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COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2014/C 303/01)

Last publication

OJ C 292, 1.9.2014

Past publications

OJ C 282, 25.8.2014

OJ C 261, 11.8.2014

OJ C 253, 4.8.2014

OJ C 245, 28.7.2014

OJ C 235, 21.7.2014

OJ C 223, 14.7.2014

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 16 December 2013 by Zoo Sport Ltd against the judgment of the General Court (First Chamber) delivered on 16 October 2013 in Case T-455/12: Zoo Sport Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and intervener before the General Court K-2 Corp.

(Case C-675/13 P)

(2014/C 303/02)

Language of the case: English

Parties

Appellant: Zoo Sport Ltd (represented by: I. Rungg, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and K-2 Corp.

By order of 15 July 2014 the Court of Justice (Sixth Chamber) held that the appeal was inadmissible.

Appeal brought on 17 December 2013 by Zoo Sport Ltd against the judgment of the General Court (First Chamber) delivered on 16 October 2013 in Case T-453/12: Zoo Sport Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and intervener before the General Court K-2 Corp.

(Case C-676/13 P)

(2014/C 303/03)

Language of the case: English

Parties

Appellant: Zoo Sport Ltd (represented by: I. Rungg, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and K-2 Corp.

By order of 15 July 2014 the Court of Justice (Sixth Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Sąd Okręgowy w Częstochowie (Poland) lodged on 20 January 2014 — Ryszard Pańczyk v Dyrektor Zakładu Emerytalno-Rentowego Ministerstwa Spraw Wewnętrznych i Administracji w Warszawie

(Case C-28/14)

(2014/C 303/04)

Language of the case: Polish

Referring court

Sąd Okręgowy w Częstochowie

Parties to the main proceedings

Applicant: Ryszard Pańczyk

Defendant: Dyrektor Zakładu Emerytalno-Rentowego Ministerstwa Spraw Wewnętrznych i Administracji w Warszawie

By order of 12 June 2014, the Court of Justice held that it manifestly lacks jurisdiction to reply to the questions submitted by the Sąd Okręgowy w Częstochowie.

Appeal brought on 20 February 2014 by Brown Brothers Harriman & Co. against the order of the General Court (Ninth Chamber) delivered on 9 December 2013 in Case T-389/13: Brown Brothers Harriman & Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-101/14 P)

(2014/C 303/05)

Language of the case: English

Parties

Appellant: Brown Brothers Harriman & Co. (represented by: P. Leander, T. Kronhöffer, advocates)

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

By order of 17 July 2014 the Court of Justice (Third Chamber) held that the appeal was inadmissible.

Request for a preliminary ruling from the Landesverwaltungsgericht Niederösterreich (Austria) lodged on 17 April 2014 — Borealis Polyolefine GmbH v Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

(Case C-191/14)

(2014/C 303/06)

Language of the case: German

Referring court

Landesverwaltungsgericht Niederösterreich

Parties to the main proceedings

Appellant: Borealis Polyolefine GmbH

Respondent authority: Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

Questions referred

1. Is Decision 2013/448/EU ([1]) invalid and does it infringe Article 10a(5) of Directive 2003/87/EC ([2]) in so far as it excludes from the basis of calculation pursuant to subparagraphs (a) and (b) of Article 10a(5) of that directive emissions associated with waste gases produced by installations falling within Annex I to Directive 2003/87/EC and heat used by installations falling within Annex I to Directive 2003/87/EC and which comes from combined heat and power installations, for which a free allocation is granted pursuant to Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU? ([3])

2. Is Decision 2013/448/EU invalid and does it infringe Article 3e and 3u of Directive 2003/87/EC, alone and/or in conjunction with Article 10a(5) of Directive 2003/87/EC, in so far as it provides that CO_2 emissions associated with waste gases — which are produced by installations falling within Annex I to Directive 2003/87/EC — and heat used in installations falling within Annex I to Directive 2003/87/EC and which was acquired by combined heat and power installations are emissions from 'electricity generators'?

3. Is Decision 2013/448/EU invalid and does it infringe the objectives of Directive 2003/87/EC in so far as it creates an asymmetry by excluding emissions associated with the combustion of waste gases and with heat produced in cogeneration from the basis of calculation in subparagraphs (a) and (b) of Article 10a(5), whereas free allocation with regard to them is due in accordance with Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU?

4. Is Decision 2011/278/EU invalid and does it infringe Article 290 TFEU and Article 10a(5) of Directive 2003/87/EC in so far as Article 15(3) of that decision amends subparagraphs (a) and (b) of Article 10a(5) of Directive 2003/87/EC to the effect that it replaces the reference to 'installations which are not covered by paragraph 3' by the reference to 'installations that are not electricity generators'?

5. Is Decision 2013/448/EU invalid and does it infringe Article 23(3) of Directive 2003/87/EC in so far as that decision was not adopted on the basis of the regulatory procedure with scrutiny which is laid down in Article 5a of Council Decision 1999/468/EC and Article 12 of Regulation (EU) No 182/2011?

6. Is Article 17 of the European Charter of Fundamental Rights to be understood as precluding the retention of free allocations on the basis of the wrongful calculation of a cross-sectoral correction factor?

7. Is Article 10a(5) of Directive 2003/87/EC, on its own and/or in conjunction with Article 15(3) of Decision 2011/278/EU, to be understood as precluding the application of a provision of national law which provides for the application of the wrongfully calculated uniform cross-sectoral correction factor, as determined in Article 4 of Decision 2013/448/EU and in Annex II thereto, to the free allocations in a Member State?

8. Is Decision 2013/448/EU invalid and does it infringe Article 10a(5) of Directive 2003/87/EC in so far as it includes only emissions from installations which were contained in the Community scheme from 2008, with the result that it excludes those emissions which are associated with activities which were contained in the Community scheme from 2008 (in the amended Annex I to Directive 2003/87/EC) if those activities took place in installations which were already contained in the Community scheme prior to 2008?

9. Is Decision 2013/448/EU invalid and does it infringe Article 10a(5) of Directive 2003/87/EC in so far as it includes only emissions from installations which were contained in the Community scheme from 2013, with the result that it excludes those emissions which are associated with activities which were contained in the Community scheme from 2013 (in the amended Annex I to Directive 2003/87/EC) if those activities took place in installations which were already contained in the Community scheme prior to 2013?

([1]) Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).

([2]) Directive of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

([3]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Landesverwaltungsgericht Niederösterreich (Austria) lodged on 17 April 2014 — OMV Refining & Marketing GmbH v Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

(Case C-192/14)

(2014/C 303/07)

Language of the case: German

Referring court

Landesverwaltungsgericht Niederösterreich

Parties to the main proceedings

Appellant: OMV Refining & Marketing GmbH

Respondent authority: Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

Questions referred

1. Is Decision 2013/448/EU ([1]) invalid and does it infringe Article 10a(5) of Directive 2003/87/EC ([2]) in so far as it excludes from the basis of calculation pursuant to subparagraphs (a) and (b) of Article 10a(5) of that directive emissions associated with waste gases produced by installations falling within Annex I to Directive 2003/87/EC and heat used by installations falling within Annex I to Directive 2003/87/EC and which comes from combined heat and power installations, for which a free allocation is granted pursuant to Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU? ([3])

2. Is Decision 2013/448/EU invalid and does it infringe Article 3e and 3u of Directive 2003/87/EC, alone and/or in conjunction with Article 10a(5) of Directive 2003/87/EC, in so far as it provides that CO_2 emissions associated with waste gases — which are produced by installations falling within Annex I to Directive 2003/87/EC — and heat used in installations falling within Annex I to Directive 2003/87/EC and which was acquired by combined heat and power installations are emissions from 'electricity generators'?

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4. Is Decision 2011/278/EU invalid and does it infringe Article 290 TFEU and Article 10a(5) of Directive 2003/87/EC in so far as Article 15(3) of that decision amends subparagraphs (a) and (b) of Article 10a(5) of Directive 2003/87/EC to the effect that it replaces the reference to 'installations which are not covered by paragraph 3' by the reference to 'installations that are not electricity generators'?

5. Is Decision 2013/448/EU invalid and does it infringe Article 23(3) of Directive 2003/87/EC in so far as that decision was not adopted on the basis of the regulatory procedure with scrutiny which is laid down in Article 5a of Council Decision 1999/468/EC and Article 12 of Regulation (EU) No 182/2011?

6. Is Article 17 of the European Charter of Fundamental Rights to be understood as precluding the retention of free allocations on the basis of the wrongful calculation of a cross-sectoral correction factor?

7. Is Article 10a(5) of Directive 2003/87/EC, on its own and/or in conjunction with Article 15(3) of Decision 2011/278/EU, to be understood as precluding the application of a provision of national law which provides for the application of the wrongfully calculated uniform cross-sectoral correction factor, as determined in Article 4 of Decision 2013/448/EU and in Annex II thereto, to the free allocations in a Member State?

8. Is Decision 2013/448/EU invalid and does it infringe Article 10a(5) of Directive 2003/87/EC in so far as it includes only emissions from installations which were contained in the Community scheme from 2008, with the result that it excludes those emissions which are associated with activities which were contained in the Community scheme from 2008 (in the amended Annex I to Directive 2003/87/EC) if those activities took place in installations which were already contained in the Community scheme prior to 2008?

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([1]) Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27).

([2]) Directive of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

([3]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 8 May 2014 — Eurogate Distribution GmbH v Hauptzollamt Hamburg-Stadt

(Case C-226/14)

(2014/C 303/08)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Eurogate Distribution GmbH

Defendant: Hauptzollamt Hamburg-Stadt

Questions referred

– Question 1: Is it inconsistent with the provisions of Directive 77/388/EEC [1] to levy import turnover tax for goods which have been reexported as non-Community goods for which, however, a customs debt is incurred due to a breach of obligation under Article 204 of the Customs Code [2] — in this case: delay in the fulfilment of the obligation to record the removal of the goods from a customs warehouse in the appropriate stock records, at the latest at the time of their removal?

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

– Question 2: Do the provisions of Directive 77/388/EEC require the levy of import turnover tax for the goods in such cases or do Member States have a margin of discretion in this respect?

and

– Question 3: Is a customs warehouse maintainer who, on the basis of a relationship involving the provision of services, stores a good from a third country in his customs warehouse without having that good at his disposal liable to pay import VAT, which is incurred as a result of his breach of obligation under the second subparagraph of Article 10(3) of Directive 77/388/EEC in conjunction with Article 204(1) of the Customs Code, even if the good is not used for the purposes of his taxable transactions within the meaning of Article 17(2)(a) of Directive 77/388/EEC?

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(1) 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.

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

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 12 May 2014 — DHL Hub Leipzig GmbH v Hauptzollamt Braunschweig

(Case C-228/14)

(2014/C 303/09)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: DHL Hub Leipzig GmbH

Defendant: Hauptzollamt Braunschweig

Question referred

— Is import VAT for goods which have been reexported under customs supervision as non-Community goods for which, however, a customs debt is incurred due to a breach of obligation under Article 204 of the Customs Code [1] — in this case: failure to discharge in due time the external Community transit procedure by presentation at the competent customs office before the introduction into the third country — to be considered to be not legally owed within the meaning of Article 236(1) of the Customs Code in conjunction with the provisions of Directive 2006/112/EC, [2] at least where the person used as the debtor is the person on whom the breached obligation was incumbent without him being entitled to dispose of the goods?

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

(2) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Arbeitsgericht Verden (Germany) lodged on 12 May 2014 — Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH

(Case C-229/14)

(2014/C 303/10)

Language of the case: German

Referring court

Arbeitsgericht Verden

Parties to the main proceedings

Applicant: Ender Balkaya

Defendant: Kiesel Abbruch- und Recycling Technik GmbH

Questions referred

1. Is applicable EU law, in particular Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, ([1]) to be interpreted as precluding national legislative provisions or practices which provide that in carrying out the calculation provided for by that provision for the number of affected workers a member of the board of directors of a limited liability company should be omitted, even where he performs his duties at the direction and subject to the supervision of another body of that company, he receives remuneration in return for the performance of his duties, and does not himself own any shares in the company?

2. Is applicable EU law, in particular Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, to be interpreted as making it mandatory that in carrying out the calculation provided for by that provision for the number of affected workers it is necessary to regard as workers persons who are not remunerated by the employer but are given financial support and are recognised by the competent public authority having responsibility for employment support, who actually perform work in order to acquire or improve skills or to complete vocational training ('trainees'), or are Member States permitted to lay down national legislative provisions or practices as regards them?

([1]) OJ 1998 L 225, p. 16.

