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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2014/C 52/01)

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

OJ C 45, 15.2.2014

Past publications

OJ C 39, 8.2.2014

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OJ C 9, 11.1.2014

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These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by the new Members of the Court of Justice

(2014/C 52/02)

Following her appointment as Judge at the Court of Justice for the period from 6 October 2013 to 6 October 2015 by decision of the Representatives of the Governments of the Member States of the European Union of 26 June 2013, [1] Ms Jürimäe took the oath before the Court of Justice on 23 October 2013.

Following his appointment as Advocate General at the Court of Justice for the period from 16 October 2013 to 6 October 2018 by decision of the Representatives of the Governments of the Member States of the European Union of 16 October 2013, [2] Mr Szpunar took the oath before the Court of Justice on 23 October 2013.

[1] OJ L 179, 29.6.2013, p. 94.
[2] OJ L 277, 18.10.2013, p. 11.

Decisions adopted by the Court in its General Meeting on 5 November 2013

(2014/C 52/03)

At its General Meeting on 5 November 2013, the Court decided to assign Ms Jürimäe to the Fourth and Ninth Chambers.

Consequently, the composition of the Fourth and Ninth Chambers is as set out below.

Fourth Chamber

Mr Bay Larsen, President of the Chamber
Mr Malenovský, Ms Jürimäe, Mr Safjan and Ms Prechal, Judges

Ninth Chamber

Mr Safjan, President of the Chamber
Mr Malenovský, Ms Prechal and Ms Jürimäe, Judges

Lists for the purposes of determining the composition of the formations of the Court

(2014/C 52/04)

At its General Meeting on 5 November 2013, the Court drew up the list for determining the composition of the Grand Chamber as follows:

Mr Rosas
Ms Jürimäe
Mr Juhász
Mr Biltgen
Mr Arestis
Mr Rodin
Mr Borg Barthet
Mr Vajda
Mr Malenovský
Mr Da Cruz Vilaça
Mr Levits
Mr Fernlund
Mr Ó Caoimh
Mr Jarašiūnas
Mr Bonichot
Ms Prechal
Mr Arabadjiev
Ms Berger
Ms Toader
Mr Šváby
Mr Safjan

At its General Meeting on 5 November 2013, the Court drew up the list for determining the composition of the Fourth Chamber of five Judges as follows:

Mr Malenovský
Ms Jürimäe
Mr Safjan
Ms Prechal

At its General Meeting on 5 November 2013, the Court drew up the list for determining the composition of the Ninth Chamber of three Judges as follows:

Mr Malenovský
Ms Prechal
Ms Jürimäe

GENERAL COURT

Taking of the oath by a new Member of the General Court

(2014/C 52/05)

Following his appointment as Judge at the General Court for the period from 6 October 2013 to 31 August 2016 by decision of the Representatives of the Governments of the Member States of the European Union of 16 October 2013, [1] Mr Madise took the oath before the Court of Justice on 23 October 2013.

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[1] OJ L 277, 18.10.2013, p. 12.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 19 December 2013 — Siemens AG (C-239/11 P), Mitsubishi Electric Corp. (C-489/11 P), Toshiba Corp. (C-498/11 P) v European Commission

(Joined Cases C-239/11 P, C-489/11 P and C-498/11 P) [1]

(Appeals — Competition — Agreements, decisions and concerted practices — Market in gas insulated switchgear projects — Market sharing — Regulation (EC) No 1/2003 — Proof of the infringement — Single and continuous infringement — Distortion of the evidence — Probative value of statements which run counter to the interests of the declarant — Fines — Starting amount — Reference year — Deterrent multiplier — Powers of unlimited jurisdiction — Equal treatment — Rights of the defence — Duty to state reasons)

(2014/C 52/06)

Language of the case: German

Parties

Appellants: Siemens AG (represented by: I. Brinker, C. Steinle and M. Hörster, Rechtsanwälte (C-239/11 P)), Mitsubishi Electric Corp. (represented by: R. Denton, Solicitor, and K. Haegeman, advocaat (C-489/11 P)), Toshiba Corp. (represented by: J. MacLennan, Solicitor, A. Dawes, Solicitor, A. Schulz, Rechtsanwalt, and S. Sakellariou, dikigoros (C 498/11 P))

Other party to the proceedings: European Commission (represented by: A. Antoniadis, R. Sauer, N. Khan and P. Van Nuffel, acting as Agents)

Intervener in support of the defendant: EFTA Surveillance Authority (represented by: M. Schneider and M. Moustakali, acting as Agents)

Re:

Appeal against the judgment of the General Court (Second Chamber) of 3 March 2011 in Case T-110/07 *Siemens* v *Commission*, by which the General Court dismissed the appellant's action for annulment of Commission Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement concerning a cartel in the market in gas insulated switchgear projects or, in the alternative, for a reduction in the amount of the fine imposed on the appellant — Infringement of the right to a fair hearing, the rights of the defence, the principle of equal treatment and the duty to state reasons — Distortion of the evidence — Erroneous application of the rules on limitation of actions — Infringement of Article 47 of the Charter of Fundamental Rights of the European Union.

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Siemens AG, Mitsubishi Electric Corp. and Toshiba Corp. to pay the costs.*

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[1] OJ C 232, 6.8.2011.
OJ C 347, 26.11.2011.

Judgment of the Court (Fifth Chamber) of 19 December 2013 — European Commission v Republic of Poland

(Case C-281/11) [1]

(Failure of a Member State to fulfil obligations — Contained use of genetically modified micro-organisms — Directive 2009/41/EC — Incorrect and incomplete transposition)

(2014/C 52/07)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: L. Pignataro Nolin and M. Owsiany-Hornung, Agents)

Defendant: Republic of Poland (represented by: B. Majczyna and M. Szpunar, Agents)

Re:

Failure of a Member State to fulfil obligations — Incorrect and incomplete transposition of Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms (OJ 2009 L 125, p. 75).

Operative part of the judgment

The Court:

1. *Declares that, in failing to transpose Articles 3(3), 7, 8(2) and (3), 9(2)(a), 18(1), second subparagraph, and 18(3) and (4), of Directive 2009/41/EC of the European Parliament and of the*

Council of 6 May 2009 on the contained use of genetically modified micro-organisms, the Republic of Poland has failed to fulfil its obligations under that directive;

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

3. *Orders the European Commission and the Republic of Poland to bear their own costs.*

([1]) OJ C 252, 27.8.2011.

Judgment of the Court (Second Chamber) of 19 December 2013 (request for a preliminary ruling from the High Court of Justice, Queen's Bench Division (Administrative Court) — United Kingdom) — The Queen, Fruition Po Ltd v Minister for Sustainable Farming and Food and Animal Health

(Case C-500/11) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 2200/96 — Regulation (EC) No 1432/2003 — Agriculture — Common organisation of markets — Fruit and vegetables — Producer organisations — Conditions for recognition by national authorities — Provision of technical resources required for storage, packing and marketing of produce — Whether organisation obliged, in the event of delegation of its tasks to third party companies, to exercise control over those companies)

(2014/C 52/08)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicant: The Queen, Fruition Po Ltd

Defendant: Minister for Sustainable Farming and Food and Animal Health

Re:

Request for a preliminary ruling — High Court of Justice Queen's Bench Division (Administrative Court) — Interpretation of Article 11 of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ L 297, p. 1) and of Article 6(2) of Commission Regulation (EC) No 1432/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups (OJ L 203, p. 18) — Conditions for recognition by national authorities — Provision of the technical means necessary for storing, packaging and marketing produce — Whether the organisation is obliged, in cases of substantial delegation of duties to third party companies, to exercise control over those companies.

Operative part of the judgment

Article 11 of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables, as amended by Council Regulation (EC) No 2699/2000 of 4 December 2000, must be interpreted as meaning that in order that a producer organisation which has entrusted to a third party the carrying out of the activities which are essential to its recognition under that provision can meet the conditions for recognition laid down therein, it is obliged to enter into a contractual agreement enabling it to continue to be responsible for the carrying out of those activities and for control of their overall management, in such a way that that organisation retains, ultimately, the power of control and, when necessary, the power to take timely action as regards those activities being carried out for the entire duration of the agreement. It is for the competent national court or tribunal to determine, in each case and taking into account all the relevant circumstances, including the nature and extent of the outsourced activities, whether the producer organisation concerned has retained such control.

([1]) OJ C 370, 17.12.2011.

Judgment of the Court (First Chamber) of 19 December 2013 (request for a preliminary ruling from the Tribunal de commerce, Verviers — Belgium) — Corman-Collins SA v La Maison du Whisky SA

(Case C-9/12) ([1])

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 2 — Article 5(1)(a) and (b) — Special jurisdiction in matters relating to contract — Concepts of 'sale of goods' and 'supply of services' — Agreement for the distribution of goods)

(2014/C 52/09)

Language of the case: French

Referring court

Tribunal de commerce, Verviers

Parties to the main proceedings

Applicant: Corman-Collins SA

Defendant: La Maison du Whisky SA

Re:

Request for a preliminary ruling — Tribunal de commerce de Verviers — Interpretation of Articles 2 and 5(1)(a) and (b) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Exclusive distribution of goods agreement concluded between a grantor of the exclusive distribution rights established in France and an exclusive distributor established in Belgium — Permissibility of a national law providing for the jurisdiction of

the courts of the exclusive distributor, irrespective of where the grantor of the exclusive distribution rights has its registered office.

Operative part of the judgment

1. *Article 2 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, where the defendant is domiciled in a Member State other than that in which the court seised is situated, it precludes the application of a national rule of jurisdiction such as that provided for in Article 4 of Law of 27 July 1961 on Unilateral Termination of Exclusive Distribution Agreements of Indefinite Duration, as amended by the Law of 13 April 1971 on Unilateral termination of distribution agreements.*

2. *Article 5(1)(b) of Regulation No 44/2001 must be interpreted as meaning that the rule of jurisdiction laid down in the second indent of that provision for disputes relating to contracts for the supply of services is applicable in the case of a legal action by which a plaintiff established in one Member State claims, against a defendant established in another Member State, rights arising from an exclusive distribution agreement, which requires the contract binding the parties to contain specific terms concerning the distribution by the distributor of goods sold by the grantor. It is for the national court to ascertain whether that is the case in the before it.*

([1]) OJ C 73, 10.3.2012.

Judgment of the Court (Second Chamber) of 19 December 2013 — Transnational Company 'Kazchrome' AO, ENRC Marketing AG v Council of the European Union, European Commission, Euroalliages

(Case C-10/12 P) ([1])

(Appeal — Dumping — Regulation (EC) No 172/2008 — Imports of ferro-silicon originating in China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia — Partial interim review — Regulation (EC) No 384/96 — Article 3(7) — Known factors — Injury to European Union industry — Causal link)

(2014/C 52/10)

Language of the case: English

Parties

Appellants: Transnational Company 'Kazchrome' AO, ENRC Marketing AG (represented by: A. Willems and S. De Knop, avocats)

Other party to the proceedings: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrish, Rechtsanwalt)

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and S. Thomas, acting as Agents), Euroalliages (represented by: J. Bourgeois, Y. van Gerven and N. McNelis, avocats)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 25 October 2011 in Case T-192/08 *Transnational Company 'Kazchrome' and ENRC Marketing* v *Council*, by which the General Court dismissed an action seeking partial annulment of Council Regulation (EC) No 172/2008 of 25 February 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (OJ 2008 L 55, p. 6).

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Transnational Company 'Kazchrome' AO and ENRC Marketing AG to pay the costs of the present proceedings;*

3. *Orders the European Commission to bear its own costs;*

4. *Orders Euroalliages to bear its own costs.*

([1]) OJ C 65, 3.3.2012.

Judgment of the Court (Grand Chamber) of 19 December 2013 (request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany)) — Rahmanian Koushkaki v Bundesrepublik Deutschland

(Case C-84/12) ([1])

(Area of freedom, security and justice — Regulation (EC) No 810/2009 — Articles 21(1), 32(1) and 35(6) — Procedures and conditions for issuing uniform visas — Obligation to issue a visa — Assessment of the risk of illegal immigration — Intention of the applicant to leave the territory of the Member States before the expiry of the visa applied for — Reasonable doubt — Discretion of the competent authorities)

(2014/C 52/11)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Rahmanian Koushkaki

Defendant: Bundesrepublik Deutschland

Re:

Request for a preliminary ruling — Verwaltungsgericht Berlin — Interpretation of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ 2009 L 243, p. 1), in particular Articles 21(1) and 32(1) — Procedures and conditions for granting visas — Right of an applicant for a visa who satisfies the entry conditions to be granted a visa — Assessment of the risk of illegal immigration — Discretion of the Member States concerned.

Operative part of the judgment

1. *Articles 23(4), 32(1) and 35(6) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) must be interpreted as meaning that the competent authorities of a Member State cannot refuse, following the examination of an application for a uniform visa, to issue such a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. Those authorities have a wide discretion in the examination of that application so far as concerns the conditions for the application of those provisions and the assessment of the relevant facts, with a view to ascertaining whether one of those grounds for refusal can be applied to the applicant.*

2. *Article 32(1) of Regulation No 810/2009, read in conjunction with Article 21(1) thereof, must be interpreted as meaning that the obligation on the competent authorities of a Member State to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for, in the light of the general situation in the applicant's country of residence and his individual characteristics, determined in the light of information provided by the applicant.*

3. *Regulation No 810/2009 must be interpreted as not precluding a provision of legislation of a Member State, such as that at issue in the main proceedings, which provides that, where the conditions for the issue of a visa provided for by that regulation are satisfied, the competent authorities have the power to issue a uniform visa to the applicant, but does not state that they are obliged to issue that visa, in so far as such a provision can be interpreted in a way that is in conformity with Articles 23(4), 32(1) and 35(6) of that regulation.*

(1) OJ C 133, 5.5.2012

Judgment of the Court (Sixth Chamber) of 12 December 2013 (request for a preliminary ruling from the Diikitiko Protodikio Serron (Greece)) — Ioannis Christodoulou, Nikolaos Christodoulou, Afi N. Christodoulou AE v Elliniko Dimosio

(Case C-116/12) (1)

(Customs value — Goods exported to a third country — Export refunds — Processing in the exporting country regarded as non-substantial — Re-export of goods to the European Union — Determination of the customs value — Transaction value)

(2014/C 52/12)

Language of the case: Greek

Referring court

Diikitiko Protodikio Serron

Parties to the main proceedings

Applicants: Ioannis Christodoulou, Nikolaos Christodoulou, Afi N. Christodoulou AE

Defendant: Elliniko Dimosio

Re:

Request for a preliminary ruling — Diikitiko Protodikio Serron — Interpretation of Articles 24, 29, 32 and 146 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Customs value — Transaction value — Determination — Goods exported undergoing working or processing in the exporting country not sufficient for them to be considered as originating in the country of final processing within the meaning of Article 24 of the Regulation and without being subjected to outward processing arrangements for re-importation into the country of original export.

Operative part of the judgment

1. *Articles 29 and 32 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as applying to the determination of the customs value of goods imported on the basis of a contract which, although described as a contract of sale, in fact proves to be a working or processing contract. For the purposes of that determination, it is immaterial whether the working or processing operations satisfy the conditions laid down in Article 24 of that regulation, so that the goods concerned may be regarded as originating in the country where those operations took place.*

2. *Articles 29 and 32 of Regulation No 2913/92, as amended by Regulation No 82/97, must be interpreted as meaning that, when the customs value is determined, account must be taken of the*

value of the export refund which a product has benefited from and which was obtained by putting into effect a practice involving the application of provisions of European Union law with the aim of wrongfully securing an advantage.

([1]) OJ C 138, 12.5.2012.

Judgment of the Court (Second Chamber) of 19 December 2013 (request for a preliminary ruling from the Handelsgericht Wien (Austria)) — Alfred Hirmann v Immofinanz AG

(Case C-174/12) ([1])

(Reference for a preliminary ruling — Company law — Second Directive 77/91/EEC — Liability of a public limited liability company for breach of its obligations in respect of advertising — Inaccurate information in share prospectus — Extent of liability — Legislation of a Member State providing for repayment of the price paid by the purchaser for purchased shares)

(2014/C 52/13)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: Alfred Hirmann

Defendant: Immofinanz AG

Intervening party: Aviso Zeta AG

Re:

Reference for a preliminary ruling — Handelsgericht Wien — Interpretation of Articles 12, 15, 18, 19 and 42 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L 26, p. 1), as amended, Articles 6 and 25 of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, and amending Directive 2001/34/EC (OJ 2001, L 345, p. 64), as amended by Directive 2008/11/EC of the European Parliament and of the Council of 11 March 2008 (OJ 2008 L 76, p. 37), Articles 12 and 13 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ 2009 L 258, p. 11), Articles 7, 17 and 28 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L 390, p. 38) and Article 14 of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (OJ 2003 L 96, p. 16) — Liability of a public limited company for infringement of its information obligations — Inaccuracy of the information contained in a prospectus — Member State legislation laying down that in such a case the price paid by the subscriber for the shares should be refunded — Situation in which the shares have been acquired on the secondary market on the basis of the prospectus

Operative part of the judgment

1. *Articles 12, 15, 16, 18, 19 and 42 of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the [second paragraph of Article 48 EC], in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, as amended by Council Directive 92/101/EEC of 23 November 1992, must be interpreted as not precluding national legislation which, in the context of the transposition of:*

   — *Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC,*

   — *Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC,*

   — *and Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse),*

   first, provides that a public limited liability company, as an issuer of shares, may have a liability to a purchaser of shares in that company based on a breach of the information requirements laid down in those directives, and, secondly, imposes, under that liability, an obligation on the company concerned to repay to the purchaser a sum equivalent to the purchase price of the shares and to redeem those shares.

