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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 58/01)

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

OJ C 49, 18.2.2012

Past publications

OJ C 39, 11.2.2012

OJ C 32, 4.2.2012

OJ C 25, 28.1.2012

OJ C 13, 14.1.2012

OJ C 6, 7.1.2012

OJ C 370, 17.12.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 30 November 2011 by Liga para a Protecção da Natureza (LPN) against the judgment of the General Court (Third Chamber) delivered on 9 September 2011 in Case T-29/08 Liga para a Protecção da Natureza (LPN) v European Commission

(Case C-514/11 P)

(2012/C 58/02)

Language of the case: Portuguese

Parties

Appellant: Liga para a Protecção da Natureza (LPN) (represented by: P. Vinagre e Silva, advogada)

Other parties to the proceedings: European Commission, Kingdom of Denmark, Republic of Finland, Kingdom of Sweden

Form of order sought

— Set aside in part the judgment of the General Court, delivered on 9 September 2011 in Case T-29/08, in so far as it:

1. dismisses the claims of the appellant, LPN, (without annulling the Commission decision of 22 November 2007);

2. orders LPN to bear its own costs and to pay the costs incurred by the Commission;

since, in both cases, the General Court makes various errors of assessment which vitiate its judgment.

— Uphold the claims of the appellant, annulling the Commission decision of 22 November 2007 in so far as it relates to the documents and parts of documents to which it continued to be denied access by the decision of 24 October 2008.

— Order the Commission to bear its own costs and pay the costs incurred by the appellant at first and second instance.

Pleas in law and main arguments

The judgment of the General Court dismissed the action brought by LPN against the Commission decision of 22 November 2007, in so far as it relates to the documents and parts of documents to which the appellant continued to be denied access by the decision of 24 October 2008.

The contested decision must be annulled on the grounds of the following errors of law:

(i) Misinterpretation of Article 6(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies; ([1])

(ii) Misinterpretation of Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; ([2])

(iii) Error of assessment in the apportionment of the costs of the proceedings.

Consequently, the form of order sought by the appellant at first instance should be granted, and the Commission decision of 22 November 2007 annulled, in so far as it relates to the documents and parts of documents to which the appellant continued to be denied access by the decision of 24 October 2008.

([1]) OJ 2006 L 264, p. 13.
([2]) OJ 2001 L 145, p. 43.

Appeal brought on 23 November 2011 by Inuit Tapiriit Kanatami and others against the order of the General Court (Seventh Chamber, Extended Composition) delivered on 6 September 2011 in Case T-18/10: Inuit Tapiriit Kanatami and others v European Parliament, Council of the European Union, Kingdom of the Netherlands, European Commission

(Case C-583/11 P)

(2012/C 58/03)

Language of the case: English

Parties

Appellants: Inuit Tapiriit Kanatami, Nattivak Hunters' and Trappers' Association, Pangnirtung Hunters' and Trappers' Association, Jaypootie Moesesie, Allen Kooneeliusie, Toomasie Newkingnak, David Kuptana, Karliin Aariak, Canadian Seal Marketing Group, Ta Ma Su Seal Products, Inc., Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Council Greenland (ICC), Johannes Egede, Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) (represented by: H. Viaene, avocat, J. Bouckaert, advocaat)

Other parties to the proceedings: European Parliament, Council of the European Union, Kingdom of the Netherlands, European Commission

Form of order sought

The Appellants claim that the Court should:

— Annul the order under appeal of the General Court and declare the application for annulment admissible, should the Court of Justice consider that all elements required to decide on the admissibility of the action for annulment of the contested Regulation [1] are present;

— In the alternative, annul the order under appeal and refer the case back to the General Court;

— Order the European Parliament and the Council of the European Union to pay the Appellants' costs;

— Order the European Commission and the Kingdom of the Netherlands to pay their own costs.

Pleas in law and main arguments

1. The Appeal is based on three main grounds of appeal: 1) the General Court erred in law in the application of Article 263, fourth paragraph, of the Treaty on the Functioning of the European Union ('TFEU'), 2) the General Court violated the duty to state reasons and, in subsidiary order, violated Articles 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Articles 6 and 13 of the European Convention for the protection of Human Rights and Fundamental Freedoms ('ECHR'), as principles of the Union's law, and 3) that the General Court wrongly presented and distorted the evidence adduced by the Applicants at first instance.

2. In the First Ground of Appeal, the Appellants allege that the interpretation given by the General Court to the term 'regulatory act', i.e., as separate and exclusive of a 'legislative act', is erroneous as it negates any *raison d'être* of the new possibility for the institution of proceedings based on Article 263, fourth paragraph (first part of the first ground of appeal). In the second part of the first ground of appeal, the Appellants also demonstrate that the General Court erred in law by concluding that only four of the eighteen Appellants are directly concerned by the contested Regulation. The General Court applied a too restrictive interpretation to the concept of direct concern. The General Court also erred in law by applying too restrictive an interpretation of the requirement of individual concern.