Request for a preliminary ruling from the Finanzgericht Baden-Württemberg (Germany) lodged on 16 May 2014 — Roman Bukovansky v Finanzamt Lörrach

(Case C-241/14)

(2014/C 303/11)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Roman Bukovansky

Defendant: Finanzamt Lörrach

Question referred

Are the provisions of the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons ([1]) (BGBl. II 2001, 810 et seq.), which was adopted as a Law by the German Bundestag on 2 September 2001 (BGBl. II 2001, 810) and entered into force on 1 June 2002 ('the Agreement on the Free Movement of Persons'), in particular the preamble thereto, Articles 1, 2 and 21 thereof and Articles 7 and 9 of Annex I thereto, to be interpreted as meaning that a worker who has moved from Germany to Switzerland, who is not a Swiss national and who, since moving to Switzerland, has been a 'reverse frontier worker' within the meaning of Article 15a(1) of the DBA-Schweiz 1971/2002 (Swiss-German Double Taxation Agreement) cannot be made subject to tax by Germany pursuant to Article 4(4), in conjunction with the fourth sentence of Article 15a(1), of the DBA-Schweiz 1971/2002?

([1]) OJ 1999 L 114, p. 6.

Request for a preliminary ruling from the Landgericht Mannheim (Germany) lodged on 19 May 2014 — Saatgut-Treuhandverwaltungs GmbH v Firma Gerhard und Jürgen Vogel GbR, Jürgen Vogel, Gerhard Vogel

(Case C-242/14)

(2014/C 303/12)

Language of the case: German

Referring court

Landgericht Mannheim

Parties to the main proceedings

Applicant: Saatgut-Treuhandverwaltungs GmbH

Defendants: Firma Gerhard und Jürgen Vogel GbR, Jürgen Vogel, Gerhard Vogel

Questions referred

— Is a farmer who has planted propagating material obtained from a protected plant variety without having concluded a contract for so doing with the plant variety right holder required to pay reasonable compensation, as provided for in Article 94(1) of Council Regulation (EC) No 2100/94 ([1]) of 27 July 1994 on Community plant variety rights, and — if he has acted intentionally or negligently — to compensate the holder for any further damage resulting from the infringement of the plant variety right in accordance with Article 94(2) of that regulation, where he has not yet fulfilled his obligation under Article 14(3), fourth indent, of that regulation, in conjunction with Articles 5 and 6 of Commission Regulation (EC) No 1768/95 ([2]) of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation (EC) No 2100/94, to pay an equitable remuneration (planting fee) at the time when he actually made use of the product of the harvest for propagating purposes in the field?

— If the first question is to be answered to the effect that the farmer can still fulfil his obligation to pay an equitable planting fee even after he has actually made use of the product of the harvest for propagating purposes in the field, are the aforementioned provisions to be interpreted as fixing a period within which a farmer who has planted propagating material obtained from a protected plant variety must fulfil his obligation to pay an equitable planting fee in order for the planting to be capable of being regarded as 'authorised' for the purposes of Article 94(1) of Regulation (EC) No 2100/94 in conjunction with Article 14 of that regulation?

([1]) OJ 1994 L 227, p. 1.
([2]) OJ 1995 L 173, p. 14.

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 21 May 2014 — Thomas Cook Belgium NV v Thurner Hotel GmbH

(Case C-245/14)

(2014/C 303/13)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Appellant: Thomas Cook Belgium NV

Respondent: Thurner Hotel GmbH

Questions referred

1. Is Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure ('Regulation No 1896/2006') ([1]) to be interpreted as meaning that a defendant may apply for a review by the competent court of the European order for payment in accordance with Article 20(2) of Regulation No 1896/2006 also where the order for payment was effectively served on him but was issued by a court which lacks jurisdiction on the basis of the information relating to jurisdiction provided in the application form?

2. If the answer to Question 1 is in the affirmative: Do exceptional circumstances within the meaning of Article 20(2) of Regulation No 1896/2006 already exist in accordance with paragraph 25 of European Commission Notice 2004/0055 of 7 February 2006 where the European order for payment was issued on the basis of information provided in the application form which may subsequently prove to be inaccurate, particularly where the jurisdiction of the court depends on that information?

([1]) OJ 2006 L 399, p. 1.

Request for a preliminary ruling from the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 26 May 2014 — György Balázs v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-251/14)

(2014/C 303/14)

Language of the case: Hungarian

Referring court

Kecskeméti Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: György Balázs

Defendant: Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

Questions referred

1. Must Article 4(1) and Article 5 of Directive 98/70/EC [1] of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC be interpreted as meaning that, in addition to the quality requirements laid down in the national legislation adopted on the basis of that directive, other national legislation may not impose on a fuel supplier quality requirements set out in a national standard that go beyond those provided in the Directive?

2. Must Article 1(6) and (11) of Directive 98/34/EC [2] of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [and of rules on Information Society services], be interpreted as meaning that, if a technical regulation is in force (in this case, a ministerial order adopted on the basis of enabling legislation), the application of a national standard adopted in the same field can only be voluntary, that is to say, the legislation may not prescribe the mandatory application thereof?

3. Is the criterion of availability to the public of the national standard laid down in [Article 1](6) of Directive 98/34/EC met by a rule that, at the time at which it should have been applied according to the administrative authority, was not available in the national language?

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(1) OJ 1998 L 350, p. 58.
(2) OJ 1998 L 204, p. 37.

Request for a preliminary ruling from the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 27 May 2014 — Robert Michal Chmielewski v Nemzeti Adó- és Vámhivatal Dél alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-255/14)

(2014/C 303/15)

Language of the case: Hungarian

Referring court

Kecskeméti Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Robert Michal Chmielewski

Defendant: Nemzeti Adó- és Vámhivatal Dél alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

Questions referred

1) Does the amount of the fine imposed by Paragraph 5/A of Law XLVIII of 2007 implementing Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community [1] ('the national implementing law') fulfil the requirement in Article 9(1) of that Regulation, according to which the penalties laid down by national law must be effective, dissuasive and, at the same time proportionate to the infringement and to the objective pursued?…

2) Does Paragraph 5/A of the national implementing law not infringe, as a result of the amount of the fines it provides for, the prohibition on disguised restrictions on the free movement of capital in the Treaty on European Union and in Article 65(3) of the Treaty on the Functioning of the European Union?

(1) OJ 2005 L 309, p. 9.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) (Portugal) lodged on 28 May 2014 — Lisboagás GDL, Sociedade Distribuidora de Gás Natural de Lisboa SA v Autoridade Tributária e Aduaneira

(Case C-256/14)

(2014/C 303/16)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicants: Lisboagás GDL, Sociedade Distribuidora de Gás Natural de Lisboa SA

Defendant: Autoridade Tributária e Aduaneira

Questions referred

1. Does EU law preclude the assessment of VAT, when a private undertaking providing infrastructures for the distribution of natural gas passes on to an undertaking acquiring its services, without including any additional amount, the amounts relating to land use taxes paid to the municipalities in which the pipes comprising those infrastructures are located?

2. Given that local authorities assess land use taxes in the exercise of their public powers, without including VAT, does EU law preclude the assessment of VAT when the amounts relating to those taxes paid by a private undertaking providing infrastructures for the distribution of natural gas are passed on to an undertaking acquiring its services?

Request for a preliminary ruling from the Rechtbank Amsterdam (Netherlands) lodged on 28 May 2014 — C. van der Lans v Koninklijke Luchtvaart Maatschappij NV

(Case C-257/14)

(2014/C 303/17)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicant: C. van der Lans

Defendant: Koninklijke Luchtvaart Maatschappij NV

Questions referred

1) How must the concept of 'event' in recital 14 of the preamble [to Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91] be interpreted?

2) Having regard to paragraph 22 of the *Wallentin* judgment, ([2]) extraordinary circumstances as referred to in the aforementioned recital 14 do not coincide with the occurrences listed as examples in the second sentence of recital 14, occurrences cited as events by the Court of Justice in paragraph 22. Is it correct that the events as referred to in the aforementioned paragraph 22 are not the same as the event in recital 14 of the preamble?

3) What should be understood by the concept of extraordinary circumstances which, according to paragraph 23 of the *Wallentin* judgment, surround the event 'unexpected flight safety shortcomings' as referred to in the aforesaid recital 14 if, in the light of paragraph 22, unexpected flight safety shortcomings cannot themselves constitute extraordinary circumstances but may only produce such circumstances?

4) It is apparent from paragraph 23 of the *Wallentin* judgment that a technical problem can be considered to be covered by 'unexpected flight safety shortcomings' and is therefore an 'event' within the meaning of paragraph 22 of the *Wallentin* judgment; the circumstances surrounding that event may nevertheless be regarded as extraordinary if they relate to an event which is not inherent in the normal exercise of the activities of the air carrier and beyond the actual control of that carrier on account of its nature or origin, as provided in paragraph 23 of the *Wallentin* judgment; according to paragraph 24 thereof, the resolution of a technical problem which can be traced back to poor maintenance of an aircraft is inherent in the normal exercise of an air carrier's activity; therefore, according to paragraph 25 of the *Wallentin* judgment, such technical problems cannot constitute extraordinary circumstances. It appears to follow from those paragraphs that a technical problem which is covered by 'unexpected flight safety shortcomings' is simultaneously an event which may be surrounded by extraordinary circumstances and may itself constitute an extraordinary circumstance. How should paragraphs 22 to 25 of the *Wallentin* judgment be interpreted in order to resolve that apparent contradiction?

5) The words: 'inherent in the normal exercise of an air carrier's activity' are consistently interpreted in the case-law of the lower courts as: 'associated with the normal activities of the airline' — which is moreover an interpretation which is compatible with the Netherlands word 'inherent' (not the authentic text of the judgment) — so that, for example, collisions with birds or ash clouds are also not regarded as events within the meaning of paragraph 23 of the *Wallentin* judgment. Other case-law emphasises the words: 'and is beyond the actual control of that carrier on account of its nature or origin', likewise in paragraph 23 of the *Wallentin* judgment. Must 'inherent in' be interpreted as meaning that only events which are within the actual control of the air carrier are covered by that concept?

6) How should paragraph 26 of the *Wallentin* judgment be read, or rather, how should that paragraph be interpreted, in the light of the answer of the Court of Justice to questions 4 and 5?

7) (a) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings constitute extraordinary circumstances which may justify invoking Article 5(3) of the Regulation if they arise from an event which is not inherent in the exercise of the activities of the airline and is beyond the actual control of the latter, does that then mean that a technical problem which arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control …) can or cannot constitute an extraordinary circumstance — on the assumption that it could not be detected during the regular maintenance operations — because then no event as referred to in paragraph 26 can be identified and it is therefore also not possible to determine whether such an event is inherent in the exercise of the activities of the airline and is thus beyond the control of the air carrier?

(b) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control), is that technical problem inherent or not inherent in the exercise of the activities of the airline and is it or is it not thus beyond the actual control of the airline within the meaning of the aforementioned paragraph 26?

(c) If question 6 is answered to the effect that technical problems which are considered to be unexpected flight safety shortcomings are events as referred to in paragraph 22 and the technical problem arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks (the said A-D Checks and the Daily Control), what circumstances should then surround that technical problem and when should those circumstances be regarded as extraordinary so that they may be relied upon for the purposes of Article 5(3) of the Regulation?

8) An air carrier can only rely on extraordinary circumstances if it can prove that the cancellation/delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken. Is it correct to conclude that the taking of all reasonable measures refers to the avoidance of the occurrence of extraordinary circumstances and not to the taking of measures to keep the delay within the 3-hour limit referred to in Article 5(1)(c)(iii) of Regulation No 261/2004 in conjunction with paragraphs 57-61 of the *Sturgeon* judgment (Case C-402/07)? ([3])

9) In principle, there are two types of measures to limit delays caused by technical problems to a maximum of 3 hours, namely, on the one hand, holding stocks of spare components in various parts of the world, thus not only at the home base of the air carrier, and, on the other hand, the rebooking of the passengers of the delayed flight. In determining the stock levels which they hold and the places in the world where they do so, may the air carriers have regard to what is customary in the aviation world, including for carriers which are only partially covered by the operation of the Regulation?

10) In answering the question of whether all reasonable measures were taken to limit the delay which occurred as a result of technical problems which have an effect on the flight safety shortcomings, must the court take account of circumstances which aggravate the consequences of a delay, such as the circumstance that the aircraft affected by the technical problems, before returning to its home base, must, as in the present case, call at a number of airports, which may result in an accumulation of time lost?

([1]) OJ 2004 L 46, p. 1.
([2]) Judgment in *Wallentin-Hermann*, C-549/07, EU:C:2008:771.
([3]) Judgment in *Sturgeon and Others*, C-402/07 and C-432/07, EU:C:2009:716.

Appeal brought on 3 June 2014 by Debonair Trading Internacional Ld[a] against the judgment of the General Court (Ninth Chamber) delivered on 3 April 2014 in Case T-356/12: Debonair Trading Internacional Ld[a] v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-270/14 P)

(2014/C 303/18)

Language of the case: English

Parties

Appellant: Debonair Trading Internacional Ld[a] (represented by: T. Alkin, Barrister)

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

Form of order sought

The appellant claims that the Court should:

1) Set aside paragraph 2 of the Decision dismissing the action as to the remainder;

2) Remit the case to the General Court for further consideration with direction as to the applicable law;

3) Order the Respondent to pay the costs both of the proceedings before the General Court and those before the Court of Justice.

