elements of the legislative act. Having regard to the nature of the attribution of powers made to the Commission but also to the purpose of the act to be adopted under those powers, such an act ought therefore to be adopted in accordance with the procedure laid down in Article 290 TFEU and not the procedures laid down in Article 291 TFEU.

[1] OJ 2012 L 167, p. 1.

## Appeal brought on 24 September 2012 by Leifheit AG against the judgment of the General Court (Sixth Chamber) delivered on 12 July 2012 in Case T-334/10 Leifheit AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**(Case C-432/12 P)**

(2012/C 355/21)

*Language of the case: German*

**Parties**

*Appellant:* Leifheit AG (represented by: V. Töbelmann and G. Hasselblatt, Rechtsanwälte)

*Other parties to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs), Vermop Salmon GmbH

**Form of order sought**

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 12 July 2012 in Case T-334/10;

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 May 2010 in Case R 924/2009-1;

— order OHIM to pay the costs of the proceedings before the Court of Justice, before the General Court and before the Board of Appeal, together with the costs incurred by the appellant;

in the event that Vermop Salmon GmbH intervenes in the proceedings before it, the appellant further claims that the Court of Justice should:

— order the intervener to pay its own costs.

**Grounds of appeal and main arguments**

The judgment of the General Court of 12 July 2012 should be set aside, since the General Court erred in law by misconstruing the scope of the examination to be made by the Board of Appeal in appeal proceedings pursuant to Article 63(1) and Article 64(1) of Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. [1]

The General Court failed to take account of the principle of functional continuity between the different instances of OHIM and wrongly found that complaints brought expressly can also not relieve the Board of Appeal of its duty to examine in full the findings of fact and law in the contested decision.

The General Court ultimately based its judgment on the finding that the issue of genuine use of the earlier mark was a specific preliminary issue which it was not necessary for the Board of Appeal to examine. In doing so, the General Court wrongly overlooked the fact that the issue of requiring evidence of lawful use forms part of opposition proceedings and, as such, falls within the scope of the examination to be made by the Board of Appeal.

In addition, the General Court infringed Article 8(1)(b) of Council Regulation (EC) No 207/2009 on the Community trade mark by misapplying the general principles for assessing the likelihood of confusion. In particular, in its assessment of the similarity of the signs, the General Court based its findings on the empirical rule that consumers place more emphasis on the beginning of words than on the other parts of marks, without assessing whether that rule was applicable in this case. Furthermore, the General Court did not sufficiently assess the appellant's claim relating to the similarity of the goods. Moreover, it adopted the findings of the Board of Appeal without first assessing their accuracy.

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[1] OJ 2009 L 78, p. 1

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**Appeal brought on 26 September 2012 by Luigi Marcuccio against the order of the General Court (Second Chamber) delivered on 3 July 2012 in Case T-27/12 Marcuccio v Court of Justice**

**(Case C-433/12 P)**

(2012/C 355/22)

*Language of the case: Italian*

**Parties**

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

*Other party to the proceedings:* Court of Justice of the European Union

**Form of order sought**

— Set aside in its entirety and without any exception the order of the General Court of 3 July 2012 in Case T-27/12;

— order the Court of Justice to pay the costs incurred by the appellant relating to the proceedings at first instance and the appeal proceedings and allow in its entirety and without any exception whatsoever the relief sought in the main body of the application at first instance;

— in the alterntive, refer the case back to the General Court for a fresh decision on the substance.

**Pleas in law and main arguments**

The order under appeal is clearly defective on account of a total failure to state reasons, unreasonableness, illogicality and distortion of the facts. The General Court erred in classifying certain letters sent by the appellant to the First Advocate General of the Court of Justice as requests for review within the meaning of Article 256(2) TFEU.

# GENERAL COURT

## Judgment of the General Court of 27 September 2012 — Shell Petroleum and Others v Commission

**(Case T-343/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Joint control — Fines — Aggravating circumstances — Role of instigator and leader — Repeated infringement — Duration of the infringement — Rights of the defence — Unlimited jurisdiction — Conduct of the undertaking during the administrative procedure)***

(2012/C 355/23)

*Language of the case: English*

**Parties**

*Applicants:* Shell Petroleum NV (The Hague, Netherlands), The Shell Transport and Trading Company Ltd (London, United Kingdom) and Shell Nederland Verkoopmaatschappij BV (Rotterdam, Netherlands) (represented: initially by O. Brouwer, W. Knibbeler and S. Verschuur, and subsequently by O. Brouwer, W. Knibbeler and P. van den Berg, lawyers)

*Defendant:* European Commission (represented by: F. Castillo de la Torre, Agent, and by L. Gyselen, lawyer)

**Re:**

APPLICATION, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)) in so far as it concerns the applicants, and, in the alternative, for reduction of the fine imposed on the applicants by that decision.

**Operative part of the judgment**

*The Court:*

1. *Annuls Article 2(l) of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)) in so far as it sets the fine imposed on Shell Petroleum NV, The Shell Transport and Trading Company Ltd and Shell Nederland Verkoopmaatschappij BV at EUR 108 million;*

2. *Reduces the fine imposed on Shell Petroleum, The Shell Transport and Trading Company and Shell Nederland Verkoopmaatschappij by Article 2(l) of that decision to EUR 81 million;*

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

4. *Orders each party to bear its own costs.*

[1] OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Total v Commission

**(Case T-344/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Fines — Gravity and duration of the infringement)***

(2012/C 355/24)

*Language of the case: French*

**Parties**

*Applicant:* Total SA (Courbevoie, France) (represented: initially by A. Lamothe, L. Godfroid and A. Gosset-Grainville, and subsequently by A. Lamothe, L. Godfroid and O. Prost, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet and F. Castillo de la Torre, Agents)

**Re:**

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

[1] OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Nynäs Petroleum and Nynas Belgium v Commission

**(Case T-347/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Fines — Cooperation during the administrative procedure — Significant added value — Equal treatment)***

(2012/C 355/25)

*Language of the case: English*

**Parties**

*Applicants:* Nynäs Petroleum AB (Stockholm, Sweden) and Nynas Belgium AB (Stockholm) (represented by: A. Howard, Barrister, M. Dean and D. McGowan, Solicitors)

*Defendant:* European Commission (represented by: F. Castillo de la Torre, Agent, and by L. Gyselen, lawyer)

**Re:**

APPLICATION, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)) and, in the alternative, for reduction of the fine imposed on the applicants by that decision.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Nynäs Petroleum AB and Nynas Belgium AB to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Total Nederland v Commission

**(Case T-348/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Continuous nature of the infringement — Imputability of the unlawful conduct — Fines — Gravity and duration of the infringement)***

(2012/C 355/26)

*Language of the case: English*

**Parties**

*Applicant:* Total Nederland NV (Voorburg, Netherlands) (represented by: A. Vandencasteele, lawyer)

*Defendant:* European Commission (represented by: A. Bouquet and F. Castillo de la Torre, Agents)

**Re:**

APPLICATION, principally, for partial annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Total Nederland NV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Dura Vermeer Groep v Commission

**(Case T-351/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct)***

(2012/C 355/27)

*Language of the case: Dutch*

**Parties**

*Applicant:* Dura Vermeer Groep NV (Rotterdam, Netherlands) (represented by: M. Slotboom, lawyer)

*Defendant:* European Commission (represented initially by A. Bouquet and A. Nijenhuis, Agents, and by F. Wijckmans, F. Tuytschaever and L. Gyselen, lawyers, and subsequently by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, and by F. Wijckmans and F. Tuytschaever)

**Re:**

Application for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Dura Vermeer Groep NV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Dura Vermeer Infra v Commission

**(Case T-352/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Rights of the defence)***

(2012/C 355/28)

*Language of the case: Dutch*

**Parties**

*Applicant:* Dura Vermeer Infra BV (Hoofddorp, Netherlands) (represented by: M. Slotboom, lawyer)

*Defendant:* European Commission (represented: initially by A. Bouquet and A. Nijenhuis, Agents, and by F. Wijckmans, F. Tuytschaever and L. Gyselen, lawyers, and subsequently by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, and by F. Wijckmans and F. Tuytschaever)

**Re:**

Application for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Dura Vermeer Infra BV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Vermeer Infrastructuur v Commission

**(Case T-353/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Existence and classification of an agreement — Restriction of competition — Guidelines on the applicability of Article 81 EC to horizontal cooperation agreements — Calculation of the amount of the fines — Gravity and duration of the infringement — Obligation to state reasons — Rights of the defence)***

(2012/C 355/29)

*Language of the case: Dutch*

**Parties**

*Applicant:* Vermeer Infrastructuur BV (Hoofddorp, Netherlands) (represented by: M. Slotboom, lawyer)