3. In the Second Ground of Appeal, the Appellants recall that in their observations on the pleas of inadmissibility, they had submitted that only a broad interpretation of Article 263, fourth paragraph, TFEU would be in conformity with Article 47 of the Charter Articles 6 and 13 ECHR. Given that this plea of law was decisive for the outcome of the case, the General Court was under a legal duty to provide for a specific and express reply. The Appellants demonstrate, however, that the General Court did not adequately address this plea of law. The omission of the General Court to do so constitutes an error in law which shall result in the annulment of the order under appeal (first part of the second ground of appeal). In the second part of the second ground of appeal, and in subsidiary order, the Appellants respectfully invite the Court of Justice to annul the order under appeal on the ground that the interpretation of Article 263, fourth paragraph, and the consequent decision of the General Court to declare the Appellant's action inadmissible, violates Article 47 of the Charter and Articles 6 and 13 ECHR, as general principles of the Union's law.

4. In the Third Ground of Appeal, the Appellants claim that the General Court wrongly presented and distorted the evidence they had adduced. Indeed, the General Court rejects the Appellants' argument concerning the interpretation to be given to the term 'regulatory act' on the basis of two claims that the Appellants allegedly made, but in reality did not. The findings of fact of the order under appeal are therefore incorrect and distort the clear sense of the evidence available to the General Court, without it being necessary to undertake a fresh assessment of the facts. Since the General Court interpreted the arguments adduced in a way that is at odds with their wording, the finding of the General Court in the order under appeal is vitiated by some manifest errors of assessment.

[1] Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products OJ L 286, p. 36

Appeal brought on 29 November 2011 by Republic of Finland against the judgment delivered on 9 September 2011 in Case T-29/08 Liga para Protecção da Natureza (LPN) v European Commission

(Case C-605/11P)

(2012/C 58/04)

Language of the case: Portuguese

Parties

Appellant: Republic of Finland (represented by: J. Heliskoski and M. Pere)

Other parties to the proceedings: Liga para Protecção da Natureza (LPN), European Commission, Kingdom of Denmark, Kingdom of Sweden

Form of order sought

— set aside the judgment under appeal in so far as the General Court rejected the LPN's application;

— annul the contested decision of the Commission and order the Commission to pay the costs incurred by Finland in the present appeal.

Pleas in law and main arguments

In Case T-29/08 Liga para Protecção da Natureza (LPN) v European Commission, the General Court infringed Article 58 of the Statute of the Court of Justice because it did not annul the contested decision of the Commission of 22 November 2007 in so far as the LPN was refused access to documents and parts of documents by the Commission decision of 24 October 2008.

1. The General Court erred in law when it interpreted the third indent of Article 4(2) Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ([1]) ('the Openness Regulation') as meaning that all the documents relating to the case in the main proceedings are protected as a class of documents so that the institution may refuse access to all the documentary material concerning the infringement proceedings based on the general presumption according to which the disclosure of the information contained in such documents in principle undermines the protection of the purpose of investigations.

2. The General Court incorrectly interpreted the last part of Article 4(2) of the Openness Regulation and Article 6(1) of Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ([2]) when assessing whether the Commission took into consideration any overriding reasons of public interest before refusing the request for access. The General Court incorrectly interpreted the relevant rules because it failed to verify properly whether the Commission had balanced, in accordance with the requirements set out in those rules, the interest protected in the third indent of Article 4(2) of the Openness Regulation and the possible overriding public interest in the disclosure of the requested documents.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 9 December 2011 — European Commission v Kingdom of the Netherlands

(Case C-635/11)

(2012/C 58/05)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to ensure that, in the case of a company resulting from a cross-border merger which has its registered office in the Netherlands, the employees of establishments of that company that are situated in other Member States have the same entitlement to exercise participation rights as is enjoyed by the employees employed in the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under subparagraph (b) of Article 16(2) (introductory sentence and second part of the sentence) of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies; ([1])

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

It is apparent from Article 16(2)(b) of Directive 2005/56/EC that the national law of the Member State in which the company resulting from the cross-border merger has its registered office must provide that employees of establishments of the company resulting from the cross-border merger that are situated in other Member States are to have the same entitlement to exercise participation rights in the company resulting from the cross-border merger as is enjoyed by those employees employed in the Member State in which that new company has its registered office.

Consequently, the national law transposing Directive 2005/56 must provide for all the situations envisaged in Article 16(2) of that directive.

This has not been the case in the Netherlands.

(1) OJ 2005 L 310, p. 1.

Action brought on 14 December 2011 — European Commission v Italian Republic

(Case C-641/11)

(2012/C 58/06)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Rozet and L. Pignataro)

Defendant: Italian Republic

Form of order sought

— Declare that, by retaining as a condition for priority in the selection of candidates at least two years residence in the province of Bolzano, as provided for in Article 12 of DPR 752/1976, the Italian Republic has failed to fulfil its obligations under Article 45 TFEU and Article 3(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union; (1)

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

By its action, the Commission complains about the inclusion of a provision affording priority in the selection of candidates on the basis of at least two years residence in the province of Bolzano (Trentino Alto Adige), a provision which is contrary to the obligations imposed by Article 45 TFEU and also by Article 3(1) of Regulation (EU) 492/2011. The Commission recalls that, according to settled case-law of the Court of Justice, the equal treatment rule laid down in Article 45 TFEU prohibits not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other distinguishing criteria, lead in fact to the same result (see, in particular, Case C-237/94 *O'Flynn* (1996) ECR I-2617, paragraph 17). That concerns, inter alia, a measure which draws a distinction on the basis of residence.