2. *Articles 12 and 13 of Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of [the second paragraph of Article 48 EC], with a view to making such safeguards equivalent, must be interpreted as not precluding national legislation which, in circumstances such as those of the main proceedings, provides for the retroactive cancellation of a share purchase contract.*

3. *Articles 12, 15, 16, 18, 19 and 42 of the Second Directive 77/91, as amended by Directive 92/101, and Articles 12 and 13 of Directive 2009/101 must be interpreted as meaning that the liability established by the national legislation at issue in the main proceedings is not necessarily restricted to the value of shares, calculated according to the price of those shares if the company is publicly listed, at the time when the claim is brought.*

([1]) OJ C 151, 26.5.2012.

Judgment of the Court (Fifth Chamber) of 19 December 2013 (request for a preliminary ruling from the Gerechtshof te 's Gravenhage — Netherlands) — Innoweb BV v Wegener ICT Media BV, Wegener Mediaventions BV

(Case C-202/12) ([1])

(Directive 96/9/EC — Legal protection of databases — Article 7(1) and (5) — Sui generis right of the database maker — Concept of 're-utilisation' — Substantial part of the contents of the database — Dedicated meta search engine)

(2014/C 52/14)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag, formerly Gerechtshof te 's Gravenhage

Parties to the main proceedings

Applicant: Innoweb BV

Defendants: Wegener ICT Media BV, Wegener Mediaventions BV

Re:

Request for a preliminary ruling — Gerechtshof te s'-Gravenhage — Netherlands — Interpretation of Article 7(1) and (5) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996, L 77, p. 20) — Right of the database maker to prohibit the extraction and/or repeated re-utilisation of a substantial part of the contents of a database — Prohibition of the repeated and systematic re-utilisation of non-substantial parts of the contents of a database implying acts that conflict with normal exploitation of that database or unreasonably prejudicing the interests of the maker of the database — Sufficiency of repeated re-utilisation or cumulative condition of systematic re-utilisation — Re-utilisation through an automated system.

Operative part of the judgment

Article 7(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that an operator who makes available on the Internet a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database protected under Article 7, where that dedicated meta engine:

— *provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;*

— *'translates' queries from end users into the search engine for the database site 'in real time', so that all the information on that database is searched through; and*

— *presents the results to the end user using the format of its website, grouping duplications together into a single block item but in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting results.*

([1]) OJ C 243, 11.8.2012.

Judgment of the Court (First Chamber) of 19 December 2013 (request for a preliminary ruling from the Bundesgerichtshof (Germany)) — Walter Endress v Allianz Lebensversicherungs AG

(Case C-209/12) ([1])

(Request for a preliminary ruling — Directives 90/619/EEC and 92/96/EEC — Direct life assurance — Right of cancellation — Lack of information on the conditions governing the exercise of that right — Expiry of the cancellation period one year after payment of the first premium — Conformity with Directives 90/619/EEC and 92/96/EEC)

(2014/C 52/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Walter Endress

Defendant: Allianz Lebensversicherungs AG

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of the first indent of Article 15(1) of Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50), in conjunction with Article 31(1) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (OJ 1992 L 360, p. 1) — Annuity — Right of cancellation of the policy-holder — Time-limit — Obligation to provide the policy-holder with information — National legislation under which the policy-holder loses the right of cancellation one year after payment of the first premium even if he has not been correctly informed of the conditions of exercising the right.

Operative part of the judgment

Article 15(1) of Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC, as amended by Council Directive 92/96/EEC of 10 November 1992, read in conjunction with Article 31 of the latter directive, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which a right of cancellation lapses one year at the latest after payment of the first premium, where the policy-holder has not been informed about the right of cancellation.

([1]) OJ C 200, 7.7.2012.

Judgment of the Court (First Chamber) of 12 December 2013 (request for a preliminary ruling from the Rechtbank te Rotterdam — Netherlands) — Criminal proceedings against Shell Nederland Verkoopmaatschappij BV (C-241/12), Belgian Shell NV (C-242/12)

(Joined Cases C-241/12 and C-242/12) ([1])

(Environment — Waste — Concept — Directive 2006/12/EC — Shipments of waste — Information from the competent national authorities — Regulation (EEC) No 259/93 — Discarding of a substance or object or intention or requirement to discard it)

(2014/C 52/16)

Language of the case: Dutch

Referring court

Rechtbank te Rotterdam

Parties in the main proceedings

Shell Nederland Verkoopmaatschappij BV (C-241/12), Belgian Shell NV (C-242/12)

Re:

Requests for a preliminary ruling — Rechtbank te Rotterdam — Netherlands — Interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1) and Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1) — Concept of 'waste' — Shipment of Ultra Light Sulphur Diesel (ULSD) by vessel from the Netherlands to Belgium — ULSD mixed accidentally, when the vessel was being loaded, with Methyl Tertiary Butyl Ether (MTBE) — Product no longer corresponding to the specifications agreed upon by the buyer and the vendor — Buyer who became aware of that fact at the time of delivery in Belgium — Diesel taken back by the vendor and shipped to the Netherlands — Purchase price refunded to the buyer — Vendor having the intention of placing the diesel back on the market, whether or not after mixing it with another product — Inclusion or non-inclusion in the concept of waste.

Operative part of the judgment

Article 2(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Regulation (EC) No 2557/2001, must be interpreted as meaning that, in a situation such as that at issue in the main proceedings, a consignment of diesel accidentally mixed with another substance is not covered by the concept of 'waste', provided that the holder of that consignment does actually intend to place that consignment, mixed with another product, back on the market, which it is for the referring court to ascertain.

([1]) OJ C 243, 11.8.2012.

Judgment of the Court (Second Chamber) of 19 December 2013 (request for a preliminary ruling from the Conseil d'État — France) — Association Vent De Colère! Fédération nationale and Others v Ministre de l'Écologie, du Développement durable, des Transports et du Logement, Ministre de l'Économie, des Finances et de l'Industrie

(Case C-262/12) ([1])

(Reference for a preliminary ruling — State aid — Concept of 'intervention by the State or through State resources' — Wind-generated electricity — Obligation to purchase at a price higher than the market price — Offsetting in full — Charges payable by final consumers of electricity)

(2014/C 52/17)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Association Vent De Colère! Fédération nationale, Alain Bruguier, Jean-Pierre Le Gorgeu, Marie-Christine Piot, Eric Errec, Didier Wirth, Daniel Steinbach, Sabine Servan-Schreiber, Philippe Rusch, Pierre Recher, Jean-Louis Moret, Didier Jocteur Monrozier

Defendants: Ministre de l'Écologie, du Développement durable, des Transports et du Logement, Ministre de l'Économie, des Finances et de l'Industrie

Intervener: Syndicat des énergies renouvelables

Re:

Request for a preliminary ruling — Conseil d'État (France) — Interpretation of Article 87 EC, now Article 107 TFEU — Concept of intervention by the State or through State resources — Obligation to purchase wind-generated electricity at a price higher than the market price — Additional costs offset in full — Change in the method of financing that offsetting — Charges payable by final consumers of electricity.

Operative part of the judgment

Article 107(1) TFEU must be interpreted as meaning that a mechanism for offsetting in full the additional costs imposed on undertakings because of an obligation to purchase wind-generated electricity at a price higher than the market price that is financed by all final consumers of electricity in the national territory, such as that resulting from Law No 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, as amended by Law No 2006-1537 of 7 December 2006 on the energy sector, constitutes an intervention through State resources.

([1]) OJ C 243, 11.8.2012

Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Cour de cassation (France)) — Frédéric Hay v Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres

(Case C-267/12) ([1])

(Directive 2000/78/EC — Equal treatment — Collective agreement which restricts a benefit in respect of pay and working conditions to employees who marry — Exclusion of partners entering into a civil solidarity pact — Discrimination based on sexual orientation)

(2014/C 52/18)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Frédéric Hay

Defendant: Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres

Re:

Reference for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 2(2)(b) of Council Directive No 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Admissibility of a national collective agreement which reserves an advantage in respect of pay and working conditions to employees who marry and excludes from the benefit of that advantage same-sex partners who have entered into a civil solidarity pact — Discrimination based on sexual orientation — Possibility of justifying indirect discrimination by a legitimate, appropriate and necessary aim.

Operative part of the judgment

Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a provision in a collective agreement, such as the one at issue in the main proceedings, under which an employee who concludes a civil solidarity pact with a person of the same sex is not allowed to obtain the same benefits, such as days of special leave and a salary bonus, as those granted to employees on the occasion of their marriage, where the national rules of the Member State concerned do not allow persons of the same sex to marry, in so far as, in the light of the objective of and the conditions relating to the grant of those benefits, that employee is in a comparable situation to an employee who marries.

([1]) OJ C 250, 18.8.2012.

Judgment of the Court (Grand Chamber) of 19 December 2013 — Telefónica SA v European Commission

(Case C-274/12 P) ([1])

(Appeal — Action for annulment — Fourth paragraph of Article 263 TFEU — Right to bring an action — Standing to bring proceedings — Natural or legal persons — Act of individual concern to them — Regulatory act not entailing implementing measures — Decision declaring a State aid scheme incompatible with the common market — Right to effective judicial protection)

(2014/C 52/19)

Language of the case: Spanish

Parties

Appellant: Telefónica SA (represented by: J. Ruiz Calzado and J. Domínguez Pérez, abogados, and M. Núñez Müller, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: P. Němečková and C. Urraca Caviedes, acting as Agents)

Re:

Appeal brought against the order of the General Court (Eighth Chamber) of 21 March 2012 in Case T-228/10 *Telefónica* v *Commission* by which the General Court dismissed as inadmissible an action for annulment of Article 1(1) of Commission Decision 2011/5/EC of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 7, p. 48).

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 227, 28.7.2012.

Judgment of the Court (Grand Chamber) of 19 December 2013 (request for a preliminary ruling from the Upper Tribunal — United Kingdom) — Fish Legal, Emily Shirley v Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd, Southern Water Services Ltd

(Case C-279/12) ([1])

(Reference for a preliminary ruling — Aarhus Convention — Directive 2003/4/EC — Public access to environmental information — Scope — Concept of 'public authority' — Water and sewerage undertakers — Privatisation of the water industry in England and Wales)

(2014/C 52/20)

Language of the case: English

Referring court

Upper Tribunal

Parties to the main proceedings

Appellants: Fish Legal, Emily Shirley

Respondents: Information Commissioner, United Utilities Water plc, Yorkshire Water Services Ltd, Southern Water Services Ltd

Re:

Request for a preliminary ruling — Upper Tribunal (Administrative Appeals Chamber) (United Kingdom) — Interpretation of Article 2(2)(a), (b) and (c) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26) — Obligation on public authorities to make environmental information held by them available to any applicant — Scope — Notion of natural or legal persons 'performing public administrative functions under national law'.

Operative part of the judgment

1. *In order to determine whether entities such as United Utilities Water plc, Yorkshire Water Services Ltd and Southern Water Services Ltd can be classified as legal persons which perform 'public administrative functions' under national law, within the meaning of Article 2(2)(b) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, it should be examined whether those entities are vested, under the national law which is applicable to them, with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law.*

2. *Undertakings, such as United Utilities Water plc, Yorkshire Water Services Ltd and Southern Water Services Ltd, which provide public services relating to the environment are under the control of a body or person falling within Article 2(2)(a) or (b) of Directive 2003/4, and should therefore be classified as 'public authorities' by virtue of Article 2(2)(c) of that directive, if they do not determine in a genuinely autonomous manner the way in which they provide those services since a public authority covered by Article 2(2)(a) or (b) of the directive is in a position to exert decisive influence on their action in the environmental field.*

3. *Article 2(2)(b) of Directive 2003/4 must be interpreted as meaning that a person falling within that provision constitutes a public authority in respect of all the environmental information which it holds. Commercial companies, such as United Utilities Water plc, Yorkshire Water Services Ltd and Southern Water Services Ltd, which are capable of being a public authority by virtue of Article 2(2)(c) of the directive only in so far as, when they provide public services in the environmental field, they are under the control of a body or person falling within Article 2(2)(a) or (b) of the directive are not required to provide environmental information if it is not disputed that the information does not relate to the provision of such services.*

([1]) OJ C 250, 18.8.2012.

Judgment of the Court (Sixth Chamber) of 19 December 2013 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Trento Sviluppo srl, Centrale Adriatica Soc. coop. arl v Autorità Garante della Concorrenza e del Mercato

(Case C-281/12) ([1])

(Reference for a preliminary ruling — Consumer protection — Unfair business-to-consumer commercial practices — Directive 2005/29/EC — Article 6(1) — Concept of 'misleading action' — Cumulative nature of the conditions set out in the provision in question)

(2014/C 52/21)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

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

Respondent: Autorità Garante della Concorrenza e del Mercato

Re:

Request for a preliminary ruling — Consiglio di Stato — Interpretation of Article 6(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22) — Concept of 'misleading action' — Cumulative nature of the conditions listed under the provision in question.

Operative part of the judgment

A commercial practice must be classified as 'misleading' for the purposes of Article 6(1) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') where that practice contains false information, or is likely to deceive the average consumer, and is likely to cause the consumer to take a transactional decision that he would not have taken otherwise. Article 2(k) of the directive must be interpreted as meaning that any decision directly related to the decision whether or not to purchase a product is covered by the concept of 'transactional decision'.

(1) OJ C 235, 4.8.2012.

Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tartu Ringkonnakohus — Estonia) — Ragn-Sells AS v Sillamäe Linnavalitsus

(Case C-292/12) (1)

(References for a preliminary ruling — Directive 2008/98/EC — Waste management — Article 16(3) — Principle of proximity — Regulation (EC) No 1013/2006 — Shipment of waste — Mixed municipal waste — Industrial waste and construction waste — Procedure for awarding a service concession for the collection and transport of waste produced on the territory of a municipality — Obligation for the future concessionaire to transport waste collected in the treatment facilities designated by the concession-granting authority — Nearest appropriate treatment facilities)

(2014/C 52/22)

Language of the case: Estonian

Referring court

Tartu ringkonnakohus

Parties to the main proceedings

Applicant: Ragn-Sells AS

Defendant: Sillamäe Linnavalitsus

Re:

Request for a preliminary ruling — Tartu Ringkonnakohus — Interpretation of Articles 102 TFEU and 106(1) TFEU and Article 16(3) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives (OJ 2008 L 312, p. 3) — Award procedure for public contracts for the organised transport of municipal waste — Condition in the contract documents that the future concessionaire must transport the waste solely to two specified waste management centres operating in the municipality in question despite the presence in the market of other service providers fulfilling the requirements — Exclusive right to treat municipal waste — Abuse of dominant position.

Operative part of the judgment

1. *The provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, read in conjunction with Article 16 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, must be interpreted as:*

   — *permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport mixed municipal waste collected from private households and, as applicable, from other producers, to the nearest appropriate treatment facility established in the same Member State as that authority;*

   — *not permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport industrial and building waste produced on its territory to the nearest appropriate treatment facility established in the same Member State as that authority, where that waste is intended for recovery, it the producers of that waste are themselves required to deliver the waste either to that undertaking or directly to that facility.*

2. *Articles 49 TFEU and 56 TFEU do not apply to a situation such as that in the main proceedings, which is confined in all respects within a single Member State.*

(1) OJ C 243, 11.8.2012.

Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium)) — Guido Imfeld, Nathalie Garcet v État belge

(Case C-303/12) ([1])

(Freedom of establishment — Equal treatment — Income tax — Legislation for the avoidance of double taxation — Income earned in a State other than the State of residence — Method of exemption subject to progressivity in the State of residence — Account taken, in part, of personal and family circumstances — Loss of certain tax advantages linked to the personal and family circumstances of the worker)

(2014/C 52/23)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Guido Imfeld, Nathalie Garcet

Defendant: État belge

Re:

Request for a preliminary ruling — Tribunal de première instance de Liège — Interpretation of Article 39 EC — Provisions of agreements, and national legislation, relating to double taxation — Occupational income wholly earned and taxed in a Member State other than the Member State of residence — Account taken in part, by the Member State in which the income is earned, of personal and family circumstances — The income tax payable in the Member State of residence calculated in accordance with the method of exemption subject to progressivity — Loss of tax advantages linked to personal and family circumstances.

Operative part of the judgment

Article 49 TFEU is to be interpreted as precluding the application of the tax legislation of a Member State, such as that at issue in the main proceedings, which has the effect that a couple residing in that Member State and earning income both in that Member State and in another Member State does not in fact receive a specific tax advantage, owing to the rules for offsetting it, whereas that couple would receive that tax advantage if the member of the couple earning the higher income did not earn his entire income in another Member State.