*Defendant:* European Commission (represented: initially by A. Bouquet and A. Nijenhuis, Agents, and by F. Wijckmans, F. Tuytschaever and L. Gyselen, lawyers, and subsequently by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, and by F. Wijckmans and F. Tuytschaever)

**Re:**

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in particular in so far as it concerns the applicant, and, in the alternative, for reduction of the fine imposed on the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Vermeer Infrastructuur BV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — BAM NBM Wegenbouw and HBG Civiel v Commission

**(Case T-354/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Existence and classification of an agreement — Restriction of competition — Guidelines on horizontal cooperation agreements — Rights of the defence — Fines — Duration of the infringement)***

(2012/C 355/30)

*Language of the case: Dutch*

**Parties**

*Applicants:* BAM NBM Wegenbouw BV (Bunnik, Netherlands); and HBG Civiel BV (Gouda, Netherlands) (represented by: M. Biesheuvel and J. de Pree, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents)

**Re:**

Application for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicants.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders BAM NBM Wegenbouw BV and HBG Civiel BV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Koninklijke BAM Groep v Commission

**(Case T-355/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Duration of the infringement)***

(2012/C 355/31)

*Language of the case: Dutch*

**Parties**

*Applicant:* Koninklijke BAM Groep NV (Bunnik, Netherlands) (represented by: M. Biesheuvel and J. de Pree, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents)

**Re:**

Application for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Koninklijke BAM Groep NV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Koninklijke Volker Wessels Stevin v Commission

**(Case T-356/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Fines — Imputability of the unlawful conduct)***

(2012/C 355/32)

*Language of the case: Dutch*

**Parties**

*Applicant:* Koninklijke Volker Wessels Stevin NV (Rotterdam, Netherlands) (represented: initially by E. Pijnacker Hordijk and Y. de Vries, and subsequently by E. Pijnacker Hordijk and X. Reintjes, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, assisted initially by L. Gyselen, F. Tuytschaever and F. Wijckmans, and subsequently by L. Gyselen, lawyers)

**Re:**

Application for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Koninklijke Volker Wessels Stevin NV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Koninklijke Wegenbouw Stevin v Commission

**(Case T-357/06)** ([1])

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Existence and classification of an agreement — Restriction of competition — Guidelines on the applicability of Article 81 EC to horizontal cooperation agreements — Rights of the defence — Fine — Aggravating circumstances — Role of instigator and leader — Absence of cooperation — Commission's powers of investigation — Right to the assistance of a lawyer — Misuse of powers — Calculation of the amount of the fines — Duration of the infringement — Unlimited jurisdiction)***

(2012/C 355/33)

*Language of the case: Dutch*

**Parties**

*Applicant:* Koninklijke Wegenbouw Stevin BV (Utrecht (Netherlands)) (represented: initially by E. Pijnacker Hordijk and Y. de Vries, and subsequently by E. Pijnacker Hordijk and X. Reintjes, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, assisted initially by de L. Gyselen, F. Tuytschaever and F. Wijckmans, and subsequently by L. de Gyselen, lawyers)

**Re:**

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant, and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Koninklijke Wegenbouw Stevin BV to pay the costs.*

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([1]) OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Heijmans Infrastructuur v Commission

**(Case T-359/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Burden of proof — Fines — Gravity of the infringement — Imputability of the unlawful conduct — Obligation to state reasons — Rights of the defence)***

(2012/C 355/34)

*Language of the case: Dutch*

### Parties

*Applicant:* Heijmans Infrastructuur BV (Rosmalen, Netherlands) (represented initially by M. Smeets and A. Van den Oord, and subsequently by M. Smeets, lawyers)

*Defendant:* European Commission (represented: initially by A. Bouquet and A. Nijenhuis, Agents, and by F. Wijckmans, F. Tuytschaever and L. Gyselen, lawyers, and subsequently by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, and by F. Wijckmans and F. Tuytschaever)

### Re:

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant, and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Heijmans Infrastructuur BV to pay the costs.*

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[1] OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Heijmans v Commission

**(Case T-360/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct)***

(2012/C 355/35)

*Language of the case: Dutch*

### Parties

*Applicant:* Heijmans NV (Rosmalen, Netherlands) (represented: initially by M. Smeets and A. Van den Oord, and subsequently by M. Smeets, lawyers)

*Defendant:* European Commission (represented: initially by A. Bouquet and A. Nijenhuis, Agents, assisted initially by F. Wijckmans, F. Tuytschaever and L. Gyselen, and subsequently by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, assisted by F. Wijckmans and F. Tuytschaever, lawyers)

### Re:

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant, and, in the alternative, for reduction of the fine imposed on the applicant by that decision.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Heijmans NV to pay the costs.*

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[1] OJ C 20, 27.1.2007.

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## Judgment of the General Court of 27 September 2012 — Ballast Nedam v Commission

**(Case T-361/06)** [1]

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Imputability of the unlawful conduct — Rights of the defence — Effects in relation to third parties of a judgment annulling a measure)***

(2012/C 355/36)

*Language of the case: Dutch*

### Parties

*Applicant:* Ballast Nedam NV (Nieuwegein (Netherlands)) (represented: initially by A. Bosman and J. van de Hel, and subsequently by A. Bosman and E. Oude Elferink, lawyers)

*Defendant:* European Commission (represented by A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, assisted initially by F. Wijckmans, F. Tuytschaever and L. Gyselen, and subsequently by F. Wijckmans and F. Tuytschaever, lawyers)

### Re:

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant, and, in the alternative (i) application for annulment in part of that decision in so far as it sets the duration of the infringement with respect to the applicant and (ii) application for a reduction of the fine imposed on the applicant.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Ballast Nedam NV to pay the costs.*

(1) OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Ballast Nedam Infra v Commission

**(Case T-362/06)** (1)

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Fines — Proof of the infringement — Gravity of the infringement — Imputability of the unlawful conduct — Rights of the defence — Production of new pleas in the course of proceedings — Unlimited jurisdiction)***

(2012/C 355/37)

*Language of the case: Dutch*

### Parties

*Applicant:* Ballast Nedam Infra BV (Nieuwegein (Netherlands)) (represented: initially by A. Bosman and J. van de Hel, and subsequently by A. Bosman and E. Oude Elferink, lawyers)

*Defendant:* European Commission (represented by: A. Bouquet, A. Nijenhuis and F. Ronkes Agerbeek, Agents, assisted initially by F. Wijckmans, F. Tuytschaever and L. Gyselen, and subsequently by F. Wijckmans and F. Tuytschaever, lawyers)

### Re:

Application, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)) in so far as it concerns the applicant, and, in the alternative, first, for annulment in part of that decision and for reduction of the fine imposed on the applicant and, second, for annulment in part of that decision in so far as it sets the duration of the infringement with respect to the applicant and for a corresponding reduction of the fine imposed on it.

### Operative part of the judgment

*The Court:*

1. *Annuls Article 1(a) of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)) in so far as it concerns the participation of Ballast Nedam Infra BV in the infringement between 21 June 1996 and 30 September 2000;*

2. *Reduces the amount of the fine imposed jointly and severally on Ballast Nedam Infra in Article 2(a) of that decision to EUR 3.45 million;*

3. *Orders each party to bear its own costs.*

(1) OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Kuwait Petroleum and Others v Commission

**(Case T-370/06)** (1)

***(Competition — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Decision finding an infringement of Article 81 EC — Fines — Cooperation during the administrative procedure — Significant added value — Equal treatment — Rights of the defence)***

(2012/C 355/38)

*Language of the case: English*

### Parties

*Applicants:* Kuwait Petroleum Corp. (Shuwaikh, Kuwait), Kuwait Petroleum International Ltd (Woking, United Kingdom) and Kuwait Petroleum (Nederland) BV (Rotterdam, Netherlands) (represented by: D. Hull, Solicitor, and G. Berrisch, lawyer)

*Defendant:* European Commission (represented by: F. Castillo de la Torre, acting as Agent, and by L. Gyselen, lawyer)

### Re:

APPLICATION, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), and, in the alternative, for reduction of the fine imposed on the applicants by that decision.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Kuwait Petroleum Corp., Kuwait Petroleum International Ltd and Kuwait Petroleum (Nederland) BV to pay the costs.*

(1) OJ C 20, 27.1.2007.

## Judgment of the General Court of 27 September 2012 — Guardian Industries and Guardian Europe v Commission

**(Case T-82/08)** (1)

***(Competition — Agreements, decisions and concerted practices — Market for flat glass in the EEA — Decision finding an infringement of Article 81 EC — Price-fixing — Evidence of the infringement — Calculation of the amount of the fines — Exclusion of captive sales — Obligation to state the reasons on which the decision is based — Equal treatment — Mitigating circumstances)***

(2012/C 355/39)

*Language of the case: English*

### Parties

*Applicants:* Guardian Industries Corp. (Dover, Delaware, United States of America); and Guardian Europe Sàrl (Dudelange, Luxembourg) (represented by: S. Völcker, F. Louis, A. Vallery, C. Eggers and H.-G. Kamann, lawyers)

*Defendant:* European Commission (represented by: F. Castillo de la Torre and R. Sauer, acting as Agents)

**Re:**

Application for annulment of Commission Decision C(2007) 5791 final of 28 November 2007 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/39165 — Flat glass), in so far as it concerns the applicants, and for a reduction in the amount of the fine imposed on them by that decision.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Guardian Industries Corp. and Guardian Europe Sàrl to pay the costs.*

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([1]) OJ C 107, 26.4.2008.