In their reply to the reasoned opinion of 6 August 2010, the Italian authorities admitted that '(t)he residence clause contained in Article 12 of DPR 752/1976 could contain elements of indirect discrimination and therefore be contrary to Article 45 TFEU' and that '(i)n order to resolve this problem, the text of the article will be amended without further ado'. The Commission has not hitherto received any information concerning the amendment in question and therefore concludes that the residence condition provided for in Article 12 of DPR 752/1976 is still in force.

(1) OJ 2011 L 141, p. 1.

Appeal brought on 19 December 2011 by Cooperativa Vitivinícola Arousana, S. Coop. Galega against the judgment of the General Court (Third Chamber) delivered on 5 October 2011 in Case T-421/10 Cooperativa Vitivinícola Arousana, S. Coop. Galega v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and María Constantina Sotelo Ares

(Case C-649/11 P)

(2012/C 58/07)

Language of the case: Spanish

Parties

Appellant: Cooperativa Vitivinícola Arousana, S. Coop. Galega (represented by: I. Temiño Ceniceros, Abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and María Constantina Sotelo Ares

Form of order sought

The appellant claims that the Court should:

— declare the appeal admissible;

— set aside in full the judgment of the General Court of 5 October 2011 in Case T-421/10;

— order OHIM to pay the costs.

Pleas in law and main arguments

1. Infringement by the General Court of the duty to state reasons and, in particular, of Article 36 of Protocol (No 3) on the Statute of the Court of Justice of the European Union, in conjunction with Article 53 thereof.

2. Infringement of the rights of defence of Cooperativa Vitivinícola Arousana, S. Coop. Galega and of the right to a fair hearing and, in particular, of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. Infringement of Article 8(1)(b) of Council Regulation No 207/2009 (1) of 26 February 2009.

(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 December 2011 — European Parliament v Council of the European Union

(Case C-658/11)

(2012/C 58/08)

Language of the case: English

Parties

Applicant: European Parliament (represented by: R. Passos, A. Caiola and M. Allik, Agent)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer; ([1])

— order that the effects of Council Decision 2011/640/CFSP of 12 July 2011 be maintained until it is replaced;

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

Pleas in law and main arguments

The European Parliament considers that Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer is invalid because it does not relate exclusively to the common foreign and security policy, as expressly provided for in Article 218(6), second paragraph, TFEU.

The European Parliament considers that the Agreement between the European Union and the Republic of Mauritius also relates to judicial cooperation in criminal matters,.police cooperation, and development cooperation, covering fields to which the ordinary legislative procedure applies.

Therefore, this Agreement should have been concluded after obtaining the consent of the European Parliament in accordance with Article 218(6)(a)(v) TFEU.

For this reason the Council has violated the Treaties by failing to choose the appropriate legal basis for the conclusion of the Agreement.

Furthermore, the European Parliament considers that the Council has violated Article 218(10) TFEU, because it did not inform Parliament fully and immediately at the stages of negotiation and conclusion of the Agreement.

Should the Court of Justice annul the contested Decision, the European Parliament nonetheless proposes that the Court exercise its discretion to maintain the effects of the contested Decision, in accordance with Article 264, second paragraph, TFEU, until such time as it is replaced.

([1]) OJ L 254, p. 1

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 3 January 2012 — P Oy

(Case C-6/12)

(2012/C 58/09)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: P Oy

Other party: Veronsaajien oikeudenvalvontayksikkö

Questions referred

1. In the context of an authorisation procedure, such as that in Paragraph 122(3) of the Law on income tax, must the criterion of selectivity in Article 107(1) TFEU be interpreted as precluding the authorisation of the deduction of losses in the case of changes of ownership if the procedure referred to in the last sentence of Article 108(3) TFEU is not observed?

2. In the interpretation of the criterion of selectivity, in particular in order to determine the reference group, is it necessary to take into account the general rule on the deductibility of established losses in Paragraphs 117 and 118 of the Law on income tax or the provisions concerning changes of ownership?

3. If the criterion of selectivity in Article 107 TFEU is a priori regarded as being fulfilled, may the system resulting from Paragraph 122(3) of the Law on income tax be regarded as justified by the fact that it is a mechanism inherent in the tax system itself which is necessary for example in order to prevent tax evasion?

4. When assessing possible justification and whether the system is a mechanism inherent in the tax system, what importance must be given to the extent of the discretion of the tax authorities? Is it necessary, as regards the mechanism inherent in the tax system itself, that the body applying the law has no discretion and that the conditions for the application of the derogation are set out precisely in the legislation?