([1]) OJ C 287, 22.9.2012

Judgment of the Court (Fourth Chamber) of 12 December 2013 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero dello Sviluppo economico, Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture v SOA Nazionale Costruttori — Organismo di Attestazione SpA

(Case C-327/12) ([1])

(Articles 101 TFEU, 102 TFEU and 106 TFEU — Public undertakings and undertakings to which special or exclusive rights have been granted — Undertakings entrusted with the operation of services of general economic interest — Definition — Bodies tasked with checking and certifying compliance by undertakings carrying out public works with the conditions required by the law — Article 49 TFEU — Freedom of establishment — Restriction — Justification — Protection of recipients of services — Status of certification services)

(2014/C 52/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Ministero dello Sviluppo economico, Autorità per la vigilanza sui contratti pubblici di lavori, servizi e forniture

Defendant: SOA Nazionale Costruttori — Organismo di Attestazione SpA

Intervening parties: Associazione nazionale Società Organismi di Attestazione (Unionsoa), SOA CQOP SpA

Re:

Request for a preliminary ruling — Consiglio di Stato — Interpretation of Articles 101 TFEU, 102 TFEU and 106 TFEU — Concepts of 'public undertakings and undertakings to which Member States grant special or exclusive rights' and 'Undertakings entrusted with the operation of services of general economic interest' — Bodies responsible for verifying and attesting to the fact that potential subcontractors for public works comply with the conditions laid down by law — National legislation imposing minimum tariffs on those bodies.

Operative part of the judgment

Articles 101 TFEU, 102 TFEU and 106 TFEU must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which imposes on companies classified as attestation organisations (Società Organismi di Attestazione) a scheme of minimum tariffs for certification services offered to undertakings seeking to participate in procedures for the award of public works contracts

Such national legislation constitutes a restriction of the freedom of establishment within the meaning of Article 49 TFEU, but is suitable for attaining the objective of protecting the recipients of the services in question. It is for the referring court to determine whether, in the light of, inter alia, the method of calculating the minimum tariffs, particularly in the light of the number of categories of work for which the certificate is drawn up, that national legislation goes beyond what is necessary to attain that objective.

([1]) OJ C 295, 29.9.2012.

Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunale di Napoli — Italy) — Carmela Carratù v Poste Italiane SpA

(Case C-361/12) ([1])

(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work — Principle of non-discrimination — Employment conditions — National legislation establishing a system of compensation for the unlawful insertion of a fixed-term clause into an employment contract which is different from that applicable to the unlawful termination of an employment contract of indefinite duration)

(2014/C 52/25)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Carmela Carratù

Defendant: Poste Italiane SpA

Re:

Request for a preliminary ruling — Tribunale di Napoli — Interpretation of Clause 4 of the framework agreement set out in Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p 43) — Scope — Concept of 'working conditions' — Horizontal applicability of that directive — Concept of 'State body' — Interpretation of Article 47 of the Charter of Fundamental Rights and Article 6 ECHR — Principle of equivalence — National legislation establishing a system of compensation for the unlawful insertion of a fixed-term clause into an employment contract providing for comprehensive compensation ranging from 2.5 to 12 months' actual full pay for the period from the interruption of the employment relations until the date of actual reinstatement — Compensation lower than either the compensation provided for under the ordinary civil law in the event of unjustified refusal to accept work or the compensation provided for in the event of unlawful termination of an employment contract of indefinite duration.

Operative part of the judgment

1. *Clause 4(1) of the Framework agreement on fixed-term work, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that it may be relied on directly against a State body such as Poste Italiane SpA.*

2. *Clause 4(1) of the framework agreement on fixed-term work must be interpreted as meaning that the concept of 'employment conditions' covers the compensation that the employer must pay to an employee on account of the unlawful insertion of a fixed-term clause into his employment contract.*

3. *While that framework agreement does not preclude Member States from granting fixed-term workers more favourable treatment than that provided for by the framework agreement, clause 4(1) of the framework agreement must be interpreted as not requiring the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship to be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship.*

([1]) OJ C 295, 29.9.2012.

Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the Supreme Court of the United Kingdom) — 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) ([1])

(Judicial protection — Principle of effectiveness — Principles of legal certainty and the protection of legitimate expectations — Restitution of sums paid but not due — Remedies — National legislation — Curtailment of the limitation period for the applicable remedies without notice and retroactively)

(2014/C 52/26)

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

Re:

Reference for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Articles 49 TFEU and 63 TFEU — National taxes contrary to European Union law — Recovery of sums unduly paid — Coexistence, under national law, of two alternative causes of action open to taxpayers for the purpose of seeking repayment of sums due, one of which provides for a longer period within which an action may be brought than the other — National legislation which reduces, retroactively and without prior notice, the longer of the two limitation periods — Whether compatible with the principles of effectiveness, legal certainty and legitimate expectations.

Operative part of the judgment

1. *In a situation in which, under national law, taxpayers have a choice between two possible causes of action as regards the recovery of tax levied in breach of European Union law, one of which benefits from a longer limitation period, the principles of effectiveness, legal certainty and the protection of legitimate expectations preclude national legislation curtailing that limitation period without notice and retroactively;*

2. *It makes no difference to the answer to the first question that, at the time when the taxpayer issued its claim, the availability of the cause of action affording the longer limitation period had been recognised only recently by a lower court and was not definitively confirmed by the highest judicial authority until later.*

([1]) OJ C 311, 13.10.2012.

Judgment of the Court (Eighth Chamber) of 12 December 2013 — European Commission v Italian Republic

(Case C-411/12) ([1])

(Failure of a Member State to fulfil obligations — State aid — Preferential electricity tariff — Decision 2011/746/EU — Aid incompatible with the internal market — Recovery — Failure to implement within the prescribed period)

(2014/C 52/27)

Language of the case: Italian

Parties

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

Defendant: Italian Republic (represented by: G. Palmieri, assisted by S. Fiorentino, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — State aid — Failure to adopt the measures necessary to comply with Articles 3, 4 and 5 of Commission Decision 2011/746/EU of 23 February 2011 on State aid granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA (OJ 2011 L 309, p. 1) — Obligation to recover without delay the aid declared unlawful and incompatible with the common market and to notify the Commission of the measures taken.

Operative part of the judgment

The Court:

1. *Declares that, by not taking, within the prescribed period, all the measures necessary to recover from Portovesme Srl and Eurallumina SpA the State aid declared unlawful and incompatible with the internal market in Article 2 of Commission Decision 2011/746/EU of 23 February 2011 on State aid measures C 38/B/04 (ex NN 58/04) and C 13/06 (ex N 587/05) granted by Italy to Portovesme Srl, ILA SpA, Eurallumina SpA and Syndial SpA, the Italian Republic failed to fulfil its obligations under Articles 3 and 4 of that decision.*

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

([1]) OJ C 355, 17.11.2012.

Judgment of the Court (Fifth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto — Portugal) — Portgás — Sociedade de Produção e Distribuição de Gás SA v Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território

(Case C-425/12) ([1])

(Procedures for awarding public contracts in the water, energy, transport and telecommunications sectors — Directive 93/38/EEC — Directive not transposed into national law — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law)

(2014/C 52/28)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal do Porto

Parties to the main proceedings

Applicant: Portgás — Sociedade de Produção e Distribuição de Gás SA

Defendant: Ministério da Agricultura, do Mar, do Ambiente e do Ordenamento do Território

Re:

Request for a preliminary ruling — Tribunal Administrativo e Fiscal do Porto — Portugal — Interpretation of Articles 2(1)(b), 4(1) and 14(1)(c)(i) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84), as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 (OJ 1998 L 101, p. 1) — Direct effect — Whether the State may rely on that directive against a body holding a public service concession in the case where that directive has not been transposed into national law.

Operative part of the judgment

Articles 4(1), 14(1)(c)(i) and 15 of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, as amended by Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998, must be interpreted as meaning that they cannot be relied on against a private undertaking solely on the ground that, in its capacity as the exclusive holder of a public-interest service concession, that undertaking comes within the group of persons covered by Directive 93/38, in circumstances where that directive has not yet been transposed into the domestic system of the Member State concerned.

Such an undertaking, which has been given responsibility, pursuant to a measure adopted by the State, for providing, under the control of the State, a public-interest service and which has, for that purpose, special powers going beyond those which result from the normal rules applicable in relations between individuals, is obliged to comply with the provisions of Directive 93/38, as amended by Directive 98/4, and the authorities of a Member State may therefore rely on those provisions against it.

([1]) OJ C 389, 15.12.2012.

Judgment of the Court (Eighth Chamber) of 19 December 2013 (reference for a preliminary ruling from the Gerechtshof 's Hertogenbosch (Netherlands)) — X

(Case C-437/12) ([1])

(Internal taxation — Article 110 TFEU — Registration duty — Similar domestic products — Neutrality of the tax between imported used automobile vehicles and similar vehicles already present on the national market)

(2014/C 52/29)

Language of the case: Dutch

Referring court

Gerechtshof 's Hertogenbosch

Parties to the main proceedings

X

Re:

Reference for a preliminary ruling — Gerechtshof te's Hertogenbosch (Netherlands) — Interpretation of Article 110 TFEU — Domestic taxation — National legislation imposing a registration levy at the time of the first use of a vehicle on the national road network — Amount of the levy based, as from 2010, on CO_2 emissions — Vehicle first used on the roads outside the Netherlands in 2006 and registered in 2010 for use within national territory.

Operative part of the judgment

1. *For the purpose of applying Article 110 TFEU, the similar domestic products which are comparable to a used vehicle such as the one at issue in the main proceedings, which was first put into service before 1 February 2008 and was imported and registered in the Netherlands in 2010, are the vehicles already present on the Netherlands market whose characteristics are closest to those of the vehicle in question.*

2. *Article 110 TFEU must be interpreted as precluding a tax, such as the passenger-car and motorcycle tax (belasting personenauto's en motorrijwielen) as in force in 2010, if and in so far as the amount of that tax levied on used imported vehicles upon their registration in the Netherlands exceeds the lowest residual amount of BPM incorporated into the value of similar used vehicles already registered in that same Member State.*

([1]) OJ C 399, 22.12.2012.

Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Actavis Group PTC EHF, Actavis UK Ltd v Sanofi

(Case C-443/12) ([1])

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining such a certificate — Successive marketing of two medicinal products containing, wholly or partially, the same active ingredient — Combination of active ingredients, one of which has already been marketed in the form of a medicinal product with a single active ingredient — Whether it is possible to obtain a number of certificates on the basis of the same patent and two marketing authorisations)

(2014/C 52/30)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicants: Actavis Group PTC EHF, Actavis UK Ltd

Defendant: Sanofi

Intervening party: Sanofi Pharma Bristol-Myers Squibb SNC

Re:

Request for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Article 3(a) and (c) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Conditions for obtaining a supplementary protection certificate — Concept of 'product protected by a basic patent in force' — Criteria — Possibility of granting the certificate for each medicinal product where there is a patent covering a number of medicinal products.

Operative part of the judgment

In circumstances such as those in the main proceedings, where, on the basis of a patent protecting an innovative active ingredient and a marketing authorisation for a medicinal product containing that ingredient as the single active ingredient, the holder of that patent has already obtained a supplementary protection certificate for that active ingredient entitling him to oppose the use of that active ingredient, either alone or in combination with other active ingredients, Article 3(c) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products must be interpreted as precluding that patent holder from obtaining — on the basis of that same patent but a subsequent marketing authorisation for a different medicinal product containing that active ingredient in conjunction with another active ingredient which is not protected as such by the patent — a second supplementary protection certificate relating to that combination of active ingredients.

([1]) OJ C 389, 15.12.2012.

Judgment of the Court (First Chamber) of 12 December 2013 — Rivella International AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Baskaya di Baskaya Alim e C. Sas

(Case C-445/12 P) ([1])

(Appeal — Community trade mark — Figurative mark containing the word element 'BASKAYA' — Opposition — Bilateral convention — Territory of a non-Member State — 'Genuine use')

(2014/C 52/31)

Language of the case: German

Parties

Appellant: Rivella International AG (represented by: C. Spintig, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: G. Schneider, Agent), Baskaya di Baskaya Alim e C. Sas

Re:

Appeal against the judgment of 12 July 2012 in Case T-170/11 *Rivella International* v *OHIM — Baskaya di Baskaya Alim (BASKAYA)* by which the General Court (Sixth Chamber) dismissed the action brought against the decision of the Fourth Board of Appeal of OHIM of 10 January 2011 (Case R 534/2010-4) relating to opposition proceedings between Rivella International AG and Baskaya di Baskaya Alim e C. Sas — Likelihood of confusion between a figurative sign containing the word element 'BASKAYA' and an earlier international figurative mark containing the word element 'Passaia' — Infringement of Article 42(2) and (3) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Error of assessment in examining the opposition.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Rivella International AG to pay the costs.*

([1]) OJ C 366, 24.11.12

Judgment of the Court (Third Chamber) of 19 December 2013 (request for a preliminary ruling from the Landgericht Krefeld — Germany) — Nipponkoa Insurance Co. (Europe) Ltd v Inter-Zuid Transport BV

(Case C-452/12) ([1])

(Judicial cooperation in civil and commercial matters — Regulation (EC) No 44/2001 — Articles 27, 33 and 71 — Lis pendens — Recognition and enforcement of judgments — Convention on the Contract for the International Carriage of Goods by Road (CMR) — Article 31(2) — Rules for coexistence — Action for indemnity — Action for a negative declaration — Negative declaratory judgment)

(2014/C 52/32)

Language of the case: German

Referring court

Landgericht Krefeld

Parties to the main proceedings

Applicant: Nipponkoa Insurance Co. (Europe) Ltd

Defendant: Inter-Zuid Transport BV

Intervener: DTC Surhuisterveen BV

Re:

Request for a preliminary ruling — Landgericht Krefeld — Interpretation of Articles 27 and 71 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I') (OJ 2001 L 12, p. 1) — Relationship with the Convention on the Contract for the International Carriage of Goods by Road (CMR) — Rules on inter-relationship — *Lis pendens* — Duty to interpret Article 31(2) of the CMR in the light of Article 27 of the Brussels I Regulation — Relationship between an action for damages by the sender of the goods or the consignee thereof and a declaratory action by the carrier seeking a declaration that he is not liable for the damage or, if he is liable, that his liability is limited to a maximum amount ('action for a negative declaration').

Operative part of the judgment

1. *Article 71 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it precludes an international convention from being interpreted in a manner which fails to ensure, under conditions at least as favourable as those provided for by that regulation, that the underlying objectives and principles of that regulation are observed.*

2. *Article 71 of Regulation No 44/2001 must be interpreted as meaning that it precludes an interpretation of Article 31(2) of the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva on 19 May 1956, as amended by the Protocol signed in Geneva on 5 July 1978, according to which an action for a negative declaration or a negative declaratory judgment in one Member State does not have the same cause of action as an action for indemnity between the same parties in another Member State.*

([1]) OJ C 26, 26.1.2013.

Judgment of the Court (Third Chamber) of 12 December 2013 (request for a preliminary ruling from the Rechtbank's-Gravenhage (Netherlands)) — Georgetown University v Octrooicentrum Nederland, operating under the name NL Octrooicentrum

(Case C-484/12) ([1])

(Medicinal products for human use — Supplementary protection certificate — Regulation (EC) No 469/2009 — Article 3 — Conditions for obtaining such a certificate — Whether it is possible to obtain a number of supplementary protection certificates on the basis of just one patent)

(2014/C 52/33)

Language of the case: Dutch

Referring court

Rechtbank's-Gravenhage

Parties to the main proceedings

Applicant: Georgetown University

Defendant: Octrooicentrum Nederland, operating under the name NL Octrooicentrum

Re:

Request for a preliminary ruling — Rechtbank's-Gravenhage (Netherlands) — Interpretation of Articles 3(c) and 14(b) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ 2009 L 152, p. 1) — Conditions under which a certificate may be obtained — Basic patent in force covering several products — Whether or not there is a right to a certificate for each product.

Operative part of the judgment

In circumstances such as those in the main proceedings, where, on the basis of a basic patent and a marketing authorisation for a medicinal product consisting of a combination of several active ingredients, the patent holder has already obtained a supplementary protection certificate for that combination of active ingredients, protected by that patent within the meaning of Article 3(a) of Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, Article 3(c) of that regulation must be interpreted as not precluding the proprietor from also obtaining a supplementary protection certificate for one of those active ingredients which, individually, is also protected as such by that patent.

([1]) OJ C 26, 26.01.13.

Judgment of the Court (Fifth Chamber) of 19 December 2013 (request for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) — United Kingdom) — Commissioners for Her Majesty's Revenue and Customs v Bridport and West Dorset Golf Club Limited

(Case C-495/12) ([1])

(Taxation — VAT — Directive 2006/112/EC — Exemptions — Article 132(1)(m) — Supply of services closely linked to sport — Access to a golf course — Payment of golf club access charge ('green fee') by visiting non-members — Exclusion from the exemption — Article 133(d) — Article 134(b) — Additional income)

(2014/C 52/34)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

Appellants: Commissioners for Her Majesty's Revenue and Customs

Respondent: Bridport and West Dorset Golf Club Limited

Re:

Request for a preliminary ruling — Upper Tribunal (Tax and Chancery Chamber) — United Kingdom — Interpretation of Articles 132(1)(m), 133(d) and 134(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemptions — Supply of services closely linked with sport or physical education — Sale by a non-profit-making body of rights to use a golf course for a certain period of time for the purpose of playing golf.