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## Judgment of the General Court of 27 September 2012 — Tuzzi fashion v OHIM — El Corte Inglés (Emidio Tucci)

**(Case T-535/08)** ([1])

***(Community trade mark — Opposition proceedings — Application for Community figurative mark Emidio Tucci — Earlier national word mark and international registration TUZZI — Earlier company name Tuzzi fashion GmbH — Relative grounds 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) — Obligation to state reasons — Article 73 and Article 62(2) of Regulation No 40/94 (now Article 75 and Article 64(2) of Regulation No 207/2009) — Examination of the facts by the adjudicatory body of its own motion — Article 74 of Regulation No 40/94 (now Article 76 of Regulation No 207/2009) — Article 79 of Regulation No 40/94 (now Article 83 of Regulation No 207/2009)***

(2012/C 355/40)

*Language of the case: Spanish*

**Parties**

*Applicant:* Tuzzi fashion GmbH (Fulda, Germany) (represented by: R. Kunze and G. Würtenberger, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* El Corte Inglés, SA (Madrid, Spain) (represented initially by J.L. Rivas Zurdo, E. López Camba and E. Seijo Veiguela and, subsequently, by J.L. Rivas Zurdo and E. Seijo Veiguela, lawyers)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 23 September 2008 (Case R 1561/2007-2), relating to opposition proceedings between Tuzzi fashion GmbH and El Corte Inglés, SA.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Tuzzi fashion GmbH to pay the costs.*

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([1]) OJ C 55, 7.3.2009.

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## Judgment of the General Court of (Sixth Chamber) of 27 September 2012 — France v Commission

**(Case T-139/09)** ([1])

***(State aid — Fruit and vegetable sector — 'Contingency plans' seeking to support the fruit and vegetable market in France — Decision declaring the aid incompatible with the common market — Concept of State aid — State resources — Co-financing by a public institution and by voluntary contributions from farmers' organisations — Arguments not raised during the administrative procedure — Duty to state the reasons on which the decision is based)***

(2012/C 355/41)

*Language of the case: French*

**Parties**

*Applicant:* French Republic (represented: initially by E. Belliard, G. de Bergues and A.-L. During, and subsequently by E. Belliard, G. de Bergues and J. Gstalter, acting as Agents)

*Defendant:* European Commission (represented by: B. Stromsky, acting as Agent)

**Re:**

Annulment of Commission Decision C(2009) 203 final of 28 January 2009, concerning the 'contingency plans' in the fruit and vegetable sectors implemented by France.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 141, 20.6.2009.

## Judgment of the General Court of 27 September 2012 — Fedecom v Commission

**(Case T-243/09)** [1]

***(State aid — Fruit and vegetable sector — 'Contingency plans' aimed at supporting the fruit and vegetable market in France — Decision declaring the aid to be incompatible with the common market — Concept of State aid — State resources — Joint financing by a public body and by voluntary contributions from producer organisations — Arguments contrary to the facts submitted during the administrative proceedings — Operating aid — Legitimate expectation)***

(2012/C 355/42)

*Language of the case: French*

### Parties

*Applicant:* Fédération de l'organisation économique fruits et légumes (Fedecom) (Paris, France) (represented by: C. Galvez, lawyer)

*Defendant:* European Commission (represented by: B. Stromsky, acting as Agent)

### Re:

Application for annulment of Commission Decision C(2009) 203 final of 28 January 2009 on the 'contingency plans' in the fruit and vegetable sector implemented by the French Republic.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Fédération de l'organisation économique fruits et légumes (Fedecom) to pay the costs.*

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[1] OJ C 205, 29.8.2009.

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## Judgment of the General Court of 27 September 2012 — Producteurs de légumes de France v Commission

**(Case T-328/09)** [1]

***(State aid — Fruit and vegetable sector — 'Contingency plans' aimed at supporting the fruit and vegetable market in France — Decision declaring the aid to be incompatible with the common market — Legitimate expectation — Material error in the calculation of the amounts to be recovered)***

(2012/C 355/43)

*Language of the case: French*

### Parties

*Applicant:* Producteurs de légumes de France (Paris, France) (represented: by initially O. Fachin, and subsequently O. Redon, lawyers)

*Defendant:* European Commission (represented by: B. Stromsky, acting as Agent)

### Re:

Application for annulment of Commission Decision C(2009) 203 final of 28 January 2009 on the 'contingency plans' in the fruit and vegetable sector implemented by the French Republic.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Producteurs de légumes de France to pay the costs.*

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[1] OJ C 267, 7.11.2009.

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## Judgment of the General Court of 27 September 2012 — Pucci International v OHIM — El Corte Inglés (Emidio Tucci)

**(Case T-357/09)** [1]

***(Community trade mark — Opposition proceedings — Application for Community figurative mark Emidio Tucci — Earlier Community figurative and national word and figurative marks Emilio Pucci and EMILIO PUCCI — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Unfair advantage taken of the distinctive character or the repute of the earlier mark — Article 8(5) of Regulation No 207/2009)***

(2012/C 355/44)

*Language of the case: Spanish*

### Parties

*Applicant:* Emilio Pucci International BV (Amsterdam, Netherlands) (represented by: P. Roncaglia, G. Lazzeretti, M. Boletto and E. Gavuzzi, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* El Corte Inglés, SA (Madrid, Spain) (represented initially by J.L. Rivas Zurdo, E. López Camba and E. Seijo Veiguela and, subsequently, by J.L. Rivas Zurdo and E. Seijo Veiguela, lawyers)

### Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 June 2009 (Joined Cases R 770/2008-2 and R 826/2008-2), relating to opposition proceedings between Emilio Pucci International BV and El Corte Inglés, 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 18 June 2009 (Joined Cases R 770/2008-2 and R 826/2008-2) as regards, first, the proof of use of the spectacles in Class 9 and, second, the application of Article 8(5) of Regulation No 207/2009 to the spectacles in Class 9, to the jewellery, costume jewellery and watches in Class 14 and to the lavatory paper in Class 16;*

2. *Dismisses the remainder of the action;*

3. *Orders Emilio Pucci International BV to pay one-third of the costs and OHIM and El Corte Inglés, SA to pay two-thirds of the costs.*

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([1]) OJ C 267, 7.11.2009.

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## Judgment of the General Court of 27 September 2012 — El Corte Inglés v OHIM — Pucci International (Emidio Tucci)

**(Case T-373/09)** ([1])

***(Community trade mark — Opposition proceedings — Application for Community figurative mark Emidio Tucci — Earlier Community figurative and national word and figurative marks Emilio Pucci and EMILIO PUCCI — Relative grounds for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Unfair advantage taken of the distinctive character or the repute of the earlier mark — Article 8(5) of Regulation No 207/2009 — Obligation to state reasons — Article 75 of Regulation No 207/2009)***

(2012/C 355/45)

*Language of the case: Spanish*

**Parties**

*Applicant:* El Corte Inglés, SA (Madrid, Spain) (represented initially by J.L. Rivas Zurdo, E. López Camba and E. Seijo Veiguela and, subsequently, by J.L. Rivas Zurdo and E. Seijo Veiguela, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Emilio Pucci International BV (Amsterdam, Netherlands) (represented by: P. Roncaglia, G. Lazzeretti, M. Boletto and E. Gavuzzi, lawyers)

**Re:**

Action brought against the decision of the Second Board of Appeal of OHIM of 18 June 2009 (Joined Cases R 770/2008-2 and R 826/2008-2), relating to opposition proceedings between Emilio Pucci International BV and El Corte Inglés, SA.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA to pay the costs.*

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([1]) OJ C 282, 21.11.2009.

