ISSN 1977-091X

# Official Journal of the European Union

C 311

English edition

Volume 55

13 October 2012

## Information and Notices

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EN

**Price: EUR 3**

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*(Notices)*

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

# COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 311/01)

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

OJ C 303, 6.10.2012

**Past publications**

OJ C 295, 29.9.2012

OJ C 287, 22.9.2012

OJ C 273, 8.9.2012

OJ C 258, 25.8.2012

OJ C 250, 18.8.2012

OJ C 243, 11.8.2012

These texts are available on:

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

# GENERAL COURT

## Assignment of Judges to Chambers

(2012/C 311/02)

On 17 September 2012, the Plenary Meeting of the General Court decided, in response to the entry into office of Mr Berardis, to amend the decisions of the Plenary Meetings of 20 September 2010, [1] 26 October 2010, [2] 29 November 2010, [3] 20 September 2011, [4] 25 November 2011 [5] and 16 May 2012 [6] on the assignment of Judges to Chambers.

For the period from 17 September 2012 to the date of entry into office of the Maltese Judge, the assignment of Judges to Chambers is as follows:

*First Chamber (Extended Composition), sitting with five Judges:*

Mr Azizi, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias and Ms Kancheva, Judges.

*First Chamber, sitting with three Judges:*

Mr Azizi, President of the Chamber;
Mr Frimodt Nielsen, Judge;
Ms Kancheva, Judge.

*Second Chamber (Extended Composition), sitting with five Judges:*

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

*Second Chamber, sitting with three Judges:*

Mr Forwood, President of the Chamber;
Mr Dehousse, Judge;
Mr Schwarcz, Judge.

*Third Chamber (Extended Composition), sitting with five Judges:*

Mr Czúcz, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias and Ms Kancheva, Judges.

*Third Chamber, sitting with three Judges:*

Mr Czúcz, President of the Chamber;
Ms Labucka, Judge;
Mr Gratsias, Judge.

*Fourth Chamber (Extended Composition), sitting with five Judges:*

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

*Fourth Chamber, sitting with three Judges:*

Ms Pelikánová, President of the Chamber;
Ms Jürimäe, Judge;
Mr Van der Woude, Judge.

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[1] OJ 2010 C 288, p. 2.
[2] OJ 2010 C 317, p. 5.
[3] OJ 2010 C 346, p. 2.
[4] OJ 2011 C 305, p. 2.
[5] OJ 2011 C 370, p. 5.
[6] OJ 2012 C 174, p. 2.

*Fifth Chamber (Extended Composition), sitting with five Judges:*

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

*Fifth Chamber, sitting with three Judges:*

Mr Papasavvas, President of the Chamber;
Mr Vadapalas, Judge;
Mr O'Higgins, Judge.

*Sixth Chamber (Extended Composition), sitting with five Judges:*

Mr Kanninen, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso, Mr Popescu and Mr Berardis, Judges.

*Sixth Chamber, sitting with three Judges:*

Mr Kanninen, President of the Chamber;

(a) Mr Wahl and Mr Soldevila Fragoso, Judges;
(b) Mr Wahl and Mr Berardis, Judges;
(c) Mr Soldevila Fragoso and Mr Berardis, Judges.

*Seventh Chamber (Extended Composition), sitting with five Judges:*

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

*Seventh Chamber, sitting with three Judges:*

Mr Dittrich, President of the Chamber;
Ms Wiszniewska-Białecka, Judge;
Mr Prek, Judge.

*Eighth Chamber (Extended Composition), sitting with five Judges:*

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso, Mr Popescu and Mr Berardis, Judges.

*Eighth Chamber, sitting with three Judges:*

Mr Truchot, President of the Chamber;
Ms Martins Ribeiro, Judge;
Mr Popescu, Judge.

For the period from 17 September 2012 to the date of entry into office of the Maltese Judge, in the Sixth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Sixth Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Eighth Chamber sitting with three Judges. The latter, who shall not be the President of the Chamber, shall be designated for one year in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court.

For the period from 17 September 2012 to the date of entry into office of the Maltese Judge, in the Eighth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall the other two Judges of the Eighth Chamber initially hearing an action and two Judges from the Sixth Chamber, sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated for one year in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court.

V

*(Announcements)*

# COURT PROCEEDINGS

# COURT OF JUSTICE

**Reference for a preliminary ruling from the Fővárosi Bíróság (Budapest Municipal Court) (Hungary) lodged on 24 July 2012 — Peró Gáz Kft. v Balla János**

**(Case C-349/12)**

(2012/C 311/03)

*Language of the case: Hungarian*

**Referring court**

Fővárosi Bíróság (Budapest Municipal Court)

**Parties to the main proceedings**

*Applicant:* Peró Gáz Kft.

*Defendant:* János Balla

**Questions referred**

1. Is it consistent with European Union law if, during proceedings to amend a decision relating to an application for invalidation of a patent, the measures, procedures and legal remedies are applied in such a way that: the national court is not bound by the claims or statements with legal effect made by the parties, and the court is entitled to order of its own motion any evidence that it may deem necessary?

