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Contents

EN

General Court

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

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 439/01)

Last publication

OJ C 431, 1.12.2014

Past publications

OJ C 421, 24.11.2014

OJ C 409, 17.11.2014

OJ C 395, 10.11.2014

OJ C 388, 3.11.2014

OJ C 380, 27.10.2014

OJ C 372, 20.10.2014

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 23 October 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Alexandra Schulz v Technische Werke Schussental GmbH und Co. KG and Josef Egbringhoff v Stadtwerke Ahaus GmbH

(Joined Cases C-359/11 and C-400/11) ([1])

(Reference for a preliminary ruling — Directives 2003/54/EC and 2003/55/EC — Consumer protection — Internal market in electricity and natural gas — National legislation determining the content of consumer contracts covered by a universal supply obligation — Unilateral adjustment of the price of the service by the seller or supplier — Information, with adequate notice before the adjustment comes into effect, as to the reasons and preconditions for that adjustment and its scope)

(2014/C 439/02)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Alexandra Schulz and Josef Egbringhoff

Defendants: Technische Werke Schussental GmbH und Co. KG and Stadtwerke Ahaus GmbH

Operative part of the judgment

On the one hand, Article 3(5) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, read in conjunction with Annex A thereto, and, on the other, Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, read in conjunction with Annex A thereto, are to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which determines the content of consumer contracts for the supply of electricity and gas covered by a universal supply obligation and allows the price of that supply to be adjusted, but which does not ensure that customers are to be given adequate notice, before that adjustment comes into effect, of the reasons and preconditions for the adjustment, and its scope.

([1]) OJ C 311, 22.10.2011.

Judgment of the Court (First Chamber) of 9 October 2014 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Rita van Caster, Patrick van Caster v Finanzamt Essen-Süd

(Case C-326/12) ([1])

(Reference for a preliminary ruling — Free movement of capital — Article 63 TFEU — Taxation of income from investment funds — Investment fund's obligations to communicate and publish certain information — Flat-rate taxation of income from investment funds which do not comply with communication and publication obligations)

(2014/C 439/03)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicants: Rita van Caster, Patrick van Caster

Defendant: Finanzamt Essen-Süd

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding national legislation such as that at issue in the main proceedings which provides that the failure by a non-resident investment fund to comply with the obligations to communicate and publish certain information required by that legislation, which are applicable without distinction to resident and non-resident investment funds alike, resulting in the flat-rate taxation of the income which the taxpayer earns from that investment fund, since that legislation does not allow the taxpayer to provide evidence or information that could prove the actual size of that income.

([1]) OJ C 303, 6.10.2012.

Judgment of the Court (Fifth Chamber) of 23 October 2014 (request for a preliminary ruling from the Augstākās Tiesas Senāts — Latvia) — Olainfarm AS v Latvijas Republikas Veselības ministrija, Zāļu valsts aģentūra

(Case C-104/13) ([1])

(Reference for a preliminary ruling — Approximation of laws — Industrial policy — Directive 2001/83/EC — Medicinal products for human use — Article 6 — Marketing authorisation — Article 8(3)(i) — Requirement to attach to the application for authorisation the results of pharmaceutical pre-clinical tests and clinical trials — Derogations relating to pre-clinical tests and clinical trials — Article 10 — Generic medicinal products — Concept of 'reference medicinal product' — Whether the holder of a marketing authorisation for a reference medicinal product has an individual right to oppose the marketing authorisation of a generic of the reference product — Article 10(a) — Medicinal products of which the active substances have been in well-established medicinal use within the European Union for at least 10 years — Whether it is possible to use a medicinal product for which authorisation has been granted on the basis of the derogation provided for in Article 10(a) as a reference medicinal product for the purpose of obtaining a marketing authorisation for a generic product)

(2014/C 439/04)

Language of the case: Latvian

Referring court

Augstākās Tiesas Senāts

Parties to the main proceedings

Applicant: Olainfarm AS

Defendants: Latvijas Republikas Veselības ministrija, Zāļu valsts aģentūra

Intervening party: Grindeks AS

Operative part of the judgment

1) *The concept of 'reference medicinal product' within the meaning of Article 10(2)(a) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007, must be interpreted as encompassing a medicinal product for which the marketing authorisation was granted on the basis of Article 10(a) of the directive.*