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## Judgment of the General Court of (Sixth Chamber) of 27 September 2012 — Applied Microengineering v Commission

**(Case T-387/09)** ([1])

***(Fifth framework programme for research, technological development and demonstration — Contracts concerning the projects 'Formation of a New Design House for MST' and 'Assessment of a New Anodic Bonder' — Recovery of part of the financial contribution paid — Enforceable decision — Decision amending the contested decision during the proceedings — Legal basis of the action — Nature of the pleas put forward — Legitimate expectations — Obligation to state the reasons on which the decision is based — Principle of sound administration)***

(2012/C 355/46)

*Language of the case: English*

**Parties**

*Applicant:* Applied Microengineering Ltd (Didcot, United Kingdom) (represented: initially by P. Walravens and J. De Wachter, and subsequently by P. Walravens and J. Blockx, lawyers)

*Defendant:* European Commission (represented by: S. Petrova, acting as Agent, assisted by R. Van der Hout, lawyer)

**Re:**

Application for annulment of Commission Decision C(2009) 5797 of 16 July 2009 relating to the recovery of the sum of EUR 258 560.61 plus interest payable by the applicant in the framework of the projects IST-199-11823 FOND MST ('Formation of a New Design House for MST') and IST-2000-28229 ANAB ('Assessment of a New Anodic Bonder').

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

2. *Orders Applied Microengineering Ltd, in addition to bearing its own costs, to pay those incurred by the European Commission.*

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([1]) OJ C 312, 19.12.2009.

## Judgment of the General Court of 3 October 2012 — Jurašinović v Council

**(Case T-465/09)** [1]

***(Access to documents — Regulation (EC) No 1049/2001 — Request for access to reports of European Union observers present in Croatia from 1 to 31 August 1995 — Refusal to grant access — Risk of undermining the protection of international relations — Previous disclosure)***

(2012/C 355/47)

*Language of the case: French*

### Parties

*Applicant:* Ivan Jurašinović (Angers, France) (represented by: M. Jarry and N. Amara-Lebret, lawyer)

*Defendant:* Council of the European Union (represented by: initially C. Fekete and K. Zieleśkiewicz, subsequently C. Fekete and J. Herrmann, acting as Agents)

### Re:

By way of principal claim, annulment of the decision of 22 September 2009 by which the applicant was granted partial access to reports of European Union observers present in the Knin zone of Croatia on from 1 August to 31 August 1995

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders Mr Ivan Jurašinović to bear his own costs and to pay those incurred by the Council of the European Union.*

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[1] OJ C 24, 30.1.2010.

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## Judgment of the General Court of 27 September 2012 — El Corte Inglés v OHIM — Pucci International (PUCCI)

**(Case T-39/10)** [1]

***(Community trade mark — Opposition proceedings — Application for the Community word mark PUCCI — Earlier national figurative and word marks Emidio Tucci and E. TUCCI — Application for the earlier Community figurative mark Emidio Tucci — Relative grounds for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) and Article 15(1)(a) of Regulation (EC) No 207/2009 — Unfair advantage taken of the distinctive character or the repute of the earlier mark — Article 8(5) of Regulation No 207/2009)***

(2012/C 355/48)

*Language of the case: English*

### Parties

*Applicant:* El Corte Inglés, SA (Madrid, Spain) (represented initially by E. López Camba, J.L. Rivas Zurdo and E. Seijo Veiguela and, subsequently, by J.L. Rivas Zurdo and E. Seijo Veiguela, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Emilio Pucci International BV (Amsterdam, Netherlands), (represented by: P. Roncaglia, G. Lazzeretti, M. Boletto and E. Gavuzzi, lawyers)

### Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 October 2009 (Case R 173/2009-1), relating to opposition proceedings between El Corte Inglés, SA and Emilio Pucci International BV.

### Operative part of the judgment

*The Court:*

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA to pay the costs.*

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[1] OJ C 100, 17.4.2010.

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## Judgment of the General Court of 3 October 2012 — Jurašinović v Council

**(Case T-63/10)** [1]

***(Access to documents — Regulation (EC) No 1049/2001 — Request for access to certain documents exchanged with the International Criminal Tribunal for the former Yugoslavia during proceedings — Refusal to grant access — Risk of undermining the protection of international relations — Risk of undermining the protection of judicial proceedings and legal advice)***

(2012/C 355/49)

*Language of the case: French*

### Parties

*Applicant:* Ivan Jurašinović (Angers, France) (represented by: N. Amara-Lebret, lawyer)

*Defendant:* Council of the European Union (represented by: initially C. Fekete and K. Zieleśkiewicz, subsequently C. Fekete and J. Herrmann)

### Re:

By way of principal claim, annulment of the Council's decision of 7 December 2009 refusing it access to the Council's decisions relating to the transmission to the International Criminal Tribunal for the former Yugoslavia of the documents which that Tribunal requested in connection with the proceedings relating to Mr Ante Gotovina and all the correspondence exchanged in that connection by the EU Institutions and that Tribunal, including any annexes, and particularly the initial requests for documents from both that Tribunal and Mr Gotovina's lawyers.

**Operative part of the judgment**

*The Court:*

1. *Annuls the Council's decision of 7 December 2009 refusing Mr Ivan Jurašinović access to the Council's decisions relating to the transmission to the International Criminal Tribunal for the former Yugoslavia of the documents which that Tribunal requested in connection with the proceedings relating to Mr Ante Gotovina and all the correspondence exchanged in that connection by the EU Institutions and that Tribunal, including any annexes, and particularly the initial requests for documents from both that Tribunal and Mr Gotovina's lawyers, in so far as he was refused access to correspondence between the Council and that Tribunal, and to documents other than the reports drawn up by the European Community's surveillance mission, annexed to that correspondence;*

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

3. *Orders each party to bear its own costs.*

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([1]) OJ C 113, 1.5.2010.

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## Judgment of the General Court of 27 September 2012 — J v Parliament

**(Case T-160/10)** ([1])

***(Right of petition — Petition addressed to the European Parliament — Decision to take no further action — Action for annulment — Duty to state reasons — Petition not falling within an area of activity of the European Union)***

(2012/C 355/50)

*Language of the case: German*

**Parties**

*Applicant:* J (Marchtrenk, Austria) (represented by: A. Auer, lawyer)

*Defendant:* European Parliament (represented by: N. Lorenz and N. Görlitz, agents)

**Re:**

Action for annulment of the decision of the European Parliament's Committee on Petitions of 2 March 2010 to take no further action in relation to the petition lodged by the applicant on 19 November 2009 (petition No 1673/2009).

**Operative part of the judgment**

1. *The action is dismissed;*

2. *Mr J is ordered to pay the costs.*

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([1]) OJ C 238, 13.8.2011.

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## Judgment of the General Court of 4 October 2012 — Greece v Commission

**(Case T-215/10)** ([1])

***(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Cotton — Aid to the least well-off — Rural development — Effectiveness of supervision — Proportionality)***

(2012/C 355/51)

*Language of the case: Greek*

**Parties**

*Applicant:* Hellenic Republic (represented: initially by I. Khalkias, G. Skiani and E. Leftheriotou, subsequently I. Khalkias, E. Leftheriotou and X. Basakou, acting as Agents)

*Defendant:* European Commission (represented by: H. Tserepa-Lacombe and A. Markoulli, acting as Agents, assisted by N. Korogiannakis, lawyer)

**Re:**

Annulment of Commission Decision 2001/152/EU of 11 March 2010 excluding from Community financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGGF), Guarantee Section of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2010 L 63, p. 7) as Decision 2001/152/EU, in so far as it excludes certain expenditure incurred by the Hellenic Republic.

**Operative part of the judgment**

*The Court:*

1. *Dismisses the action;*

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

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([1]) OJ C 195, 17.7.2010.

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## Judgment of the General Court of 27 September 2012 — Italy v Commission

**(Case T-257/10)** ([1])

***(State aid — Undertaking with subsidiaries in certain third countries — Reduced rate loans — Decision declaring aid incompatible in part with the internal market and ordering it to be repaid — Decision taken following the annulment by the General Court of the initial decision concerning the same procedure — Force of res judicata — Duty to state reasons)***

(2012/C 355/52)

*Language of the case: Italian*

**Parties**

*Applicant:* Italian Republic (represented by: P. Gentili and M. Fiorilli, avvocati dello Stato)

*Defendant:* European Commission (represented by: V. Di Bucci and D. Grespan, agents)

**Re:**

Application for annulment of Commission Decision 2011/134/EU of 24 March 2010 concerning State aid C 4/03 (ex NN 102/02) implemented by Italy for Wam SpA (OJ 2011 L 57, p. 29).

**Operative part of the judgment**

1. *The action is dismissed;*

2. *The Italian Republic is ordered to pay the costs.*

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([1]) OJ C 221, 14.8.2010.

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## Judgment of the General Court of 27 September 2012 — Wam Industriale v Commission

**(Case T-303/10)** ([1])

***(State aid — Undertaking with subsidiaries in certain third countries — Reduced rate loans — Decision declaring aid in part incompatible with the internal market and ordering it to be repaid — Decision taken following the annulment by the General Court of the initial decision concerning the same procedure — Execution of a judgment of the General Court — Obligation to state reasons — Principle of sound administration — Duty to exercise diligence — Duty of care)***

(2012/C 355/53)

*Language of the case: Italian*

**Parties**

*Applicant:* Wam Industriale SpA (Modena, Italy) (represented by: G. M. Roberti and I. Perego, lawyers)

*Defendant:* European Commission (represented by: V. Di Bucci and D. Grespan, agents)

**Re:**

Application for annulment of Commission Decision 2011/134/EU of 24 March 2010 concerning State aid C 4/03 (ex NN 102/02) implemented by Italy for Wam SpA (OJ 2011 L 57, p. 29).