2. Is it consistent with European Union law if, during proceedings to amend a decision relating to an application for invalidation of a patent, the measures, procedures and legal remedies are applied in such a way that: the national court, when making its decision, is not bound by the administrative decision made in relation to the application for invalidation, or by the findings established therein, nor, specifically, by the grounds for invalidation indicated during the administrative procedure, or by the declarations, assertions or evidence submitted during the administrative procedure?

3. Is it consistent with European Union law if, during proceedings to amend a decision relating to an application for invalidation of a patent, the measures, procedures and legal remedies are applied in such a way that: the national court, in connection with the requirement for novelty or an inventive step, assesses whether the invention is due the priority of the application date, or merely the priority of the amendment date, assuming that the legislation in force on the application date allowed the applicant to extend the technical content of the patent application, and the scope of the patent awarded, after the application date

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**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Lombardia (Italy) lodged on 30 July 2012 — Consorzio Stabile Libor Lavori Pubblici v Comune di Milano**

**(Case C-358/12)**

(2012/C 311/04)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per la Lombardia

**Parties to the main proceedings**

*Applicant:* Consorzio Stabile Libor Lavori Pubblici

*Defendant:* Comune di Milano

**Question referred**

Do the principle of proportionality which arises from the right of establishment and the principles of non-discrimination and protection of competition laid down in Articles 49, 56 and 101 TFEU, and the principle of reasonableness enshrined therein, preclude national legislation which, in relation to contracts both above and below the Community threshold, classifies as serious an infringement relating to contribution obligations which has been definitively established, where the amount thereof exceeds EUR 100,00 and is at the same time greater

than 5 % of the difference between the sums owed and those paid in respect of each payment or contribution period, with the consequent obligation on the contracting authority to exclude from the tender process any competitor who has committed such an infringement, without assessing other aspects which objectively demonstrate the competitor's reliability as a contractual partner?

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**Reference for a preliminary ruling from Supreme Court of the United Kingdom (United Kingdom) made on 30 July 2012 — Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue, Commissioners for Her Majesty's Revenue and Customs**

**(Case C-362/12)**

(2012/C 311/05)

*Language of the case: English*

**Referring court**

Supreme Court of the United Kingdom

**Parties to the main proceedings**

*Applicant:* Test Claimants in the Franked Investment Income Group Litigation

*Defendants:* Commissioners of Inland Revenue, Commissioners for Her Majesty's Revenue and Customs

**Questions referred**

1. Where under the law of a Member State a taxpayer can choose between two alternative causes of action in order to claim restitution of taxes levied contrary to Articles 49 and 63 TFEU and one of those causes of action benefits from a longer limitation period, is it compatible with the principles of effectiveness, legal certainty and legitimate expectations for that Member State to enact legislation curtailing that longer limitation period without notice and retrospectively to the date of the public announcement of the proposed new legislation?

2. Does it make any difference to the answer to Question 1 that, at the moment when the taxpayer issued its claim using the cause of action which benefited from the longer limitation period, the availability of the cause of action under national law had only been recognised (i) recently and (ii) by a lower court and was not definitively confirmed by the highest judicial authority until later?

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**Reference for a preliminary ruling from The Equality Tribunal (Ireland) made on 30 July 2012 — Z v A Government Department and the Board of Management of a Community School**

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

(2012/C 311/06)

*Language of the case: English*

**Referring court**

The Equality Tribunal

**Parties to the main proceedings**

*Applicant:* Z

*Defendants:* A Government Department and the Board of Management of a Community School

**Questions referred**

1. Having regard to the following provisions of the primary law of the European Union:

   (i) Article 3 of the Treaty on European Union,

   (ii) Articles 8 and 157 of the Treaty on the Functioning of the European Union, and/or

   (iii) Articles 21, 23, 33 and 34 of the Charter of Fundamental Rights of the European Union

   Is Directive 2006/54/EC, and in particular Articles 4 and 14 thereof, to be interpreted as meaning that there is discrimination on the ground of sex where a woman — whose genetic child has been born through a surrogacy arrangement, and who is responsible for the care of her genetic child from birth — is refused paid leave from employment equivalent to maternity leave and/or adoptive leave?

2. If the answer to the first question is in the negative, is Directive 2006/54/EC [1] compatible with the above provisions of the primary law of the European Union?

3. Having regard to the following provisions of the primary law of the European Union:

   (i) Article 10 of the Treaty on the Functioning of the European Union, and/or

   (ii) Articles 21, 26 and 34 of the Charter of Fundamental Rights of the European Union

Is Directive 2000/78/EC [2], and in particular Articles 3(1) and 5 thereof, to be interpreted as meaning that there is discrimination on the ground of disability where a woman — who suffers from a disability which prevents her from giving birth, whose genetic child has been born through a surrogacy arrangement, and who is responsible for the care of her genetic child from birth — is refused paid leave from employment equivalent to maternity leave and/or adoptive leave?

4. If the answer to the third question is in the negative, is Directive 2000/78/EC compatible with the above provisions of the primary law of the European Union?