Pleas in law and main arguments

The Appellant relies on a single plea in law, namely infringement of Article 8(1)(b) CTMR ([1]). In summary, it contends that the General Court erred by purporting to limit the conditions in which a likelihood of confusion may arise between a 'family' of trade marks and a later trade mark. Alternatively the Appellant contends that the General Court failed to carry out a global assessment of the likelihood of confusion taking into account all relevant factors.

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

Request for a preliminary ruling from the Tribunal Económico Administrativo Central de Madrid (Spain) lodged on 5 June 2014 — Banco de Santander, S.A.

(Case C-274/14)

(2014/C 303/19)

Language of the case: Spanish

Referring court

Tribunal Económico Administrativo Central de Madrid

Parties to the main proceedings

Applicant: Banco de Santander, S.A.

Questions referred

1) Must Article 1(2) of the European Commission Decision ([1]) of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 be interpreted to the effect that the legitimate expectations recognised in that paragraph and in the terms in which they are confined therein to deduction of the tax amortisation of financial goodwill under Article 12.5 TRLIS are to be considered applicable in relation to indirect foreign shareholding acquisitions made through the direct acquisition of a non-resident holding company?

2) If the answer to the first question is affirmative, is Decision C(2013) 4399 final of 17 July 2013 in State aid proceedings No SA. 35550 (2013/C) (ex 13/NN, ex 12/CP) — Tax amortisation of financial goodwill for foreign shareholding acquisitions, which decides to initiate the procedure provided for under Article 108(2) TFEU for infringement of Article 108 TFEU and of Council Regulation (EC) No 659/1999 ([2]) of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (now Article 108 TFEU), invalid?

([1]) OJ 2011 L 7, p. 48.
([2]) OJ 1999 L 83, p. 1.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 5 June 2014 — Gmina Wrocław v Minister Finansów

(Case C-276/14)

(2014/C 303/20)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Gmina Wrocław

Respondent: Minister Finansów

Question referred

In the light of Article 4(2), in conjunction with Article 5(3), of the Treaty on European Union, may an organisational entity of a municipality (a local government body in Poland) be regarded as a taxable person for purposes of VAT when it engages in activities other than as a public authority within the meaning of Article 13 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, ([1]) notwithstanding the fact that it does not satisfy the criterion of autonomy (independence) set out in Article 9(1) of that directive?

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

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 5 June 2014 — PPUH Stehcemp Sp. j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek v Dyrektor Izby Skarbowej w Łodzi

(Case C-277/14)

(2014/C 303/21)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: PPUH Stehcemp Sp. j. Florian Stefanek, Janina Stefanek, Jarosław Stefanek

Defendant: Dyrektor Izby Skarbowej w Łodzi

Questions referred

1) Must Articles 2(1), 4(1) and (2), 5(1) and 10(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment [1] ('the Sixth Directive') be interpreted as meaning that a transaction conducted in circumstances such as those in the main proceedings, in which neither the taxable person nor the tax authorities are in a position to establish the identity of the actual supplier of the goods, constitutes a supply of goods?

2) If the reply to Question 1 is in the affirmative, must Articles 17(2)(a), 18(1)(a) and 22(3) of the Sixth Directive be interpreted as precluding provisions of national law under which, in circumstances such as those in the main proceedings, tax cannot be deducted by the taxable person since the invoice was issued by a person who was not the actual supplier of the goods and it is not possible to establish the identity of the actual supplier of the goods and to require that supplier to pay the tax, or to identify the person required to pay the tax on the basis of the issuance of the invoice pursuant to Article 21(1)(c) of the Sixth Directive?

[1] OJ 1977 L 145, p. 1.

Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 6 June 2014 — SC Enterprise Focused Solutions SRL v Spitalul Județean de Urgență Alba Iulia

(Case C-278/14)

(2014/C 303/22)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Appellant: SC Enterprise Focused Solutions SRL

Respondent: Spitalul Județean de Urgență Alba Iulia

Question referred

May Article 23(8) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 [1] be interpreted as meaning that, when a contracting authority defines the technical specifications of the product which is the subject of a procurement contract by reference to a particular brand, the characteristics of the 'equivalent' product offered must be established solely by reference to the technical specifications of products still in production, or may they be established by reference to products which are on the market but no longer in production?

[1] 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 Landgericht Hannover (Germany) lodged on 6 June 2014 — Catharina Smets, Franciscus Vereijken v TUIfly GmbH

(Case C-279/14)

(2014/C 303/23)

Language of the case: German

Referring court

Landgericht Hannover

Parties to the main proceedings

Applicants: Catharina Smets, Franciscus Vereijken

Defendant: TUIfly GmbH

Questions referred

1. In the light of recital 15 in its preamble, is Regulation No 261/2004 ([1]) to be interpreted as meaning that the occurrence of an exceptional circumstance — which leads the air carrier, after that circumstance has occurred, to deliberately reroute flights and to first reschedule those flights which were directly affected by the exceptional circumstance — can justify a delay within the meaning of Article 5 of that regulation and release the air carrier from its obligation to pay compensation under Article 5(1)(c) of Regulation No 261/2004 to the passenger whose flight was operated only after the exceptional circumstance had been dealt with and all flights could be rescheduled?

2. In this context, is Article 5(3) of Regulation No 261/2004 to be interpreted as meaning that the air carrier which operates flights using a rotation procedure took all reasonable measures and is accordingly released from its obligation to pay compensation, when transporting passengers whose flight has already been significantly delayed due directly to an extraordinary circumstance, as a priority with aircraft which, in principle, are used differently in the rotation?

3. Is recital 15 to be interpreted as meaning that only the aircraft directly affected by the strike, which is liable to affect one or more flights of that aircraft, may be affected by extraordinary circumstances, or does the circle of affected planes extend to several aircraft?

4. In the context of reasonable measures within the meaning of Article 5(3) of Regulation No 261/2004, is the airline permitted to use aircraft that are not affected in order to minimise the consequences of the strike for passengers who are directly affected and accordingly to spread the effects of a strike among several aircraft and passengers?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) — Commission Statement (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Szegedi Törvényszék lodged on 11 June 2014 — Eurospeed Ltd v Szegedi Törvényszék

(Case C-287/14)

(2014/C 303/24)

Language of the case: Hungarian

Referring court

Szegedi Törvényszék

Parties to the main proceedings

Applicant: Eurospeed Ltd

Defendant: Szegedi Törvényszék

Questions referred

1. Does the fact that a Member State is liable to make good damage resulting from a breach of EU law preclude the application of rules on liability when ruling on a claim for damages brought on that basis against the State body actually responsible for the breach?

2. If the answer to the first question is in the negative, does Article 10(3) of Regulation No 561/2006/EC ([1]) preclude the adoption of a national law by the Member State which, in the event of breach of the requirements laid down by the Regulation, provides for the imposition of a penalty on the driver who actually committed the breach in addition to or instead of the transport company?

3. If the answer to the second question is in the affirmative, must it be considered that a decision of a national administrative court which, instead of being based on Article 10(3) of Regulation No 561/2006, is based on national law contrary to that provision, is manifestly in breach of Union law?

([1]) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85.

Request for a preliminary ruling from the Tribunalul Timiș (Romania) lodged on 12 June 2014 — Silvia Ciup v Administrația Județeană a Finanțelor Publice (AJFP) Timiș — Direcția Generală Regională a Finanțelor Publice (DGRFP) Timișoara

(Case C-288/14)

(2014/C 303/25)

Language of the case: Romanian

Referring court

Tribunalul Timiș

Parties to the main proceedings

Applicant: Silvia Ciup

Defendant: Administrația Județeană a Finanțelor Publice (AJFP) Timiș — Direcția Generală Regională a Finanțelor Publice (DGRFP) Timișoara

Question referred

Can the principles of equivalence and effectiveness of remedies for infringements of EU law, upheld by the case-law of the Court, and the right to property referred to in Article 17 of the Charter of Fundamental Rights of the European Union be interpreted as precluding provisions of national law that defer, on the basis of instalments payable over a period of five years, the reimbursement of taxes levied in breach of Community law and reimbursement of interest thereon, such reimbursements having been directed to be made by judgments that became enforceable by 31 December 2015?

Appeal brought on 12 June 2014 by Faci SpA against the judgment of the General Court (Third Chamber) delivered on 20 March 2014 in Case T-46/10: Faci SpA v European Commission

(Case C-291/14 P)

(2014/C 303/26)

Language of the case: English

Parties

Appellant: Faci SpA (represented by: Messrs S. Piccardo, Avvocato, S. Crosby, Advocaat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of 20 March 2014 of the General Court in Case T-46/10, or

— in the alternative cancel or substantially reduce the fine imposed on the Appellant, or

— send the case back to the General Court for re-assessment, and

— in any event order the European Commission to pay the Appellant's costs at first instance and in this appeal.

Pleas in law and main arguments

The appeal is brought against the judgment of the General Court of the European Union of 20 March 2014 in Case T-46/10. In the judgment the General Court dismissed the appellant's action of 28 January 2010 brought against Commission Decision C(2009) 8682 final of 11 November 2009 relating to a proceeding under Article 81 (EC) and Article 53 of the EEA Agreement (Case COMP/38589 — Heat Stabilisers) ([1]).

The Appellant raises two grounds of appeal:

By the first ground of appeal the appellant alleges that the General Court erred in law by not examining the gravity of the infringement after November 1996 by reference to the change in the nature of the cartel thereby failing to take all the circumstances into account relevant for the calculation of the fine imposed on the appellant and so infringed Point 20 of the 2006 fining guidelines and/or Article 23 of Regulation 1/2003 ([2]) and Article 49 of the Charter of Fundamental Rights of the European Union.

By the second ground of appeal the appellant alleges that the General Court failed to conduct an effective and in depth judicial review of the decision by holding without examination of the facts that the appellant had behaved exactly like all the other undertakings involved except that its implementation was less rigorous and by dismissing without any assessment that the ground that competition had been illegally distorted to the appellant's detriment by application of Point 35 of the fining Guidelines to a competitor, Bärlocher.

([1]) OJ C 307, 12.11.2010, p. 9

([2]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, p. 1

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 13 June 2014 — Gerhart Hiebler v Walter Schlagbauer

(Case C-293/14)

(2014/C 303/27)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Gerhart Hiebler

Defendant: Walter Schlagbauer

Questions referred

1. In accordance with Article 2(2)(i) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, ([1]) is the entire commercial activity of a chimney sweep excluded from the scope of that directive because chimney sweeps also perform tasks in the field of fire safety regulation (fire safety inspections, expert reports in the course of building approval procedures etc.)?

   If Question 1 is answered in the negative:

2. Is a scheme, provided for in national law, under which the licence to trade as a chimney sweep is limited to a particular 'Kehrgebiet' (sweeping area) compatible with Article 10(4) and Article 15(1), (2)(a) and (3) of Directive 2006/123/EC?

([1]) OJ 2006 L 376, p. 36.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 16 June 2014 — DOW Benelux and Others v Staatssecretaris van Infrastructuur en Milieu

(Case C-295/14)

(2014/C 303/28)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellants: DOW Benelux BV, Esso Nederland BV, ExxonMobil Chemical Holland BV, Kuwait Petroleum Europoort BV, Rütgers Resins BV, Koppers Netherlands BV, Yara Sluiskil BV, BP Raffinaderij Rotterdam BV, Zeeland Refinery NV, ESD-SIC BV, DSM Delft Permit BV, SABIC Innovative Plastics BV, Shell Nederland Raffinaderij BV, Shell Nederland Chemie BV, Akzo Nobel Chemicals BV, Akzo Nobel Industrial Chemicals BV, Emerald Kalama Chemical BV, Nedmag Industries Mining & Manufacturing Holding BV, Rosier Nederland BV, Nederlandse Aardolie Maatschappij BV, Tata Steel IJmuiden BV, Chemelot Site Permit BV, Eska Graphic Board BV, Koch HC Partnership BV

Respondent: Staatssecretaris van Infrastructuur en Milieu

Questions referred

1. Must the fourth paragraph of Article 263 of the Treaty on the Functioning of the European Union be interpreted as meaning that operators of installations to which, as from the beginning of 2013, the emissions-trading rules laid down in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) have been applicable, with the exception of operators of the installations referred to in Article 10a(3) of that directive and of newcomers, could undoubtedly have brought an action before the General Court seeking the annulment of Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2013 L 240, p. 27), in so far as the uniform cross-sectoral correction factor is determined by that decision?

2. Is Decision 2013/448/EU, in so far as the uniform cross-sectoral correction factor is determined thereby, invalid because that decision was not adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10a(1) of Directive 2003/87/EC?

3. Is Article 15 of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1) contrary to Article 10a(5) of Directive 2003/87/EC because the former article precludes emissions from electricity generators from being taken into account in the determination of the uniform cross-sectoral correction factor? If so, what are the consequences of that conflict for Decision 2013/448/EU?