2) *On a proper construction of Article 10 of Directive 2001/83, as amended by Regulation No 1394/2007, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, the holder of a marketing authorisation for a medicinal product used as a reference product in an application for a marketing authorisation under Article 10 of the directive for a generic product of another manufacturer has the right to a judicial remedy enabling him to challenge the decision of the competent authority which granted the marketing authorisation for the generic product, provided that that holder is seeking judicial protection of a right conferred on him by Article 10. Such a judicial remedy exists, inter alia, where the holder demands that his medicinal product is not to be used for the purpose of obtaining, under Article 10, a marketing authorisation for another medicinal product in relation to which his own product cannot be regarded as a reference product within the meaning of Article 10(2)(a) of the directive.*

([1]) OJ C 123, 27.4.2013.

Judgment of the Court (Third Chamber) of 9 October 2014 (request for a preliminary ruling from the Teleklagenævnet — Denmark) — TDC A/S v Erhvervsstyrelsen

(Case C-222/13) ([1])

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/22/EC — Article 32 — Additional mandatory services — Compensation mechanism for the cost associated with providing those services — Meaning of 'court or tribunal' for the purposes of Article 267 TFEU — Lack of jurisdiction of the Court)

(2014/C 439/05)

Language of the case: Danish

Referring court

Teleklagenævnet

Parties to the main proceedings

Applicant: TDC A/S

Defendant: Erhvervsstyrelsen

Operative part of the judgment

The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the Teleklagenævnet (Denmark) in its decision of 22 April 2013.

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Sixth Chamber) of 22 October 2014 — European Commission v Kingdom of the Netherlands

(Case C-252/13) ([1])

(Failure of a Member State to fulfil obligations — Directives 2002/73/EC and 2006/54/EC — Equal treatment for men and women — Employment and occupation — Access to employment — Return from maternity leave — Formal requirements for the application initiating proceedings — Coherent summary of the pleas — Unambiguous wording of the form of order sought)

(2014/C 439/06)

Language of the case: Dutch

Parties

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

Defendant: Kingdom of the Netherlands (represented by: M. Bulterman and J. Langer, acting as Agents)

Operative part of the judgment

The Court:

1) *Dismisses the action;*

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

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Third Chamber) of 9 October 2014 (request for a preliminary ruling from the Tribunalul Sibiu — Romania) — Elena Petru v Casa Județeană de Asigurări de Sănătate Sibiu, Casa Națională de Asigurări de Sănătate

(Case C-268/13) ([1])

(Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Article 22(2), second subparagraph — Health insurance — Hospital treatment provided in another Member State — Prior authorisation refused — Lack of medication and basic medical supplies and infrastructure)

(2014/C 439/07)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Elena Petru

Defendants: Casa Județeană de Asigurări de Sănătate Sibiu, Casa Națională de Asigurări de Sănătate

Operative part of the judgment

The second subparagraph of Article 22(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, must be interpreted as meaning that the authorisation necessary under Article 22(1)(c)(i) of that regulation cannot be refused where it is because of a lack of medication and basic medical supplies and infrastructure that the hospital care concerned cannot be provided in good time in the insured person's Member State of residence. The question whether that is impossible must be determined by reference to all the hospital establishments in that Member State that are capable of providing the treatment in question and by reference to the period within which the treatment could be obtained in good time.

(1) OJ C 207, 20.7.2013.

Judgment of the Court (Fifth Chamber) of 9 October 2014 (request for a preliminary ruling from the Grondwettelijk Hof — Belgium) — Isabelle Gielen v Ministerraad

(Case C-299/13) (1)

(Taxation — Directive 2008/7/EC — Articles 5(2) and 6 — Indirect taxes on the raising of capital — Tax on the conversion of bearer securities into registered securities or dematerialised securities)

(2014/C 439/08)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicant: Isabelle Gielen

Defendant: Ministerraad

Operative part of the judgment

Article 5(2) of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital must be interpreted as precluding the taxation of the conversion of bearer securities into registered securities or dematerialised securities such as that at issue in the main proceedings. Such a tax cannot be justified under Article 6 of that directive.