5. Is the United Nations Convention on the Rights of Persons with Disabilities capable of being relied on for the purposes of interpreting, and/or of challenging the validity, of Directive 2000/78/EC?

6. If the answer to the fifth question is in the affirmative, is Directive 2000/78/EC, and in particular Articles 3 and 5 thereof, compatible with Articles 5, 6, 27(1)(b) and 28(2)(b) of the United Nations Convention on the Rights of Persons with Disabilities?

[1] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204, p. 23

[2] Council Directive 2000/78/EC OF 27 November 2000 establishing a general framework for equal treatment in employment and occupation

## Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 6 August 2012 — Valimar OOD v Nachalnik na Mitnitsa — Varna

**(Case C-374/12)**

(2012/C 311/07)

*Language of the case: Bulgarian*

### Referring court

Varhoven administrativen sad

### Parties to the main proceedings

*Appellant:* Valimar OOD

*Respondent:* Nachalnik na Mitnitsa — Varna

### Questions referred

1. Is Article 11(9) and the first sentence of Article 11(10) of Council Regulation (EC) No 384/1996 [1] of 22 December 1995 on protection against dumped imports from countries not members of the European Community (now Council Regulation (EC) No 1225/2009 [2] of 30 November 2009) ('the Basic Regulation') in conjunction with Article 2(8) and (9) of that regulation to be interpreted as meaning that, if no change in circumstances is proved for the purpose of Article 11(9), those provisions take precedence over any implicit powers of the institutions arising from Article 11(3) of the Basic Regulation for determining the export price, including — as in the case of Council Regulation (EC) No 1279/2007 [3] — the implicit power of the institutions to assess the reliability of the export prices of Severstal-Metiz in the future by making a comparison with the minimum prices according to the price undertaking and the selling prices in third countries? Is the reply to that question affected if, as in the case of Severstal-Metiz and Council Regulation (EC) No 1279/2007, the institutions decide, when exercising their powers in connection with assessing the stability of the change in circumstances regarding the existence of dumping in accordance with Article 11(3) of the Basic Regulation, to vary the anti-dumping measure (reduce the duty rate)?

2. Does it follow from the reply to the first question that, in the circumstances which are described in the part of Council Regulation (EC) No 1279/2007 relating to the determination of the export price of Severstal-Metiz, and in view of the fact that in that regulation a change for the purpose of Article 11(9) of the Basic Regulation was not expressly proved which would justify the application of a new methodology, the Commission ought to have applied the method for determining the export price which was used in the context of the original investigation, in the present case in accordance with Article 2(8) of the Basic Regulation?

3. Taking into consideration the replies to the first and second questions: Was that part of Council Regulation (EC) No 1279/2007 which concerns the determination and imposition of individual anti-dumping measures in relation to imports of steel ropes and cables manufactured by Severstal-Metiz adopted contrary to Article 11(9) and (10) in conjunction with Article 2(8) of the Basic Regulation or on an invalid legal basis and, as such, is Council Regulation (EC) No 1279/2007 to be regarded as invalid in that part?

[1] Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1).

[2] Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

[3] Council Regulation (EC) No 1279/2007 of 30 October 2007 imposing a definitive anti-dumping duty on certain iron or steel ropes and cables originating in the Russian Federation, and repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in Thailand and Turkey (OJ 2007 L 285, p. 1).

**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 6 August 2012 — Sky Italia Srl v Autorità per le Garanzie nelle Comunicazioni, Commissione di Garanzia per l'Attuazione della Legge sullo Sciopero nei Servizi Pubblici Essenziali**

**(Case C-376/12)**

(2012/C 311/08)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per il Lazio

**Parties to the main proceedings**

*Applicant:* Sky Italia Srl

*Defendant:* Autorità per le Garanzie nelle Comunicazioni, Commissione di Garanzia per l'Attuazione della Legge sullo Sciopero nei Servizi Pubblici Essenziali

**Question referred**

Are the Community provisions in the sector, and in particular the provisions of Directive No 2002/20 EC, [1] to be interpreted as precluding the national rules referred to, in particular Law No 266 of 2005, as those provisions are actually applied by regulation included?

[1] Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

**Reference for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 13 August 2012 — Siegfried János Schneider**

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

(2012/C 311/09)

*Language of the case: Bulgarian*

**Referring court**

Sofiyski gradski sad

**Party to the main proceedings**

*Applicant:* Siegfried János Schneider

**Question referred**

Is Article 22(1) of Council Regulation (EC) No 44/2001 [1] of 22 December 2000 applicable only to contentious proceedings which have as their object rights in rem in immovable property, or does the provision also apply to non-contentious proceedings in which nationals of a Member State who have been declared by a court of that State, in accordance with its national law, to be lacking full legal capacity and for whom a guardian has been appointed (who is also a national of that Member State), and who seek to dispose of immovable property belonging to them which is situated in another Member State?

[1] 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).