Operative part of the judgment

1. *Article 134(b) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as not excluding from the exemption in Article 132(1)(m) of that directive a supply of services consisting in the grant, by a non-profit-making body managing a golf course and offering a membership scheme, of the right to use that golf course to visiting non-members of that body.*

2. *Article 133(d) of Directive 2006/112 must be interpreted as not allowing the Member States, in circumstances such as those in the main proceedings, to exclude from the exemption in Article 132(1)(m) of that directive a supply of services consisting in the grant of the right to use the golf course managed by a non-profit-making body offering a membership scheme when that supply is provided to visiting non-members of that body.*

([1]) OJ C 32, 2.2.2013.

Judgment of the Court (Fifth Chamber) of 19 December 2013 (request for a preliminary ruling from the Kúria — Hungary) — BDV Hungary Trading Kft, in liquidation v Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

(Case C-563/12) ([1])

(VAT — Directive 2006/112/EC — Article 146 — Exemptions on exportation — Article 131 — Conditions laid down by Member States — National legislation requiring that property intended to be exported leave the customs territory of the European Union within a fixed period of 90 days after supply)

(2014/C 52/35)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: BDV Hungary Trading Kft, in liquidation

Defendant: Nemzeti Adó- és Vámhivatal Közép-magyarországi Regionális Adó Főigazgatósága

Re:

Request for a preliminary ruling — Kúria — Interpretation of Article 15 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and Articles 131, 146 and 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemptions on exportation — Company producing and selling tinned food which sells goods intended to be sold by the purchaser in third countries — National legislation making the right to exemption from VAT with respect to the sale of goods for export outside the European Union subject to the condition that the period between the sale and the date when the goods leave the national territory does not exceed 90 days.

Operative part of the judgment

Articles 146(1) and 131 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding national legislation under which, in the context of a supply for export, goods intended to be exported from the European Union must have left the territory of the European Union within a fixed period of three months or 90 days following the date of supply, where merely exceeding that time-limit results in the definitive loss for the taxable person of the right to exemption in relation to that supply.

([1]) OJ C 114, 20.4.2013.

Judgment of the Court (Tenth Chamber) of 19 December 2013 — Koninklijke Wegenbouw Stevin BV v European Commission

(Case C-586/12 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Netherlands market in road pavement bitumen — Fixing of the gross price of road pavement bitumen — Fixing of a rebate for road builders — Evidence — Principle of equal treatment — Unlimited jurisdiction — Proportionality of the fine — Review by the Court)

(2014/C 52/36)

Language of the case: Dutch

Parties

Appellant: Koninklijke Wegenbouw Stevin BV (represented by: E. Pijnacker Hordijk, lawyer)

Other party to the proceedings: European Commission (represented by: F. Ronkes Agerbeek, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Sixth Chamber) of 27 September 2012 in Case T-357/06 *Koninklijke Wegenbouw Stevin* v *Commission*, by which the General Court dismissed an action, principally, for annulment of Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)), in so far as it concerns the applicant, and, in the alternative, for reduction of the fine imposed on the applicant by that decision

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 71, 9.3.2013.

Order of the Court (Sixth Chamber) of 14 November 2013 — TeamBank AG Nürnberg v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fercredit Servizi Finanziari SpA

(Case C-524/12 P) ([1])

(Appeal — Community trade mark — Figurative mark f@ir Credit — Opposition by the proprietor of the Community figurative mark FERCREDIT — Refusal of registration)

(2014/C 52/37)

Language of the case: German

Parties

Appellant: TeamBank AG Nürnberg (represented by: D. Terheggen, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), Fercredit Servizi Finanziari SpA (represented by: G Petrocchi, A. Masetti Zannini de Concina and R. Cartella, lawyers)

Re:

Appeal against the judgment of the General Court (Third Chamber) of 19 September 2012 in Case T-220/11 TeamBank v OHMI — Fercredit Servizi Finanziari, by which the General Court dismissed the action brought against the decision of the First Board of Appeal of OHIM of 3 February 2011 (Case R 719/2010-1) relating to opposition proceedings between Fercredit Servizi Finanziari SpA and TeamBank AG Nürnberg — Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Likelihood of confusion between a figurative sign including the word element 'f@ir Credit' and an earlier international figurative mark including the word element 'FERCREDIT'.

Operative part of the order

1. *The appeal is dismissed.*

2. *Team Bank AG Nürnberg is ordered to pay the costs.*

([1]) OJ C 9, 12.1.2013.

Order of the Court of Justice (Tenth Chamber) of 5 December 2013 — Luigi Marcuccio v European Commission

(Case C-534/12 P) ([1])

(Appeal — Action for review — Order of the General Court of the European Union declaring the action inadmissible — Assignment — Reassignment from the delegation in Luanda (Angola) to Brussels (Belgium) — Decision to pack and remove the applicant's personal effects in his absence — Consequences of a later judgment of the General Court)

(2014/C 52/38)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission (represented by: C. Berardis-Kayser and G. Gattinara, acting as Agents)

Re:

Appeal against the order of the General Court (Third Chamber) of 11 September 2012 in Case T-241/03 REV *Marcuccio* v *Commission* by which that court dismissed an application for review of the order of the General Court of 17 May 2006 in Case T-241/03 *Marcuccio* v *Commission* — Breach of the first subparagraph of Article 64(4) and Article 127(2) of the Rules of Procedure of the General Court — Breach of the first and second subparagraphs of Article 44 of the Statute of the Court of Justice — Breach of Article 47 of the Charter of Fundamental Rights of the European Union.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio is ordered to pay the costs.*

([1]) OJ C 71, 9.3.2013

Order of the Court (Eighth Chamber) of 12 December 2013 (request for a preliminary ruling from the Tribunale ordinario di Aosta — Italy) — Rocco Papalia v Comune di Aosta

(Case C-50/13) [1]

(Request for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Social policy — Directive 1999/70/EC — Clause 5 of the Framework Agreement on fixed-term work — Public sector — Successive contracts — Misuse — Compensation for damage — Conditions for the payment of compensation in the event of the unlawful fixing of a date on which a contract of employment will expire — Principles of equivalence and effectiveness)

(2014/C 52/39)

Language of the case: Italian

Referring court

Tribunale ordinario di Aosta

Parties to the main proceedings

Applicant: Rocco Papalia

Defendant: Comune di Aosta

Re:

Request for a preliminary ruling — Tribunale ordinario di Aosta — Interpretation of Clause 5 of the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Public administration — Compensation in the event of the unlawful fixing of a date on which a contract of employment will expire — Conditions — Evidence of damage incurred — Need to prove that better work opportunities were foregone

Operative part of the order

The framework agreement on fixed-term work, concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding measures provided for by national legislation, such as that at issue in the main proceedings, which, in the event of misuse by a public employer of successive fixed-term employment contracts, provides solely for the right for the worker concerned to obtain compensation for the damage which he considers himself to have therefore incurred, without any transformation of the fixed-term employment relationship into an employment relationship for an indefinite period, where the right to that compensation is subject to the obligation on that worker to prove that he was forced to forego better work opportunities, although the effect of that obligation is to render impossible in practice or excessively difficult the exercise by that worker of rights conferred by European Union law.

It is for the referring court to assess to what extent the provisions of domestic law aimed at penalising the misuse by the public administration of successive fixed-term employment contracts or relationships comply with those principles.

[1] OJ C 147, 25.5.2013.

Order of the Court (Sixth Chamber) of 12 December 2013 — Fercal — Consultadoria e Serviços, Ld[a] v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Jacson of Scandinavia AB

(Case C-159/13 P) [1]

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Community trade mark JACKSON SHOES — Application for a declaration of invalidity made by the proprietor of the national business name Jacson of Scandinavia AB — Declaration of invalidity — Manifest inadmissibility)

(2014/C 52/40)

Language of the case: Portuguese

Parties

Appellant: Fercal — Consultadoria e Serviços, Ld[a] (represented by: A.J. Rodrigues, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Guimarães and G. Schneider, Agents), Jacson of Scandinavia AB

Re:

Appeal against the judgment of the General Court (Fifth Chamber) of 24 January 2013 in Case T-474/09 Fercal — Consultadoria e Serviços, Ld[a] v OHIM, Jacson of Scandinavia AB, by which the General Court dismissed the action brought against the decision of the Second Board of Appeal of OHIM of 18 August 2009 (Case R 1253/2008-2) relating to invalidity proceedings between Jacson of Scandinavia AB and Fercal — Consultadoria e Serviços, Lda.

Operative part of the order

1. *The appeal is dismissed.*
2. *Fercal — Consultadoria e Serviços Lda is ordered to pay the costs.*

[1] OJ C 171, 15.6.2013.

Order of the Court (Sixth Chamber Chamber) of 7 November 2013 — (reference for a preliminary ruling from the Tribunal di Cagliari (Italy)) — Criminal proceedings against Sergio Alfonso Lorrai

(Case C-224/13) [1]

(Request for a preliminary ruling — Article 53(2) of the Rules of Procedure of the Court of Justice — Fundamental rights — Excessive length of the criminal proceedings — Stay of criminal proceedings, for an indefinite period, in the event of sickness of the accused making him incapable of consciously participating in the proceedings — Irreversible sickness of the accused — Failure to implement European Union law — Clear lack of jurisdiction of the Court of Justice)

(2014/C 52/41)

Language of the case: Italian

Referring court

Tribunal di Cagliari (Italy)

Criminal proceedings against

Sergio Alfonso Lorrai

Re:

Request for a preliminary ruling — Tribunal di Cagliari — Interpretation of Article 47(2) of the Charter of Fundamental Rights of the European Union and of Article 6 of the European Convention on Human Rights read together with Article 6 TEU — Excessive length of the criminal proceedings — National legislation laying down the obligation to stay criminal proceedings, for an indefinite period, in the event of sickness of the accused, making him incapable of consciously participating in the proceedings — Obligation to subject the accused to periodic checks — Irreversible sickness of the accused.

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the questions referred by the Tribunal di Cagliari (Italy).

([1]) OJ C 207, 20.7.2013.

Order of the Court (Seventh Chamber) of 12 December 2013 (request for a preliminary ruling from the Commissione Tributaria Regionale dell'Umbria — Italy) — Umbra Packaging srl v Agenzia delle Entrate — Direzione Provinciale di Perugia

(Case C-355/13) ([1])

(Request for a preliminary ruling — Rules of Procedure — Articles 53(2) and 99 — Possible to infer the answer to a question referred for a preliminary ruling clearly from the case-law — Request manifestly inadmissible — Electronic communications networks and services — Directive 2002/20/EC (Authorisation Directive) — Article 3 — Imposition of a government authorisation charge when a telephone subscription is taken out — Charge not applied to the use of prepaid telephone cards — Article 102 TFEU)

(2014/C 52/42)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale dell'Umbria

Parties to the main proceedings

Applicant: Umbra Packaging srl

Defendant: Agenzia delle Entrate — Direzione Provinciale di Perugia

Re:

Request for a preliminary ruling — Commissione Tributaria Regionale dell'Umbria — Interpretation of Article 3 of 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) and of Article 102 TFEU — National legislation imposing a fee on mobile telephone operators — Imposition of a government authorisation charge when a telephone subscription is taken out — Charge not applied to the use of prepaid telephone cards

Operative part of the order

Article 3 of 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), must be interpreted as meaning that it does not preclude national legislation such as that relating to the charge on activities carried out in the context of a government concession.

([1]) OJ C 260, 7.9.2013.

Request for a preliminary ruling from the Curtea de Apel Timișoara (Romania) lodged on 3 June 2013 — Agenția de Plăți și Intervenție pentru Agricultură (APIA) — Centrul Județean Timiș v Curtea de Conturi a României, Camera de Conturi a Județului Timiș

(Case C-304/13)

(2014/C 52/43)

Language of the case: Romanian

Referring court

Curtea de Apel Timișoara

Parties to the main proceedings

Appellant: Agenția de Plăți și Intervenție pentru Agricultură (APIA) — Centrul Județean Timiș

Respondents: Curtea de Conturi a României, Camera de Conturi a Județului Timiș

Intervener: Agenția de Plăți și Intervenție pentru Agricultură (APIA)

Question referred

Do the provisions of Council Regulation (EC) No 1782/2003 of 29 September 2003, ([1]) in particular Articles 115 and 135

thereof, preclude a State from making the grant of a premium to a farmer subject to additional conditions, which are not laid down in that regulation, namely the condition that the farmer must 'have no debts due in respect of the State budget and/or the local budget at the date of application for the premium'?

(1) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

Request for a preliminary ruling from the Tribunale di Verona (Italy) lodged on 30 August 2013 — Shamim Tahir v Ministero dell'Interno and Questura di Verona

(Case C-469/13)

(2014/C 52/44)

Language of the case: Italian

Referring court

Tribunale di Verona

Parties to the main proceedings

Applicant: Shamim Tahir

Defendants: Ministero dell'Interno, Questura di Verona

Questions referred

1. Is Article 7(1) of Directive 2003/109 (1) to be interpreted as meaning that the condition laid down in Article 4(1) of that directive, under which long-term residence status is dependent upon a person having resided legally and continuously in a Member State for five years, documentary evidence of which must be submitted when an application for a long-term residence permit is made, may also be satisfied by a person, other than the applicant, who has a family connection with the applicant for the purposes of Article 2(e) of the directive?

2. Is the first sentence of Article 13 of Directive 2003/109 to be interpreted as meaning that one of the more favourable terms on which Member States may issue a 'long-term resident's EC residence permit' of permanent or unlimited validity is that, where a person has already acquired long-term resident status, having satisfied the pre-condition laid down in Article 4(1) of that directive, under which legal and continuous residence in the Member State concerned for five years is required, members of that person's family for the purposes of Article 2(e) of the directive are to be deemed also to have satisfied that condition, irrespective of the length of time for which they have resided in the national territory of the Member State in which the application is submitted?

(1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 6 November 2013 — Azienda Ospedaliero-Universitaria di Careggi-Firenze v Data Medical Service srl

(Case C-568/13)

(2014/C 52/45)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Azienda Ospedaliero-Universitaria di Careggi-Firenze

Respondent: Data Medical Service srl

Questions referred

1. Does Article 1 of Directive 50/1992, (1) read also in the light of the later Article 1(8) of Directive 18/2004, (2) preclude a national rule which was interpreted as excluding the appellant in the present proceedings, by dint of the fact that it is a commercially-run hospital characterisable as a public economic entity, from participating in tendering procedures?

2. Does European Union law on public procurement — in particular, the general principles of freedom of competition, non-discrimination and proportionality — preclude a national rule under which a body like the appellant hospital, which receives public funding on a permanent basis and is directly contracted to provide a public service, is able to derive from that situation a decisive competitive advantage over rival economic operators, as demonstrated by the size of the discount offered, in circumstances in which corrective measures have not been put in place at the same time in order to prevent that kind of distortion of competition?

(1) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

(2) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Consiglio di Stato (Italy) of 20 November 2013 — Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Ministero dello Sviluppo Economico v Ediltecnica SpA

(Case C-592/13)

(2014/C 52/46)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Ministero dello Sviluppo Economico

Respondent: Ediltecnica SpA

Question referred for a preliminary ruling

Do the European Union principles relating to the environment, laid down in Article 191(2) of the Treaty on the Functioning of the European Union and in Directive 2004/35/EC [1] of 21 April 2004 (Articles 1 and 8(3) and recitals 13 and 24 in the preamble) — specifically, the 'polluter pays'principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority — preclude national legislation, such as the rules set out in Articles 244, 245 and 253 of Legislative Decree No 152 of 3 April 2006, which, in circumstances in which it is established that a site is contaminated and in which it is impossible to identify the polluter or to have that person adopt the restoration measures, do not permit the administrative authority to require the owner (who is not responsible for the pollution) to implement the emergency safety and decontamination measures, merely attributing to that person financial liability limited to the value of the site once the decontamination measures have been carried out?

[1] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

Request for a preliminary ruling from the Giudice di pace di Matera (Italy) lodged on 21 November 2013 — Intelcom Service Ltd v Vincenzo Mario Marvulli

(Case C-600/13)

(2014/C 52/47)

Language of the case: Italian

Referring court

Giudice di pace di Matera

Parties to the main proceedings

Applicant: Intelcom Service Ltd

Defendant: Vincenzo Mario Marvulli

Questions referred

1. Do Articles 51 et seq. of Italian Law No 89/1913 concerning the profession of notary, in conjunction with Articles 1350 and 2657 of the Civil Code, give rise to a de facto monopoly on the provision of services by notaries with regard to drawing up and authenticating deeds relating to the sale of immovable property in Italy, in clear breach of the rules and principles laid down by the Treaties of the European Union (Article 49 of the EU Treaty), which provide for the free movement of services within the Member States of the European Union, and in particular of Directive 2006/123/EC [1] of 12 December 2006 [on services in the internal market] (referred to as the Bolkestein directive), implemented in Italy by Legislative Decree No 59 of 26 March 2010 and published in G.U. No 94 of 23 April 2010?

2. Does the Court of Justice of the European Union also consider Italian Law No 89/1913 concerning the profession of notary, in conjunction with Articles 1350 and 2657 of the Civil Code, to be in breach of the rules laid down by the EU Treaty which prohibit monopolies on the provision of services (Article 53 of the EU Treaty and Article 37 of the EU Treaty)?