(1) OJ C 226, 3.8.2013.

Judgment of the Court (Third Chamber) of 23 October 2014 (request for a preliminary ruling from the Augstākās Tiesas Senāts — Latvia) — flyLAL-Lithuanian Airlines AS, in liquidation v Starptautiskā lidosta Rīga VAS, Air Baltic Corporation AS

(Case C-302/13) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 44/2001 — Article 31 — Request for recognition and enforcement of a judgment ordering provisional or protective measures — Article 1(1) — Scope — Civil and commercial matters — Concept — Claim for compensation in respect of damage resulting from alleged infringements of European Union competition law — Reductions in airport charges — Article 22(2) — Exclusive jurisdiction — Concept — Dispute in proceedings concerning companies or other legal persons or associations of natural or legal persons — Decision granting reductions — Article 34(1) — Grounds for refusal of recognition — Public policy in the State in which recognition is sought)

(2014/C 439/09)

Language of the case: Latvian

Referring court

Augstākās Tiesas Senāts

Parties to the main proceedings

Applicant: flyLAL-Lithuanian Airlines AS, in liquidation

Defendants: Starptautiskā lidosta Rīga VAS, Air Baltic Corporation AS

Operative part of the judgment

1) *Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, comes within the notion of 'civil and commercial matters' within the meaning of that provision and, therefore, falls within the scope of that regulation.*

2) *Article 22(2) of Regulation No 44/2001 must be interpreted as meaning that an action such as that in the main proceedings, seeking legal redress for damage resulting from alleged infringements of European Union competition law, does not constitute proceedings having as their object the validity of the decisions of organs of companies within the meaning of that provision.*

3) *Article 34(1) of Regulation No 44/2001 must be interpreted as meaning that neither the detailed rules for determining the amount of the sums which are the subject of the provisional and protective measures granted by a judgment in respect of which recognition and enforcement are requested, in the case where it is possible to follow the line of reasoning which led to the determination of the amount of those sums, and even where legal remedies were available which were used to challenge such methods of calculation, nor the mere invocation of serious economic consequences constitute grounds establishing the infringement of public policy of the Member State in which recognition is sought which would permit the refusal of recognition and enforcement in that Member State of such a judgment given in another Member State.*

([1]) OJ C 226, 3.8.2013.

Judgment of the Court (Third Chamber) of 23 October 2014 (request for a preliminary ruling from the Cour de cassation — France) — Haeger & Schmidt GmbH v Mutuelles du Mans assurances IARD (MMA IARD), Jacques Lorio, Dominique Miquel, in his capacity as liquidator of Safram intercontinental SARL, Ace Insurance SA NV, Va Tech JST SA, Axa Corporate Solutions SA

(Case C-305/13) ([1])

(Reference for a preliminary ruling — Rome Convention on the law applicable to contractual obligations — Article 4(1), (2), (4) and (5) — Law applicable by default — Commission contract for the carriage of goods — Contract for the carriage of goods)

(2014/C 439/10)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Haeger & Schmidt GmbH

Defendants: Mutuelles du Mans assurances IARD (MMA IARD), Jacques Lorio, Dominique Miquel, in his capacity as liquidator of Safram intercontinental SARL, Ace Insurance SA NV, Va Tech JST SA, Axa Corporate Solutions SA

Operative part of the judgment

1. *The last sentence of Article 4(4) of the Convention on the Law applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, must be interpreted as applying to a commission contract for the carriage of goods solely when the main purpose of the contract consists in the actual transport of the goods concerned, which it is for the referring court to verify.*

2. *Article 4(4) of the Convention must be interpreted as meaning that, where the law applicable to a contract for the carriage of goods cannot be fixed under the second sentence of that provision, it must be determined in accordance with the general rule laid down in Article 4(1), that is to say, the law governing that contract is that of the country with which it is most closely connected.*