# GENERAL COURT

**Action brought on 25 July 2012 — Salim Georges Al Toun and Al Toun Group v Council**

**(Case T-326/12)**

(2012/C 311/10)

*Language of the case: Bulgarian*

## Parties

*Applicants:* Salim Georges Al Toun and Al Toun Group (represented by: Stanislav Koev, lawyer)

*Defendant:* Council of the European Union

## Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded in its entirety, and grant all the pleas raised in the application;

— allow the present action to be examined under the accelerated procedure;

— declare that the contested measures may be annulled in part, since the part of the measures to be annulled is removable for the measures as a whole;

— annul Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria, and Council Implementing Decision 2012/256/CFSP of 14 May 2012, in so far as Mr Salim Al Toun and the Al Toun Group have been added to the list set out in the annex to Decision 2011/782/CFSP;

— annul Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and Council Implementing Regulation (EU) No 410/2012 of 14 May 2012, in so far as Mr Salim Al Toun and the Al Toun Group have been added to the list set out in Annex II to Council Regulation (EU) No 36/2012;

— order the Council to pay all of the applicants' costs and legal fees related to their defence in the present proceedings.

## Pleas in law and main arguments

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

1. By their first plea in law, the applicants allege a serious infringement of the rights of the defence and of the right to a fair hearing, since the applicants were not warned about the contested measures, which they learned of via the media, or presented with any conclusive evidence or reference points to justify their inclusion on the list of persons to be fined. In that regard, the burden of proof is on the Council, which is required to justify the imposition of the restrictive measures.

2. By their second plea in law, the applicants allege an infringement of the duty to state reasons. The Council merely made unfounded claims in the contested measures and infringed that duty, which is imposed on the institutions of the European Union by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union. In that regard, the applicants submit that the Council relied on the imprecise notion of participation in the regime, of which there is no definition in the Council measures regarding the situation in Syria. In the light of the lack of clear and precise grounds on the part of the Council, the General Court is not able to review the lawfulness of the contested measures.

3. By their third plea in law, the applicants allege an infringement of the right to effective legal protection, since the infringement of the duty to state reasons prevented them from preparing an effective defence, as provided for in Articles 6 and 13 of the European Convention for the protection of Human Rights and Fundamental Freedoms, Article 215 TFEU, and Article 41 and 47 of the Charter of Fundamental Rights of the European Union.

4. By their fourth plea in law, the applicants allege an error of assessment on the part of the Council, since the applicant, Mr Salim Al Toun, was wrongly identified as a Venezuelan citizen, which is not the case, and the Al Toun Group has never participated, since in creation, in transactions related to oil or oil products, contrary to what is stated in the contested measures.

5. By their fifth plea in law, the applicants allege an infringement of the right to property, of the principle of proportionality and of the freedom to pursue an economic activity, laid down in Article 1 of the additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 17 of the Charter of Fundamental Rights of the European Union, since, by adopting Implementing Decision 2012/256/CFSP, and Implementing Regulation (EU) No 410/2012, the Council unduly deprived the applicants of the possibility of making peaceful use of their property, which puts their existence and their physical survival at risk.

6. By their sixth plea in law, the applicants allege a flagrant infringement of the right to the protection of the reputation,

provided for in Articles 8 and 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, since the inclusion of the applicants' names in the contested measures has unlawfully ruined their reputation in Syrian society, among their friends, in the religious community and among trading partners.

## Action brought on 25 July 2012 — Plantavis and NEM v Commission and EFSA

**(Case T-334/12)**

(2012/C 311/11)

*Language of the case: German*

### Parties

*Applicants:* Plantavis GmbH (Berlin, Germany) and NEM, Verband mittelständischer europäischer Hersteller und Distributoren von Nahrungsergänzungsmitteln & Gesundheitsprodukten e.V. (Laudert, Germany) (represented by: T. Büttner, lawyer)

*Defendants:* European Commission and European Food Safety Authority

### Form of order sought

— Annul the prohibitions laid down by Regulation (EC) No 1924/2006 ([1]) in conjunction with Regulation (EU) No 432/2012 ([2]) and the European Commission's Union Register in respect of permitted and prohibited health claims.

### Pleas in law and main arguments

In support of the application the applicants claim, first, that the European legislature lacks the competence to adopt the contested regulations.

Second, the applicants submit that Regulations No 1924/2006 and No 432/2012 and the Union Register of nutrition and health claims made on foods interfere unlawfully in the food industry's legal positions, which are protected as fundamental rights, and in consumers' and the trade's right to information. In that regard, the applicants submit in particular that the prohibitions of nutrition and health claims laid down by the contested regulations are disproportionate. That applies above all to the prohibition of the use of factually accurate nutritional health claims such as, for example, 'better bioavailability'. Further, the Regulations are not appropriate to their intended purpose, as EFSA and the Commission have not established a clear, transparent or uniform approach in relation to the establishment of scientific standards. The applicants also complain about the undifferentiated unequal treatment of different substances and food businesses. Nor are the prohibitions necessary, as Directive 2003/13/EC ([3]) and Regulation (EU) No 1169/2011 ([4]) already prohibit the misleading advertising of food in all European Member States.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

([2]) Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health (OJ 2012 L 136, p. 1).

([3]) Commission Directive 2003/13/EC of 10 February 2003 amending Directive 96/5/EC on processed cereal-based foods and baby foods for infants and young children (OJ 2003 L 41, p. 33).