4. Is Decision 2013/448/EU, in so far as the uniform cross-sectoral correction factor is determined thereby, invalid because that decision is based on, inter alia, data submitted pursuant to Article 9a(2) of Directive 2003/87/EC without the provisions to be adopted pursuant to Article 14(1), referred to in Article 9a(2), having been established?

5. Is Decision 2013/448/EU, in so far as the uniform cross-sectoral correction factor is determined thereby, contrary to, in particular, Article 296 of the Treaty on the Functioning of the European Union or Article 41 of the Charter of Fundamental Rights of the European Union ([1]) on the ground that the quantities of emissions and emission allowances which determined the calculation of the correction factor are set out only partially in that decision?

6. Is Decision 2013/448/EU, in so far as the uniform cross-sectoral correction factor is determined thereby, contrary to, in particular, Article 296 of the Treaty on the Functioning of the European Union or Article 41 of the Charter of Fundamental Rights of the European Union on the ground that that correction factor was determined on the basis of data of which the operators of the installations involved in emissions trading could not have become aware?

([1]) OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 17 June 2014 — Rüdiger Hobohm v Benedikt Kampik Ltd & Co., Benedikt Aloysius Kampik, Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL

(Case C-297/14)

(2014/C 303/29)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Rüdiger Hobohm

Defendants: Benedikt Kampik Ltd & Co., Benedikt Aloysius Kampik, Mar Mediterraneo Werbe- und Vertriebsgesellschaft für Immobilien SL

Question referred

– Can a consumer, pursuant to the second alternative in Article 15(1)(c) of Council Regulation (EC) No 44/2001 [1] of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, in conjunction with the second alternative in Article 16(1) of the regulation, bring proceedings in the courts for the place where he is domiciled against the other party to the contract, who pursues commercial or professional activities in another Member State of the European Union if, whilst the contract underlying the proceedings does not fall directly within the scope of such activities of the other party to the contract which are directed to the Member State of the consumer's domicile, the contract serves, however, to achieve the economic result that is sought by another contract — previously concluded between the parties and already performed — which falls within the scope of the aforementioned provisions?

(1) OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 16 June 2014 — Alain Brouillard v Selection board for the competition to recruit legal secretaries at the Cour de cassation, Belgian State

(Case C-298/14)

(2014/C 303/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Alain Brouillard

Defendants: Selection board for the competition to recruit legal secretaries at the Cour de cassation, Belgian State

Questions referred

1) Are Articles 45 and 49 TFEU and Directive 2005/36 of 7 September 2005 on the recognition of professional qualifications to be interpreted as applying in a situation where a Belgian national, who resides in Belgium and who has not pursued a professional activity [1] in another Member State, relies in support of his application to participate in a competition to recruit legal secretaries at the Belgian Cour de cassation on a degree awarded by a French university, namely a vocational master's degree in law, economics and management, private law, lawyer-linguist specialism, awarded on 22 November 2010 by the University of Poitiers in France?

2) Is the office of legal secretary at the Belgian Cour de cassation, in respect of which Article 259 *duodecies* of the Judicial Code makes appointment conditional on holding a doctorate or licentiate degree in law, a regulated profession within the meaning of Article 3 of Directive 2005/36 of 7 September 2005?

3) Is the office of legal secretary at the Cour de cassation, the duties of which are defined in Article 135 *bis* of the Judicial Code, employment in the public service within the meaning of Article 45(4) TFEU, and is the application of Articles 45 and 49 TFEU and Directive 2005/36 of 7 September 2005 on the recognition of professional qualifications therefore precluded by Article 45(4) TFEU?

4) If Articles 45 and 49 TFEU and Directive 2005/36 of 7 September 2005 apply in the present case, must they be interpreted as precluding the selection board charged with the recruitment of legal secretaries at the Cour de cassation from making participation in that competition conditional on the holding of a doctorate or licentiate degree in law awarded by a Belgian university, or on recognition by the French Community, which has competence in the field of education, that the master's degree awarded to the applicant by the University of Poitiers in France is equivalent to the qualification of doctorate, licentiate degree or master's degree in law awarded by a Belgian university?

5) If Articles 45 and 49 TFEU and Directive 2005/36 of 7 September 2005 apply in the present case, must they be interpreted as requiring the selection board charged with the recruitment of legal secretaries at the Cour de cassation to compare the applicant's qualifications resulting from his degrees as well as from his professional experience with those resulting from a doctorate or licentiate degree in law awarded by a Belgian university and, if necessary, to impose a compensation measure on him under Article 14 of Directive 2005/36?

([1]) Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

Request for a preliminary ruling from the Hof van Beroep te Antwerpen (Belgium) lodged on 20 June 2014 — Imtech Marine Belgium NV v Radio Hellenic SA

(Case C-300/14)

(2014/C 303/31)

Language of the case: Dutch

Referring court

Hof van Beroep te Antwerpen

Parties to the main proceedings

Appellant: Imtech Marine Belgium NV

Respondent: Radio Hellenic SA

Questions referred

1. Does the non-application directly of Regulation (EC) No 805/2004 ([1]) of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims constitute a breach of Article 288 (consolidated version) of the Treaty of 25 March 1957 on the functioning of the European Union, because

— the Belgian legislature has not transposed that regulation into Belgian legislation and

— although an opposition and an appeal are provided for in Belgian legislation, the Belgian legislature has not introduced a review procedure?

2. If that is not the case, given that an (EC) regulation has direct effect, what should be understood by 'review of [a] judgment' in Article 19(1) of Regulation No 805/2004 …? Must a review procedure be provided for only if a summons/document instituting proceedings has been served by a method provided for in Article 14 of Regulation No 805/2004 …, in other words without proof of receipt? Does Belgian legislation not offer satisfactory guarantees to satisfy the [criterion] of 'review procedure' provided for in Article 19(1) of Regulation No 805/2004 … by providing for opposition in accordance with Article 1047 et seq. of the Belgisch Gerechtelijk Wetboek (Belgian Judicial Code) and an appeal in accordance with Article 1050 et seq. of the Belgisch Gerechtelijk Wetboek?

3. Does Article 50 of the Belgisch Gerechtelijk Wetboek, which allows the limitation periods referred to in the second paragraph of Article 860, Article 55 and Article 1048 of that code to be extended in the event of force majeure or due to extraordinary circumstances without any fault on the part of the person concerned offer sufficient protection for the purposes of Article 19(1)(b) of Regulation No 805/2004 …?

4. Is certification as a European Enforcement Order for uncontested claims a judicial measure which must be applied for in the document instituting the proceedings? If so, must the judge certify the judgment as a European Enforcement Order and must the registrar of the court issue the certificate?

   If that is not the case: can the task of certifying the judgment as a European Enforcement Order fall to a registrar?

5. In the event that certification as a European Enforcement Order is not a judicial measure, may the applicant — who has not used the document instituting proceedings to apply for a European Enforcement Order — subsequently, once the judgment has become final, request the registrar to certify the judgment as a European Enforcement Order?

([1]) OJ 2004 L 143, p. 15.

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 24 June 2014 — Pfotenhilfe-Ungarn e.V. v Ministry of Energy Transition, Agriculture, Environment and Rural Areas of the Land Schleswig-Holstein

(Case C-301/14)

(2014/C 303/32)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Pfotenhilfe-Ungarn e.V.

Defendant: Ministry of Energy Transition, Agriculture, Environment and Rural Areas of the Land Schleswig-Holstein

Joined party: The Representative of the Federal interest before the Bundesverwaltungsgericht

Questions referred

1. Is there a transport of animals which does not take place in connection with an economic activity within the meaning of Article 1(5) of Regulation (EC) No 1/2005 ([1]) where that transport is effected by an animal protection association recognised as charitable and serves to re-home stray dogs with third parties for a remuneration ('nominal fee') which:

   (a) is less than the costs which the association incurs in connection with the animal, the transport and the re-homing, or just covers these; or

   (b) is greater than those costs but the profit serves to finance the outstanding costs of re-homing other stray animals and the costs connected with stray animals or other animal protection projects?

2. Is it a case of a dealer engaging in intra-Community trade within the meaning of Article 12 of Directive 90/425/EEC ([2]) where an animal protection association recognised as charitable transports stray dogs to Germany and re-homes them with third parties for a remuneration ('nominal fee') which:

   (a) is less than the costs which the association incurs in connection with the animal, the transport and the re-homing, or just covers these; or

   (b) is greater than those costs but the profit serves to finance the outstanding costs of re-homing other stray animals and the costs connected with stray animals or other animal protection projects?

([1]) Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1).

([2]) Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra- Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29).

Request for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 25 June 2014 — Direktor na Agentsia 'Mitnitsi' v Biovet AD

(Case C-306/14)

(2014/C 303/33)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Appellant in cassation: Direktor na Agentsia 'Mitnitsi'

Respondent in the appeal in cassation: Biovet AD

Questions referred

1. What is the meaning of the term 'manufacturing process' in Article 27(2)(d) of Council Directive 92/83/EEC ([1]) of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages, and does that term include cleaning and/or disinfection as processes for achieving specific degrees of cleanliness which are prescribed by good practice in the manufacture of medicinal products?

2. Does Article 27(2)(d) of Directive 92/83 permit the enactment of a legal provision under which, after the Member States have introduced legislation exempting alcohol from harmonised excise duty on condition that the alcohol is used in a manufacturing process and that the end product does not contain any alcohol, alcohol used for cleaning is deemed, for the purposes of the application of that exemption, not to have been used in a manufacturing process?

3. Having regard to the principles of legal certainty and the protection of legitimate expectations, is it permissible for a deeming provision such as that in Article 22(7) ZADS (Bulgarian Law on excise duties and tax warehouses) to be enacted with immediate effect (that is to say, without providing any reasonable period for market participants to adjust their behaviour) if it restricts refunds of excise duty on alcohol used as a cleaning material in the case where the exemption from excise duty has been enacted by the Member State within the scope of its discretion?

([1]) OJ 1992 L 316, p. 21.

Request for a preliminary ruling from the Ráckevei Járásbíróság (Hungary) lodged on 1 July 2014 — Banif Plus Bank Zrt. v Márton Lantos, Mártonné Lantos

(Case C-312/14)

(2014/C 303/34)

Language of the case: Hungarian

Referring court

Ráckevei Járásbíróság

Parties to the main proceedings

Applicant: Banif Plus Bank Zrt.

Defendants: Márton Lantos, Mártonné Lantos

Questions referred

1. Must it be held that, pursuant to Article 4(1)(2) (investment services and activities), Article 4(1)(17) (financial instruments) and Annex I, Section C, point (4) (forward currency contracts, derivative instruments) of Directive [2004/39/EC] ([1]) ('the directive'), the offer of an (exchange rate) transaction to a client which, under the legal form of a foreign currency denominated loan agreement, consists of a spot transaction at the time of the advance of the loan and a forward transaction at the time of repayment, which is carried out by converting into forints a registered amount of foreign currency and which exposes the client's loan to the effects and risks (currency risk) of capital markets, constitutes a financial instrument?

2. Must it be held that, pursuant to Article 4(1)(6) (dealing on own account) and Annex I, Section A, point (3) (dealing on own account) of the directive, the carrying out of proprietary trading in respect of the financial instrument described in the first question constitutes an investment service or activity?

3. Must the financial institution perform the suitability check required by Article 19(4) and (5) of the directive, taking into account that the forward currency contract — which is an investment service relating to financial derivative instruments — was offered as part of another financial product (namely a loan agreement) and that the derivative instrument in itself constitutes a complex financial instrument? Must it be held that Article 19(9) of the directive is not applicable because, as the risks assumed by the client with regard to the loan and to the financial instrument are fundamentally different, the suitability assessment is essential inasmuch as the transaction contains a derivative instrument?

4. Does the circumvention of Article 19(4) and (5) of the directive lead to the annulment of the loan agreement between the bank and the client?

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 2 July 2014 — Marc Hußock, Ute Hußock, Michelle Hußock, Florian Hußock v Condor Flugdienst GmbH

(Case C-316/14)

(2014/C 303/35)

Language of the case: German

Referring court

Amtsgericht Rüsselsheim

Parties to the main proceedings

Applicants: Marc Hußock, Ute Hußock, Michelle Hußock, Florian Hußock

Defendant: Condor Flugdienst GmbH

Questions referred

1. Are adverse actions by third parties acting on their own responsibility and to whom certain tasks that constitute part of the operation of an air carrier have been entrusted, to be deemed to be extraordinary circumstances within the meaning of Article 5(3) of Regulation No 261/2004? ([1])

2. If the answer to Question 1 is in the affirmative, does the assessment of the situation depend on who (airline, airport operator etc.) entrusted the task(s) to the third party?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Action brought on 2 July 2014 — European Commission v Kingdom of Belgium

(Case C-317/14)

(2014/C 303/36)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Enegren and D. Martin, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Commission claims that the Court should:

— find that, in requiring persons applying for positions with local services established in French-speaking or German-speaking regions who do not have diplomas or certificates to show that they have completed their studies in the language concerned to obtain the certificate issued by SELOR (having taken the exam organised by that body), and in making that certificate the only way in which those persons can prove that they have the language skills needed for such positions, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union; ([1])

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The condition, set out in Belgian legislation, under which persons applying for vacant positions with local public services in French-speaking or German-speaking regions who do not have diplomas to show that they have completed their studies in the language concerned are required to prove their language skills before they can fill such positions and are given only one way in which they can do so constitutes discrimination prohibited by Article 45 TFEU and Regulation (EU) No 492/2011.