3. Does the Court of Justice of the European Union also consider Italian Law No 89/1913 concerning the profession of notary, in conjunction with Articles 1350 and 2657 of the Civil Code, to be in breach of European Union rules prohibiting what are referred to as measures having equivalent effect, laid down in Articles 28 and 29 of the EC Treaty and subsequently included in Articles 34 and 35 of the Treaty on the Functioning of the European Union as a result of the reform brought about by the Treaty of Lisbon, such measures being prohibited by the Treaty since they treat nationals of some Member States less favourably than nationals of other Member States with regard to access to services?

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Appeal brought on 26 November 2013 by Hansa Metallwerke AG and Others against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Case T-375/10 Hansa Metallwerke AG and Others v European Commission

(Case C-611/13 P)

(2014/C 52/48)

Language of the case: German

Parties

Appellants: Hansa Metallwerke AG, Hansa Nederland BV, Hansa Italiana Srl., Hansa Belgium, Hansa Austria GmbH (represented by: H.-J. Hellmann and S. Cappellari, Rechtsanwälte)

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

Form of order sought

The appellants claim that the Court should:

I. set aside the judgment of the General Court delivered on 16 September 2013 in Case T-375/10 *Hansa Metallwerke AG and Others* v *Commission* and make a definitive determination as follows:

1. annul the Commission's decision of 23 June 2010, notified to the appellants on 30 June 2010, relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union ('TFEU') and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as it concerns the appellants;

in the alternative,

reduce the amount of the fine;

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

II. in the further alternative,

set aside the judgment under appeal and refer the case back to the General Court for a decision.

Pleas in law and main arguments

The appellants first of all allege infringement by the General Court of the EU-law principle that penalties must be specific to the offender and to the offence. In particular, the General Court failed to take into account the fact that the recast version of the Commission's Guidelines for fines in 2006 brought with it a radical change to the general method of calculation, particularly for undertakings with a limited range of products and services. As a consequence of its legally defective approach, the General Court failed to carry out its comprehensive duty of verification with regard to the setting of the fine by the respondent, or alternatively did so only in a legally deficient manner.

In addition, the appellants allege that the General Court provided insufficient reasons for its comments on the principle that penalties must be specific to the offender and to the offence. In particular, the General Court failed entirely to examine the leading judgment of the Eighth Chamber in Case T-211/08 [1] and the evidently changed view of the Commission in its order in the proceedings in COMP/39452, although the appellants had set out detailed submissions on this issue at the hearing.

Finally, the appellants allege infringement of the EU-law principle of the protection of legitimate expectations. In assessing the Commission's action in not granting a reduction in the fine in its decision, contrary to the assurance which it had given during the administrative procedure, the General Court failed to have regard for the overriding significance which is attached to loyal cooperation with the Commission within the context of its notice on immunity from fines and reduction of fines in cartel cases.

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[1] Judgment of 16 June 2011, *Putters International* v *European Commission* [2011] ECR II-3729.

Appeal brought on 26 November 2013 by European Commission against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Joined Cases T-379/10 and T-381/10: Keramag Keramische Werke AG and Others, Sanitec Europe Oy v European Commission

(Case C-613/13 P)

(2014/C 52/49)

Language of the case: English

Parties

Appellant: European Commission (represented by: F. Castillo de la Torre, F. Ronkes Agerbeek, agents)

Other parties to the proceedings: Keramag Keramische Werke AG and Others, Sanitec Europe Oy

Form of order sought

The appellant claims that the Court should:

— set aside point 1 of the operative part of the judgment under appeal insofar as it annuls article 1 of the contested Decision as regards the events in AFICS and the liability of Allia SAS, Produits Céramique de Touraine SA and Sanitec for them;

— set aside in full point 2 of the operative part of the judgment under appeal;

— if the Court of Justice gives final judgment, to dismiss the action for annulment also insofar as it concerns the events in AFICS and to reinstate the fines imposed on Allia SAS, Produits Céramique de Touraine SA and Sanitec; and, in any event,

— to order the applicants at first instance (now other parts in the proceedings) bear the costs of this appeal, and, to the extent that the Court of Justice gives final judgment on the action for annulment, of such case as well.

Pleas in law and main arguments

First ground: failure to comply with duty to state reasons and the rules of evidence; the General Court failed to examine several relevant pieces of evidence and applied too high evidentiary requirements for those pieces of evidence that the General Court did examine.

Second ground: contradictory reasoning; the assessment of the evidence is in direct contradiction with that in three other judgments delivered the same day relating to the same decision and the same facts.

Appeal brought on 4 December 2013 by Roca Sanitario, S.A. against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Case T-408/10 Roca Sanitario v Commission

(Case C-636/13 P)

(2014/C 52/50)

Language of the case: Spanish

Parties

Appellant: Roca Sanitario, S.A. (represented by: J. Folguera Crespo, abogado)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— uphold the arguments put forward by Roca Sanitario, S.A. in the present case;

— set aside in part the judgment of the General Court of 16 September 2013 in Case T-408/10; and accordingly,

— uphold Roca Sanitario's claims by reducing the fine imposed on it jointly and severally with its subsidiaries Roca France and Laufen Austria;

— in the alternative, since Roca Sanitario did not participate directly in the infringement and its liability arises purely from the attribution to it of its subsidiaries' conduct, in the event that the Court rules on the parallel appeals which Laufen Austria and Roca France intend to bring against the judgments of the General Court of 16 September 2013 in Cases T-411/10 and T-412/10 and reduces the fine imposed on those subsidiaries jointly and severally with Roca Sanitario, apply an equivalent reduction of the fine to Roca Sanitario, in accordance with the principles established in paragraph 203 of the judgment under appeal;

— order the Commission to pay the costs incurred by Roca Sanitario in the present case, as well as those incurred in Case T-408/10 in so far as the same grounds are concerned.

Grounds of appeal and main arguments

1. ***First ground of appeal***, alleging an erroneous application of Article 23(2) of Regulation No 1/2003 [1] and of the principles of proportionality and individual liability in relation to the fine imposed jointly and severally on Roca Sanitario, S.A. with its subsidiary Laufen Austria, AG.

2. ***Second ground of appeal***, alleging error of law in the application of the case-law of the Court of Justice of the European Union and breach of the principles of equal treatment and proportionality, of the principle that reasons must be stated and of the principle of the protection of legitimate expectations in the application of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. [2]

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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 [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p.1).

[2] OJ 2006 C 210, p. 2

Appeal brought on 4 December 2013 by Laufen Austria AG against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Case T-411/10 Laufen Austria v Commission

(Case C-637/13 P)

(2014/C 52/51)

Language of the case: Spanish

Parties

Appellant: Laufen Austria AG (represented by: E. Navarro Varona, abogada)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— uphold the arguments put forward by Laufen Austria AG in the present case;

— set aside in part the judgment of the General Court of 16 September 2013 in Case T-411/10;

— uphold Laufen Austria AG's claims by reducing the fine imposed on it;

— order the Commission to pay the costs incurred by Laufen Austria AG in the present case, as well as those incurred in Case T-411/10 in so far as the same grounds are concerned.

Grounds of appeal and main arguments

1. ***First ground of appeal***, alleging an erroneous application of Article 23(2) of Regulation No 1/2003 [1] and of the principles of proportionality and individual liability in relation to the fine imposed individually on Laufen Austria, AG for the infringement committed prior to its acquisition by Roca Sanitario, S.A.

2. ***Second ground of appeal***, alleging error of law in the application of the case-law of the Court of Justice of the European Union and breach of the principles of equal treatment and proportionality, of the principle that reasons must be stated and of the principle of the protection of legitimate expectations in the application of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. ([2])

([1]) 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).
([2]) OJ 2006 C 210, p. 2.

Appeal brought on 4 December 2013 by Roca against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Case T-412/10 Roca v Commission

(Case C-638/13 P)

(2014/C 52/52)

Language of the case: Spanish

Parties

Appellant: Roca (represented by: P. Vidal Martínez, abogada)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— uphold the arguments put forward by Roca in the present case;

— set aside in part the judgment of the General Court of 16 September 2013 in Case T-412/10;

— uphold Roca's claims and reduce the fine imposed on it;

— order the Commission to pay the costs incurred by Roca in the present case, as well as those incurred in Case T-412/10 in so far as the same grounds are concerned.

Grounds of appeal and main arguments

1. ***First ground of appeal***, alleging breach of the obligation to state reasons and the principles of non-discrimination and equal treatment as regards the assessment of the lesser gravity of Roca's infringement because of the smaller range of goods concerned by the infringement, and distortion of the findings of fact in the decision.

2. ***Second ground of appeal***, alleging error of law in the application of the case-law of the Court of Justice of the European Union and breach of the principles of equal treatment and protection of legitimate expectations in the application of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003. ([1])

([1]) OJ 2006 C 210, p. 2.

Appeal brought on 4 December 2013 by Melkveebedrijf Overenk BV and Others against the order of the General Court (Fourth Chamber) delivered on 11 September 2013 in Case T-540/11 Melkveebedrijf Overenk and Others v Commission

(Case C-643/13 P)

(2014/C 52/53)

Language of the case: Dutch

Parties

Appellants: Melkveebedrijf Overenk BV, Maatschap Veehouderij Kwakernaak, Mulders Agro vof, Melkveebedrijf Engelen vof, Melkveebedrijf De Peel BV, M.H.H.M. Moonen (represented by: P.E. Mazel and A. van Beelen, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The appellants request the Court to set aside the order against which the present appeal has been brought and to refer the case back to the General Court.

Pleas in law and main arguments

In conclusion, the order should be set aside on the ground of procedural irregularities, which prejudiced the appellants' interests, and on the ground of the General Court's breach of European Union law.

Appeal brought on 13 December 2013 by The Cartoon Network, Inc. against the judgment of the General Court (Seventh Chamber) delivered on 2 October 2013 in Case T-285/12: The Cartoon Network, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-670/13 P)

(2014/C 52/54)

Language of the case: English

Parties

Appellant: The Cartoon Network, Inc. (represented by: I. Starr, Solicitor)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Boomerang TV, SA

Form of order sought

The appellant seeks an order that:

— The judgment under appeal be set aside by the Court of Justice and that the contested decision be annulled; or in the alternative,

— That the judgment under appeal be set aside by the Court of Justice and referred back to the General Court; and that

— The defendant pays to the applicant, the applicant's costs of and occasioned by this appeal.

Pleas in law and main arguments

1. **Infringement of Article 36 and 53 of the Statute of the Court of Justice of the European Union (the 'Statute')**

Articles 36 and 53 of the Statute state that the General Court has a duty to set out the reasons on which its judgments are based. In the Judgment under Appeal the General Court erred in law by failing to provide reasons for its conclusion that the relevant public consisted solely of professionals.

2. **Infringement of Article 8(1)(b) of Council Regulation 207/2009/EC** [1]: **Distortion of the Facts: Relevant Public**

2.1. The General Court erred in law in concluding that the relevant public consisted solely of professionals and was the same relevant public for the relevant services of the Intervener's CTM and the CTM Application, as this conclusion is based on a distortion of the facts before the General Court. The General Court and the Board should have limited their analysis to the specification of the CTM Application; or in the alternative

2.2. If the General Court was correct to conclude that the relevant public for both the CTM Application and the Intervener's CTM was composed solely of professionals, the General Court ought to have considered that there was no likelihood of confusion between the CTM Application and Intervener's CTM, as a result of the higher degree of attention paid by the relevant professionals.

3. **Infringement of Article 8(1)(b) of Council Regulation 207/2009/EC: Distortion of the Facts: Similarity of Services and Infringement of Article 75 of Council Regulation 207/2009/EC**

The General Court erred in law in concluding that the services covered by the CTM Application are similar to the services protected by the Intervener's CTM, bearing in mind inter alia their respective nature, intended purpose, end users and relevant public. Furthermore, the General Court and the Board erred in law in relying on facts on their own initiative.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, 24.3.2009, p. 1

Action brought on 18 December 2013 — European Commission v Hellenic Republic

(Case C-677/13)

(2014/C 52/55)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and E. Sanfrutos Cano)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

— declare that the Hellenic Republic,

— by not taking the necessary measures to ensure that (a) waste management at the Kiato landfill site is carried out without endangering human health and without harming the environment and (b) the abandonment, dumping or uncontrolled management of waste at said landfill site is prohibited,

— by tolerating the operation of the said landfill site without agreed environmental conditions and a valid permit which comply with the prerequisites for the issue of such a permit and its content, and consequently not ensuring that only waste that has been subject to treatment is landfilled, the holder of the waste or the operator of the said landfill site not being able to show before or at the time of delivery that the waste in question can be accepted at that landfill site according to the conditions set out in the permit, and that it fulfils the acceptance criteria set out in Annex II,

— by not ensuring that monitoring and control procedures during the operational phase meet the minimum legal requirements,

has failed to fulfil its obligations under Articles 13, 23 and 36(1) of Directive 2008/98/EC [1] on waste and Article 6 (subparagraph (a)), Article 8, Article 9 (subparagaphs (a) (b) and (c)), Article 11(1) (subparagraph (a)) and Article 12 of Directive 99/31/EC [2] on the landfill of waste;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The Greek authorities continue to tolerate the Kiato landfill site without agreed environmental conditions and without the appropriate permit (infringement of Article 23 of Directive 2008/98/EC and Articles 8 (particularly subparagraph (a)) and 9 (subparagraphs (a), (b) and (c)) of Directive 99/31/EC. Because of the absence of that permit, the Hellenic Republic is consequently not in a position to meet the obligations which stem from Article 6, subparagraph (a), and Article 11(1), (subparagraph (a)) of Directive 99/31/EC.

The inspections which were carried out on 24 October 2007, 3 November 2011 and 31 July 2012 revealed some substantial problems of malfunctioning at the Kiato landfill site and the overfilling of the site. There is a clear infringement of Articles 13 and 36(1) of Directive 2008/98/EC and Articles 8, 9, and 12 of Directive 99/31/EC.

(1) OJ 2008 L 312, p. 3.
(2) OJ 1999 L 182, p. 1.

Action brought on 19 December 2013 — European Parliament v Council of the European Union

(Case C-679/13)

(2014/C 52/56)

Language of the case: French

Parties

Applicant: European Parliament (represented by: F. Drexler, A. Caiola and M. Pencheva, Agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Decision 2013/496/EU of 7 October 2013 on subjecting 5-(2-aminopropyl)indole to control measures; (1)

— maintain the effects of Council Decision 2013/496/EU, until such time that it is replaced by a new act adopted in the prescribed manner;

— order the defendant to pay the costs.

Pleas in law and main arguments

First, the Parliament notes that the preamble to the contested decision refers to the following legal bases: Article 8(3) of Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances (2) and the Treaty on the Functioning of the European Union. The Parliament concludes that the Council refers implicitly to Article 34(2)(c) of the former Treaty of the European Union.

The Parliament puts forward two pleas in support of its action for annulment.

First, the Parliament claims that the Council bases its decision on a legal basis [Article 34(2)(c) UE] which has been repealed since the entry into force of the Lisbon Treaty. Therefore, the contested decision can no longer be based solely on Decision 2005/387/JHA. The latter is a secondary legal basis and is therefore illegal.

Secondly, and in view of the above, the Parliament considers that the decision-making process suffers from infringements of essential procedural requirements. On the one hand, if Article 34(2)(c) EU had been applicable, the Parliament should have been consulted before the adoption of the contested decision in accordance with Article 39(1) EU. However, the Parliament contends that that was not the case. On the other hand, given that the provisions to be applied are those resulting from the Lisbon Treaty, the Parliament contends it should have been involved in the legislative procedure in any event. The Parliament argues, indeed, that if subjecting the 5-(2-aminopropyl)indole to control measures is an essential element of Decision 2005/387/JHA, the legislative procedure would be that described in Article 83(1) TFEU, namely the ordinary legislative procedure. Alternatively, if Decision 2013/496/EU is considered to be a uniform requirement for the implementation of Decision 2005/387/JHA or as a measure supplementing or modifying a non-essential element of that decision, the procedure to follow would be that provided for in Articles 290 and 291 TFEU for the adoption of implementing acts or delegated acts. In any event, as the Parliament was not involved in the adoption of the contested decision, it suffers from an infringement of an essential procedural requirement.

Finally, in the event that the Court decides to annul the contested decision, the Parliament considers it appropriate, in accordance with Article 264, second paragraph, TFEU, to maintain the effects of the contested decision, until such time that it is replaced by a new act adopted in the prescribed manner.

(1) OJ 2013 L 272, p. 44.
(2) OJ 2005 L 127, p. 32.

Request for a preliminary ruling from the Tribunal do Trabalho da Covilhã (Portugal) lodged on 23 December 2013 — Pharmacontinente Saúde e Higiene SA and Others v Autoridade para as Condições do Trabalho (ACT)

(Case C-683/13)

(2014/C 52/57)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho da Covilhã

Parties to the main proceedings

Applicants: Pharmacontinente Saúde e Higiene SA, Domingos Sequeira de Almeida, Luis Mesquita Soares Moutinho, Rui Teixeira Soares de Almeida, André de Carvalho e Sousa

Defendant: Autoridade para as Condições do Trabalho (ACT)

Questions referred

(a) Is Article 2 of Directive 95/46/EC (1) to be interpreted as meaning that the concept of 'personal data' covers the record of working time, that is to say, the indication, in relation to each worker, of the times at which working hours begin and end, together with the related breaks and intervals?