([4]) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

## Action brought on 2 August 2012 — Evonik Degussa v Commission

**(Case T-341/12)**

(2012/C 311/12)

*Language of the case: German*

### Parties

*Applicant:* Evonik Degussa GmbH (Essen, Germany) (represented by: C. Steinle, M. Holm-Hadulla and C. von Köckritz, lawyers)

*Defendant:* European Commission

### Form of order sought

— Annul Commission Decision C(2012) 3534 final of 24 May 2012 concerning the refusal of a request by Evonik Degussa for confidential treatment of information in the decision in Case COMP/F/38.620 — Hydrogen Peroxide and Perborate, in accordance with the fourth paragraph of Article 263 TFEU;

— order the Commission to pay the applicant's costs in accordance with Article 87(2) of the Rules of Procedure of the General Court.

**Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 8 of the terms of reference of the hearing officer, [1] and of the applicant's right to good administration and its right to be heard

   The applicant submits that the hearing officer did not examine its fundamental objections to publication, thereby failing to have regard to the scope of his powers and obligations, and infringing Article 8 of the terms of reference. Since neither the hearing officer nor any other Commission officer examined or took into consideration the applicant's fundamental objections to the planned publication, the applicant takes the view that the Commission failed to investigate all relevant aspects of the particular case, thereby breaching the principles of good administration and of an effective hearing (Article 41(1) of the Charter of Fundamental Rights of the European Union).

2. Second plea in law, alleging breach of the duty to state reasons

   The applicant submits that the contested decision does not contain any statement of reasons in relation to the applicant's objections to the publication of the extended version of the decision. The same applies as regards the Commission's reasons and the public interest in the publication of the extended version almost five years after the original non-confidential version was issued.

3. Third plea in law, alleging errors of law and of assessment by virtue of breach of the obligation of professional secrecy under Article 339 TFEU and Article 8 of the European Convention on Human Rights, and failure to have regard to the confidentiality of the information to be published.

   — In the context of this plea, the applicant submits that the passages which the Commission plans to publish in the extended non-confidential version of the decision are protected by professional secrecy and to some extent also contain business secrets. The publication of that information in the internet infringes the applicant's right to the maintenance of professional secrecy.

   — Further, the applicant submits that the planned publication of the information provided by the leniency applicants falls within the scope of Article 4(2) of Regulation (EC) No 1049/2001, [2] and that Regulation (EC) No 1/2003 [3] and the Leniency Notice [4] contain special rules on access to such information provided by leniency applicants. Therefore, according to the applicant, and in accordance with the case-law of the Court of Justice (Case C-139/07 P *Commission* v *Technische Glaswerke Ilmenau* [2010] ECR I-5885, and judgment of 28 June 2012 in Case C-404/10 P *Commission* v *Éditions Odile Jacob*, not yet published in the ECR), there is a presumption that publication of that information will harm the applicant's commercial interests and the purpose of the Commission's investigation. A special public interest in the publication of that information must therefore be specifically established. According to the applicant the hearing officer failed to do this, and thus made a manifest error of assessment.

4. Fourth plea in law, alleging breach of the applicant's legitimate expectations and of the principle of legal certainty

   The applicant submits that the Commission breached the principle of the protection of legitimate expectations when it refused the request for confidential treatment and decided to publish the contested version of the decision. Since making its applications for leniency the applicant has trusted in the confidentiality of the information transmitted. That trust is based on the leniency notices and the Commission's established practice and, in the applicant's view, merits protection. The principle of legitimate expectations is also breached by virtue of the fact that the Commission had already published a final non-confidential version of the decision in 2007, in respect of which it had accepted the applicant's wishes concerning text to be omitted. The applicant submits that there is no basis in law or in fact for a subsequent modification of that decision.

5. Fifth plea in law, alleging breach of the specific purpose requirement

   In the context of this plea the applicant submits that the use — for the purpose of informing the public — of information provided by leniency applicants is contrary to the specific purpose of that information provided for in Article 28(1) of Regulation No 1/2003 and paragraph 48 of the Commission's Notice on access to the file. [5] That is particularly the case where that use has occurred more than six years after the end of the administrative procedure.

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[1] Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p. 29).

[2] 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).

[3] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

[4] Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

[5] Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 [EC] and 82 [EC], Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325, p. 7).

## Action brought on 1 August 2012 — Hungary v European Commission

**(Case T-346/12)**

(2012/C 311/13)

*Language of the case: Hungarian*

### Parties

*Applicant(s):* Hungary (represented by: Miklós Zoltán and Katalin Szíjjártó, agents)

*Defendant(s):* European Commission

### Form of order sought

— Annul the Commission Implementing Decision C(2012) 3324 final of 25 May 2012 on national financial assistance granted to producer organisations

### Pleas in law and main arguments

In support of the action, the applicant alleges that the Commission exceeded its powers and breached the relevant provisions of European Union law in determining the amount of the partial reimbursement to Hungary of the national financial assistance granted in 2009 to producers' organisations operating in the fruit and vegetable sector.