3. *Article 4(2) of the Convention must be interpreted as meaning that, where it is argued that a contract has a closer connection with a country other than that the law of which is designated by the presumption laid down therein, the national court must compare the connections existing between that contract and, on the one hand, the country whose law is designated by the presumption and, on the other, the other country concerned. In so doing, the national court must take account of the circumstances as a whole, including the existence of other contracts connected with the contract in question.*

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Third Chamber) of 22 October 2014 (request for a preliminary ruling from the Commissione tributaria provinciale di Roma — Italy) — Cristiano Blanco (C-344/13), Pier Paolo Fabretti (C-367/13) v Agenzia delle Entrate — Direzione Provinciale I di Roma — Ufficio Controlli

(Joined Cases C-344/13 and C-367/13) ([1])

(Reference for a preliminary ruling — Freedom to provide services — Restrictions — Tax legislation — Income from winnings from games of chance — Difference in taxation between winnings obtained abroad and those from national casinos)

(2014/C 439/11)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Roma

Parties to the main proceedings

Applicants: Cristiano Blanco (C-344/13), Pier Paolo Fabretti (C-367/13)

Defendant: Agenzia delle Entrate — Direzione Provinciale I di Roma — Ufficio Controlli

Operative part of the judgment

Articles 52 and 56 TFEU must be interpreted as precluding legislation of a Member State which subjects winnings from games of chance obtained in casinos in other Member States to income tax and exempts similar income from that tax if it is obtained from casinos in its national territory.

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Fifth Chamber) of 9 October 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS) v Yesmoke Tobacco SpA

(Case C-428/13) ([1])

(Reference for a preliminary ruling — Tax provisions — Harmonisation of laws — Directives 95/59/EC and 2011/64/EU — Structure and rates of excise duty applied to manufactured tobacco — Establishment of an excise duty — Principle establishing one rate of excise duty for all cigarettes — Possibility for the Member States of establishing a minimum amount of excise duty — Cigarettes in the lowest price category — National legislation — Specific category of cigarettes — Excise duty set at 115 %)

(2014/C 439/12)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS)

Respondent: Yesmoke Tobacco SpA

Operative part of the judgment

Articles 7(2) and 8(6) of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which, rather than establishing an identical minimum excise duty that is applicable to all cigarettes, establishes a minimum excise duty that is applicable only to cigarettes with a retail selling price lower than that of cigarettes in the most popular price category.

([1]) OJ C 313, 26.10.2013.

Judgment of the Court (Sixth Chamber) of 22 October 2014 — Kingdom of Spain v European Commission

(Case C-429/13 P) ([1])

(Appeal — Cohesion fund — Reduction of financial assistance — Irregularities in the application of the public procurement legislation — Adoption of the decision by the European Commission — Failure to comply with the time-limit — Consequences)

(2014/C 439/13)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Other party to the proceedings: European Commission (represented by: B. Conte and A. Tokár, acting as Agents, assisted by J. Rivas Andrés, abogado)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union in Spain v Commission (T-384/10, EU:T:2013:277);*

2. *Annuls Commission Decision C(2010) 4147 of 30 June 2010, reducing the assistance granted from the Cohesion Fund to the following (groups of) projects: 'Water supply to settlements in the Guadiana basin: Andévalo area' (2000.ES.16.C.PE.133), 'Drainage and water treatment in the Guadalquivir basin: Guadaira, Aljarafe and the areas of natural protection of the Guadalquivir' (2000.ES.16.C.PE.066) and 'Water supply to multi-municipal systems in the provinces of Granada and Malaga' (2002.ES.16.C.PE.061);*

3. *Orders the European Commission to pay the costs of the Kingdom of Spain and to bear its own costs of both the proceedings at first instance and of the present appeal proceedings.*

([1]) OJ C 260, 7.9.2013.