(b) If the answer to Question (a) is in the affirmative, is the Portuguese State obliged, under Article 17(1) of Directive 95/46/EC, to adopt appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where processing involves the transmission of data over a network?

(c) If the answer to Question (b) is in the affirmative, if ever the Member State does not adopt any measure pursuant to Article 17(1) of Directive 95/46/EC and if an employer, as a controller of such data, adopts a system of restricted access to those data which does not allow automatic access by the national authority responsible for monitoring working conditions, is the principle of the primacy of European Union law to be interpreted as meaning that the Member State cannot penalise the employer for such behaviour?

(d) If the answer to Question (c) is in the negative, while it has not been shown or argued that the information from the record has not, in the present case, been altered, is the requirement that a record be immediately available, enabling all parties to the employment relationship to have general access to the data, proportionate?

(1) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Appeal brought on 10 January 2014 by Wünsche Handelsgesellschaft International mbH & Co KG against the judgment of the General Court (Third Chamber) delivered on 12 November 2013 in Case T-147/12 Wünsche Handelsgesellschaft International mbH & Co KG v European Commission

(Case C-7/14 P)

(2014/C 52/58)

Language of the case: German

Parties

Appellant: Wünsche Handelsgesellschaft International mbH & Co KG (represented by: K. Landry and G. Schwendinger, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside in its entirety the judgment of the General Court (Third Chamber) of 12 November 2013 in Case T-147/12 and annul Commission Decision C(2011) 6393 final of 16 September 2011 in Case REM 02/09;

— in the alternative, refer the case back to the General Court for a fresh decision;

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

Grounds of appeal and main arguments

By the first ground of appeal, the appellant claims that the General Court infringed Article 220(2)(b) of the Customs Code (1) in holding that the error on the part of the German customs authorities could have been detected by the appellant. That is untrue. The individual provisions are complex and their wording is unclear and confusing. This is evidenced in particular by correspondence between the Federal Ministry of Finance and the Commission. In addition, the duration and extent of the erroneous practice of the German customs authorities also militate against the contention that the error could have been detected by the appellant.

Secondly, the General Court infringed the second indent of Article 239(1) of the Customs Code in erroneously finding that there had been obvious negligence on the part of the appellant.

Thirdly, the General Court failed to give sufficient reasons for its judgment on two points, with the result that the reasoning which it followed in order to arrive at its decision is incomprehensible for the appellant.

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

GENERAL COURT

Judgment of the General Court of 16 January 2014 — BP Products North America v Council

(Case T-385/11) ([1])

(Dumping — Subsidies — Imports of biodiesel originating in the United States — Circumvention — Article 13 of Regulation (EC) No 1225/2009 — Article 23 of Regulation (EC) No 597/2009 — Slightly modified like product — Legal certainty — Misuse of powers — Manifest errors of assessment — Obligation to state reasons — Equal treatment — Principle of sound administration)

(2014/C 52/59)

Language of the case: English

Parties

Applicant: BP Products North America Inc. (Naperville, Illinois, United States) (represented initially by C. Farrar, Solicitor, H.-J. Prieß, B. Sachs and M. Schütte, lawyers, and subsequently by C. Farrar, H.-J. Prieß, M. Schütte and K. Arend, lawyer)

Defendant: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by B. O'Connor, Solicitor, and S. Gubel, lawyer)

Interveners in support of the defendant: European Commission (represented by: M. França and A. Stobiecka-Kuik, acting as Agents), and by European Biodiesel Board (EBB) (represented by: O. Prost and M.-S. Dibling, lawyers)

Re:

Application for the partial annulment, first, of Council Implementing Regulation (EU) No 443/2011 of 5 May 2011 extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive countervailing duty imposed by Regulation (EC) No 598/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 1) and, secondly, of Council Implementing Regulation (EU) No 444/2011 of 5 May 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 on imports of biodiesel originating in the United States of America to imports of biodiesel consigned from Canada, whether declared as originating in Canada or not, and extending the definitive anti-dumping duty imposed by Regulation (EC) No 599/2009 to imports of biodiesel in a blend containing by weight 20 % or less of biodiesel originating in the United States of America, and terminating the investigation in respect of imports consigned from Singapore (OJ 2011 L 122, p. 12), in so far as those regulations affect the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders BP Products North America Inc. to bear its own costs and to pay those of the Council of the European Union and the European Biodiesel Board (EBB);*

3. *Orders the European Commission to bear its own costs.*

([1]) OJ C 282, 24.9.2011.

Judgment of the General Court of 16 January 2014 — Aloe Vera of America v OHIM — Detimos (FOREVER)

(Case T-528/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark FOREVER — Earlier national figurative mark 4 EVER — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009)

(2014/C 52/60)

Language of the case: English

Parties

Applicant: Aloe Vera of America, Inc. (Dallas, Texas, United States) (represented by: R. Niebel and F. Kerl, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Detimos — Gestão Imobiliária, SA (Carregado, Portugal) (represented by: V. Caires Soares, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 August 2011 (Case R 742/2010-4), relating to opposition proceedings between Diviril — Distribuidora de Viveres do Ribatejo, L[da] and Aloe Vera of America, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aloe Vera of America, Inc. to pay the costs, including those incurred by Detimos — Gestão Imobiliária, SA in the course of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 362, 10.12.2011.

Judgment of the General Court of 15 January 2014 — Stols v Council

(Case T-95/12) ([1])

(Appeal — Civil service — Officials — Promotion — 2007 promotion procedure — Decision not to promote the interested party to grade AST 11 — Comparison of merits — Review by the court of the manifest error of assessment)

(2014/C 52/61)

Language of the case: French

Parties

Appellant: Willem Stols (Halsteren, Netherlands) (represented by: S. Rodrigues, A. Blot and C. Bernard-Glanz, lawyers)

Other party to the proceedings: Council of the European Union (represented by: M. Bauer and A. Jensen, acting as Agents)

Re:

Appeal brought against the judgment delivered by the Civil Service Tribunal (First Chamber) on 13 December 2011 in Case F-51/08 RENV, not yet published, seeking the setting aside of that judgment.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mr Willem Stols to bear his own costs and to pay the costs incurred by the Council of the European Union in the context the appeal proceedings.*

([1]) OJ C 126, 28.4.2012.

Judgment of the General Court of 16 January 2014 — Investrónica, SA v OHIM — Olympus Imaging (MICRO)

(Case T-149/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark MICRO — Earlier national figurative mark micro — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation No 207/2009 — Power to alter decisions)

(2014/C 52/62)

Language of the case: English

Parties

Applicant: Investrónica, SA (Madrid, Spain) (represented by: E. Seijo Veiguela and J.L. Rivas Zurdo, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Olympus Imaging Corp. (Tokyo, Japan) (represented by: C. Opatz, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 31 January 2012 (Case R 347/2011-4), relating to opposition proceedings between Investrónica, SA and Olympus Imaging Corp.

Operative part of the judgment

The Court:

1. *Annuls the decision of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 31 January 2012 (Case R 347/2011-4).*

2. *Allows the opposition with regard to the goods covered by Class 9 and corresponding to the following description: 'Photographic apparatus and instruments, digital cameras, interchangeable lenses, and parts and accessories therefor as far as included in Class 9'.*

3. *Orders OHIM to bear its own costs, together with half of the costs incurred by Investrónica, SA.*

4. *Orders Olympus Imaging Corp. to bear its own costs, together with half of the costs incurred by Investrónica, SA.*

([1]) OJ C 194, 30.6.2012.

Judgment of the General Court of 15 January 2014 — SICOM v Commission

(Case T-279/12) ([1])

(Arbitration clause — Food aid — Supply of colza oil to Guinea — Non-performance of the contract — Limitation period)

(2014/C 52/63)

Language of the case: Italian

Parties

Applicant: SICOM Srl — Società industriale per il confezionamento degli olii meridionale (Cercola, Italy) (represented by: R. Manzi, lawyer)

Defendant: European Commission (represented by: S. Bartelt and F. Moro, acting as Agents)

Re:

Application under an arbitration clause seeking an order that the Commission pay the applicant a sum corresponding to penalties imposed in relation to quantities not delivered and delays in supply, deducted by the Commission from the final amount paid to the applicant for the delivery of refined colza oil for the benefit of the Republic of Guinea, in the context of a food aid operation carried out pursuant to Commission Regulation (EC) No 664/2001 of 2 April 2001 on the supply of vegetable oil as food aid (OJ 2001 L 93, p. 3).

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders SICOM Srl — Società industriale per il confezionamento degli olii meridionale to pay the costs.*

([1]) OJ C 243, 11.8.2012.

Judgment of the General Court of 16 January 2014 — Message Management v OHIM — Absacker (ABSACKER of Germany)

(Case T-304/12) ([1])

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

(2014/C 52/64)

Language of the case: German

Parties

Applicant: Message Management GmbH (Wiesbaden, Germany) (represented by: C. Konle, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Absacker GmbH (Cologne, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 March 2012 (case R 1028/2011-1), relating to opposition proceedings between Absacker GmbH and Message Management GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Message Management GmbH to pay the costs.*

([1]) OJ C 273, 8.9.2012.

Judgment of the General Court of 16 January 2014 — Ferienhäuser zum See v OHIM — Sunparks Groep (Sun Park Holidays)

(Case T-383/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark Sun Park Holidays — Earlier Community figurative mark Sunparks Holiday Parks — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 52/65)

Language of the case: English

Parties

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

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

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 25 June 2012 (Case R 1928/2011-4), relating to opposition proceedings between Sunparks Groep NV and Ferienhäuser zum See GmbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 355, 17.11.2012.

Judgment of the General Court of 16 January 2014 — Steiff v OHIM (Metal button in the middle section of the ear of a soft toy)

(Case T-433/12) ([1])

(Community trade mark — Application for a Community trade mark consisting of fixing a metal button in the middle section of the ear of a soft toy — Absolute ground for refusal — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) 207/2009)

(2014/C 52/66)

Language of the case: German

Parties

Applicant: Margarete Steiff GmbH (Giengen an der Brenz, Germany) (represented by: D. Fissl, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2012 (Case R 1693/2011-1) concerning an application for registration of a sign consisting of fixing of a metal button in the middle section of the ear of a soft toy as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Margarete Steiff GmbH to pay the costs.*

([1]) OJ C 366, 24.11.2012.

Judgment of the General Court of 16 January 2014 — Steiff v OHIM (Fabric tag with metal button in the middle section of the ear of a soft toy)

(Case T-434/12) ([1])

(Community trade mark — Application for a Community trade mark consisting of a fabric tag with metal button in the middle section of the ear of a soft toy — Absolute ground for refusal — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) 207/2009)

(2014/C 52/67)

Language of the case: German

Parties

Applicant: Margarete Steiff GmbH (Giengen an der Brenz, Germany) (represented by: D. Fissl, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 19 July 2012 (Case R 1692/2011-1) concerning an application for registration of a sign consisting of a fabric tag with metal button in the middle section of the ear of a soft toy as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Margarete Steiff GmbH to pay the costs.*

([1]) OJ C 366, 24.11.2012.

Judgment of the General Court of 13 January 2014 — LaserSoft Imaging v OHIM (WorkflowPilot)

(Case T-475/12) ([1])

(Community trade mark — Application for Community word mark WorkflowPilot — Absolute grounds for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) 207/2009)

(2014/C 52/68)

Language of the case: German

Parties

Applicant: LaserSoft Imaging AG (Kiel, Germany) (represented by: J. Hunnekuhl, lawyer)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 6 August 2012 (Case R 480/2012-4), concerning an application for registration of the word mark WorkflowPilot as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LaserSoft Imaging AG to pay the costs.*

([1]) OJ C 9, 12.1.2013.

Judgment of the General Court of 16 January 2014 — Optilingua v OHIM — Esposito (ALPHATRAD)

(Case T-538/12) ([1])

(Community trade mark — Revocation proceedings — Community figurative mark — Genuine use of the mark — Extent of the use — Second subparagraph of Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009)

(2014/C 52/69)

Language of the case: French

Parties

Applicant: Optilingua Holding SA (Épalingues, Switzerland) (represented by: S. Rizzo, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Michele Esposito (Cava de' Tirreni, Italy)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 October 2012 (Case R 444/2011-1) relating to revocation proceedings between Mr Michele Esposito and Optilingua Holding SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Optilingua Holding SA to pay the costs.*

([1]) OJ C 38, 9.2.2013.

Order of the General Court of 19 December 2013 — Marcuccio v Commission

(Case T-385/13 P) ([1])

(Appeal — Civil Service — Action dismissed at first instance as manifestly inadmissible — Application lodged by fax and original subsequently received not the same — Original application lodged out of time — Action out of time — Appeal manifestly unfounded)

(2014/C 52/70)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission (represented by: C. Berardis Kayser and G. Gattinara, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the order of the European Union Civil Service Tribunal (First Chamber) of 14 May 2013 in Case F-17/12 Marcuccio v Commission, not published in the ECR, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Luigi Marcuccio is ordered to bear his own costs and to pay the costs incurred by the European Commission in the appeal proceedings.*

([1]) OJ C 284, 28.9.2013.

Action brought on 22 November 2013 — Reed Exhibitions v OHIM (INFOSECURITY)

(Case T-633/13)

(2014/C 52/71)

Language of the case: English

Parties

Applicant: Reed Exhibitions Ltd (Richmond, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 1544/2012-5;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'INFOSECURITY' for goods and services in Classes 16, 35 and 41 — Community trade mark application No 10 155 596

Decision of the Examiner: Partially rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and (c) and 7(3) CTMR.

Action brought on 27 November 2013 — Bimbo v OHIM — Cafe' do Brasil (Caffè KIMBO)

(Case T-637/13)

(2014/C 52/72)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cafe' do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul partially the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 25 September 2013 given in Case R 1434/2012-4;

— Order the other party, should it intervene, to bear the costs of proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing the verbal elements 'Caffè KIMBO' in black, red, gold, white, light sky blue, dark sky blue, yellow and light green for goods in Classes 30, 32, and 43 — Community trade mark application No 4 273 884

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

Mark or sign cited in opposition: The Spanish trade mark registration No 291 655 for the word mark 'BIMBO' for goods in Class 30 and earlier well-known Spanish and Portuguese word mark 'BIMBO'

Decision of the Opposition Division: Upheld the opposition in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1), (2) and (5) CTMR

Action brought on 27 November 2013 — Bimbo v OHIM — Cafe' do Brasil (Caffè KIMBO GOLD MEDAL)

(Case T-638/13)

(2014/C 52/73)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cafe' do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul partially the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 25 September 2013 given in Case R 787/2012-4;

— Order the other party, should it intervene, to bear the costs of proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing the verbal elements 'Caffè KIMBO GOLD MEDAL' in red, gold, white and black for goods in Classes 30, 32 and 43 — Community trade mark application No 4 037 909

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

Mark or sign cited in opposition: The Spanish trade mark registration No 291 655 for the word mark 'BIMBO' for goods in Class 30 and earlier well-known Spanish and Portuguese word mark 'BIMBO'

Decision of the Opposition Division: Upheld the opposition in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1), (2) and (5) CTMR

Appeal brought on 6 December 2013 by Kari Wahlström against the judgment of the Civil Service Tribunal of 9 October 2013 in Case F-116/12, Wahlström v Frontex

(Case T-653/13 P)

(2014/C 52/74)

Language of the case: French

Parties

Appellant: Kari Wahlström (Espoo, Finland) (represented by: S. Pappas, lawyer)

Other party to the proceedings: the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Form of order sought by the appellant

The appellant claims that the Court should:

— annul the judgment of the Civil Service Tribunal of 9 October 2013 dismissing its application;

— grant the forms of order sought at first instance, as the appellant contends that final judgment may be given on the matter;

— order the other party to the proceedings to pay the costs in their entirety.

Pleas in law and main arguments

By its appeal, the appellant seeks annulment of the judgment of the Civil Service Tribunal ('the CST') dismissing its action that sought, first, annulment of the appellant's assessment report for the year 2010 and, secondly, a claim for damages.

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

1. First plea in law, alleging that the CST erred in law in that it found that the absence of dialogue between the assessor and the appellant in the context of the assessment for the year 2010 was a non-substantial procedural irregularity (concerning points 38 et seq. of the judgment under appeal). The appellant claims that:

   — on the one hand, the CST disregarded the existing case-law;

   — on the other hand, by basing the grounds of the judgment under appeal on the context in which the assessment report had been prepared and not solely on issue of whether holding a formal dialogue was likely to affect the procedure, the CST exceeded the margins of its judicial review by encroaching on the powers of administrative discretion.

2. Second plea in law, alleging that the CST erred in law when it held that the absence of goal-setting for the first part of 2010 did not constitute a substantial procedural defect such as to call into question the validity of the assessment report in question (concerning paragraphs 50 et seq. of the judgment under appeal). The appellant claims that:

   — on the one hand, the CST disregarded the guidelines relating to assessment, insofar as those guidelines provided for the obligation to set new goals when changing the function of the agent during the reference period;

   — on the other hand, the fact that the tasks assigned to the appellant in his new role were described by reference to documents concerning the establishment and functioning of the operational office does not mean that the objectives to be achieved by the appellant in relation to those tasks had been set for him.