The applicant states that Union law does not provide for the option for the Commission, in its decision on partial Community reimbursement of national financial assistance granted, pursuant to Article 103e of Regulation (EC) No 1234/2007, ([1]) to producers' organisations operating in the fruit and vegetable sector, to agree to reimburse only those amounts which were indicated by Hungary in its application for the grant of national assistance, where they are given as estimated, expected or provisional amounts.

The applicant considers that, under Article 103e of Regulation No 1234/2007, the Commission's authorisation for national assistance relates to the grant of assistance and not to the establishment by the Commission of a maximum limit for the assistance which can be granted. That limit is laid down unequivocally in Regulation No 1234/2007 which provides that national assistance may not exceed 80 % of the financial contributions to the operational funds of members or producers' organisations. Nor do the rules concerning partial Community reimbursement of national assistance allow the Commission, in authorising such partial reimbursement, to fix as a maximum limit the amount that the Member State communicated to the Commission in its application for authorisation either as the total amount of assistance or as the amount of assistance provided for certain producers' organisations, especially when in that communication the Government of Hungary put forward the amounts in question as merely planned or provisional amounts.

Similarly, the applicant states that the Commission has the right to verify that the assistance actually received has not exceeded the above-mentioned maximum limit of 80 %, and that the reimbursement sought does not exceed 60 % of the assistance granted, but not to lay down a maximum limit for reimbursement of the amounts set out in the application for authorisation or in the communication on that application, especially when that application or communication stresses the estimated, planned or provisional nature of the data. Where, for certain reasons, there is a change during the year in the amount of national assistance given to any producers' organisation, partial Community reimbursement is to be granted in respect of the amount actually received, provided that the requirements laid down by Union law in that regard are fulfilled.

([1]) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

## Action brought on 31 July 2012 — Globosat Programadora v OHIM — Sport TV Portugal (SPORT TV INTERNACIONAL)

**(Case T-348/12)**

(2012/C 311/14)

*Language in which the application was lodged: English*

### Parties

*Applicant:* Globosat Programadora Ltda (Rio de Janeiro, Brazil) (represented by: S. Micallef, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Sport TV Portugal, SA (Lisbon, Portugal)

### 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 23 May 2012 in case R 2079/2010-4;

— Annul all costs orders made against the applicant by the Office, and order the later to bear the costs of the applicant.

**Pleas in law and main arguments**

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

*Community trade mark concerned:* The word mark 'SPORT TV INTERNACIONAL', for services in classes 35, 38 and 41 — Community trade mark application No 6915094

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

*Mark or sign cited in opposition:* Portuguese trade mark registration No 329507 of the figurative mark 'SPORTV', for services in classes 38 and 41

*Decision of the Opposition Division:* Rejected the opposition

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

*Pleas in law:* Infringement of Article 42(2) and (3) of Council Regulation No 207/2009 and Infringement of Rule 22(3) of Commission Regulation No 2868/95.

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## Action brought on 6 August 2012 — Aleris v OHIM — Carefusion 303 (ALARIS)

**(Case T-353/12)**

(2012/C 311/15)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Aleris Holding AB (Stockolm, Sweden) (represented by: A. Kylhammar and K. Westerberg, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Carefusion 303, Inc. (San Diego, United States)

**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 11 May 2012 (R 334/2011-5), as well as Section 2 of the Cancellation decision, and render a decision in accordance with the applicant's request; and

— Order the respondent as the losing party to bear all costs and fees incurred by the applicant in the proceedings before the Cancellation Division, the Board of Appeal and the General Court.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which an application for revocation has been made:* The word mark 'ALARIS', for goods and services in classes 10, 37 and 42 — Community trade mark registration No 571521

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

*Party applying for revocation of the Community trade mark:* The applicant

*Decision of the Cancellation Division:* Revoked the Community trade mark only in part

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

*Pleas in law:* Infringement of the fundamental principles that must be applied in revocation proceedings based on non-use. Infringement of Articles 15 and 9 of Council Regulation No 207/2009.

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## Action brought on 6 August 2012 — Debonair Trading Internacional v OHIM — Ibercosmetica (SÔ:UNIC)

**(Case T-356/12)**

(2012/C 311/16)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Debonair Trading Internacional Ld[a] (Funcha, Madeira) (represented by: T. Alkin, Barrister)

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

*Other party to the proceedings before the Board of Appeal:* Ibercosmetica, SA de CV (Mexico City, Mexico)

**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 4 June 2012 in case R 1033/2011-4;

— Order the other party to pay the costs incurred by the applicant.

**Pleas in law and main arguments**

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

*Community trade mark concerned:* The word mark 'SÔ:UNIC', for goods in class 3 — Community trade mark application No 8197972

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

*Mark or sign cited in opposition:* A series of 24 Community, International, UK and Irish registered trade marks consisting of the word 'SO' combined with other material, for goods in class 3; A series of 17 unregistered signs consisting of the word 'SO' combined with other material, used in connection with goods in class 3

*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 Article 8(1)(b) of Council Regulation No 207/2009;

— Infringement of Rule 15(2)(b)(iii) of Commission Regulation No 2868/95; and

— Infringement of Article 8(4) of Council Regulation No 207/2009.