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

Request for a preliminary ruling from the Gyulai Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 8 July 2014 — Szemerey Gergely v Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

(Case C-330/14)

(2014/C 303/37)

Language of the case: Hungarian

Referring court

Gyulai Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Gergely Szemerey

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal Központi Szerve

Questions referred

1. Must the principle of flexibility and of the possibility of amending [recitals] 20 and 27 in the preamble to Regulation (EC) No 796/2004 ([1]) and [recitals] 18, 23 and 26 in the preamble to Regulation (EC) No 1122/2009 ([2]) be interpreted as precluding a national provision, under which, in the case of the cultivation of a rare plant species, the certificate relating to the rare plant must be attached to the application for payment, having regard to the administrative practice, in accordance with which it was possible to apply for the certificate only before applying for payment between 2 and 15 April 2010, and it was possible to attach it only at the same time as the presentation of the single application, and the provision did not make it possible to remedy the defect in the application constituted by the failure to produce a certificate?

2. Is this arrangement consistent with the obligation of a Member State not to undermine the objectives of the Common Agriculture Policy, or can it be said that the effective exercise of the right to aid under EU law of farmers who grow rare plants became impossible or excessively difficult and unpredictable in 2010 when the legislation was amended (amendment of Paragraph 43(6) of Regulation No 61/2009 (of 14 May 2009) of the Ministry of Agriculture and Rural Development, made law by Regulation No 31/2010 (of 30 March 2010) of the Ministry of Agriculture and Rural Development)?

3. Do [recital] 57 in the preamble to Regulation (EC) No 796/2004 or [recital] 75 in the preamble to Regulation (EC) No 1122/2009 and, in particular, the principal of proportionality preclude an administrative practice which, in the event that there is no certificate relating to the rare plant, and without taking into consideration intention, negligence or the circumstances of the case, imposes a penalty for over-declaration in respect of the entire application, when the application for payment, in respect of the entire plot of land, otherwise complies with the requirements for granting the aid, and the farmer grows the declared plant in the area declared?

4. Are the grounds for exemption contained in [recitals] 67 or 71 in the preamble to Regulation (EC) No 796/2004 or in [recital] 75 in the preamble to Regulation (EC) No 1122/2009 applicable in the event that the farmer claims that a prejudicial or inappropriate administrative practice amounts to exceptional circumstances, and seeks to demonstrate that the practice of the administrative body was wholly or partly the cause of his error?

5. Can the accepted declaration of *force majeure* submitted by the farmer in relation to the total loss of the crop (sowing) be regarded as correct information for the purposes of [recital] 67 in the preamble to Regulation (EC) No 796/2004 and [recital] 93 in the preamble to Regulation (EC) No 1122/2009, which would exonerate the farmer in respect of the failure to submit the certificate relating to the rare plant and thereby entail exemption from the penalties relating to the entire application?

(1) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers; OJ 2004 L 141, p. 18.

(2) Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector; OJ 2009 L 316, p. 65.

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 8 July 2014 — Petar Kezić, s.p., Trgovina Prizma v Republic of Slovenia — Ministry of Finance

(Case C-331/14)

(2014/C 303/38)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Petar Kezić, s.p., Trgovina Prizma

Defendant: Republic of Slovenia — Ministry of Finance

Question referred

Are Articles 2(1) and 4(1) of the Sixth Directive ([1]) to be interpreted to the effect that, in circumstances such as those of this case (in which a person buys plots of land acting as a natural person, without being charged any input VAT, then acting as a sole trader builds on those plots a shopping centre, enters as assets of his business on the basis of national accounting rules only some of the plots on which he built the shopping centre and then sells the centre together with all the plots of land to the developer), such a person must, because he has not entered certain plots of land as assets of his business or included those plots in the VAT system, be considered not to be obliged to calculate and pay output VAT?

([1]) Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (77/388/EEC) (OJ 1977 L 145, p. 1).

Request for a preliminary ruling from the Cour d'appel de Mons (Belgium) lodged on 9 July 2014 — Belgian State v Nathalie De Fruytier

(Case C-334/14)

(2014/C 303/39)

Language of the case: French

Referring court

Cour d'appel de Mons

Parties to the main proceedings

Applicant: Belgian State

Defendant: Ms Nathalie De Fruytier

Questions referred

1. Do points (b) and (c) of Article 13(A)(1) of the Sixth VAT directive ([1]) mean that the transportation of samples and organs, for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system to clinics and laboratories, are not exempt from VAT as services closely related to medical services, namely, as services intended to diagnose, treat and, in so far as is possible, cure diseases or health disorders?

2. Can the activity of transporting samples and organs for the purposes of medical analysis or medical or therapeutic care, carried out by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system to clinics and laboratories for medical analysis, qualify for the exemption from VAT provided for in Article 13(A)(1)(b) and (c) of the Sixth VAT directive?

3. Must the concept of other duly recognised establishments of a similar nature, referred to in Article 13(A)(1)(b) of the Sixth Directive, be interpreted as covering private companies whose services consist in the transportation of human samples for the purposes of analysis essential to the therapeutic objectives of hospitals and centres for medical treatment?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation 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).

GENERAL COURT

Order of the President of the General Court of 25 July 2014 — Deza v ECHA

(Case T-189/14 R)

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the ECHA containing information submitted by an undertaking in connection with its application for authorisation to use a chemical substance — Decision to allow a third party access to the documents — Application for suspension of operation — Urgency — Fumus boni juris — Weighing up of interests)

(2014/C 303/40)

Language of the case: Czech

Parties

Applicants: Deza, a.s. (Valašské Meziříčí, Czech Republic) (represented by: P. Dejl, lawyer)

Defendants: European Chemicals Agency (ECHA) (represented by: A. Iber, M. Heikkilä and T. Zbihlej, Agents)

Re:

Application for suspension of operation of the ECHA’s decision of 24 January 2014 concerning the disclosure of certain information submitted by the applicant in the course of the procedure relating to the application for authorisation to use the chemical substance Bis (2-ethylhexyl) phthalate (DEHP).

Operative part of the order

1. *The operation of Decision AFA-C-0000004274-77-09/F of the European Chemicals Agency (ECHA) of 24 January 2014 is suspended in so far as it grants to a third party, under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, access to a version of the report on the chemical safety and the analysis of the possible replacements for the substance Bis (2-ethylhexyl) phthalate (DEHP), which is more detailed than the version with the material specified in the application for interim measures blanked out and which is set out in Annexes A.4.5 and A.4.6. of that application, with the exception, first, of the information on the classification and labelling of substances and, secondly, of the data specifically and exclusively concerning Arkema France, Grupa Azoty Zakłady Azotowe Kędzierzyn S.A. and Vinyloop Ferrara S.p.A.*

2. *The ECHA is ordered not to disclose:*

   — *the report on the chemical safety and the analysis of the possible replacements for the substance Bis (2-ethylhexyl) phthalate (DEHP) referred to in point 1 of the present operative part, in a version which is more detailed than that defined in point 1;*

   — *the reports on the chemical safety and the analyses of the possible replacements for the substance Bis (2-ethylhexyl) phthalate (DEHP) submitted by Arkema France, Grupa Azoty Zakłady Azotowe Kędzierzyn and Vinyloop Ferrara and which are the subject of the ECHA Decisions AFA-C-0000004280-84-09/F, AFA-C-0000004275-75-09/F and AFA-C-0000004151-87-08/F of 24 January 2014, in so far as those documents are identical to those protected under point 1 of the present operative part.*

3. *The costs are reserved.*

Action brought on 11 June 2014 — Wine in Black v OHIM — Quinta do Noval — Vinhos (Wine in Black)

(Case T-420/14)

(2014/C 303/41)

Language in which the application was lodged: English

Parties

Applicant: Wine in Black GmbH (Berlin, Germany) (represented by: A. Bauer and V. Ahmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Quinta do Noval — Vinhos, SA (Pinhão, Portugal)

Form of order sought

The applicant claims that the Court should:

— Fully set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 March 2014 in Case R 1601/2013-1;

— Award the costs of the proceedings against the defendant and the other party to the proceedings before the Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Wine in Black' for goods and services in classes 33, 35 and 42 — Community trade mark application No 10 949 071

Proprietor of the mark or sign cited in the opposition proceedings: Quinta do Noval — Vinhos, SA

Mark or sign cited in opposition: The word mark 'NOVAL BLACK' for goods in class 33

Decision of the Opposition Division: The opposition was upheld

Decision of the Board of Appeal: The appeal was dismissed

Pleas in law: Violation of Art. 8 (1) (b) of Regulation No 207/2009

Action brought on 11 June 2014 — Viscas v Commission

(Case T-422/14)

(2014/C 303/42)

Language of the case: English

Parties

Applicant: Viscas Corporation (Tokyo, Japan) (represented by: J.-F. Bellis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision insofar as it finds an infringement covering the period 1 October 2001 through 28 January 2009;

— annul or reduce the amount of the fine imposed; and

— order the Commission to bear the costs.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment, in part, of Commission Decision C(2014) 2139 final of 2 April 2014 in case AT.39610 — Power Cables.

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

1. First and second pleas in law, alleging that the Commission erred in concluding that the applicant was part of the infringement covering the period 1 October 2001 through 28 January 2009.

2. Third and fourth pleas in law, alleging that Commission's application of Point 18 of the Fining Guidelines ([1]) violates the principles of proportionality and equal protection because i) it disproportionately benefits European producers of power cables and ii) it fails to recognize significant differences in the weight in the infringement for different producers.

3. Fifth plea in law, alleging that the Commission erred by allocating sales by the applicant's shareholders to the applicant for purposes of determining the fine to be imposed.

4. Sixth plea in law, alleging that the Commission wrongly increased the proportion of the value of sales to be taken into account based on the combined market share of the parties.

5. Seventh plea in law, alleging that the Commission erred by failing to apply a reduction for mitigating circumstances.

6. Eighth plea in law by which the applicant calls on the Court to rely on its unlimited jurisdiction and significantly reduce the fine.

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

Action brought on 11 June 2014 — ClientEarth v Commission

(Case T-424/14)

(2014/C 303/43)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: O. Brouwer, F. Heringa and J. Wolfhagen, lawyers)

Defendant(s): European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision to refuse access to documents requested by the applicant pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, as communicated to the Applicant on 3 April 2014 in a letter with the reference SG.B.4/LR/rc — sg.dsg2.b.4(2014) 1028887;

— order the Commission to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the Commission's decision to refuse access to the Commission's Impact Assessment Report, as well as the opinion of the Impact Assessment Board on Access to justice in environmental matters regarding the implementation of the third pillar of the Århus Convention into the law of the European Union and the law of the Member States.

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

1. First plea in law, alleging that the first subparagraph of Article 4(3) of Regulation No 1049/2001 ([1]) is not applicable and that the Commission failed to state reasons. The applicant submits that the Commission misinterpreted and erroneously invoked the exception to access to documents of the first subparagraph of Article 4(3) as the requested documents should be distinguished from the Commission's decision-making process. The applicant further submits that the Commission failed to state reasons as to why the first subparagraph of Article 4(3) is applicable.

2. Second subsidiary plea in law, alleging misapplication of the first subparagraph of Article 4(3) of Regulation No 1049/2001 and failure to state reasons. The applicant submits that even if the first subparagraph of Article 4(3) would apply, the Commission failed to establish that disclosure of the requested documents would undermine the decision-making process and failed to provide a specific explanation in this regard.

3. Third subsidiary plea in law, alleging misapplication of the overriding public interest test of the first subparagraph of Article 4(3) of Regulation No 1049/2001 and failure to state reasons. The applicant submits that even if the first subparagraph of Article 4(3) would apply, the Commission misapplied and misinterpreted the overriding public interest balancing test and failed to show that there was no overriding public interest that favoured disclosure of the requested documents. The applicant further submits that the Commission did not state sufficient reasons in this regard.

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

Action brought on 11 June 2014 — ClientEarth v Commission

(Case T-425/14)

(2014/C 303/44)

Language of the case: English

Parties

Applicant: ClientEarth (London, United Kingdom) (represented by: O. Brouwer, F. Heringa and J. Wolfhagen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision to refuse access to documents requested by the applicant pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, as communicated to the Applicant on 1 April 2014 in a letter with the reference SG.B.4/LR/rc-sg.dsg2.b.4(2014) 1029188;

— order the Commission to pay the applicant’s costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening parties.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the Commission’s decision to refuse access to the Commission’s Impact Assessment Report, as well as the opinion of the Impact Assessment Board regarding the revision of the EU legal framework on environmental inspections and surveillance at national and EU level.