**Operative part of the judgment**

1. *The action is dismissed;*

2. *Wam Industriale SpA is ordered to pay the costs.*

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([1]) OJ C 246, 11.9.2010.

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## Judgment of the General Court of 2 October 2012 — ELE.SI.A v Commission

**(Case T-312/10)** ([1])

***(Arbitration clause — Sixth multiannual framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002 to 2006) — Contract concerning the 'I-Way, Intelligent, co-operative system in cars for road safety' project — Termination of the contract — Request for repayment of the financial contribution paid — Damages — Action seeking to obtain the full financial contribution requested and to challenge the request for repayment — Counterclaim)***

(2012/C 355/54)

*Language of the case: Italian*

**Parties**

*Applicant:* Elettronica e sistemi per automazione (ELE.SI.A) SpA (Guidonia Montecelio, Italy) (represented by: P. Tomassi, S. Baratti and P. Caprile, lawyers)

*Defendant:* European Commission (represented by: A. Aresu and A. Sauka, Agents)

**Re:**

Application seeking payment of the financial contribution to which the applicant considers that it is entitled under the terms of Contract No 27195, entered into on 13 December 2005 between the Commission and the applicant, relating to the research project entitled 'I-Way, Intelligent, co-operative system in cars for road safety', and a counterclaim for repayment of a part of the financial contribution paid and for payment of damages.

**Operative part of the judgment**

*The General Court:*

1. *Dismisses the action brought by Elettronica e sistemi per automazione (ELE.SI.A) SpA;*

2. *Orders ELE.SI.A to pay to the European Commission a sum of EUR 184 129,74, plus interest from 18 May 2010, together with a sum of EUR 7 344,46, plus interest from 18 June 2010;*

3. *Orders ELE.SI.A to pay the costs.*

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([1]) OJ C 260, 25.9.2010.

## Judgment of the General Court of 3 October 2012 –Yilmaz v OHIM — Tequila Cuervo (TEQUILA MATADOR HECHO EN MEXICO)

**(Case T-584/10)** [1]

***(Community trade mark — Opposition proceedings — Application for the Community figurative mark TEQUILA MATADOR HECHO EN MEXICO — Earlier national and international word marks MATADOR — Relative ground for refusal — No likelihood of confusion — No similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)***

(2012/C 355/55)

*Language of the case: English*

**Parties**

*Applicant:* Mustafa Yilmaz (Stuttgart, Germany) (represented: initially by F. Kuschmirek, and subsequently by F. Stangl, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court:* Tequila Cuervo, SA de CV (Tlaquepaque, Jalisco, Mexico) (represented by: S. Salvetti, lawyer)

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of 13 October 2010 (Case R 1162/2009-2), concerning opposition proceedings between Mustafa Yilmaz and Tequila Cuervo, SA de CV.

**Operative part of the judgment**

*The Court:*

1. *Holds that it is unnecessary to adjudicate on the action in so far as it seeks the annulment of the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 13 October 2010 (Case R 1162/2009-2) in so far as it accepted registration of the mark applied for in respect of 'alcoholic beverages';*

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

3. *Orders Mustafa Yilmaz to bear his own costs and to pay those incurred by OHIM and by Tequila Cuervo, SA de CV.*

[1] OJ C 55, 19.2.2011.

## Order of the General Court of 21 September 2012 — TI Media Broadcasting and TI Media v Commission

**(Case T-501/10)** [1]

***(Competition — Concentrations — Italian pay-TV market — Decision modifying the commitments attached to a decision declaring a concentration compatible with the common market and the EEA agreement — Call for tenders for the award of digital terrestrial television frequencies in Italy — Action devoid of purpose — No need to adjudicate — Inadmissibility)***

(2012/C 355/56)

*Language of the case: Italian*

**Parties**

*Applicants:* Telecom Italia Media Broadcasting Srl (TI Media Broadcasting) (Rome, Italy) and Telecom Italia Media SpA (TI Media) (Rome) (represented by: B. Caravita di Toritto, L. Sabelli, F. Pace and A. d'Urbano, lawyers)

*Defendant:* European Commission (represented by: initially B. Gencarelli and P. Manzini, and subsequently L. Malferrari and J. Bourke, acting as Agents)

*Intervener in support of the defendant*: Sky Italia Srl (Milan, Italy) (represented by: F. González Díaz and F. Salerno, lawyers)

**Re:**

Application for annulment of Commission Decision C(2010) 4976 final of 20 July 2010 modifying the commitments attached to a decision declaring a concentration compatible with the common market and the EEA agreement (Case COMP/M.2876).

**Operative part of the order**

1. *There is no further need to adjudicate on the first and fourth heads of claim.*

2. *The remainder of the application is dismissed.*

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

[1] OJ C 346, 18.12.2010.

## Order of the President of the General Court of 19 September 2012 — Greece v Commission

**(Case T-52/12 R)**

***(Application for interim measures — State aid — Compensation payments made in 2008 and 2009 by the Greek Agricultural Insurance Organisation (ELGA) — Decision declaring the aid incompatible with the internal market and ordering its recovery — Application for suspension of operation of the decision — Prima facie case — Urgency — Weighing up of interests)***

(2012/C 355/57)

*Language of the case: Greek*

**Parties**

*Applicant:* Hellenic Republic (represented by: I. Khalkias and S. Papaïoannou, acting as Agents)

*Defendant:* European Commission (represented by: D. Triantafyllou and S. Thomas, acting as Agents)

**Re:**

Application for suspension of operation of Commission Decision 2012/157/EU of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) for the years 2008 and 2009 (OJ 2012 L 78, p. 21).

**Operative part of the order**

1. *The operation of Commission Decision 2012/157/EU of 7 December 2011 concerning compensation payments made by the Greek Agricultural Insurance Organisation (ELGA) in 2008 and 2009 is suspended in so far as that decision obliges the Hellenic Republic to recover the sums paid from the beneficiaries.*

2. *Costs are reserved.*

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## Action brought on 25 September 2012 — CW v Council

**(Case T-162/12)**

(2012/C 355/58)

*Language of the case: French*

**Parties**

*Applicant:* CW (Paris, France) (represented by: A. Tekari, lawyer)

*Defendant:* Council of the European Union

**Form of order sought**

— declare the application admissible and well founded;

— consequently, declare Decision 2012/50/CFSP null and void in all its effects, in so far as it relates to the applicant;

— order the Council to pay the costs, as well as EUR 2 500 000 in respect of non-recoverable expenses.

**Pleas in law and main arguments**

In support of the action, the applicant relies on five pleas in law, alleging (i) an infringement of the rules of procedure and the rights of the defence; (ii) a lack of legal basis; (iii) an infringement of Article 1 of Decision 2011/72/CFSP [1] and an insufficient statement of reasons; (iv) an error of assessment; and (v) a disproportionate infringement of the right to property and of entrepreneurial freedom.

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[1] Council Decision 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia (OJ 2011 L 28, p. 62).

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## Action brought on 8 August 2012 — Harper Hygienics v OHIM — Clinique Laboratories (CLEANIC natural beauty)

**(Case T-363/12)**

(2012/C 355/59)

*Language in which the application was lodged: Polish*

**Parties**

*Applicant:* Harper Hygienics S.A. (Warsaw, Poland) (represented by: R. Rumpel, legal adviser)

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

*Other party to the proceedings before the Board of Appeal:* Clinique Laboratories LLC (New York, United States)

**Form of order sought**

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 May 2012 (Case R 1134/2001-2) refusing registration of 'CLEANIC natural beauty' as a Community trade mark for goods in Classes 3, 5 and 16;

— amend the contested decision by registration of the trade mark for all the goods and services applied for;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Harper Hygienics

*Community trade mark concerned:* figurative trade mark containing the word element 'CLEANIC natural beauty' for goods in Classes 3, 5 and 16

*Proprietor of the mark or sign cited in the opposition proceedings:* Clinique Laboratories LLC

*Mark or sign cited in opposition:* Community trade marks No 54 429 for goods in Classes 3, 14, 25 and 42 and No 2 294 429 for goods in Classes 35 and 42, and national (Polish) mark No 51 732 for goods in Classes 3 and 5

*Decision of the Opposition Division:* opposition upheld

*Decision of the Board of Appeal:* appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009 [1] as regards establishment of the similarity of the trade marks and of the likelihood of confusion on the part of consumers, and infringement of Article 8(5) of that regulation