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**Action brought on 7 August 2012 — Sachi Premium-Outdoor Furniture v OHIM — Gandia Blasco (Armchairs)**

**(Case T-357/12)**

(2012/C 311/17)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Sachi Premium — Outdoor Furniture, Ld[a] (Estarreja, Portugal) (represented by: M. Oehen Mendes, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Gandia Blasco, SA (Valencia, Spain)

**Form of order sought**

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade marks and Designs) of 27 April 2012 (R 969/2011-3);

— Declare the contested Community Design No 1512633-0003 invalid; and

— Order the defendant to pay the costs.

**Pleas in law and main arguments**

*Registered Community design trade mark in respect of which a declaration of invalidity has been sought:* A design for 'armchairs, loungers' — registered Community design No 1512633-0003

*Proprietor of the Community design:* The applicant

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

*Grounds for the application for a declaration of invalidity:* The other party to the proceedings before the Board of Appeal requested the invalidation of the RCD based on Articles 4 to 9 of Council Regulation No 6/2002; Community design registration No 52113-0001, for 'armchairs'

*Decision of the Invalidity Division:* Rejected the application for a declaration of invalidity

*Decision of the Board of Appeal:* Annulled the contested decision and declared the contested Registered Community design invalid

*Pleas in law:* Infringement of Articles 5 to 7 of Council Regulation No 6/2002.

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**Action brought on 8 August 2012 — Vuitton Malletier v OHIM — Nanu-Nana (device of a checked pattern)**

**(Case T-359/12)**

(2012/C 311/18)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Louis Vuitton Malletier (Paris, France) (represented by: P. Roncaglia, G. Lazzaretti and N. Parrotta, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co.KG (Berlin, Germany)

**Form of order sought**

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2012 in case R 1855/2011-1;

— Order OHIM to pay the costs incurred by the applicant during these proceedings; and

— Order Nanu-Nana Handelsgesellschaft mbH für Geschenkartikel & Co.KG to pay the costs incurred by the applicant in the proceedings before the OHIM Cancellation Division and Boards of Appeal.

**Pleas in law and main arguments**

*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The figurative mark representing a device of a checked pattern for goods in class 18 — Community trade mark application No 370445

*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 other party to the proceedings before the Board of Appeal filed its request for declaration of invalidity against the CTM on the basis of absolute grounds, namely Article 52(1)(a) in connection with Article 7(1)(b), (c), (d), (e)(iii) and (f) of Council Regulation No 207/2009, and on absolute grounds under Article 52(1)(b) of Council Regulation No 207/2009

*Decision of the Cancellation Division:* Upheld the request for invalidity in its entirety

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

*Pleas in law:*

— Infringement of Article 7(1)(b) of Council Regulation No 207/2009; and

— Infringement of Article 7(3) and Article 52(2) of Council Regulation No 207/2009.

## Appeal brought on 17 August 2012 by the European Commission against the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11, Macchia v Commission

**(Case T-368/12 P)**

(2012/C 311/19)

*Language of the case: French*

**Parties**

*Appellant:* European Commission (represented by J. Currall and D. Martin, acting as Agents)

*Other party to the proceedings:* Luigi Macchia (Brussels, Belgium)

**Form of order sought by the appellant**

— Set aside the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11 *Macchia* v *Commission*;

— Dismiss the action brought by Mr Macchia in Case F-63/11;

— Hold that each party shall bear its own costs of the present instance;

— Order Mr Macchia to pay the costs incurred before the Civil Service Tribunal.

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging infringement of the prohibition on ruling *ultra petita*, since the CST, firstly, extended the subject-matter of the dispute by annulling the Commission's decision not only because it refuses any prolongation of Mr Macchia's contract, but also because of its refusal to award him a new contract, while the petition in the application at first instance referred only to the annulment of the Commission's decision not to renew his contract and, secondly, distorted the subject-matter of the dispute by holding that there was no need to examine the complaint of the applicant at first instance, Mr Macchia, that the ground for refusal based on the eight-year rule, despite the fact that that complaint lay at the heart of the action at first instance.

2. Second plea in law, alleging infringement of the adversarial principle, since the CST extended and distorted the subject-matter of the dispute without giving the Commission the opportunity of submitting observations in that regard.

3. Third plea in law, alleging infringement of the prohibition on ruling *ultra vires* in that, firstly, the CST annulled the Commission's decision because the Commission failed to ascertain whether there was another post to which the person concerned could usefully be appointed and, secondly, it held that it has the power to ascertain whether the grounds given by the administration for refusing to renew a contract are not such as to call into question the criteria and conditions which have been laid down by the legislature in the Staff Regulations seeking to ensure that contractual staff are able to benefit, over time, from a certain continuity of employment, although that there is nothing in the provisions of the Conditions of Employment of Other Servants of the European Union.

4. Fourth plea in law, alleging distortion of the interest of the service and disregard of the case-law of the Court of Justice, firstly, by holding that the interest of the service must be reconciled with the duty of care and requires the possibility of giving the person concerned new duties to be examined and, secondly, by wrongly deducing from the case-law of the Court of Justice that the Commission cannot validly claim a lack of any interest of the service in renewing the contract of the person concerned, since Article 8 of the Conditions of Employment of Other Servants of the European Union must be understood as guaranteeing a certain continuity of employment to staff holding a fixed-term contract.