GENERAL COURT

Judgment of the General Court (Seventh Chamber) of 17 January 2012 — Italy v Commission

(Case T-135/07) [1]

(Health policy — Avian influenza — Italian market in poultrymeat — Request of the Italian authorities to adopt exceptional measures to support the market — Commission decision rejecting that request)

(2012/C 58/10)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aieelo, G. Palmieri, lawyers, and by M. Moretto, lawyer)

Defendant: European Commission (represented by: C. Cattabriga, Agent)

Re:

Application for annulment of the Commission's decision of 7 February 2007 rejecting the request of the Italian authorities to adopt exceptional measures to support the Italian market in poultrymeat within the meaning of Article 14 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat (OJ 1975 L 282, p. 77).

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 7 February 2007 rejecting the request of the Italian authorities to adopt exceptional measures to support the Italian market in poultrymeat within the meaning of Article 14 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat;*

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

[1] OJ C 140, 23.6.2007.

Judgment of the General Court (Second Chamber) of 18 January 2012 — Djebel — SGPS v Commission

(Case T-422/07) [1]

(State aid — Aid scheme designed to promote modern and competitive entrepreneurial strategies — Planned aid for a commercial company in the form of a soft loan in order to help finance an investment by that company in Brazil — Decision declaring aid to be incompatible with the common market — Obligation to state reasons — Impairment of competition — Effect on trade between Member States — Equal treatment)

(2012/C 58/11)

Language of the case: Portuguese

Parties

Applicant: Djebel — SGPS SA (Funchal, Portugal) (represented by: M. Andrade Neves and S. Castro Caldeira, lawyers)

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

Re:

Action for annulment of Commission Decision 2007/582/EC of 10 May 2007 on State aid C 4/2006 (ex N 180/2005) — Portugal — Aid to Djebel (OJ 2007 L 219, p. 30).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Djebel — SGPS, SA to bear its own costs and to pay those of the European Commission.*

[1] OJ C 64, 8.3.2008.

Judgment of the General Court of 18 January 2012 — Tilda Riceland Private v OHIM — Siam Grains (BASMALI)

(Case T-304/09) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark BASmALI — Earlier non-registered trade mark and earlier sign BASMATI — Relative ground for refusal — Article 8(4) of Regulation (EC) No 40/94 (now Article 8(4) of Regulation (EC) No 207/2009))

(2012/C 58/12)

Language of the case: English

Parties

Applicant: Tilda Riceland Private Ltd (Gurgaon, India) (represented by: S. Malynicz, Barrister, N. Urwin and D. Sills, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Siam Grains Co. Ltd (Bangkok, Thailand) (represented by: C. Thomas-Raquin, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 19 March 2009 (Case R 513/2008-1) relating to opposition proceedings between Tilda Riceland Private Ltd and Siam Grains Co. Ltd.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 19 March 2009 (Case R 513/2008-1);*

2. *Orders OHIM to bear its own costs and to pay two thirds of the costs incurred by Tilda Riceland Private Ltd;*

3. *Orders Siam Grains Co. Ltd to bear its own costs and to pay one third of the costs incurred by Tilda Riceland Private Ltd.*

([1]) OJ C 244, 10.10.2009.

Judgment of the General Court of 17 January 2012 — Kitzinger v OHIM — Mitteldeutscher Rundfunk and Zweites Deutsches Fernsehen (KICO)

(Case T-249/10) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark KICO — Earlier national figurative mark and Community word mark KIKA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 58/13)

Language of the case: German

Parties

Applicant: Kitzinger & Co. (GmbH & Co. KG) (Hamburg, Germany) (represented by: S. Kitzinger, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM, interveners before the General Court: Mitteldeutscher Rundfunk (Leipzig, Germany) and Zweites Deutsches Fernsehen (Mainz, Germany) (represented by: B. Krause and F. Cordt, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 March 2010 (Case R 1388/2008-4), relating to opposition proceedings between, on the one hand, Mitteldeutscher Rundfunk and Zweites Deutsches Fernsehen and, on the other hand, Kitzinger & Co. (GmbH & Co. KG)

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Kitzinger & Co. (GmbH & Co. KG) to pay the costs.*

([1]) OJ C 209, 31.7.2010.

Judgment of the General Court of 17 January 2012 — Hamberger Industriewerke v OHIM (Atrium)

(Case T-513/10) ([1])

(Community trade mark — Application for the Community word mark Atrium — Absolute ground for refusal — Descriptive character — Lack of distinctive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2012/C 58/14)

Language of the case: German

Parties

Applicant: Hamberger Industriewerke GmbH (Stephanskirchen, Germany) (represented by: T. Schmidpeter, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 August 2010 (Case R 291/2010-4), concerning an application for registration of the word mark Atrium as a Community trade mark

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Hamberger Industriewerke GmbH to pay the costs.*

([1]) OJ C 13, 15.1.2011.