Appeal brought on 16 December 2013 by the Court of Auditors of the European Union against the judgment of the Civil Service Tribunal of 17 October 2013 in Case F-69/11, BF v Court of Auditors

(Case T-663/13 P)

(2014/C 52/75)

Language of the case: French

Parties

Appellant: Court of Auditors of the European Union (represented by T. Kennedy and J. Vermer, acting as Agents)

Other party to the proceedings: BF (Luxembourg, Luxembourg)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal in Case F-69/11;

— grant the form of order sought at first instance by the Court of Auditors, namely dismiss the action as unfounded;

— order BF to pay the costs of the present proceedings and those which took place 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 an error of law, in so far as the Civil Service Tribunal incorrectly interpreted and applied Article 6 of Decision 45-2010 of 17 June 2010 on the selection procedures for Heads of Unit and Directors.

2. Second plea in law, alleging distortion of the evidence by the Civil Service Tribunal in considering that the scores awarded to the candidates by the Pre-selection Committee constituted information that must be included in the report submitted by the Pre-selection Committee to the appointing authority.

3. Third plea in law, alleging distortion of the facts, in so far as the Civil Service Tribunal acted in breach of its obligation to examine the facts on the basis of which it found there to be a procedural irregularity.

4. Fourth plea in law, alleging a failure to state reasons and an error of law undermining the consistency of the case-law in that the Civil Service Tribunal held that the irregularity relating to the failure to state reasons required by Article 6(1) of Decision 45-2010 with regard to the report of the Pre-selection Committee is liable to lead to the annulment of the decisions contested at first instance.

Appeal brought on 17 December 2013 by the European Commission against the judgment of the Civil Service Tribunal of 7 October 2013 in Case F-97/12 Thomé v Commission

(Case T-669/13 P)

(2014/C 52/76)

Language of the case: French

Parties

Appellant: European Commission (represented by J. Currall and G. Gattinara, acting as Agents)

Other party to the proceedings: Florence Thomé (Brussels, Belgium)

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 7 October 2013 in Case F-97/12 *Thomé* v *Commission*;

— dismiss the action brought by Ms Thomé in Case F-97/12 as inadmissible, or, in any event, as unfounded;

— reserve the costs.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on five grounds of appeal.

1. First ground of appeal, alleging infringement of the concept of an act adversely affecting an official. The Commission claims, first, that an act already annulled by the appointing authority in a complaints procedure is not open to being annulled in an action before a Court and, second, that a decision granting a claim of the person concerned cannot be qualified as an act adversely affecting an official (concerning paragraphs 28 to 37 of the judgment under appeal).

2. Second ground of appeal, alleging, first, an error in law in the definition of the extent of the power of review of the appointing authority and of the Civil Service Tribunal with regard to the decisions of selection boards, and the Civil Service Tribunal's power of judicial review and, second, a clear distortion of the subject-matter of the proceedings and a breach of the adversarial principle (concerning paragraphs 50 to 52 of the judgment under appeal). The Commission submits that the Civil Service Tribunal applied an erroneous test of judicial review to the decisions before it, namely decisions of the appointing authority, thus exceeding the limits of its judicial review.

3. Third ground of appeal, alleging breach of the rules of law relating to the assessment of the existence of a university degree in accordance with the notice of competition (concerning paragraphs 56 to 58 of the judgment under appeal). The Commission claims that the Civil Service Tribunal erred in law by taking the professional value of a degree for its academic value and by considering that a non-official degree, such as a document issued by a private educational institution and not recognised for its academic value, must be taken into consideration by the appointing authority.

4. Fourth ground of appeal, alleging breach of the obligation to state reasons in that the Civil Service Tribunal did not explain how, at the date of submission of her application, the degree of the applicant at first instance had complied with the condition laid down in the notice of competition, when that compliance had only been established subsequently, during the complaints procedure (concerning paragraphs 56, 57 and 60 to 64 of the judgment under appeal).

5. Fifth ground of appeal, alleging errors in law in that the Civil Service Tribunal considered that the applicant at first instance had lost a chance of being recruited and must be compensated (concerning paragraph 74 of the judgment under appeal).

Action brought on 17 December 2013 — PAN Europe and Confédération paysanne v Commission

(Case T-671/13)

(2014/C 52/77)

Language of the case: English

Parties

Applicants: Pesticide Action Network Europe (PAN Europe) (Brussels, Belgium) and Syndicat agricole Confédération paysanne (Bagnolet, France) (represented by: B. Kloostra, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul the Commission decision of 9 October 2013 in which the Commission declared inadmissible:

  — The request for internal review of Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (OJ 2013 L 139, p. 12);

— The request for internal review of the omission of the Commission to set a complete ban on clothianidin, thiamethoxam and imidacloprid.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that by adopting the contested measure the Commission acted in breach of Article 9(3) of the United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 25 June 1998 (the Aarhus Convention). The provisions applied by the Commission, Article 10 in conjunction with Article 2(1)(g) and (h) of the Aarhus Regulation ([1]), are incompatible with Article 9(3) of the Aarhus Convention. The illegality of these provisions in the Aarhus Regulation should have led the Commission to not applying the criteria referred to in the contested decision and to declare the requests for internal review admissible.

2. Second plea in law, alleging that by adopting the contested measure the Commission acted in breach of its obligation to act as Convention compliant as possible. The Commission should have interpreted Article 10 of the Aarhus Regulation and in particular the words 'administrative act' and 'administrative omission' in that provision in conformity with Article 9(3) of the Aarhus Convention and should have left aside the illegal definitions laid down in Article 2(1)(g) and (h) of the Aarhus Regulation. The Commission thus acted in breach of Article 10 of the Aarhus Regulation and the obligation to act in a Convention compliant way.

([1]) 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 23 December 2013 — Copernicus-Trademarks v OHIM — Bolloré (BLUECO)

(Case T-684/13)

(2014/C 52/78)

Language in which the application was lodged: German

Parties

Applicant: Copernicus-Trademarks Ltd (Borehamwood, United Kingdom) (represented by: L. Pechan and S. Körber, lawyers)

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

Other party to the proceedings before the Board of Appeal: Bolloré SA (Érgue Gaberic, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2013 in Case R 2029/2012-1 and alter it to the effect that the appeal is well founded and the opposition is therefore to be rejected in its entirety;

— Order OHIM and Bolloré SA, should the latter intervene in these proceedings, to pay the costs including those incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'BLUECO' for goods in Class 12 — Community trade mark application No 9 724 675

Proprietor of the mark or sign cited in the opposition proceedings: Bolloré SA

Mark or sign cited in opposition: the word mark 'BLUECAR' for goods in Class 12 — Community trade mark No 4 597 621

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 23 December 2013 — Copernicus-Trademarks v OHIM — Blue Coat Systems (BLUECO)

(Case T-685/13)

(2014/C 52/79)

Language in which the application was lodged: German

Parties

Applicant: Copernicus-Trademarks Ltd (Borehamwood, United Kingdom) (represented by: L. Pechan and S. Körber, lawyers)

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

Other party to the proceedings before the Board of Appeal: Blue Coat Systems, Inc. (Sunnyvale, United States of America)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2013 in Case R 2028/2012-1 and alter it to the effect that the appeal is well founded and the opposition is therefore to be rejected in its entirety;

— Order OHIM and Blue Coast Systems, Inc., should the latter intervene in these proceedings, to pay the costs including those incurred in the course of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'BLUECO' for goods in Class 9 — Community trade mark application No 9 724 675

Proprietor of the mark or sign cited in the opposition proceedings: Blue Coat Systems, Inc.

Mark or sign cited in opposition: the word mark 'BLUE COAT' for goods in Class 9 and services in Classes 38 and 42 — Community trade mark No 3 016 235

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 17 December 2013 — Unibail Management v OHIM (Representation of two lines and four stars)

(Case T-686/13)

(2014/C 52/80)

Language of the case: French

Parties

Applicant: Unibail Management (Paris, France) (represented by L. Bénard, A. Rudoni, O. Klimis, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— annul in part the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2013 in Case R 300/2013-2 in so far as the registration of Community mark No 10 940 161 for goods and services in Classes 16, 35, 36, 38, 41 and 42 was refused;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark composed of four five-pointed stars, preceded and followed by a horizontal line for goods and services in Classes 16, 35, 36, 38, 39, 41, 42 and 43 — Community trade mark application No 10 940 161

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b), read in conjunction with the first sentence of Article 75, of Regulation (EC) No 207/2009

Action brought on 13 December 2013 — Unibail Management v OHIM (Representation of two lines and four stars)

(Case T-687/13)

(2014/C 52/81)

Language of the case: French

Parties

Applicant: Unibail Management (Paris, France) (represented by: L. Bénard, A. Rudoni, O. Klimis, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— annul in part the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2013 in Case R 299/2013-2 in so far as the registration of Community mark No 10 939 981 for goods and services in Classes 16, 35, 36, 38, 41 and 42 was refused;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark composed of four five-pointed stars, preceded and followed by a horizontal line for goods and services in Classes 16, 35, 36, 38, 39, 41, 42 and 43 — Community trade mark application No 10 939 981

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b), read in conjunction with the first sentence of Article 75, of Regulation (EC) No 207/2009

Action brought on 27 December 2013 — Ricoh Belgium v Council

(Case T-691/13)

(2014/C 52/82)

Language of the case: Dutch

Parties

Applicant: Ricoh Belgium NV (Vilvoorde, Belgium) (represented by: N. Braeckevelt and A. de Visscher, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well founded;

— annul the decision of the Council of 29 October 2013 not to award Lot 4 of the contract for the *'Purchase or hire of black and white multifunction printers (MFP) and associated maintenance services in the buildings occupied by the General Secretariat of the Council of the European Union — Reference Number 2013/S 83-138901'* to Ricoh Belgium NV, but to another undertaking;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of transparency under Articles 15 TFEU and 298 TFEU, as well as under Article 102(1) of Regulation No 966/2012. ([1])

   Specifically, although nothing in that regard was mentioned in the relevant specification, the (speed of the) applicant's printers was tested by the defendant from the moment of their start-up, and not from the moment at which they operate most efficiently. The measurements and values in the applicant's tender therefore differ from those that follow from the test results, which are ultimately lower and thus produce an unfavourable score. The applicant is unable to verify whether its competitor's machines were tested under the same (unfavourable) conditions. Moreover, the defendant, after completion of the tests for that award sub-criterion (Criterion C 'Technical evaluation of the equipment on the basis of tests'), established a calculation and score and presented these to the applicant. That score (namely 41.2%) differs from the score ultimately included in the contested decision (namely 38.61%).

2. Second plea in law, alleging breach of the duty to state reasons following from Article 113(2) of Regulation No 966/2012 and Article 161(3) of Delegated Regulation No 1268/2012, ([2]) as well as breach of the duty in tender procedures to award the contract to the most economically advantageous tenderer, as follows from Article 110(2) of Regulation No 966/2012 and Article 149(1)(b) of Delegated Regulation No 1268/2012.

   In the further clarification subsequently provided to the applicant, the defendant stated that it had initially made a mistake and that the test results should have been compared against the standards set out in the specifications (copying and printing at 100 per minute) and not against the standards in the tender submitted by the applicant (copying and printing at 110 per minute).

   Although the defendant explained the alleged correction in the final score by stating that the test results had to be assessed against a lower standard (comparison at 100 instead of 110), the applicant appears, for some incomprehensible reason, totally (mathematically) illogically — and also without a single specific calculation or justification — to have suddenly obtained a lower score (38.61 points as opposed to 41.2 points, whereas a higher score of 44.3 points would have been expected for a comparison made against the specification standards).

   In view of the very small overall difference between both tenderers for Lot 4, namely 90.81 points for the other undertaking as against 89.67 points for the applicant, on a correct calculation the applicant ought therefore to have been designated as the most economically advantageous tenderer.

([1]) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

([2]) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

Action brought on 31 December 2013 — ENAC v Commission and TEN-T EA

(Case T-695/13)

(2014/C 52/83)

Language of the case: Italian

Parties

Applicant: Ente nazionale per l'aviazione civile (ENAC) (Rome, Italy) (represented by: P. Garofoli, lawyer, and G. Palmieri, Agent)

Defendants: Trans-European Transport Network Executive Agency (TEN-T EA), European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's note of 23 October 2013, ref. Ares (203) 3321778, concerning the 'Study for developing the intermodality of Bergamo-Orio al Serio Airport', in which the Commission announced both the launch of the procedure for obtaining reimbursement of part of the financial assistance granted for the carrying-out of that study and the issuing of a debit note for a total of EUR 158 517,54;

— annul the decision of 18 March 2013 adopted by the Trans-European Transport Network Executive Agency (TEN-T EA), referred to in the Commission's note of 23 October 2013, concerning the 'Closure of Action 2009-IT-91407-S — Study for developing the intermodality of Bergamo-Orio al Serio Airport — Commission Decision C(2010) 4456', in so far as it found that the costs related to activities 1, 2.1, 4, 5, 6 and 7, which had already been carried out, could not be identified, and, thus, could not be subsidised, and requested repayment of EUR 158 517,54.

Pleas in law and main arguments

The decisions at issue in the present case are the same as those contested in Case T-270/13 and Case T-692/13 *SACBO* v *Commission and TEN-T EA*.

The pleas in law and main arguments are similar to the ones raised in those cases.

Action brought on 30 December 2013 — Meta Group v European Commission

(Case T-696/13)

(2014/C 52/84)

Language of the case: Italian

Parties

Applicant: Meta Group Srl (Rome, Italy) (represented by: A. Bartolini, V. Colcelli and A. Formica, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare that the reductions made by the European Commission on the subsidies granted to META S.r.l are unlawful;

— And, consequently, order the Commission to pay the applicant the additional amount of EUR 129 153,11, together with default interest;

— Order the administration to compensate the applicant for the consequential loss suffered by it.

Pleas in law and main arguments

This action is brought against the decisions of the Commission which reduced the grant initially provided for the projects 'Bcreative', 'Take-It-Up' and 'Ecolink +', which grant agreements were concluded between the applicant and the defendant in the context of the 'Competitiveness and Innovation Framework Programme (CIP) (2007 — 2013)'.

Several decisions concerning those projects were also contested in Cases T — 471/12, T — 34/13 and T — 35/13, *Meta Group* v *Commission*.

The pleas in law and main arguments set out are identical to those raised in those cases.

Appeal brought on 30 December 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 17 October 2013 in Case F-127/12 Marcuccio v Commission

(Case T-698/13 P)

(2014/C 52/85)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the General Court should:

— set aside in its entirety the order under appeal;

— refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

In support of his appeal, the appellant claims that the order under appeal is manifestly unfair, unjust and unlawful by virtue of a total failure to provide reasons and a failure to make preliminary inquiries, as well as on the grounds of ostensibly self-evident, tautologous and arbitrary reasoning, distortion and misrepresentation of the facts, and error of law.

Appeal brought on 30 December 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 17 October 2013 in Case F-145/12 Marcuccio v Commission

(Case T-699/13 P)

(2014/C 52/86)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the General Court should:

— set aside in its entirety the order under appeal;

— refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those put forward in Case T-698/13 P *Marcuccio* v *Commission*.

Action brought on 30 December 2013 — Bankia v Commission

(Case T-700/13)

(2014/C 52/87)

Language of the case: Spanish

Parties

Applicant: Bankia, SA (Valencia, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, A. Lamadrid de Pablo and A. Biondi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' ('STLS') as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as the beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid in breach of general principles of EU law;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-515/13 *Spain* v *Commission* (OJ 2013 C 336, p. 29).

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

1. First plea in law

   — The applicant claims that the contested decision infringes Article 107 TFEU in categorising as State aid the STLS and the individual measures of which it is composed. The applicant submits that the Commission erred in assessing as a whole, and in imputing to the Kingdom of Spain, a number of independent autonomous public and private measures. In addition, the applicant denies that the measures in question are liable to confer a selective economic advantage on the alleged beneficiaries, as well as the possibility that they may distort competition between those beneficiaries and other entities, and their supposed effect on trade between Member States.

2. Second plea in law

   — Secondly, the applicant submits that the Commission made a manifest error of law and infringed Articles 107 TFEU and 108 TFEU in categorising the application of the Spanish tonnage tax regime in certain cases as new aid rather than as existing aid. Given that, in 2002, the Commission approved the tonnage tax regime notified by Spain, if the Commission had wished to call in question the application of that regime, it ought, in any event, to have done so in accordance with the procedure applicable to existing aid. The applicant maintains that the arguments set out in the decision to make the case for the existence of new aid are manifestly unfounded.

3. Third plea in law

— Thirdly, the applicant alleges, in the alternative, infringement of Articles 107 TFEU and 296 TFEU, inasmuch as the Commission erred in regarding entities such as the applicant (investors in EIGs which carried out operations covered by the decision) as the ultimate and only beneficiaries of the measures at issue, and in any event failed to state adequate reasons for such a view.

4. Fourth plea in law

— Fourthly, the applicant alleges, also in the alternative, that the order for recovery under Article 4 of the contested decision is in breach of the general principle of legal certainty inasmuch as it places, unjustifiably, a temporal limit on the application of that principle.