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

## Action brought on 8 August 2012 — Harper Hygienics v OHIM — Clinique Laboratories (CLEANIC Kindii)

**(Case T-364/12)**

(2012/C 355/60)

*Language in which the application was lodged: Polish*

**Parties**

*Applicant:* Harper Hygienics S.A. (Warsaw, Poland) (represented by: R. Rumpel, legal adviser)

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

*Other party to the proceedings before the Board of Appeal:* Clinique Laboratories LLC (New York, United States)

**Form of order sought**

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 May 2012 (Case R 1135/2001-2) refusing registration of 'CLEANIC Kindii' as a Community trade mark for goods in Classes 3, 5 and 16;

— amend the contested decision by registration of the trade mark for all the goods and services applied for;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Harper Hygienics

*Community trade mark concerned:* figurative trade mark containing the word element 'CLEANIC Kindii' for goods in Classes 3, 5 and 16

*Proprietor of the mark or sign cited in the opposition proceedings:* Clinique Laboratories LLC

*Mark or sign cited in opposition:* Community trade marks No 54 429 for goods in Classes 3, 14, 25 and 42 and No 2 294 429 for goods in Classes 35 and 42, and national (Polish) mark No 51 732 for goods in Classes 3 and 5

*Decision of the Opposition Division:* opposition upheld

*Decision of the Board of Appeal:* appeal dismissed

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation No 207/2009 [1] as regards establishment of the similarity of the trade marks and of the likelihood of confusion on the part of consumers, and infringement of Article 8(5) of that regulation

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

## Action brought on 21 August 2012 — Electric Bike World v OHIM — Brunswick (LIFECYCLE)

**(Case T-379/12)**

(2012/C 355/61)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Electric Bike World Ltd (Southampton, United Kingdom) (represented by: S. Malynicz, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Brunswick Corp. (Lake Forest, United States)

**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 16 May 2012 in case R 2308/2011-1; and

— Order the Office and the other party to bear their own costs and pay those of the applicant.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'LIFECYCLE' for goods in classes 12, 18 and 25 — Community trade mark application No 8546401

*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:* Spanish trade mark registration No 1271758 of the word mark 'LIFECYCLE', for goods in class 28

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

*Decision of the Board of Appeal:* Annulled the contested decision to the extent that it rejected the opposition for goods in class 12; rejected the CTM application for these goods; and dismissed the appeal for the remaining goods in class 12

*Pleas in law:* Infringement of Articles 8(1)(b) and 75 of Council Regulation No 207/2009.

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**Action brought on 24 August 2012 — Kampol v OHIM — Colmol (Nobel)**

**(Case T-382/12)**

(2012/C 355/62)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Kampol sp. z o.o. (Świdnica, Poland) (represented by: J. Kępiński, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Colmol-Colchões, SA (Oliveira de Azeméis, Portugal)

**Form of order sought**

— Accept the appeal and annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 June 2012 in case R 2286/2011-4;

— Reject in its entirety the opposition No B 1762742 (Community trade mark application No 9080078);

— Order OHIM to register the trade mark applied for;

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

— Alternatively, refer back the case to the Fourth Board of Appeal to hear the case once again, in accordance with the binding criteria established by the Court of Justice.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'Nobel' in colours black, gold and red, for goods in classes 10 and 24 — Community trade mark application No 9080078

*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:* Portuguese trade mark registration No 373184 of the word mark 'NOBEL', for goods in class 20

*Decision of the Opposition Division:* Upheld the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) Council Regulation No 207/2009.

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**Action brought on 24 August 2012 — Ferienhäuser zum See v OHIM — Sunparks Groep (Sun Park Holidays)**

**(Case T-383/12)**

(2012/C 355/63)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Ferienhäuser zum See GmbH (Marienmünster, Germany) (represented by: M. Boden and I. Höfener, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Sunparks Groep NV (Den Haan, Belgium)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 June 2012 in case R 1928/2011-4;

— Annul the decision of the Opposition Division of 25 July 2011; and

— Order OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'Sun Park Holidays Die wohl kinderfreundlichste Art Campingurlaub zu machen!' in colours blue, yellow and black, for services in classes 39 and 43 — Community trade mark application No 9078049

*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 6852453 for the figurative mark in colours blue and green 'Sunparks Holiday Parks', for services in classes 39, 41 and 43; Benelux trade mark registration No 834301 of the word mark 'SUNPARK'; Benelux trade mark registration No 853882 and International registration No 992185 for the figurative mark 'SUNPARKS'

*Decision of the Opposition Division:* Upheld the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) Council Regulation No 207/2009.

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**Action brought on 30 August 2012 — Elite Licensing v OHIM — Aguas De Mondariz Fuente del Val (elite BY MONDARIZ)**

**(Case T-386/12)**

(2012/C 355/64)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Elite Licensing Company SA (Fribourg, Suisse) (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:* Aguas De Mondariz Fuente del Val, SL (Mondariz, Spain)

**Form of order sought**

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 June 2012 in case R 9/2011-5; and

— Order the defendant 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 'elite BY MONDARIZ', for goods and services in classes 32, 38 and 39 — Community trade mark application No 6957872

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

*Mark or sign cited in opposition::* Community trade mark registration No 4995114 for the word mark 'ELITE MODEL LOOK', for goods and services in classes 8, 9, 11, 21 and 38; Community trade mark application No 5765185 for the figurative mark 'elite', for goods and services in classes 3, 5, 8, 9, 10, 11, 12, 14, 16, 18, 20, 21, 24, 25, 26, 28, 32, 35, 38, 41, 43 and 44; International trade mark registration No 949195 for the figurative mark 'elite', for goods and services in classes 3, 5, 8, 9, 10, 11, 12, 14, 16, 18, 20, 21, 24, 25, 26, 28, 32, 35, 38, 41, 43 and 44

*Decision of the Opposition Division:* Upheld the opposition and rejected the Community trade mark application in its entirety

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the opposition

*Pleas in law:*

— Infringement of Rules 48(2), 49(1) and 96 (1) of Commission Regulation No 2868/95; and

— Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009.

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**Action brought on 5 September 2012 — Lifted Research and LRG Europe/OHIM — Fei Liangchen (Lr geans)**

**(Case T-390/12)**

(2012/C 355/65)

*Language in which the application was lodged: English*

**Parties**

*Applicants:* Lifted Research Group, Inc (Irvine, United States) and LRG Europe Ltd (Hertfordshire, United Kingdom) (represented by: M. Edenborough, QC)

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

*Other party to the proceedings before the Board of Appeal:* Fei Liangchen (Zhejiang, China)

**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 13 June 2012 in case R 1199/2010-2; and

— Order the defendant to pay to the applicants the applicants' costs of and occasioned by this appeal; alternatively, if the other party to the proceedings intervenes, the defendant and the intervener are jointly and severally liable to pay to the applicants the applicants' costs of and occasioned by this appeal.

**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 'Lr geans', for goods and services in classes 3, 18 and 25 — Community trade mark application No 5572631

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

*Mark or sign cited in opposition:* Community trade mark registration No 2473627 for the word mark 'LIFTED RESEARCH GROUP', for goods in class 8; Community trade mark registration No 1591478 for the word mark 'LIFTED RESEARCH GROUP', for goods in class 25; Community trade mark registration No 4709325 for the word mark 'L R G', for goods and services in classes 3, 9, 16, 25, 28, 35, 41 and 42; Community trade mark registration No 2473601 for the word mark 'L R G', for goods in class 18; Community trade mark registration No 1591452 for the word mark 'L R G', for goods in class 25; Community trade mark registration No 4708897 for the figurative mark representing a tree with a cross, for goods in classes 3, 9 and 25; Community trade mark registration No 4709218 of the figurative mark 'L', for goods in classes 9, 18 and 25; Community trade mark application No 4988127 of the figurative mark 'L', for goods and services in classes 3, 18, 25 and 35; Non-registered signs used in the course of trade in the European Union 'LIFTED RESEARCH GROUP', 'LRG', 'L r geans', 'L', 'Lrg', 'Lr geans', for goods in classes 3, 18 and 25.

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

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:*

— Infringement of Articles 8(1)(b) and 8(5) of Council Regulation No 207/2009; and

— Infringement of Article 8(4) of Council Regulation No 207/2009 in conjunction with Rule 19(1) of Commission Regulation No 2868/95.