Judgment of the General Court of 17 January 2012 — Hell Energy Magyarország v OHIM — Hansa Mineralbrunnen (HELL)

(Case T-522/10) ([1])

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

(2012/C 58/15)

Language of the case: English

Parties

Applicant: Hell Energy Magyarország kft (Budapest, Hungary) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Hansa Mineralbrunnen GmbH (Rellingen, Germany) (represented by: A. Renck, V. von Bomhard, E. Nicolás Gómez and T. Dolde, lawyers)

Re:

Action against the decision of the First Board of Appeal of OHIM of 5 August 2010 (Case R 1517/2009-1), relating to opposition proceedings between Hansa Mineralbrunnen GmbH and Hell Energy Magyarország.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hell Energy Magyarország kft to pay the costs.*

([1]) OJ C 13, 15.1.2011.

Order of the General Court of 9 January 2012 — Neubrandenburger Wohnungsgesellschaft v Commission

(Case T-407/09) ([1])

(Action for annulment — State aid — Contracts for the sale of apartments as part of the privatisation of publicly-owned apartments in Neubrandenburg — Complaint — Act not subject to review — Inadmissibility — Action for failure to act)

(2012/C 58/16)

Language of the case: German

Parties

Applicant: Neubrandenburger Wohnungsgesellschaft mbH (Neubrandenburg, Germany) (represented by M. Núñez-Müller and J. Dammann, lawyers)

Defendant: European Commission (represented by B. Martenczuk and K. Gross, agents)

Interveners in support of the defendant: Bavaria Immobilien Beteiligungsgesellschaft mbH & Co. Objekte Neubrandenburg KG (Berlin, Germany); and Bavaria Immobilien Trading GmbH & Co. Immobilien Leasing Objekt Neubrandenburg KG (Berlin) (represented by C. von Donat, lawyer)

Re:

Action, first, for annulment of the Commission decision claimed to be contained in the letter of 29 July 2009 declaring that some contracts concluded by the applicant regarding the sale of apartments as part of the privatisation of publicly-owned apartments in Neubrandenburg did not fall within the scope of Article 87(1) EC and, second, for a declaration of the Commission's failure to act, under Article 232 EC, since the Commission did not define its position on those contracts on the basis of Article 4 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article (88 EC) (OJ 1999 L 83, p. 1).

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *Neubrandenburger Wohnungsgesellschaft mbH shall bear its own costs and pay the costs incurred by the Commission and by Bavaria Immobilien Beteiligungsgesellschaft mbH & Co. Objekte Neubrandenburg KG and Bavaria Immobilien Trading GmbH & Co. Immobilien Leasing Objekt Neubrandenburg KG.*

([1]) OJ C 312, 19.12.2009.

Order of the General Court of 11 January 2012 — Phoenix-Reisen and DRV v Commission

(Case T-58/10) ([1])

(Action for annulment — State aid — German system of allowances paid to employees of insolvent undertakings and the financing thereof — Decision finding no State aid — Inadmissibility)

(2012/C 58/17)

Language of the case: German

Parties

Applicants: Phoenix-Reisen GmbH (Bonn, Germany); and Deutscher Reiseverband eV (DRV) (Berlin, Germany) (represented by R. Gerharz, lawyer)

Defendant: European Commission (represented by L. Flynn and B. Martenczuk, agents)

Intervener in support of the defendant: Federal Republic of Germany (represented by T. Henze, J. Möller and B. Klein, agents)

Re:

Action for annulment of Commission Decision C(2009) 8707 final of 19 November 2009 declaring that the system of allowances paid to employees of insolvent undertakings and the financing thereof under German legislation does not constitute State aid (State aid NN 55/2009) (OJ 2009 C 323, p. 5).

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *Phoenix-Reisen GmbH and Deutscher Reiseverband eV (DRV) shall bear their own costs and pay the costs incurred by the European Commission.*

3. *The Federal Republic of Germany shall bear its own costs.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 11 January 2012 — Ben Ali v Council

(Case T-301/11) ([1])

(Common foreign and security policy — Restrictive measures taken in the light of the situation in Tunisia — Action for annulment — Time-limit for bringing proceedings — Out of time — No force majeure — No excusable error — Application for alteration of the contested measure — Claim for compensation — Manifest inadmissibility)

(2012/C 58/18)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Tunis, Tunisia) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union (represented initially by A. Vitro and R. Liudvinaviciute-Cordeiro, and subsequently by R. Liudvinaviciute-Cordeiro and M. Bishop, Agents)

Re:

First, action for annulment of Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia (OJ 2011 L 31, p. 1), in so far as it concerns the applicant and, second, an application seeking an order for the Council to adopt certain derogations to the freezing of funds imposed by the regulation and a claim for damages for the harm allegedly suffered by the applicant.

Operative part of the order

1. *The order is dismissed.*

2. *Mr Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali is ordered to bear his own costs and to pay those incurred by the Council of the European Union.*

3. *There is no need to give a ruling on the application for leave to intervene by the European Commission.*

([1]) OJ C 226, 30.7.2011.

Action brought on 16 December 2011 — Boehringer Ingelheim International v OHIM (RELY-ABLE)

(Case T-640/11)

(2012/C 58/19)

Language of the case: English

Parties

Applicant: Boehringer Ingelheim International GmbH (Ingelheim am Rhein, Germany) (represented by: V. von Bomhard, A. Renck and C. Steudtner, lawyers)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2011 in case R 756/2011-4;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'RELY-ABLE' for services in classes 38, 41 and 42 — International Registration (IR) No 1044333

Decision of the Examiner: Rejected the protection of the mark in the European Union for all the services applied for.