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## Action brought on 22 August 2012 — France Télécom v Commission

**(Case T-385/12)**

(2012/C 311/20)

*Language of the case: French*

### Parties

*Applicant:* France Télécom (Paris, France) (represented by: S. Hautbourg and S. Cochard-Quesson, lawyers)

*Defendant:* European Commission

### Form of order sought

— Annul the decision;

— Order the Commission to pay all the costs.

### Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2011) 9403 final of 20 December 2011 declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)).

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

1. First plea in law, alleging, principally, errors of law and assessment and infringement of the duty to state reasons since the Commission categorised as State aid, within the meaning of Article 107(1) TFEU, the reduction in the contribution to be paid to the State in respect of pensions awarded to officials of France Télécom. The applicant argues that the Commission made these errors:

   — by finding that there was an economic advantage;

   — by taking the view that the measure is selective;

   — by taking the view that the measure is liable to distort competition; and

   — by finding that it was State aid despite the fact that the Commission accepts that the advantage was neutralised at least until 31 December 2010 by payment of an exceptional lump-sum contribution.

2. Second plea in law, alleging, in the alternative, errors of law and assessment in that the Commission made the compatibility of the alleged aid subject to the conditions laid down in Article 2 of the contested decision. The applicant submits that the Commission made these errors by taking the view that the applicant is subject to lower social charges than its competitors and by refusing to apply the precedent of 'La Poste' to the France Télécom proceeding.

3. Third plea in law, alleging, in the alternative, errors in assessment and infringement of the duty to state reasons in the assessment of the period during which the aid defined by the contested decision was neutralised by the exceptional lump-sum contribution. The applicant submits that the Commission made these errors:

   — by including the charges of compensation and over-compensation in the calculation of the reduction in the charges which follows from the reduction in the employer's contribution;

   — by holding that the exceptional lump-sum contribution should be capitalised at the discount rate of 5,53 % instead of 7 %.

4. Fourth plea in law, alleging, in the alternative, infringement of the procedural rights of the applicant.

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# EUROPEAN UNION CIVIL SERVICE TRIBUNAL

## Action brought on 20 June 2012 — ZZ v EIB

**(Case F-63/12)**

(2012/C 311/21)

*Language of the case: Italian*

### Parties

*Applicant:* ZZ (represented by: L. Isola, lawyer)

*Defendant:* European Investment Bank

### Subject-matter and description of the proceedings

The annulment of the letters by which the defendant is refusing to reimburse, following the judgment of the General Court of the European Union setting aside in part the judgment of the Civil Service Tribunal, the EUR 6 000 which the applicant paid to the defendant in respect of recoverable costs in consequence of the judgment of the Civil Service Tribunal ruling on costs.

### Form of order sought

The applicant claims that the Tribunal should:

— annul the letters of 4 and 25 May 2012, in so far as the EIB is refusing to reimburse the applicant the sum of EUR 6 000 which it had demanded in respect of costs in a previous case before the Civil Service Tribunal;

— order the EIB to reimburse without delay that sum plus interest and compensation for currency fluctuations from the date of the payment by the applicant until the date of actual reimbursement;

— order the defendant to pay compensation for the harm suffered by the applicant;

— order the EIB to pay the costs.

## Action brought on 2 July 2012 — ZZ v Commission

**(Case F-67/12)**

(2012/C 311/22)

*Language of the case: Italian*

### Parties

*Applicant:* ZZ (represented by: G. Cipressa, avvocato)

*Defendant:* European Commission

### Subject-matter and description of the proceedings

Action for the annulment of the decision to dismiss the applicant's request for compensation for the damage suffered as a result of the defendant having sent a letter relating to the possible resumption of the applicant's services, and in response to certain proceedings brought by the applicant, to a lawyer who had defended the applicant in various cases, but to whom the applicant had not given a general mandate in the present case.

### Form of order sought

— Annul the decision, whatever the form in which it was adopted, by which the Commission rejected the request of 20 May 2011 which the applicant sent to the appointing authority;

— In so far as necessary, annul the measure, whatever the form in which it was adopted, by which the Commission rejected the complaint of 1 December 2011 against the decision rejecting the request of 20 May 2011, annul that decision and grant the request of 20 May 2011;

— In so far as necessary, annul the note of 9 March 2012;

— Order the Commission to make reparation for the damage unjustly suffered by the applicant as a result of the fact that the undated note attributable to the Commission was sent by the Commission to Giuseppe Cipressa, avvocato, by paying to the applicant the sum of EUR 10 000, or such greater or lesser sum as the Tribunal may deem to be just and fair;

— Order the Commission to pay to the applicant, from the day following that on which the request of 20 May 2011 was received by the Commission until actual payment of the sum of EUR 10 000, the interest on that sum, with annual capitalisation, at the rate of 10 % per annum;

— Order the Commission to pay the costs.

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