Judgment of the Court (Sixth Chamber) of 23 October 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Unitrading Ltd v Staatssecretaris van Financiën

(Case C-437/13) ([1])

(Reference for a preliminary ruling — Community Customs Code — Recovery of import duties — Origin of goods — Means of proof — Charter of Fundamental Rights of the European Union — Article 47 — Rights of the defence — Right to effective judicial protection — Procedural autonomy of the Member States)

(2014/C 439/14)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Unitrading Ltd

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

1. *Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as not precluding proof of origin of imported goods adduced by the customs authorities on the basis of national procedural rules resting on the results of an examination carried out by a third party, with regard to which that third party refuses to disclose further information either to the customs authorities or to the customs declarant, as a result of which it is made difficult or impossible to verify or disprove the correctness of the conclusions reached, provided that the principles of effectiveness and equivalence are upheld. It is for the national court to ascertain whether that is so in the main proceedings.*

2. *In a situation such as that at issue in the main proceedings, and when the customs authorities cannot disclose further information in respect of the examination carried out, whether the customs authorities must grant the request of the party concerned that it conducts, at its own expense, an examination in the country declared as the country of origin and whether it matters that portions of the samples of the goods, to which the party concerned could have obtained access with a view to having an examination carried out by another laboratory, were still available for a limited period and, if so, whether the customs authorities must inform the party concerned that portions of the samples of the goods are still available and that it may request those samples for purposes of such an examination must be assessed on the basis of national procedural law.*

([1]) OJ C 325, 9.11.2013.

Judgment of the Court (Fifth Chamber) of 9 October 2014 (request for a preliminary ruling from the Administrativen sad Varna — Bulgaria) — Traum EOOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-492/13) ([1])

(Reference for a preliminary ruling — Taxation — VAT — Directive 2006/112/EC — Article 138(1) — Exemptions for intra-Community transactions — Purchaser not registered for VAT purposes — Whether the vendor is required to establish the authenticity of the signature of the purchaser or his representative — Principles of proportionality, legal certainty and protection of legitimate expectations — Direct effect)

(2014/C 439/15)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Traum EOOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Operative part of the judgment

1) *Articles 138(1) and 139(1), second subparagraph, of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2010/88/EU of 7 December 2010, must be interpreted as precluding, in circumstances such as those in the main proceedings, the tax authorities of a Member State from refusing to grant an exemption from value added tax in respect of an intra-Community supply of goods on the ground that the purchaser was not registered for value added tax purposes in another Member State and the supplier has proven neither the authenticity of the signature on the documents submitted in support of its declaration in respect of a supply it claims to be exempt from value added tax nor that the person who signed those documents on behalf of the purchaser had the authority to represent the purchaser, where the evidence establishing entitlement to the exemption submitted by the supplier in support of its declaration is consistent with the list of documents to be submitted to those authorities under national law and has been accepted by them, initially, as supporting evidence, which is a matter for the referring court to verify.*

2) *Article 138(1) of Directive 2006/112, as amended by Directive 2010/88, must be interpreted as having direct effect, so that it may be relied upon by taxable persons before national courts against the State in order to obtain an exemption from value added tax in respect of an intra-Community supply of goods.*

(1) OJ C 344, 23.11.2013.

Judgment of the Court (Seventh Chamber) of 9 October 2014 (request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 1 de Ferrol — Spain) — Ministerio de Defensa, Navantia SA v Concello de Ferrol

(Case C-522/13) (1)

(Request for a preliminary ruling — Competition — State aid — Article 107(1) TFEU — Concept of 'State aid' — Property tax on immovable property — Tax exemption)

(2014/C 439/16)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 1 de Ferrol

Parties to the main proceedings

Applicants: Ministerio de Defensa, Navantia SA

Defendant: Concello de Ferrol

Operative part of the judgment

On a proper construction of Article 107(1) TFEU, the exemption from property tax of a plot of land belonging to the State and made available to an undertaking whose capital is wholly State-owned and which produces, from that plot of land, goods and services that may be traded between Member States on markets open to competition may constitute State aid prohibited by that provision. It is for the referring court, however, to determine whether, in the light of all the relevant evidence in the dispute before it, assessed by reference to the interpretative guidance provided by the Court of Justice of the European Union, that tax exemption falls to be categorised as State aid within the meaning of that provision.