In support of the action, the applicant relies on three pleas in law which are essentially identical or similar to those relied on in Case T-424/14, *ClientEarth* v *Commission*.

Action brought on 16 June 2014 — Brugg Kabel and Kabelwerke Brugg v Commission

(Case T-441/14)

(2014/C 303/45)

Language of the case: German

Parties

Applicants: Brugg Kabel AG (Brugg, Switzerland), Kabelwerke Brugg AG Holding (Brugg) (represented by: A. Rinne, A. Boos and M. Lichtenegger, lawyers)

Defendant: European Commission

Form of order sought

— Annul, pursuant to Article 264(1) TFEU, Article 1(2), Article 2(b) and, in so far as it concerns the applicants, Article 3 of the defendant’s decision of 2 April 2014 in Case AT.39610 — Power Cables;

— In the alternative, reduce, in the discretion of the Court, pursuant to Article 261 TFEU and Article 31 of Regulation No 1/2003, the amount of the fine imposed on the applicants in Article 2(b) of the defendant’s decision of 2 April 2014 in Case AT.39610 — Power Cables;

— In any event, order the defendant, pursuant to Article 87(2) of the Rules of Procedure of the Court, to pay the applicants’ costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of the defence and the right to a fair hearing in that access to documents was refused and the requests for information and the statement of objections were written in English

   — The applicants submit in this respect, inter alia, that, as regards access to documents, the defendant ought to have treated the opinions of the other addressees regarding the notification of the statement of objections in the same way as other potentially exculpatory documents.

   — Further, in cases of single and repeated or single and continuous infringement, access to documents as regards the opinions of other participants on the notification of the statement of objections is the procedural counterpart to the allegation of infringements against other participants.

   — Furthermore, the applicants, as undertakings with their head offices in the German-speaking canton of Aargau (Switzerland), are entitled to conduct their correspondence with the defendant in German, since that is one of the defendant’s official languages and even one of its working languages.

2. Second plea in law, alleging the defendant's lack of competence as regards third country breaches which do not affect the EEA

— It is claimed here that the merely arbitrary allegation of a single and repeated or single and continuous infringement is not sufficient to found the defendant's competence as regards third country breaches. Rather, in such a case, the defendant ought also to have examined projects or conduct outside the EEA in detail as regards their direct, actual and foreseeable effects in the EEA.

3. Third plea in law, alleging breach of the presumption of innocence by shifting and extending the standard of proof in the context of a single and repeated or single and continuous infringement

— The infringements are not uniform, in particular in so far as land and sea cables are concerned. There is in fact no identity of goods and provision of services or of the working methods and only partial identity of the participating undertakings and natural persons. Furthermore, there is no complementarity of the infringements.

— In respect of the start of the participation, but also in respect of its unbroken duration, the defendant ought to have provided individual, meaningful and consistent proof to each undertaking.

— In the case of a merely partial and indirect participation in a single and repeated or single and continuous infringement, the defendant must prove in concrete terms that the undertaking concerned intended to participate in the achievement of each common goal and knew of all the otherwise unlawful conduct of the other participants in the context of the common plan or was able reasonably to foresee it. Since the defendant failed entirely or in part to show such proof, the applicants ought not, in that regard, to have been held liable for all the unlawful conduct.

4. Fourth plea in law, alleging breach of the duty to investigate and the duty to state reasons by wrongfully establishing facts and falsifying evidence

— In the applicants' view, the decision rests on a series of factual assumptions, in respect of which the defendant has provided no meaningful and consistent proof. In particular, with regard to the supposed start of the applicants' participation, the defendant has falsified evidence, drawn speculative conclusions and failed to consider alternative, equally plausible, explanations.

— Further, the decision is contradictory, since it alleges a single and continuous infringement in the operative part but states grounds for a single and repeated infringement.

5. Fifth plea in law, alleging infringement of the material rights by wrongful application of Article 101 TFEU and Article 53 of the EEA Agreement

The defendant infringes Article 101 TFEU and Article 53 of the EEA Agreement in that it includes the applicants in agreements between other participating undertakings as regards the concept of the single and repeated or single and continuous infringement, in which, objectively, the applicants were not in a position to participate.

6. Sixth plea in law, alleging a manifest error of assessment by incorrect calculation of the fine

— The departure from the basic rule in paragraph 13 of the guidelines on the method of setting fines as regards the establishment of the reference year is arbitrary, since it is not sufficiently substantiated.

— Further, it is contradictory and infringes the prohibition of *ne bis in idem*, in the assessment of the seriousness of the infringement in the context of the calculation of the basic amount to address a single and repeated or single and continuous infringement, the seriousness of which is assessed in a uniform manner at 15 %, and at the same time to establish a further penalty of 2 % in respect of the participation in certain aspects of this global cartel. The defendant ought to have had regard to the fact that the applicants were not responsible for the entire cartel when calculating the basic amount.

— In designating the applicants as ancillary or accessory participants, the defendant should have based its claim on the actual role of the applicants in the global cartel, and not, however, on a random and meaningless amount of evidence.

— The reduction in the fine of 5 % is too small and does not properly reflect the different impact of the cartel organisers and main participants and the only very minor participation of the applicants.

Action brought on 12 June 2014 — Furukawa Electric v Commission

(Case T-444/14)

(2014/C 303/46)

Language of the case: English

Parties

Applicant: Furukawa Electric Co. Ltd (Tokyo, Japan) (represented by: C. Pouncey, A. Luke and L. Geary, Solicitors)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— order the annulment of Article 1(9)(a) of the decision to the extent that it states that an infringement of Article 101 TFEU and Article 53 of the EEA Agreement involving Furukawa occurred during the period 18 February 1999 and 30 September 2001. In the alternative, order the annulment of Article 1(9)(a) of the decision to the extent that it finds that any infringement involving Furukawa commenced on 18 February 1999 and/or that Furukawa's direct involvement in any infringement continued after 11 June 2001;

— order the annulment of Article 2(n) of the decision and/or order a substantial reduction of the fine;

— if the Court should give judgment in an action brought by VISCAS Corporation reducing the fine imposed in Article 2 (p) of the decision for infringements by VISCAS Corporation for which Furukawa is jointly and severally liable, declare that Furukawa is entitled to an equivalent reduction in the amount of the fine for which it is jointly and severally liable; and

— order that the Commission pay the applicant's costs in these proceedings.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment, in part, of Commission Decision C(2014) 2139 final of 2 April 2014 in case AT.39610 — Power Cables.

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

1. First plea in law, alleging that the Commission infringed Article 101 TFEU and Article 53 of the EEA Agreement and/or Regulation No 1/2003 [1] by mischaracterising the conduct that occurred during the period 18 February 1999 to 30 September 2001. The applicant submits that:

   — the Commission failed to establish the existence of an infringement involving the applicant in the terms described in the contested decision during this period; and

   — in the alternative, the Commission failed to establish that an infringement involving the applicant commenced on 18 February 1999.

2. Second plea in law, alleging, in the alternative, that the Commission failed to discharge its burden of proof in asserting that the applicant continued its participation in any infringement after 11 June 2001 or that it 'continued' its involvement via VISCAS Corporation after 30 September 2001.

3. Third plea in law, alleging, in the alternative, that the Commission failed to discharge its burden of proof regarding the applicant's level of involvement in the infringement.

4. Fourth plea in law, alleging that the fine imposed on the applicant in respect of the period prior to 1 October 2001 is time-barred.

5. Fifth plea in law, alleging, in the alternative, that the Commission made errors in the calculation of the fine imposed on the applicant by:

   — using an inappropriate value of sales figure to calculate the fine imposed on the applicant;

   — miscalculating the multiplier for duration; and

   — failing to apply a mitigating circumstance to the applicant.

6. Sixth plea in law, asking the Court to extend to the applicant the benefit of any reduction in the fine which the Court may grant to VISCAS Corporation, in any application made by VISCAS Corporation for annulment or variation of the fine imposed on it in the contested decision.

7. Seventh plea in law, alleging that the fine is, in all the circumstances, manifestly disproportionate, excessive and inappropriate and that the Court should therefore exercise its unlimited jurisdiction pursuant to Article 261 TFEU and Article 31 of Regulation No 1/2003 to review the level of the fine and in doing so substantially reduce it.

(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).

Action brought on 16 June 2014 — ABB v Commission

(Case T-445/14)

(2014/C 303/47)

Language of the case: English

Parties

Applicants: ABB Ltd (Zürich, Switzerland); and ABB AB (Västerås, Sweden) (represented by: I. Vandenborre and S. Dionnet, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul in part Article 1 of the decision finding that the applicants participated in a single and continuous infringement in the (extra) high voltage underground and/or submarine power cable sector insofar as the finding extends to all projects for underground power cables with voltages of 110 kV and above (and not only underground power cable projects with voltages of 220 kV and above);

— annul in part Article 1 of the decision finding that the applicants participated in a single and continuous infringement in the (extra) high voltage underground and/or submarine power cable sector insofar as the finding extends to all accessories relating to underground power cable projects with voltages of 110 kV and above (and not only accessories relating to underground power cable projects with voltages of 220 kV and above);

— annul in part Article 1 of the decision insofar as it finds that the applicants' participation in the infringement started on 1 April 2000;

— order the Commission to pay the costs.

Pleas in law and main arguments

By its present action, the applicants seek the annulment, in part, of Commission Decision C(2014) 2139 final of 2 April 2014 in case AT.39610 — Power Cables.

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

1. First plea in law, alleging that the Commission failed to meet its burden of proof and committed a manifest error of assessment in assuming that the infringement covered all underground power cable projects with voltages of 110 kV and above, when the Commission's file contained clear indications that not all projects with voltages below 220 kV were subject to the infringement.

2. Second plea in law, alleging that the Commission did not meet its burden of proof in establishing the applicants' participation in such an infringement covering all underground power cable projects with voltages of 110 kV and above.

3. Third plea in law, alleging that the Commission committed a manifest error of assessment in including within the scope of the infringement all underground power cable accessories relating to underground cable projects with a voltage of 110 kV and above, when the evidence in the Commission's file showed that the infringement extended only to power cables accessories relating to underground power cable projects with a voltage of 220 kV and above.

4. Fourth plea in law, alleging that the Commission erred in law when finding that the applicants participated in the infringement as from 1 April 2000.

5. Fifth plea in law, alleging that the Commission made a manifest error of assessment and breached the presumption of innocence by assuming that the applicants' participation in the infringement started on the earliest possible date.

6. Sixth plea in law, alleging that the contested decision is inadequately reasoned contrary to Article 296 TFEU.

Action brought on 17 June 2014 — Sumitomo Electric Industries and J-Power Systems v Commission

(Case T-450/14)

(2014/C 303/48)

Language of the case: English

Parties

Applicants: Sumitomo Electric Industries Ltd (Osaka, Japan); and J-Power Systems Corp. (Tokyo) (represented by: M. Hansen, L. Crocco, J. Ruiz Calzado and S. Völcker, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision insofar as it holds the applicants liable for a single complex continuous infringement including the European and the A/R configuration or, in the alternative, substantially reduce the fine;

— in the alternative, annul Article 1(8)(a)-(c) of the decision insofar as it holds the applicants liable for an infringement in the period between 26 July 2006 and 10 April 2008;

— in the further alternative, annul Article 2(m) of the Commission decision and reduce the amount of the fine imposed on the applicants in view of the applicants' substantially limited involvement in the period between 26 July 2006 and 10 April 2008; and

— annul the decision in its entirety as it relies to a decisive extent on evidence illegally seized at the premises of Nexans SA and Nexans France;

— ordering the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission failed to prove a single complex continuous infringement involving an agreement between Asian and European producers to stay out of each other's home territories and an agreement to allocate among European companies projects within the European Economic Area (EEA).

2. Second plea in law, alleging that the Commission committed errors in fact and in law in the application of Article 101 TFEU, in so far as the contested decision failed to prove to the required legal standard the applicants' involvement over the entire duration of the infringement.

3. Third plea in law, alleging that the Commission committed errors of law and assessment in calculating the fine imposed on the applicants, as the fine imposed does not reflect the gravity of the infringement and the applicants' substantially limited role for a significant duration thereof.

4. Fourth plea in law, alleging infringement of an essential procedural requirement and rights of defence as the contested decision relies to a decisive extent on evidence that the Commission illegally seized during inspections at the premises of Nexans.