5. Fifth plea in law

— Fifthly, the applicant sets out the reasons why, in its submission, in making a determination as to the validity of clauses in private contracts entered into under Spanish law between the investors and other private entities, the contested decision is also in breach of the principle of conferral of powers and of Articles 107 TFEU and 108 TFEU, Article 14 of Council Regulation (EC) No 659/1999 and Article 16 of the Charter of Fundamental Rights of the European Union.

Action brought on 30 December 2013 — Asociación Española de Banca v Commission

(Case T-701/13)

(2014/C 52/88)

Language of the case: Spanish

Parties

Applicant: Asociación Española de Banca (Madrid, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to the decision, together constitute the 'Spanish Tax Lease System' as new State Aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 30 December 2013 — Unicaja Banco v Commission

(Case T-702/13)

(2014/C 52/89)

Language of the case: Spanish

Parties

Applicant: Unicaja Banco, SA (Malaga, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, A. Lamadrid de Pablo and A. Biondi, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to the decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 30 December 2013 — Liberbank v Commission

(Case T-703/13)

(2014/C 52/90)

Language of the case: Spanish

Parties

Applicant: Liberbank, SA (Madrid, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to the decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 30 December 2013 — Banco de Sabadell and Banco Gallego v Commission

(Case T-704/13)

(2014/C 52/91)

Language of the case: Spanish

Parties

Applicants: Banco de Sabadell, SA (Sabadell, Spain) and Banco Gallego, SA (Santiago de Compostela, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to the decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 30 December 2013 — Catalunya Banc v Commission

(Case T-705/13)

(2014/C 52/92)

Language of the case: Spanish

Parties

Applicant: Catalunya Banc, SA (Barcelona, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to the decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 30 December 2013 — Lico Leasing and Pequeños y Medianos Astilleros Sociedad de Reconversión v Commission

(Case T-719/13)

(2014/C 52/93)

Language of the case: Spanish

Parties

Applicants: Lico Leasing, SA (Madrid, Spain) and Pequeños y Medianos Astilleros Sociedad de Reconversión, SA (Madrid) (represented by: M. Sánchez and M. Merola, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the Decision on the ground that it is vitiated by errors in that it finds that the STLS [Spanish Tax Lease System] is a State aid scheme that benefits the EIGs [Economic Interest Groupings] and their investors, and also by defects in reasoning;

— in the alternative, annul the order for recovery of the aid granted through the STLS on the ground that it is contrary to the general principles of the European Union legal order;

— in the further alternative, annul the point in the order for recovery concerning the calculation of the amount of incompatible aid to be recovered in so far as it prevents Spain from determining the formula for calculating that amount in accordance with the general principles applicable to the recovery of State aid, and

— award the applicants all the costs incurred by them in connection with this action.

Pleas in law and main arguments

The Decision contested in the present proceedings is the same as that in Case T-515/13 *Spain* v *Commission* (OJ 2013 C 336, p. 29).

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

1. First plea in law, alleging infringement of Articles 107(1) TFEU and 296 TFEU

   — The measure in question satisfies the condition of selectivity: the applicants claim, first, that the Decision is vitiated by an error in that it identifies sectorial selectivity since the measure that is the subject of the Decision was open to investors operating in all sectors of the economy and, secondly, that the Decision is vitiated by an error in that it concludes that a prior authorisation procedure can confer selectivity, without taking into consideration that the prior authorisation was justified by the complexity of the measure in question and, in any case, does not concern the qualities of the alleged beneficiaries.

   — The measure in question satisfies the conditions relating to distortion of competition and effect on trade between Member States; the applicants claim, in particular, that the Decision does not explain how the alleged State aid would have an effect on the markets referred to and confines itself to asserting the fact without proving it.

   In addition, in the second part of this plea for annulment, the applicants submit that the Decision is vitiated by a defect in reasoning, in that it does not explain why the benefit retained by the alleged beneficiaries constitutes State aid when those beneficiaries merely shared the benefit obtained by the shipowners, which, as the Commission itself recognises, does not constitute State aid.

2. Second plea in law, alleging infringement of Article 14 of Council Regulation (EC) No 659/1999

   — The applicants claim that the order for recovery contained in Articles 4, 5 and 6 of the Decision must be annulled pursuant to the following general principles of European Union law:

     — Principle of protection of legitimate expectations, in particular, on the ground that the letter sent by Commissioner Kroes in 2009 gave rise to a legitimate expectation on the part of the operators as to the lawfulness of the STLS.

— In the alternative, should the order for recovery not be found to be contrary to the principle of protection of legitimate expectations, [the order for recovery must be annulled pursuant to the] principle of legal certainty since, owing to certain circumstances, the uncertainty as to the lawfulness of the STLS initially created by the Brittany Ferries decision became prolonged and intensified during the period the STLS was in force.

3. Third plea in law, alleging infringement of the general principles applicable to recovery of State aid

— The applicants claim that the contested Decision does not observe the general principles applicable to the recovery of State aid inasmuch as it may lead to the recovery of an amount greater than the alleged aid in fact received by the beneficiaries being required from them.

Action brought on 7 January 2014 — Aluminios Cortizo and Cortizo Cartera v Commission

(Case T-1/14)

(2014/C 52/94)

Language of the case: Spanish

Parties

Applicants: Aluminios Cortizo, SAU (Extramundi, Spain) and Cortizo Cartera, SL (Extramundi, Spain) (represented by: A. Beiras Cal, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision in its entirety;

— in the alternative, annul the order to reimburse the State aid; and

— in the further alternative, quantify that aid in accordance with the investor's actual net profit.

Pleas in law and main arguments

The contested decision in the present proceedings is the same as that in Case T-515/13 *Spain* v *Commission* (OJ 2013 C 336, p. 29).

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

1. First plea in law, alleging infringement of Article 107 TFEU, since the State aid granted to the investor entailed neither selectivity nor distortion.

2. Second plea in law, alleging infringement of the second paragraph of Article 296 TFEU on the basis of the complete failure to state reasons for the exclusion of the ship-owner and/or shipyard as the recipient of the bulk of the aid.

3. Third plea in law, alleging infringement of the principle of proportionality — in connection with the loss of profit — in requiring the investor to reimburse aid which was transferred to a third party.

4. Fourth plea in law, alleging infringement of the principle of legitimate expectations, since the Commission, through letters of the Commissioner, and by its inactivity, gave rise to the legitimate appearance that the 'SEAF' was lawful.

5. Fifth plea in law, alleging infringement of the principle of legal certainty, since the imposition of a duty to reimburse aid which was not received/transferred by the investor constitutes confiscation without any legal basis.

6. Sixth plea in law, alleging infringement of the principle of equal treatment, since the measures declared to be incompatible were allowed in other proceedings.

Action brought on 1 January 2014 — Caixabank v Commission

(Case T-2/14)

(2014/C 52/95)

Language of the case: Spanish

Parties

Applicant: Caixabank SA (Barcelona, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 2 January 2014 — Anudal Industrial v Commission

(Case T-3/14)

(2014/C 52/96)

Language of the case: Spanish

Parties

Applicant: Anudal Industrial, SL (Badalona, Spain) (represented by: J. García Muñoz, J. Jiménez-Blanco and J. Corral García, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Articles 1 to 6 of the Decision;

— in the alternative, annul Article 4 of the Decision in so far as it orders recovery of the aid; and

— order the Commission to pay all the costs arising from these proceedings.

Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-515/13 *Spain* v *Commission*.

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

1. The contested decision is vitiated by breach of essential procedural requirements and infringement of Articles 20, 21 and 41(1) of the Charter of Fundamental Rights of the European Union, in that it was adopted following an investigation procedure in which there were substantial irregularities.

2. Error of law: infringement of Articles 107 TFEU and 108 TFEU, inasmuch as the Commission found that the measures covered by the present proceedings constitute State aid, without establishing that they were selective.

3. Error of law: infringement of Articles 107 TFEU and 108 TFEU, inasmuch as the Commission found that the measures covered by the present proceedings constitute State aid, without establishing that they affect Community trade.

4. Error of law: infringement of Article 107(1) TFEU and failure to state reasons, inasmuch as the Commission found that there was State aid and categorised the Economic Interest Groupings and their investors as beneficiaries, in circumstances in which the aid neither confers competitive advantages on those parties nor affects trade between Member States in their respective sectors.

5. Error of law in ordering recovery of the alleged aid in breach of the principles of legal certainty, protection of legitimate expectations and equal treatment, as well as of Article 14 of Regulation (EC) No 659/1999.

Action brought on 2 January 2014 — Industrias Ponsa v Commission

(Case T-4/14)

(2014/C 52/97)

Language of the case: Spanish

Parties

Applicant: Industrias Ponsa, SA (Manresa-Barcelona, Spain) (represented by: J. García Muñoz, J. Jiménez-Blanco and J. Corral García, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Articles 1 to 6 of the Decision;

— in the alternative, annul Article 4 of the Decision, in so far as it orders recovery of the aid; and

— order the Commission to pay all the costs arising from these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-3/14 *Anudal Industrial* v *Commission*.

Action brought on 2 January 2014 — Anudal v Commission

(Case T-5/14)

(2014/C 52/98)

Language of the case: Spanish

Parties

Applicant: Anudal, SL (Badalona, Spain) (represented by: J. García Muñoz, J. Jiménez-Blanco and J. Corral García, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Articles 1 to 6 of the Decision;

— in the alternative, annul Article 4 of the Decision, in so far as it orders recovery of the aid; and

— order the Commission to pay all the costs arising from these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-3/14 *Anudal Industrial* v *Commission*.

Action brought on 3 January 2014 — Inditex and Naviera Nebulosa de Omega v Commission

(Case T-10/14)

(2014/C 52/99)

Language of the case: Spanish

Parties

Applicants: Industria de Diseño Textil, SA (Inditex) (Arteixo, Spain) and Naviera Nebulosa de Omega, AIE (Las Palmas de Gran Canaria, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, A. Lamadrid de Pablo and A. Biondi, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

— in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

— in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

— annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia* v *Commission*.

Action brought on 6 January 2014 — Simet v Commission

(Case T-15/14)

(2014/C 52/100)

Language of the case: Italian

Parties

Applicant: Simet SpA (Rossano Calabro, Italy) (represented by: A. Clarizia and P. Clarizia, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2013) 6251 final of 2 October 2013, relating to a proceeding under Article 108 of the Treaty on the Functioning of the European Union and Article 62 of the Agreement on the European Economic Area — State aid Measure SA.33037 (C/2012) — Italy — Compensation of SIMET SpA for public transport services provided between 1987 and 2003;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought against Decision C(2013) 6251 final of the European Commission of 2 October 2013, which states that the payments made to SIMET of the compensation awarded by a judgment of the Italian Consiglio di Stato and notified by the Italian authorities constitute State aid within the meaning of Article 107(1) TFEU and that that State aid was not exempt from prior notification on the basis of Article 17(2) of Regulation (EEC) No 1191/69.

In that regard, SIMET points out that the case giving rise to that judgment of the national court concerned compensation for the damage which it had suffered as a result of the unlawful aspects of measures adopted by the Ministero delle Infrastrutture e dei Trasporti (Italian Ministry of Infrastructure and Transport) (MIT) with regard to the provision of inter-regional public transport by road between 1987 and 2003.

In support of its claims, the applicant alleges that:

1. the national legislation, on the basis of which the MIT managed SIMET's business activity during the period examined by the Consiglio di Stato in its judgment, is incompatible with Regulation (EEC) No 1191/69, which, following the amendments made by Regulation (EEC) No 1893/91, prohibited Member States from subjecting businesses which, like SIMET, provide inter-regional bus transport services to individuals to any public service obligations;

2. contrary to the Commission's assertions, SIMET was subjected to public service obligations, as the administrative concessionary measures adopted by the MIT for the provision of inter-regional bus passenger transport services, in accordance with the requirements of national legislation, clearly deprived SIMET of any autonomy in carrying on its own business activity as that activity was directly shaped and dictated by the authorities;

3. the principles relating to compensation for damage suffered by individuals as a result of breaches of European Union law — on the basis of which, if the authorities of a Member State adopt an administrative measure within their sphere of competence which is contrary to European Union law, those authorities are obliged to pay compensation for any damage suffered by addresses of that measure owing to its unlawfulness — have been infringed;

4. in any event, no State aid was granted to SIMET, as the method — which refers to the criteria set out in Regulation (EEC) No 1191/69 — of determining the amounts to be awarded to it by way of compensation for the road transport service which it provided from 1987 to 2003 and which was made subject to public service obligations is such as to rule out any risk that SIMET might receive surplus compensation, since the compensation being received corresponds only to the additional costs incurred by that company in fulfilling the public service obligations which were imposed on it unlawfully.

Order of the General Court of 7 January 2014 — Lifted Research and LRG Europe v OHIM — Fei Liangchen (Lr geans)

(Case T-390/12) [1]

(2014/C 52/101)

Language of the case: English

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

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[1] OJ C 355, 17.11.12.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 29 November 2013 — ZZ and ZZ v Commission

(Case F-114/13)

(2014/C 52/102)

Language of the case: French

Parties

Applicants: ZZ and ZZ (represented by: A. Salerno and B. Cortese, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Appointing Authority refusing to recognise the legal validity of the decision of the local Staff Committee in Luxembourg revoking the authority granted to a representative to represent it within the Commission's Central Staff Committee.

Form of order sought

— Annul the decision of the Appointing Authority refusing to recognise the legal validity of the decision of the local Staff Committee in Luxembourg revoking the authority granted to a representative to represent it within the Commission's Central Staff Committee;

— Order the Commission to pay the costs.

Action brought on 9 December 2013 — ZZ v Commission

(Case F-118/13)

(2014/C 52/103)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the Career Development Report relating to the period from 1 July 2001 to 31 December 2002 and annulment of the merit points awarded during the 2003 promotion exercise.

Form of order sought

— annul the Career Development Report (CDR) of the applicant for the period from 1 July 2001 to 31 December 2002;

— in the alternative, annul the applicant's merit points from the 2003 promotion exercise since they are not at the level of the average points awarded to staff of his grade during the same exercise;

— order the Commission to pay the costs.

Action brought on 16 December 2013 — ZZ v Commission

(Case F-121/13)

(2014/C 52/104)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. de Abreu Caldas and J.-N. Louis, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision concerning the transfer of the applicant's pension rights into the European Union pension scheme applying the new GIPs to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Annul the decision of 15 April 2013 calculating the bonus on his pension rights acquired before his entry into the service of the Commission;

— Order the Commission to pay the costs.

Action brought on 17 December 2013 — ZZ v Europol

(Case F-122/13)

(2014/C 52/105)

Language of the case: French

Parties

Applicant: ZZ (represented by: J. Kempeners and M. Itani, lawyers)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Application for annulment of the decision of Europol not to renew the applicant's contract for an indefinite period and for an order against Europol for the payment of the difference between the remuneration which he would have continued to receive at Europol and any other allowances which he has in fact received.

Form of order sought

— annulment of the decision taken by Europol on 6 May 2013 by which Europol informed the applicant that it would not renew his fixed-term contract which expired on 31 October 2013;

— order Europol to pay the applicant the difference between, first, the amount of the remuneration which he would have earned if he had continued to be employed by Europol and, second, the amount of the remuneration, fees, unemployment benefit or any other allowance in lieu which he has in fact received since 1 October 2013 in place of the remuneration which he was receiving at Europol;

— order Europol to pay the costs.

Action brought on 18 December 2013 — ZZ v Commission

(Case F-123/13)

(2014/C 52/106)

Language of the case: French

Parties

Applicant: ZZ (represented by: P. Joassart, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to terminate, with immediate effect, the applicant's contract as a member of the contract staff.

Form of order sought

— Annul the decision to dismiss the applicant, notified by letter of 7 March 2013;

— Order the Commission to pay the costs.

Action brought on 19 December 2013 — ZZ v Parliament

(Case F-124/13)

(2014/C 52/107)

Language of the case: English

Parties

Applicant: ZZ (represented by: C. Bernard-Glanz, lawyer)

Defendant: European parliament

Subject-matter and description of the proceedings

Annulment of the decision of the Appointing Authority rejecting applicant's request for assistance.

Form of order sought

— Annul the contested decision and, so far as necessary, the decision rejecting the complaint;

— order the defendant to pay to the applicant an amount of EUR 50 000, as compensation for the non-material damage suffered, together with interest at the legal rate until payment in full has been made;

— order the defendant to pay to the applicant a quarter of the medical expenses incurred in connection with the deterioration of her state of health, as compensation for the material damage suffered, together with interest at the legal rate until payment in full has been made;

— order the defendant to pay the costs.

Action brought on 6 January 2014 — ZZ v Commission

(Case F-1/14)

(2014/C 52/108)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Frabetti, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of EPSO not to admit the applicant to the assessment stage because of her level of education which corresponds to completed university studies of at least three years attested to by a diploma relevant to the post, or equivalent training/an equivalent professional qualification relevant to the post.

Form of order sought

— Annul the decision of the selection board of 3 October 2013;

— Order the defendant to pay the sum of EUR 1 000 in respect of non-pecuniary harm suffered by the applicant;

— Rule on the costs, expenses and fees and, having regard to the vexatory nature of the defendant's decision to refuse to admit the applicant, order the Commission to pay them.

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