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal erred in finding that the sign applied for is 'not particularly fanciful or arbitrary' and an 'obvious misspelling of the word reliable' with the result that it would be perceived as laudatory. It further erred when assuming that misspellings are 'a frequent feature of promotional messages' and that this was relevant to the case at hand.

Action brought on 19 December 2011 — Asos v OHIM — Maier (ASOS)

(Case T-647/11)

(2012/C 58/20)

Language in which the application was lodged: English

Parties

Applicant: Asos plc (London, United Kingdom) (represented by: P. Kavanagh, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Roger Maier (San Pietro di Stabio, Switzerland)

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 17 October 2011 in case R 2215/2010-4;

— Authorise registration of the application mark in respect of all of the goods and services covered by the specification of the application mark; and

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ASOS', for goods and services in classes 3, 14, 18, 25 and 35 — Community trade mark application No 4524997

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 4580767 of the word mark 'ASSOS', for goods in classes 3, 12 and 25

Decision of the Opposition Division: Partially upheld the opposition

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

Pleas in law: The Board of Appeal failed to properly consider co-existence and its effect on the global assessment of the likelihood of confusion, and erred in dismissing the relevance of the evidence of co-existence. Further, the Board of Appeal erred in its assessment of the conceptual meaning of the application mark and failed to take into account the correct conceptual meaning of the application mark in assessing likelihood of confusion based on a global assessment.

Action brought on 21 December 2011 — Smart Technologies/OHMI (SMART NOTEBOOK)

(Case T-648/11)

(2012/C 58/21)

Language of the case: English

Parties

Applicant: Smart Technologies ULC (Calgary, Canada) (represented by: M. Edenborough, QC, T. Elias, Barrister, and R. Harrison, Solicitor)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 September 2011 in case R 942/2011-1;

— In the alternative, alter the contested decision of the First Board of Appeal to state that the application possesses sufficient distinctive character that no objection to its registration may be raised under Articles 7(1)(b) or (c) of the Regulation; and

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'SMART NOTEBOOK' for goods in class 9 — Community trade mark application No 9049313

Decision of the Examiner: Rejected the Community trade mark application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and 7(1)(c) of Council Regulation No 207/2009, as the Board of Appeal wrongly found that the Community trade mark application was devoid of any distinctive character. Further, the applicant submits that the application is not descriptive of the applicant's goods, rather it has a distinctive character that enables the application to function as an indication of trade origin for the goods in question. In particular the applicant submits that the Board: (a) applied the wrong test when considering whether or not a mark was descriptive of the goods for which registration was sought; (b) failed to consider the fact that the applicant had a family of 'Smart' marks, and wrongly confused this issue with the concept of acquired distinctiveness under Article 7(3) of the Regulation; and (c) wrongly dismissed the submission relating to legitimate expectation in the circumstances where the other marks upon which reliance was placed were all owned by the applicant, as opposed to marks owned by third parties.

Action brought on 23 December 2011 — Sabbagh v Council

(Case T-652/11)

(2012/C 58/22)

Language of the case: French

Parties

Applicant: Bassam Sabbagh (Damas, Syria) (represented by: M.-A. Bastin and J.-M. Salva, lawyers)

Defendant: Council of the European Union

Form of order sought

— Declare the present application admissible in its entirety;

— Declare it well founded in all its pleas;

— Hold that the contested measures can be annulled in part since that part of the measures to be annulled can be separated from the measure as a whole;

— Consequently,

  — annul in part Decision 2011/782 of 1 December 2011, which repeals Decision 2011/273/CFSP concerning restrictive measures against Syria and Implementing Regulation (EU) No 1151/2011 of 14 November 2011 implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria by removing the name of Mr Bassam Sabbagh from the list of persons subject to sanctions;

  — failing that, annul Decision 2011/782 of 1 December 2011, which repeals Decision 2011/273/CFSP concerning restrictive measures against Syria and Implementing Regulation (EU) No 1151/2011 of 14 November 2011 implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria by removing Mr Bassam Sabbagh from the list of persons subject to sanctions;

— Failing that, declare those decisions and regulation inapplicable to Mr Bassam Sabbagh and order the removal of his name and details from the list of persons subject to European Union sanctions;

— Order the Council to pay 500 000 dollars in damages provisionally as compensation for the non-pecuniary and material harm suffered owing to the inclusion of Mr Bassam Sabbagh in the list of persons subject to sanctions;

— Order the Council to pay all the costs and in particular all charges, fees and disbursements incurred by the applicant for his defence at the present instance.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment, since the applicant disputes the grounds advanced against him in the contested measures.

2. Second plea in law, alleging infringement of the rights of the defence and of the right to a fair hearing, since the contested measures were not notified to the applicant and nor was he sent any evidence or serious indications to justify his inclusion in the list of persons subject to sanctions.