Action brought on 16 June 2014 — Fujikura v Commission

(Case T-451/14)

(2014/C 303/49)

Language of the case: English

Parties

Applicant: Fujikura Ltd (Tokyo, Japan) (represented by: L. Gyselen, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— reduce the fine imposed on it in Article 2 (o) of the decision for its direct participation in the cartel between 18 February 1999 and 30 September 2001;

— annul Article 2 (p) of the decision insofar as it holds Fujikura jointly and severally liable for the fine imposed on Viscas between 1 January 2005 and 28 January 2009;

— order the costs of the proceedings to be borne by the Commission.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred by including Viscas' parents' independent sales in 2004 into the value of sales used for the determination of the basic amount of the fine. The applicant submits that it only participated in the alleged cartel until 30 September 2001 and that its independent sales in the course of 2004 did not form part of the cartel.

2. Second plea in law, alleging that the Commission infringed the principle of proportionality by insufficiently taking into account the limited weight of the Japanese undertakings in the cartel when setting the basic amount of the fine. The applicant submits that since it faced significant technical and commercial entry barriers in Europe, its commitment not to compete in the European Economic Area (EEA) was immaterial for the effectiveness of the European suppliers' customer allocation arrangements within the EEA. The Commission should therefore have differentiated more significantly the gravity factors used for the fines imposed upon the applicant (or other Asian suppliers) and upon European suppliers.

3. Third plea in law, alleging that the Commission erred by retaining the applicant's parent liability for the fine imposed on Viscas also from 1 January 2005 onwards. The applicant submits that when Viscas became a full-function joint venture in January 2005, the legal links (e.g. reporting), organizational links (e.g. secondment of full time directors) and economic links (e.g. guarantees for borrowings) between Viscas and the applicant became too thin for the Commission to conclude that the applicant continued to exercise decisive influence over Viscas during the infringement period between January 2005 and January 2009.

Action brought on 13 June 2014 — Magyar Bencés Kongregáció Pannonhalmi Főapátság v European Parliament

(Case T-453/14)

(2014/C 303/50)

Language of the case: Hungarian

Parties

Applicant: Magyar Bencés Kongregáció Pannonhalmi Főapátság (Pannonhalma, Hungary) (represented by: D. Sobor, lawyer)

Defendant: European Parliament

Form of order sought

— Annul decision MS/sd(IPOL-COM-PETI D (2014) 14486) of the Petitions Committee of the European Parliament of 16 April 2014 to file without further action the petition presented in the Lónyay Mansion in Rusovce (Slovakia) case;

— Order the European Parliament to examine the petition and take all the measures required by law;

— Order the European Parliament to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant argues that the Petitions Committee infringed procedural rules in that no reasons were stated for the contested decision.

In that regard, the applicant points out that, pursuant to Rule [215](8) of the Rules of Procedure of the European Parliament, petitions declared inadmissible by the committee are to be filed and the petitioner informed of the decision and the reasons for it. The applicant also states that, in breach of that Rule, the defendant gave no reasons for its view that the subject matter of the petition had no connection with the European Union's fields of activity. The applicant also cites the judgment of the General Court of 14 September 2011 in Case T-308/07 *Tegebauer* v *Parliament* [2011] ECR II-279.

Action brought on 18 June 2014 — AETMD v Council

(Case T-460/14)

(2014/C 303/51)

Language of the case: English

Parties

Applicant: Association européenne des transformateurs de maïs doux (AETMD) (Paris, France) (represented by: A. Willems, S. De Knop and J. Charles, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Regulation (EU) No 307/2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant of Article 11(3) of Regulation (EC) No 1225/2009;

— order the Council to correct Implementing Regulation (EU) No 875/2013 in view of the annulment of Council Implementing Regulation (EU) No 307/2004;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the institutions committed a manifest error of assessment and infringed Article 2(3) and (4) of Council Regulation No 1225/2009 ([1]) by failing to properly assess whether River Kwai International Food Industry's domestic sales were made in the ordinary course of trade and whether the domestic sales should therefore serve as a basis to calculate River Kwai International Food Industry's normal value.

2. Second plea in law, alleging that the institutions infringed Article 2(10) of Council Regulation No 1225/2009 by failing to make a fair comparison between River Kwai International Food Industry's export price and normal value.

3. Third plea in law, alleging that the institutions infringed Article 11(3) of Council Regulation No 1225/2009 by failing to properly assess the alleged change in River Kwai International Food Industry's dumping margin and by failing to properly assess the lasting nature of any such alleged change.

4. Fourth plea in law, alleging that the institutions infringed Article 19(2) and Article 20(2) of Council Regulation No 1225/2009 by failing to provide the applicant with a meaningful summary of the evidence on which they intended to amend River Kwai International Food Industry's dumping margin and by failing to provide the applicant with the considerations on the basis of which they intended to amend River Kwai International Food Industry's anti-dumping duty.

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

Action brought on 24 June 2014 — Österreichische Post v Commission

(Case T-463/14)

(2014/C 303/52)

Language of the case: German

Parties

Applicant: Österreichische Post AG (Vienna, Austria) (represented by: H. Schatzmann, J. Bleckmann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's implementing decision in Case C(2014) 2093 in so far as Directive 2004/17/EC continues to apply to the award of contracts for postal services which are not mentioned in Article 1 of the implementing decision, exemption from which the applicant has requested under Article 30(6) of Directive 2004/17/EC;

— in the alternative, in so far as partial annulment of the contested decision is, according to the Court, not admissible or possible, to annul the implementing decision in its entirety;

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

Pleas in law and main arguments

In support of the action, the applicant claims that the contested decision, as regards the postal services not covered by Article 1 thereof, is unlawful under Article 263(2) TFEU because the Commission has infringed EU law by misapplying and misinterpreting Directive 2004/17/EC. The applicant claims, in essence, that the postal services which it provides are exposed to sufficient direct competition, so that the conditions for an exemption under Article 30(1) of Directive 2004/17 are met. The applicant also claims that the Commission misapplied the criteria and methods on market definition laid down by EU law and case-law.

Furthermore, the applicant alleges infringement of essential procedural requirements, as the Commission failed to give sufficient reasons for its decision.

Finally, the applicant submits that the Commission infringed general fundamental procedural rights, in that by failing to adequately address the applicant's claims and evidence, it infringed the applicant's right to be heard.

Action brought on 25 June 2014 — Stavytskyi v Council

(Case T-486/14)

(2014/C 303/53)

Language of the case: English

Parties

Applicant: Edward Stavytskyi (Belgium) (represented by: J. Grayston, Solicitor, P. Gjørtler, G. Pandey, D. Rovetta and M. Gambardella, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Decision 2014/216/CFSP of 14 April 2014, implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ L 111, p. 91), and Council Implementing Regulation (EU) No 381/2014 of 14 April 2014, implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ L 111, p. 33), in so far as the contested acts include the applicant in the list of persons and entities made subject to the restrictive measures;

— Order the Council to bear the costs of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law concerning infringement of an essential procedural requirement, as well as infringement of the Treaties and of rules of law relating to their application: violation of the right of hearing, violation of the obligation to give notice, insufficient statement of grounds, violation of the right of defence, incorrect legal basis, and manifest error of assessment.

The applicant finds that the Council failed to perform a hearing of the applicant, and that no contrary indications would justify this. Furthermore, the Council failed to notify the Contested Acts to the applicant, and in any case these acts contained an insufficient statement of reasons. Requests for access to information and documents have not been replied to by the Council. By these omissions, the Council violated the right of defence of the applicant, who was denied the possibility of effectively arguing against the findings of the Council, as these findings were withheld from the applicant. Further, the measures taken by the Council do not constitute foreign policy measures, but instead constitute international cooperation in criminal proceedings, which accordingly have been adopted on an incorrect legal basis. Finally, the measures taken by the Council were adopted without proper consideration of relevant facts as well as the case law from the European Court of Human Rights pertaining to criminal procedures in Ukraine, especially in relation to the prosecution of former government officers.

Action brought on 1 July 2014 — Vidmar and Others v European Union

(Case T-507/14)

(2014/C 303/54)

Language of the case: Croatian

Parties

Applicants: Vedran Vidmar (Zagreb, Croatia); Saša Čaldarević (Zagreb); Irena Glogovšek (Zagreb); Gordana Grancarić (Zagreb); Martina Grgec (Zagreb); Ines Grubišić (Vranjic, Croatia); Sunčica Horvat Peris (Karlovac, Croatia); Zlatko Ilak (Samobor, Croatia); Mirjana Jelavić (Virovitica, Croatia); Romuald Kantoci (Pregrada, Croatia); Svjetlana Klobučar (Zagreb); Ivan Kobaš (Županja, Croatia); Zlatko Kovačić (Sesvete, Croatia); Tihana Kušeta Šerić (Split, Croatia); Damir Lemaić (Zagreb); Željko Ljubičić (Solin, Croatia); Gordana Mahovac (Nova Gradiška, Croatia); Martina Majcen (Krapina, Croatia); Višnja Merdžo (Rijeka, Croatia); Tomislav Perić (Zagreb); Darko Radić (Zagreb); Damjan Saridžić (Zagreb); Darko Graf (Zagreb) (represented by: D. Graf, lawyer)

Defendant: European Union

Form of order sought

The applicants claim that the General Court should:

— By means of an interim measure, order the European Union to compensate, on the basis of Article 340(2) of the Treaty on the Functioning of the European Union, all of the material damage suffered by all the applicants during the period from 1 January 2012 to the time at which the applicants began to exercise the functions of Croatian bailiffs in accordance with Article 36(1) and Annex VII(1) of the Act of Accession, legally binding on all 28 signatory States of the Treaty of Accession of the Republic of Croatia to the European Union, including the Commission since 9 December 2011, as a result of the European Commission's failure to fulfil its monitoring obligation under Article 36(1) and (2) of the Act of Accession, intended to ensure that the Republic of Croatia would establish the profession of bailiff from 1 January 2012, a commitment undertaken during the negotiations on the accession of the Republic of Croatia to the European Union in the context of Chapter 23, 'Justice and Fundamental Rights', referred to in section 1 of Annex VII of the Act of Accession, 'Specific commitments undertaken by the Republic of Croatia in the accession negotiations', which states: '1. To continue to ensure effective implementation of its Judicial Reform Strategy and Action Plan'.

— Until the interim measure sought in the first indent has become definitive, suspend the discussions on the total amount of material damage in respect of which compensation is sought from the European Union by the applicants in the present action.

— After the interim measure sought in the first indent has become definitive, and after the oral hearing and the presentation of evidence relating to the determination of the total material damage in respect of which compensation is sought by the applicants in the present action, order the European Union to compensate each of the applicants for the material damaged suffered as a result of the Commission's unlawful omission, referred to in the first subparagraph of the present action, namely, all of the actual loss (*damnum emergens*) and all of the loss of profit (*lucrum cessans*) suffered by the applicants during the period from 1 January 2012 to the date on which the Court makes the corresponding requests to the Minister for Finance and the Minister for Justice of the Republic of Croatia, amounting to EUR 600 000 for each calendar year and for each defendant, together with late payment interest of 12 % per annum, to be calculated:

  — as regards the compensation for all of the actual loss, from 1 January 2012 until the date of actual payment;

  — as regards the compensation for all of the loss of profit suffered by the applicants during 2012, from 1 January 2013 until the date of actual payment;

  — as regards the compensation for all of the loss of profit suffered by the applicants during 2013, from 1 January 2014 until the date of actual payment;

  — as regards the compensation for all of the loss of profit suffered by the applicants during 2014, from 1 January 2015 until the date of actual payment;

— After the interim measure sought in the first indent has become definitive, and after the oral hearing and the presentation of the appropriate evidence relating to the amount of that claim, order the European Commission to pay every one of the applicants the costs incurred in the present proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on pleas essentially the same as those relied on in Case T-109/14 *Škugor and Others* v *European Union*. ([1])

([1]) OJ C 142, p. 38.