(1) OJ C 367, 14.12.2013.

Judgment of the Court (Ninth Chamber) of 9 October 2014 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Douane Advies Bureau Rietveld v Hauptzollamt Hannover

(Case C-541/13) (1)

(Reference for a preliminary ruling — Customs union and common customs tariff — Tariff classification — Heading 3822 — Concept of 'diagnostic or laboratory reagents' — Indicators of exposure to a predetermined target temperature)

(2014/C 439/17)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Douane Advies Bureau Rietveld

Defendant: Hauptzollamt Hannover

Operative part of the judgment

Heading 3822 of the Combined Nomenclature in Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010, must be interpreted as meaning that temperature indicators, such as the products marketed under the names 'WarmMark' and 'ColdMark', which, by the effect of a change in colour caused by the variation in volume of the liquids that they contain, indicate, irreversibly, whether a temperature higher or lower than a specified threshold has been reached, are not covered by that heading.

(1) OJ C 9, 11.1.2014.

Judgment of the Court (Third Chamber) of 9 October 2014 (request for a preliminary ruling from the Hovrätten för Västra Sverige — Sweden) — criminal proceedings against Ove Ahlström, Lennart Kjellberg, Fiskeri Ganthi AB, Fiskeri Nordic AB

(Case C-565/13) (1)

(Reference for a preliminary ruling — External relations — Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco — Exclusion of any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities)

(2014/C 439/18)

Language of the case: Swedish

Referring court

Hovrätten för Västra Sverige

Parties in the criminal proceedings in the main proceedings

Ove Ahlström, Lennart Kjellberg, Fiskeri Ganthi AB, Fiskeri Nordic AB

Operative part of the judgment

The Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco, approved on behalf of the Community by Council Regulation (EC) No 764/2006 of 22 May 2006, in particular Article 6 of that agreement, must be interpreted as excluding any possibility for Community vessels to carry out fishing activities in Moroccan fishing zones on the basis of a licence issued by the Moroccan authorities without the intervention of the competent European Union authorities.

(1) OJ C 15, 18.1.2014.

Judgment of the Court (Second Chamber) of 22 October 2014 — British Telecommunications plc v European Commission and BT Pension Scheme Trustees Ltd

(Case C-620/13 P) (1)

(Appeal — State aid — Exemption of a pension fund from the obligation to pay a contribution to a pension protection fund in respect of certain employees — Selective nature of the measure)

(2014/C 439/19)

Language of the case: English

Parties

Appellant: British Telecommunications plc (represented by: J. Holmes, Barrister, and H. Legge QC)

Other parties to the proceedings: European Commission (represented by: L. Flynn and N. Khan, Agents), BT Pension Scheme Trustees Ltd (represented by: J. Derenne and A. Müller-Rappard, avocats, instructed by M. Farley, Solicitor)

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders British Telecommunications plc and BT Pension Scheme Trustees Ltd to pay the costs.*

(1) OJ C 61, 1.3.2014.

Judgment of the Court (Eighth Chamber) of 9 October 2014 — Kingdom of Spain v European Commission

(Case C-641/13 P) (1)

(Appeal — Cohesion Fund — Reduction of financial assistance — Public works contracts — Directive 93/37/EEC — Award criteria — Experience of previous works — Qualitative selection criteria)

(2014/C 439/20)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Other party to the proceedings: European Commission (represented by: S. Pardo Quintillán and A. Steiblytė, acting as Agents)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

(1) OJ C 31, 1.2.2014.