3. Third plea in law, alleging infringement of the duty to state reasons, in that the defendant merely used an affirmative wording in the contested measures, without stating reasons, when adopting the restrictive measures against the applicant.

4. Fourth plea in law, alleging infringement of the right to an effective judicial review, since the infringement of the duty to state reasons prevents the European Court from carrying out its review of the lawfulness of the contested measures.

5. Fifth plea in law, alleging infringement of the right to property, since the sanctions adopted disproportionately affect the applicant's right freely to dispose of his assets.

6. Sixth plea in law, alleging harm resulting from the inclusion of the applicant in the list of persons subject to sanctions, since the publication of the contested measures in the press has had an impact on the legitimate confidence which the applicant's clients had in him.

Action brought on 26 December 2011 — Jaber v Council

(Case T-653/11)

(2012/C 58/23)

Language of the case: French

Parties

Applicant: Jaber (Lattakia, Syria) (represented by: M. Ponsard, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— admit this action applying an accelerated procedure;

— annul, in so far as those acts concern the applicant;

— Decision 2011/273/CFSP as amended and supplemented up to now, including all the decisions cited in Chapter 12 of the application;

— Regulation No 442/2011 as amended and supplemented up to now, including all the regulations cited in Chapter 13 of the application;

— Decision 2011/782/CFSP as amended and supplemented up to now;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two plea(s) in law.

1. First plea in law, alleging infringement of fundamental rights and procedural guarantees, in particular the right to be heard, rights of defence, the obligation to state reasons and the principle of effective judicial protection, in so far as the applicant has not received formal notification of his inclusion on the list of persons sanctioned and in so far as the defendant has not responded to the applicant's questions and has not explained on what grounds the applicant's name was added to the lists at issue.

2. Second plea in law, alleging infringement of the right to property and the principle of economic freedom, as the contested measures adversely affect the applicant's commercial activities.

Action brought on 26 December 2011 — Kaddour v Council

(Case T-654/11)

(2012/C 58/24)

Language of the case: French

Parties

Applicant: Khaled Kaddour (Damas, Syria) (represented by: M. Ponsard, lawyer)

Defendant: Council of the European Union

Form of order sought

— Admit this action to be examined under the accelerated procedure;

— Annul, in so far as those acts refer to the applicant:

— Decision 2011/273/CFSP as completed and amended to date, including all decisions cited in Chapter 13 of the application;

— Regulation No 442/2011 as completed and amended to date, including all regulations cited in Chapter 14 of the application;

— Decision 2011/782/CFSP as completed and amended to date;

— Order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law which are essentially identical or similar to those raised in Case T-653/11 *Jaber* v *Council*.

Action brought on 22 December 2011 — FSL and Others v Commission

(Case T-655/11)

(2012/C 58/25)

Language of the case: English

Parties

Applicants: FSL Holdings (Antwerp, Belgium), Firma Léon Van Parys (Antwerp, Belgium) and Pacific Fruit Company Italy SpA (Rome, Italy) (represented by: P. Vlaemminck and C. Verdonck, lawyers)

Defendant: European Commission

Form of order sought

— Annul Articles 1 and 2 of the Decision of the Commission of 12 October 2011 rendered in Case COMP/39.482 — Exotic Fruits — Bananas;

— In subsidiary order, annul Article 2 of the contested decision insofar as it imposes a fine on the applicants of EUR 8 919 000 and to reduce the fine in line with the arguments raised by the applicants in the application before the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of essential procedural requirements and the rights of defence, as:

— Documents obtained solely for the purpose of a national tax investigation were used;

— Documents from other files were used; and

— The immunity applicant has been illegally steered.

2. Second plea in law, alleging misuse of powers by the defendant.

3. Third plea in law, alleging an incorrect assessment of evidence, as well as the inability of the evidence to support the finding of an infringement.

4. Fourth plea in law, alleging an infringement of Article 23(3) of Council Regulation (EC) No 1/2003 [1] and of the 2006 fining guidelines [2] due to a manifest incorrect assessment of the gravity and duration of the infringement, as well as of the mitigating circumstances, and a breach of the principle of non-discrimination in the calculation of the fine.

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

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

Action brought on 29 December 2011 — Morison Menon Chartered Accountants and Others v Council

(Case T-656/11)

(2012/C 58/26)

Language of the case: English

Parties

Applicants: Morison Menon Chartered Accountants (Dubai, United Arab Emirates); Morison Menon Chartered Accountants — Dubai Office (Dubai); and Morison Menon Chartered Accountants — Sharjah Office (Sharjah, United Arab Emirates) (represented by: H. Viaene, T. Ruys and D. Gillet, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran [1] and Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran [2] insofar as they concern the applicants;

— Order the Council to pay the costs incurred by the applicants, as well as its own.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — an infringement of the duty to state reasons on the part of the Council, as well as the applicants' rights of defence, in particular the right to be heard and to an effective judicial remedy;

2. Second plea in law, alleging

   — a manifest error of assessment on the part of the Council;

3. Third plea in law, alleging

   — an infringement of the right to property.