Action brought on 3 July 2014 — Staywell Hospitality Group v. OHIM — Sheraton International IP (PARK REGIS)

(Case T-510/14)

(2014/C 303/55)

Language in which the application was lodged: English

Parties

Applicant: Staywell Hospitality Group Pty Ltd (Sydney, Australia) (represented by: D. Farnsworth, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Sheraton International IP LLC (Stamford, United States of America)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fifth Board of Appeal of 30 April 2014 in Cases R 240/2013-5 and R 303/2013-5 insofar as it concerns Case R 240/2013-5; and

— condemn the Defendant to bear its own and pay the Applicant's costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark containing the word elements 'PARK REGIS' for services in Classes 35, 36 and 43 — Community trade mark application No 9 488 933

Proprietor of the mark or sign cited in the opposition proceedings: Sheraton International IP LLC

Mark or sign cited in opposition: The figurative and word marks 'ST. REGIS' for services in Classes 36, 42 and 43, the international trade mark registration designating the European Union of the word mark 'ST. REGIS' for services in Class 36 as well as the well-known figurative and word marks 'ST. REGIS' in the European Union

Decision of the Opposition Division: The opposition was partially upheld

Decision of the Board of Appeal: The appeals were dismissed

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

Action brought on 7 July 2014 — GreenPack v OHIM (greenpack)

(Case T-513/14)

(2014/C 303/56)

Language of the case: German

Parties

Applicant: GreenPack GmbH (Henningsdorf, Germany) (represented by P. Ruess und A. Doepner-Thiele, 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 the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2014 in Case R 2324/2013-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'greenpack' for goods and services in Class 9 — Community trade mark application No 11 926 706

Decision of the Examiner: Refused the application

Decision of the Board of Appeal: Rejected the appeal

Pleas in law:

— Infringement of Article 7(1)(b) of Regulation No. 207/2009

— Infringement of Article 7(1)(c) of Regulation No. 207/2009

Action brought on 9 July 2014 — Hispavima v Commission

(Case T-514/14)

(2014/C 303/57)

Language of the case: Spanish

Parties

Applicant: Hispavima, SL (Murcia, Spain) (represented by: A. Ward, A. Barba and J. Torrecilla, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the contested decision under Article 263 TFEU in so far as it declares the existence of State aid and orders its recovery from the investors in the Economic Interest Groupings (EIGs);

— in the alternative, uphold the applicant's claims and declare void the provision laid down in Article 4.1 of the decision, *in fine*, ordering recovery of the alleged aid, for infringement of the principles of legal certainty and of the protection of legitimate expectations, since, in any event, recovery of the aid cannot be ordered with effect from before the publication in the *Official Journal of the European Union* of the decision to open formal proceedings, on 21 September 2011; in addition, acknowledge that the principle of the protection of legitimate expectations applies to those EIGs that fulfilled the objective requirements for the application of the contested tax advantages prior to the publication of the 2006 decision in the Official Journal;

— annul in part Article 2 of the decision and declare unlawful the methodology, set out in paragraphs 263 to 269 of the decision, used to determine the alleged advantage to be reimbursed by the investors, which should have included a series of deductions that were not taken into account;

— annul in part Article 4.1 of the decision, since the Commission clearly acted *ultra vires* in declaring invalid, in Article 4.1 of the decision, contractual terms providing for compensation to be paid to the investors in the event that the tax advantages of the Spanish Tax Lease system were declared to be unlawful State aid; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-401/14 *Duro Felguera* v *Commission*, Case T-700/13 *Bankia* v *Commission* and Case T-500/14 *Derivados del Flúor* v *Commission*

Action brought on 10 July 2014 — Grupo Morera & Vallejo and DSA v Commission

(Case T-519/14)

(2014/C 303/58)

Language of the case: Spanish

Parties

Applicants: Grupo Morera & Vallejo, SL (Seville, Spain) and DSA, Defensa y Servicios del Asegurado, SA (Seville, Spain) (represented by: E. Navarro Varona, P. Vidal Martínez and G. Canalejo Lasarte, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision under Article 263 TFEU in so far as it declares the existence of State aid and orders its recovery from the investors in the Economic Interest Groupings (EIGs);

— in the alternative, annul Articles 1, 2 and 4.1 of the decision in so far as they describe the investors as beneficiaries that must reimburse the alleged aid;

— in the alternative, declare void the provision made in Article 4.1 of the decision, *in fine*, ordering recovery of the alleged aid, for infringement of the principles of legal certainty and of the protection of legitimate expectations, since recovery of the aid cannot be ordered with effect from before the publication of the decision to open formal proceedings;

— in the alternative, annul Article 2 of the decision and declare unlawful the methodology, set out in paragraphs 263 and 167 of the decision, used to determine the alleged advantage to be reimbursed by the investors, which should have been adjusted in order to take certain deductions into account;

— declare inoperative, or in the alternative, annul in part Article 4.1 of the decision relating to the prohibition of 'transfer [ring] the burden of recovery on other subjects', in so far as it entails a ruling on the prohibition or supposed invalidity of the contractual terms allowing recourse against third parties in respect of the amounts that the investors are required to reimburse to Spain; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-401/14 *Duro Felguera* v *Commission*, Case T-700/13 *Bankia* v *Commission* and Case T-500/14 *Derivados del Flúor* v *Commission*

Action brought on 11 July 2014 — bd breyton-design v OHIM (RACE GTP)

(Case T-520/14)

(2014/C 303/59)

Language of the case: German

Parties

Applicant: bd breyton-design GmbH (Stockach, Germany) (represented by T. Raab and H. Lauf, 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 the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 27 March 2014 in case R 1230/2013-1 in its entirety;

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

Pleas in law and main arguments

Community trade mark concerned: The word mark 'RACE GTP' for goods in class 12 — Community trade mark application No 11 018 918

Decision of the Examiner: Application rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009 and infringement of Article 7(2) of Regulation No 207/2009

Action brought on 13 July 2014 — Compagnie générale des établissements Michelin v OHIM — Continental Reifen Deutschland (XKING)

(Case T-525/14)

(2014/C 303/60)

Language in which the application was lodged: English

Parties

Applicant: Compagnie générale des établissements Michelin (Clermont-Ferrand, France) (represented by: L. Carlini, lawyer)

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

Other party to the proceedings before the Board of Appeal: Continental Reifen Deutschland GmbH (Hannover, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 May 2014 given in Case R 1522/2013-4;

— Order the defendant and the other party to the proceedings, should it intervene, to pay the costs of the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing the verbal elements 'XKING' for goods in Class 12 — Community trade mark application No 10 644 821

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

Mark or sign cited in opposition: Community trademarks Nos 5 293 782 and 5 560 396, national marks an international registrations

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

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

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

Action brought on 14 July 2014 — Matratzen Concord v OHIM — Barranco Rodriguez (Matratzen Concord)

(Case T-526/14)

(2014/C 303/61)

Language in which the application was lodged: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: I. Selting, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Mariano Barranco Rodriguez and Pablo Barranco Schnitzler (Sant Just Desvern, Spain)

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 9 April 2014 in Case R 1523/2013-1;

— Order the defendant to pay the costs including the costs incurred in the course of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Matratzen Concord' for goods in Classes 10, 20, 24 and 35 — Community trade mark application No 10 359 404

Proprietors of the mark or sign cited in the opposition proceedings: Mariano Barranco Rodriguez and Pablo Barranco Schnitzler

Mark or sign cited in opposition: the national word mark 'MATRATZEN' for goods in Classes 20 and 35

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Articles 8(1), 41(1)(a) and 42(2) of Regulation No 207/2009

Action brought on 15 July 2014 — Information Resources v OHIM (Growth Delivered)

(Case T-528/14)

(2014/C 303/62)

Language of the case: English

Parties

Applicant: Information Resources, Inc. (Chicago, United States) (represented by: C. Schulte, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 May 2014 given in Case R 1777/2013-4;

— Order the defendant to bear the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Growth Delivered' for services in Classes 35, 41 and 42

Decision of the Examiner: Refused the application for registration

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 14 July 2014 — adp Gauselmann v OHIM (Multi Win)

(Case T-529/14)

(2014/C 303/63)

Language of the case: German

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by P. Koch Moreno, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 April 2014 in Case R 1326/2013-1;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'Multi Win' for goods and services in Classes 9, 28 and 41 — Community trade mark application No 11 206 364

Decision of the Examiner: Refused the application

Decision of the Board of Appeal: Rejected the appeal

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

Action brought on 11 July 2014 — Verein StHD v OHIM (Representation of a black ribbon)

(Case T-530/14)

(2014/C 303/64)

Language of the case: German

Parties

Applicant: Verein Sterbehilfe Deutschland (Verein StHD) (Zurich, Switzerland) (represented by P. Brauns, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the partial rejection of Community trade mark application No 11 624 483 of 13 August 2013 and the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 May 2014 in case R 1940/2013-4;

— order that Community trade mark application No 11 624 483 (also) for the following services be allowed to proceed to registration:

35: News clipping services; Dissemination of advertisements; Direct mail advertising;

41: Publication of books; General public information work on the subject of 'dying' by events such as seminars, speaking tours and other training courses; Publication and editing of printed material on the subject of 'dying';

44: Advisory services relating to pharmaceutics; Medical assistance; Advisory services relating to health; Nursing care; Therapy services; Services of a psychologist;

45: Personal and social services, provided by third parties, regarding individual needs, namely family support, clinic support, disabled support, assisted dying, end-of-life care, end-of-life care through counselling; comfort and assistance for those affected and helpers, general life counselling with particular regard to the subject of 'dying', day-services, night watches, around the clock care, Sunday and public holiday services, advisory services nationwide, nursing services nationwide;

— order the defendant to pay the costs of appeal proceedings R 1940/2013-4 and of the present proceedings.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark representing a black ribbon for services in classes 35, 41, 44 and 45 — Community trade mark application No 11 624 483

Decision of the Examiner: Application rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

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

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

— Infringement of Article 7(1)(f) of Regulation No 207/2009

Action brought on 17 July 2014 — Alsharghawi v Council

(Case T-532/14)

(2014/C 303/65)

Language of the case: French

Parties

Applicant: Bashir Saleh Bashir Alsharghawi (Johannesburg, South Africa) (represented by: É. Moutet, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Decision 2011/137/CFSP and Decision 2011/178/CFSP;

— Order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council had no power to include the applicant on the list of persons subject to restrictive measures, since the applicant's name is not mentioned in the United Nations Security Council resolutions 1970 (2011) and 1973 (2011).

2. Second plea in law, alleging infringement of the duty to state reasons, in so far as the Council merely relies on the abovementioned resolutions, without considering the applicant's personal situation.

3. Third plea in law, alleging infringement of the applicant's rights of defence and of the principle of the presumption of innocence as a result of the lack of an *inter partes* procedure.

4. Fourth plea in law, alleging infringement of fundamental rights, in so far as, by imposing restrictive measures on the applicant, the Council unlawfully restricted his freedom of movement and his right to property.

Action brought on 16 July 2014 — North Drilling v Council

(Case T-539/14)

(2014/C 303/66)

Language of the case: Spanish

Parties

Applicant: North Drilling Co. (Tehran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Article 1 of Council Decision 2014/222/CFSP of 16 April 2014, in so far as it refers to the applicant, and remove the applicant's name from the annex thereto;

— annul Article 1 of Council Implementing Regulation (EU) No 397/2014 of 16 April 2014, in so far as it refers to the applicant, and remove the applicant's name from the annex thereto; and

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: a manifest error in the assessment of the facts on which the contested measures are based, in that they lack any factual or evidential basis.

2. Second plea in law: breach of the obligation to state reasons, since the reasons stated for the contested measures, as regards the applicant, lack any real basis and are imprecise, unspecific and generic, making it impossible for the applicant adequately to prepare its defence.

3. Third plea in law: infringement of the right to effective judicial protection as regards the reasons stated for the measures, the lack of evidence for the reasons stated and the rights of defence and of property, since the requirements to state reasons and to provide actual evidence were not met, which affects the other rights.

4. Fourth plea in law: misuse of power, since there is objective, specific and consistent evidence that, in adopting the penalties, the Council pursued aims different from those it claimed to pursue, thus misusing its power in a fraudulent manner.

5. Fifth plea in law: misinterpretation of the legal rules intended to be applied, in that they are interpreted and applied in an incorrect and extensive manner, which is inadmissible in relation to penalties.

6. Sixth plea in law: infringement of the right to property, in that the applicant's right to property was limited without any real justification and without respecting the principle of proportionality.

7. Seventh plea in law: breach of the principle of equal treatment, since the applicant's competitive position was damaged, without there being any justification for such treatment.

Action brought on 18 April 2014 — Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris v OHIM — Vicente Gandía Pla (ILLIRIA)

(Case T-541/14)

(2014/C 303/67)

Language in which the application was lodged: English

Parties

Applicant: Antica Azienda Agricola Vitivinicola Dei Conti Leone De Castris Srl (Salice Salentino, Italy) (represented by: D. Russo, lawyer)

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

Other party to the proceedings before the Board of Appeal: Vicente Gandía Pla SA (Chiva, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 May 2014 given in Case R 917/2013-4;

— Award the applicant the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark containing the verbal elements 'ILLIRIA' for 'wines' in Class 33 — Community trade mark application No 10 599 033

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

Mark or sign cited in opposition: Community trade mark registration No. 8 299 653

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: annulled the contested decision and upheld the opposition

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Order of the General Court of 12 June 2014 — Makhlouf and Others v Council

(Joined Cases T-432/11, T-490/11, T-649/11, T-651/11, T-97/12, T-99/12 to T-102/12 and T-446/12) ([1])

(2014/C 303/68)

Language of the case: French

The President of the Seventh Chamber has ordered that the joined cases be removed from the register.

([1]) OJ C 290, 1.10.2011.

Order of the General Court of 8 July 2014 — Gemeente Bergen op Zoom v Commission

(Case T-641/13) ([1])

(2014/C 303/69)

Language of the case: Dutch

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

([1]) OJ C 31, 1.2.2014.

Order of the General Court of 25 June 2014 — José Manuel Baena Grupo v OHIM — Neuman (Seated figure)

(Case T-28/14) ([1])

(2014/C 303/70)

Language of the case: Spanish

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

([1]) OJ C 78, 15.3.2014.

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