Judgment of the Court (Third Chamber) of 9 October 2014 (request for a preliminary ruling from the Supreme Court — Ireland) — C v M

(Case C-376/14 PPU) (1)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility — Regulation (EC) No 2201/2003 — Wrongful retention — Habitual residence of the child)

(2014/C 439/21)

Language of the case: English

Referring court

Supreme Court, Ireland

Parties to the main proceedings

Applicant: C

Defendant: M

Operative part of the judgment

1) *Articles 2(11) and 11 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that where the removal of a child has taken place in accordance with a judgment which was provisionally enforceable and which was thereafter overturned by a judgment which fixed the residence of the child at the home of the parent living in the Member State of origin, the court of the Member State to which the child was removed, seised of an application for the return of the child, must determine, by undertaking an assessment of all the circumstances of fact specific to the individual case, whether the child was still habitually resident in the Member State of origin immediately before the alleged wrongful retention. As part of that assessment, it is important that account be taken of the fact that the judgment authorising the removal could be provisionally enforced and that an appeal had been brought against it.*

2) *Regulation No 2201/2003 must be interpreted as meaning that, in circumstances where the removal of a child has taken place in accordance with a court judgment which was provisionally enforceable and which was thereafter overturned by a court judgment fixing the child's residence at the home of the parent living in the Member State of origin, the failure to return the child to that Member State following the latter judgment is wrongful and Article 11 of the Regulation is applicable if it is held that the child was still habitually resident in that Member State immediately before the retention. If it is held, conversely, that the child was at that time no longer habitually resident in the Member State of origin, a decision dismissing the application for return based on that provision is without prejudice to the application of the rules established in Chapter III of the Regulation relating to the recognition and enforcement of judgments given in a Member State.*

([1]) OJ C 351, 6.10.2014.

Request for a preliminary ruling from the Landgericht Köln (Germany) lodged on 31 July 2014 — Sommer Antriebs- und Funktechnik GmbH v Rademacher Geräte-Elektronik GmbH & Co. KG

(Case C-369/14)

(2014/C 439/22)

Language of the case: German

Referring court

Landgericht Köln

Parties to the main proceedings

Applicant: Sommer Antriebs- und Funktechnik GmbH

Defendant: Rademacher Geräte-Elektronik GmbH & Co. KG

Questions referred

1) Must Articles 2(1) and 3(a) of, and Annexes IA and IB to, Directive 2002/96/EC ([1]) of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment and/or Articles 2(1)(a) and 3(1)(a) of, and Annexes I and II to, Directive 2012/19/EU ([2]) of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment be interpreted as meaning that operating devices for (garage) doors with an electric voltage of approximately 220 to 240 volts, which are designed to be incorporated into the building structure together with the (garage) door, come within the concept of electrical and electronic equipment, in particular the concept of electrical and electronic tools?

2) If the answer to Question 1 is in the affirmative:

   Must Annex IA, No 6, and Annex IB, No 6, to Directive 2002/96/EC and/or Article 3(1)(b) of, and Annex I, No 6, and Annex II, No 6, to, Directive 2012/19/EU be interpreted as meaning that (garage-door) operating devices, as referred to in Question (1), are to be regarded as components of large-scale stationary industrial tools within the meaning of those provisions?

3) If the answer to Question (1) is in the affirmative and the answer to Question (2) is in the negative:

Must Article 2(1) of Directive 2002/96/EC and/or Article 2(3)(b) of Directive 2012/19/EU be interpreted as meaning that (garage-door) operating devices, as referred to in Question (1), are to be regarded as part of another type of equipment which does not fall within the scope of those directives?

(1) Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) — Joint declaration of the European Parliament, the Council and the Commission relating to Article 9, OJ 2002 L 37, p. 24.
(2) OJ 2012 L 197, p. 38.

Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 11 August 2014 — Juergen Schneider, Erika Schneider v Condor Flugdienst GmbH

(Case C-382/14)

(2014/C 439/23)

Language of the case: German

Referring court

Amtsgericht Rüsselsheim

Parties to the main proceedings

Applicants: Juergen Schneider, Erika Schneider

Defendant: Condor Flugdienst GmbH

Questions referred

1. Must the extraordinary circumstance within the meaning of Article 5(3) of Regulation No 261/2004 (1) relate directly to the booked flight?

2. If the first question is to be answered in the negative, how many earlier flights involving the aircraft to be used for the scheduled flight are relevant to the existence of an extraordinary circumstance? Is there a time-limit to the consideration of extraordinary circumstances which occur during earlier flights? If so, how is that time-limit to be calculated?