## Action brought on 5 September 2012 — Lidl Stiftung v OHIM — Unipapel Industria Comercio y Servicios (UNITED OFFICE)

**(Case T-391/12)**

(2012/C 355/66)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Wolter and S. Paul, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Unipapel Industria Comercio y Servicios, SL (Tres Cantos, 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 21 June 2012 in case R 745/2011-1; and

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

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark 'UNITED OFFICE', for goods in classes 9, 16 and 20 — Community trade mark application No 7454606

*Proprietor of the Community trade mark:* The applicant

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

*Grounds for the application for a declaration of invalidity:* The request for a declaration of invalidity was based on the grounds laid down in Article 53(1) of Council Regulation No 207/2009, and on Community trade mark registration No 1445832 of the word mark 'UNIOFFICE', for goods in class 16

*Decision of the Cancellation Division:* Revoked the challenged Community trade mark in respect of part of the goods

*Decision of the Board of Appeal:* Dismissed the appeal

Pleas in law:

— Infringement of Article 15(1) in combination with Article 42(2) and (3) of Council Regulation No 207/2009 and Rule 22(3) and (4) of Commission Regulation No 2868/95

— Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

## Action brought on 4 September 2012 — Tsujimoto v OHIM — Kenzo (KENZO)

**(Case T-393/12)**

(2012/C 355/67)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Kenzo Tsujimoto (Osaka, Japan) (represented by: A. Wenninger-Lenz, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Kenzo SA (Paris, France)

### 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 May 2012 in case R 1659/2011-2; and

— Order the defendant to bear the costs of the proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'KENZO', for goods in class 33 — Community trade mark application No 6334544

*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 720706 for the word mark 'KENZO', for goods and services in classes 3, 18 and 25

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the CTM application in its entirety

*Pleas in law:*

— Infringement of Article 8(5) of Council Regulation No 40/94; and

— Infringement of Articles 75 and 76 of Council Regulation No 40/94.

## Action brought on 4 September 2012 — Fetim v OHIM — Solid Floor (Solidfloor The professional's choice)

**(Case T-395/12)**

(2012/C 355/68)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Fetim BV (Amsterdam, Netherlands) (represented by: L. Bakers, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Solid Floor Ltd (London, United Kingdom)

### 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 15 June 2012 in case R 884/2011-2; and

— Order OHIM 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:* The figurative mark 'Solidfloor The professional's choice', for goods in class 19 — Community trade mark application No 5667837

*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:* United Kingdom trade mark registration No 2390415 of the figurative mark 'SOLID floor', for goods in classes 19 and 37; Trade name 'Solid Floor Ltd' used in the course of trade in the United Kingdom; Domain name 'SOLID floor' used in the course of trade in the United Kingdom

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

*Decision of the Board of Appeal:* Annulled the contested decision, upheld the opposition in its entirety and rejected the CTM application

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

**Action brought on 14 September 2012 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (Ubee Interactive)**

**(Case T-407/12)**

(2012/C 355/69)

*Language in which the application was lodged: English*

**Parties**

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

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

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

**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 12 July 2012 in case R 1849/2011-2; and

— Order the defendant to bear the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The word mark 'Ubee Interactive', for goods and services in classes 9 and 38 — Community trade mark application No 7397326

*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 7130248 of the word mark 'QUBEE', for goods and services in classes 9, 37, 38 and 42; Community trade mark No 7224603 of the figurative mark 'QUBEE', for goods and services in classes 9, 37, 38 and 42

*Decision of the Opposition Division:* Upheld the opposition in its entirety

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

**Action brought on 14 September 2012 — Ubee Interactive v OHIM — Augere Holdings (Netherlands) (ubee)**

**(Case T-408/12)**

(2012/C 355/70)

*Language in which the application was lodged: English*

**Parties**

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

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

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

**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 11 July 2012 in case R 1848/2011-2; and

— Order the defendant to bear the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'ubee', for goods and services in classes 9 and 38 — Community trade mark application No 7467111

*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 7130248 of the word mark 'QUBEE', for goods and services in classes 9, 37, 38 and 42; Community trade mark No 7224603 of the figurative mark 'QUBEE', for goods and services in classes 9, 37, 38 and 42

*Decision of the Opposition Division:* Upheld the opposition in its entirety

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

## Action brought on 6 September 2012 — Vitaminaqua Ltd v OHIM

**(Case T -410/12)**

(2012/C 355/71)

*Language in which the application was lodged: Hungarian*

**Parties**

*Applicant:* Vitaminaqua Ltd (London, United Kingdom) (represented by: A. Krajnyák, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Energy Brands, Inc. (New York, United States of America)

**Form of order sought**

— Amend the decision of the First Board of Appeal of OHIM rejecting application No 8338592 for registration of the figurative mark 'vitaminaqua' (Case R 997/2011-1) and order the registration of the trade mark in accordance with the decision of the Opposition Division of OHIM, thereby conferring protection as a trade mark on the sign;

— Order the defendant or the other party to bear the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Vitaminaqua Ltd.

*Community trade mark concerned:* the figurative mark 'vitaminaqua' for goods in Classes 5, 30 and 32 (application for registration No 8 338 592).

*Proprietor of the mark or sign cited in the opposition proceedings:* Energy Brands, Inc.

*Mark or sign cited in opposition:* inter alia the national word mark 'VITAMINWATER' for goods in Classes 5, 30 and 32.

*Decision of the Opposition Division:* opposition rejected.

*Decision of the Board of Appeal:* decision of the Opposition Division set aside and application for registration as a Community trade mark rejected.

*Pleas in law:* infringement of Article 8(1)(b) of Regulation No 207/2009, [1] since there is no likelihood of confusion between the marks at issue.

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

## Action brought on 14 September 2012 — Xeda International and Others v Commission

**(Case T-415/12)**

(2012/C 355/72)

*Language of the case: English*

**Parties**

*Applicants:* Xeda International SA (Saint-Andiol, France); Pace International LLC (Washington, United States); and Decco Iberica Post Cosecha, SAU (Paterna, Spain) (represented by: C. Mereu and K. Van Maldegem, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Declare the application admissible and well-founded;

— Annul Commission Implementing Regulation (EU) No 578/2012 [1]; and

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

**Pleas in law and main arguments**

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

1. First plea in law, alleging that the contested act is unlawful for manifest errors of appraisal. The Commission has erred as a matter of law in justifying the contested act on the grounds of hypothetical concerns: (i) the three unidentified metabolites and (ii) processed commodities. In relation to these concerns, the Commission also erred in law by asking the applicants for *probatio diabolica*, namely by asking for the identity of the unidentified metabolites in stored apples whereas this was technically impossible, and by asking the applicants to demonstrate an absence of risk in relation to low risk compounds found below the Limit of Quantification (LOQ) in processed commodities.

2. Second plea in law, alleging that the contested act is unlawful for violations of due process and right of defence. The contested act is based on a report from the European Food Safety Authority ('EFSA') which introduced a new requirement — the submission of a fully validated analytical method — at a very late stage of the evaluation procedure. The applicants submitted the requested data to the Rapporteur, who in turn evaluated it and prepared a conclusion whereby the data were sufficient to address the issue raised by EFSA. However, the Commission disregarded the new data. Moreover, the applicants were not given an opportunity to address the issue due to the Commission's misunderstanding of Commission Regulation (EC) No 33/2008 [2] concerning the submission of new data.

3. Third plea in law, alleging that the contested act is unlawful because it is disproportionate. Even if it were accepted that the new studies could not be taken into consideration, the Commission could have adopted an inclusion decision with less restrictive measures, such as making it subject to confirmatory data.

[1] Commission Implementing Regulation (EU) No 578/2012 of 29 June 2012 concerning the non approval of the active substance diphenylamine, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ 2012 L 171, p. 2)

[2] Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Council Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I (OJ 2008 L 15, p. 5)

## Action brought on 20 September 2012 — HP Health Clubs Iberia v OHIM — Shiseido (ZENSATIONS)

**(Case T-416/12)**

(2012/C 355/73)

*Language in which the application was lodged: Spanish*

### Parties

*Applicant:* HP Health Clubs Iberia, SA (Barcelona, Spain) (represented by: S. Serrat Viñas, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Shiseido Company Ltd (Tokyo, Japan)

### Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 June 2012 in Case R 2212/2010-1;

— reject the opposition brought by Shiseido Company Ltd;

— refer the case back to OHIM for it to register the mark is respect of which registration was sought for all the contested services; and

— order the defendant and the other party involved in the case to pay the costs incurred by the applicant in these proceedings and in the earlier proceedings before OHIM.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* figurative mark 'ZENSATIONS' for services in Classes 35 and 44 — Community trade mark No 5 778 303

*Proprietor of the mark or sign cited in the opposition proceedings:* Shiseido Company Ltd

*Mark or sign cited in opposition:* word mark 'ZEN' for goods and services in Classes 3, 21 and 44

*Decision of the Opposition Division:* opposition rejected

*Decision of the Board of Appeal:* appeal upheld

Pleas in law:

— Infringement of the second sentence of Article 75 and Article 76(1) and (2) of Regulation No 207/2009;

— Infringement of Article 8(2)(b) of Regulation No 207/2009

## Action brought on 26 September 2012 — Kappa Filter Systems v OHIM (THE FUTURE HAS ZERO EMISSIONS)

**(Case T-422/12)**

(2012/C 355/74)

*Language of the case: German*

### Parties

*Applicant:* Kappa Filter Systems GmbH (Steyr-Gleink, Austria) (represented by C. Hadeyer, 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 10 July 2012 in Case R 817/2012-4;

— order OHIM to pay the costs.