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[1] OJ L 319, 2.12.2011, p. 11

[2] OJ L 319, 2.12.2011, p. 71

Action brought on 21 December 2011 — Commission/OHMI — European Alliance for Solutions and Innovations (EASI European Alliance Solutions Innovations)

(Case T-659/11)

(2012/C 58/27)

Language in which the application was lodged: English

Parties

Applicant: European Commission (represented by: A. Berenboom, A. Joachimowicz, and M. Isgour, lawyers, J. Samnadda, and F. Wilman, Agents)

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

Other party to the proceedings before the Board of Appeal: European Alliance for Solutions and Innovations Ltd (London, United Kingdom)

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 11 October 2011 in case R 1991/2010-4;

— Declare therefore invalid the Community trademark No 6112403 registered on 17 October 2008 by the other party to the proceedings before the Board of Appeal in classes 36, 37, 44 and 45; and

— 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 'EASI European Alliance Solutions Innovations' in the colours 'yellow, light blue, blue', for services in classes 36, 37, 44 and 45 — Community trade mark registration No 6112403

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

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds laid down in Article 52(1)(a) in conjunction with Article 7(1)(c) and (h) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Rejected the request for declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The contested decision infringes Article 7(1)(h) of Council Regulation No 207/2009 in conjunction with Article 6 ter (1) of the Paris Convention in so far as the Community trade mark ('CTM') has been registered, although its registration falls within the scope of prohibition laid down in those provisions. The contested decision also violates Article 7(1)(g) in so far as such a registration would deceive the public by making them believe that the products and services for which the CTM is registered are approved or endorsed by the European Union or one of its institutions.

Action brought on 28 December 2011 — Veloss and Attimedia v Parliament

(Case T-667/11)

(2012/C 58/28)

Language of the case: English

Parties

Applicants: Veloss International SA (Brussels, Belgium) and Attimedia SA (Brussels) (represented by: N. Korogiannakis, lawyer)

Defendant: European Parliament

Form of order sought

— Annul the decision of the European Parliament to select the bid of the applicants filed in response to the open call for tenders no EL/2011/EU 'Translation into Greek' ([1]), as second on the list of successful tenders, communicated to the applicants by letter dated 18 October 2011 and all related decisions taken subsequently by the defendant, including the one to award the respective contract to the first successful tender;

— Order the European Parliament to pay damages to the applicants for loss of opportunity and reputational damage in the amount of 10 000 EUR (euros);

— Order the European Parliament to pay legal and other costs and expenses incurred in connection with the present application, even if it is dismissed by the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that the evaluation committee systematically mixed the selection and award criteria and various phases of the tendering procedure;

2. Second plea in law, alleging

   — that the European Parliament infringed Article 100 (2) of the Financial Regulation ([2]) by not disclosing to the applicants the financial offer of the successful tender, in spite of their written request;

3. Third plea in law, alleging

   — various shortcomings of the evaluation method applied by the evaluation committee and further, contesting composition of the latter, lack of effectiveness on its part;

4. Fourth plea in law, alleging

   — vagueness and unsuitability of the selection and award criteria and taking into account the criteria which have not been notified to the tenderers;

5. Fifth plea in law, alleging

   — that the evaluation committee failed to request the proof of the educational profile and the translation experience of the tenderers' staff.

([1]) OJ 2011/S 56-090374

([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25.6.2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1)

Action brought on 12 January 2012 — Laboratoires CTRS v Commission

(Case T-12/12)

(2012/C 58/29)

Language of the case: English

Parties

Applicant: Laboratoires CTRS (Boulogne-Billancourt, France) (represented by: K. Bacon, Barrister, M. Utges Manley, Solicitor, and M. Barnden, Solicitor)

Defendant: European Commission

Form of order sought

— Declare, pursuant to Article 265 TFEU, that the defendant has unlawfully failed to act, contrary to Article 10(2) of Regulation (EC) No 726/2004 ([1]);

— In the alternative, annul the decision of the defendant of 5 December 2011 declining to grant a marketing authorisation under Regulation (EC) No 726/2004; and

— Order the defendant to bear the costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging, with regard to the action for failure to act lodged pursuant to Article 265 TFEU, that the refusal to adopt a final decision on the application for an authorisation for Orphacol is contrary to the requirements of Article 10(2) of Regulation (EC) No 726/2004, which requires a final decision to be adopted within a specified timeframe in accordance with the outcome of the Comitology Procedure.

2. Second plea in law, alleging, with regard to the action of annulment lodged pursuant to Article 263 TFEU in the alternative, that by adopting a decision that was rejected by the Standing Committee and the Appeal Committee under the Comitology Procedure, the defendant is in breach of Regulation (EU) No 182/2011 ([2]) and Regulation (EC) No 726/2004.

3. Third plea in law, alleging with regard to the action of annulment lodged pursuant to Article 263 TFEU in the alternative, that the decision is in any event vitiated by fundamental errors of law in the interpretation of Directive 2001/83/EC (as amended) ([3]), and defects of reasoning contrary to Article 296 TFEU.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1)

([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13)

([3]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use (OJ 2001 L 311, p. 67)

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