**Pleas in law and main arguments**

*Community trade mark concerned:* the word mark 'THE FUTURE HAS ZERO EMISSIONS' for goods and services in Classes 9, 11 and 37 — Community trade mark application No 010139749

*Decision of the Examiner:* the application was rejected

*Decision of the Board of Appeal:* the appeal was dismissed

*Pleas in law:* Infringement of Article 7(1)(b) of Regulation No 207/2009

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**Action brought on 27 September 2012 — Skype v OHIM — British Sky Broadcasting and Sky IP International (skype)**

**(Case T-423/12)**

(2012/C 355/75)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Skype (Dublin, Ireland) (represented by: I. Fowler, Solicitor, J. Schmitt, lawyer, and J. Mellor, QC)

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

*Other parties to the proceedings before the Board of Appeal:* British Sky Broadcasting Group plc (Isleworth, United Kingdom); and Sky IP International Ltd (Isleworth)

**Form of order sought**

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 July 2012 in case R 1561/2010-4; and

— Order that the costs of the proceedings be borne by the defendant.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant

*Community trade mark concerned:* The figurative mark 'skype', for goods and services in classes 9, 38 and 42 — Community trade mark application No 4546248

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

*Mark or sign cited in opposition:* Community trade mark registration No 3203411 for the word mark 'SKY', for inter alia goods and services in classes 9, 38, 41 and 42; United Kingdom trade mark registration No 2302176 E for the word mark 'SKY', for inter alia goods and services in classes 16, 35 and 38; United Kingdom trade mark registration No 2302176 B for the word mark 'SKY', for inter alia goods and services in classes 9, 41 and 42; Community trade mark registration No 1178409 of the figurative mark 'sky', for inter alia goods and services in classes 9, 38 and 42; Community trade mark registration No 1178540 of the figurative mark 'sky', for inter alia goods and services in classes 9, 38 and 42; Community trade mark registration No 3166337 of the figurative mark 'sky', for inter alia goods and services in classes 9, 38 and 42; Community trade mark registration No 3203619 of the figurative mark 'sky', for inter alia goods and services in classes 9, 38 and 42; United Kingdom trade mark 'SKY', for goods and services in classes 9, 16, 38, 41 and 42; Earlier non-registered trade mark, trade name and company name 'SKY' used in the course of trade in the United Kingdom, for goods and services in classes 9, 16, 38, 41 and 42

*Decision of the Opposition Division:* Upheld the opposition for all the contested goods and services

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation No 207/2009.

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**Action brought on 26 September 2012 — Sport Eybl & Sports Experts v OHIM — Elite Licensing (e)**

**(Case T-425/12)**

(2012/C 355/76)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Sport Eybl & Sports Experts GmbH (Wels, Austria) (represented by: B. Gumpoldsberger, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Elite Licensing Company SA (Fribourg, Switzerland)

**Form of order sought**

The applicant claims that the Court should:

— annul the part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 June 2012 in Case R 881/2011-1 with which the opponent's appeal was upheld and the registration of the Community trade mark applied for by the applicant in respect of Classes 9, 12, 18, 22, 25 and 28 was refused; and

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

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the figurative mark including the letter 'e' for goods and services in Classes 9, 12, 18, 22, 25, 28 and 42 — Community trade mark application No 6 220 421

*Proprietor of the mark or sign cited in the opposition proceedings:* Elite Licensing Company SA

*Mark or sign cited in opposition:* the national, international and Community figurative mark including the letter 'e' for goods and services in Classes 3, 5, 8, 9, 10, 11, 12, 14, 16, 18, 20, 21, 24, 25, 26, 28, 32, 35, 38, 41, 43 and 44

*Decision of the Opposition Division:* the opposition was rejected

*Decision of the Board of Appeal:* the appeal was upheld in part

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

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**Action brought on 2 October 2012 — Heinrich v OHIM — Commission (European Network Rapid Manufacturing)**

**(Case T-430/12)**

(2012/C 355/77)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Heinrich Beteiligungs GmbH (Witten, Germany) (represented by: A. Theis, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 July 2012 in Case R 793/2011-1;

— order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* the figurative mark including the word elements 'European Network Rapid Manufacturing' for goods and services in Classes 6, 7, 12, 17 and 42 — Community trade mark No 7 407 968

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade mark:* European Commission

*Grounds for the application for a declaration of invalidity:* the figurative mark is an imitation from a heraldic point of view of the European emblem

*Decision of the Cancellation Division:* the application for a declaration of invalidity was rejected

*Decision of the Board of Appeal:* the appeal was upheld and the figurative mark was declared invalid

*Pleas in law:* Infringement of Article 7(1)(h) of Regulation No 207/2009 in conjunction with Article 6*ter*(1)(a) of the Paris Convention for the Protection of Industrial Property

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**Order of the General Court of 26 September 2012 — Deutsche Telekom v OHIM TeliaSonera Denmark (Nuance de magenta)**

**(Case T-583/10)** [1]

(2012/C 355/78)

*Language of the case: English*

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

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[1] OJ C 55, 19.2.2011.

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**Order of the General Court of 20 September 2012 — Western Digital and Western Digital Ireland v Commission**

**(Case T-452/11)** [1]

(2012/C 355/79)

*Language of the case: English*

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

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[1] OJ C 305, 15.10.2011.

**Order of the General Court of 14 September 2012 — Skyhawke Technologies v OHIM — British Sky Broadcasting and Sky IP International (SKYCADDIE)**

**(Case T-484/11)** ([1])

(2012/C 355/80)

*Language of the case: English*

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

([1]) OJ C 319, 29.10.2011.

**Order of the General Court of 20 September 2012 — Western Digital and Western Digital Ireland v Commission**

**(Case T-60/12)** ([1])

(2012/C 355/81)

*Language of the case: English*

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

([1]) OJ C 98, 31.3.2012.

**Order of the General Court of 20 September 2012 — Tioxide Europe and Others v Council**

**(Case T-116/12)** ([1])

(2012/C 355/82)

*Language of the case: English*

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

([1]) OJ C 126, 28.4.2012.

**Order of the General Court of 27 September 2012 — Ålands Industrihus v Commission**

**(Case T-212/12)** ([1])

(2012/C 355/83)

*Language of the case: Swedish*

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

([1]) OJ C 227, 28.7.2012.

# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Action brought on 9 August 2012 — ZZ v Commission

**(Case F-86/12)**

(2012/C 355/84)

*Language of the case: Polish*

### Parties

*Applicant:* ZZ (represented by: A. Lizer-Klatka, legal adviser)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the decision not to extend the validity of reserve list EPSO/AD/60/6 in relation to the applicant by the period that she spent on maternity and parental leave.

### Form of order sought

— Annul the decision of 17 October 2011 terminating the validity of reserve list EPSO AD/60/06 on 31 December 2011 in relation to the applicant and the decision of 10 May 2012 issued in response to the applicant's complaint No R/147111, and extend the validity of reserve list EPSO AD/60/06 in relation to the applicant by the period that she spent on maternity and parental leave while that list was valid, that is to say, by the period of 3 years and 46 days;

— Order that the parties shall each bear their own costs in accordance with Article 89(3) of the Rules of Procedure of the European Union Civil Service Tribunal of 25 July 2007 and the applicant's arguments contained in paragraph 56 et seq. of the present application.

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## Action brought on 17 September 2012 — ZZ v Commission

**(Case F-97/12)**

(2012/C 355/85)

*Language of the case: French*

### Parties

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

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Annulment of the decision of the European Commission not to recruit the applicant after her success in the EPSO/AD/177/10-EPA competition and a claim for damages.

### Form of order sought

— Annul the decision of the Appointing Authority of 11 November 2011 refusing to grant the request of the European Commission Directorate General for Regional Policy to recruit the applicant by appointing her and assigning her as an official to the vacant post COM/2011/218;

— Annul the decision of the Appointing Authority of 5 June 2012 rejecting in part the appeal against the decision of the Appointing Authority of 11 November 2011 refusing to grant the request of the Directorate General for Regional Policy to recruit the applicant as an official;

— Order the European Commission to reconstruct the applicant's career;

— Order the European Commission to pay EUR 14 911,07 in addition to payment of contributions to the pension scheme from October 2011;

— Order the European Commission to pay EUR 2 500 in respect of the material and non-material damage caused, subject to increase or reduction during the proceedings, those sums to be increased by late-payment interest calculated from the date on which the sums were due at the rate applied by the ECB to its main refinancing operations plus two points;

— Order the European Commission to pay the costs.

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