3. If extraordinary circumstances which occur during earlier flights are also relevant to a later flight, must the reasonable measures to be taken by the operating air carrier, in accordance with Article 5(3) of the regulation, relate only to preventing the extraordinary circumstance or also to avoiding a long delay?

(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).

Request for a preliminary ruling from the Debreceni Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 28 August 2014 — Schenker Nemzetközi Szállítmányozási és Logisztikai Kft. v Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-409/14)

(2014/C 439/24)

Language of the case: Hungarian

Referring court

Debreceni Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Schenker Nemzetközi Szállítmányozási és Logisztikai Kft.

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

Questions referred

1. Must the description of customs goods as '*Light air-cured tobacco*' in accordance with heading CN 2401 10 35 of Chapter 24 'TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES' in Commission Regulation (EU) No 861/2010 ([1]) of 5 October 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff be interpreted as meaning that it includes only air cured tobacco, not stemmed/stripped:

   — which contains the whole leaves of the tobacco plant,

   — which is not cut, pressed or compacted,

   — which is not permitted, as light air cured tobacco not stemmed/stripped under heading CN 2401 10 35, to undergo any other form of processing (for example, removal of stems, cutting or compacting of leaves) apart from processing consisting in air curing,

   — which is not for smoking?

2. Must the concept of 'suspensive customs procedure' in Article 4(6) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC be interpreted as meaning that it also covers the case of customs goods (excise goods) in external transit, in temporary storage or in customs storage under accompanying documents in which the tariff heading is incorrectly stated (CN 2401 10 35 instead of CN 2403 10 9000), but the relevant chapter (Chapter 24 — tobacco) and all the other data in those documents (container number, quantity, net weight) are correct and the seals are not broken?

   (In other words, it must be determined whether particular products can be under a suspensive customs procedure when the Chapter of the Common Customs Code is indicated correctly in its accompanying documents but the specific tariff heading is incorrect?)

3. Must the concept of 'importation' in Article 2(b) of Council Directive 2008/118/EC ([2]) of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC and the concept of 'importation of excise goods' in Article 4(8) of that directive as meaning that they also cover the case where the tariff heading of the actual goods in external transit and the tariff heading stated in the accompanying documents is different, while, apart from that disparity, both the indication of the Chapter (in the present case, Chapter 24 — tobacco) and the quantity and net weight of the actual goods correspond to the data given in the accompanying documents?

4. Do the irregularities referred to in Article 38 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC include a situation where goods are under a suspensive customs arrangement and there is an incorrect CN code under Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Regulation (EU) No 861/2010, in the accompanying documents?

([1]) OJ L 284, 29.10.2010, p. 1.
([2]) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 8 September 2014 — WebMindLicences Kft.Nemzeti Adó és Vámhivatal Kiemelt Adó és Vám Főigazgatóság v Nemzeti Adó és Vámhivatal Kiemelt Adó és Vám Főigazgatóság

(Case C-419/14)

(2014/C 439/25)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: WebMindLicences Kft.

Defendant: Nemzeti Adó és Vámhivatal Kiemelt Adó és Vám Főigazgatóság

Questions referred

1. Under Articles 2(1)(c), 24(1) and 43 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax ('the VAT Directive'), in order to identify the person supplying the service for the purposes of VAT, when examining whether the transaction is fictitious, has no real financial or commercial content and is intended only to secure a tax advantage, is it relevant for the purposes of interpretation that, in the circumstances of the main proceedings, the managing director and 100 % owner of the commercial company which grants the licence is the natural person who created the know-how transferred by means of the licensing agreement?

2. If the answer to the first question is in the affirmative, when applying Articles 2(1)(c), 24(1) and 43 of the VAT Directive and assessing whether there is an abusive practice, is it relevant that this natural person exercises or may exercise influence informally over the running of the commercial company which acquired the licence and over the decisions of that company? For the purposes of that interpretation, might it be relevant that the creator of the know-how participates or may participate directly or indirectly, by advising professionally or offering advice on the development and exploitation of the know-how, in taking business decisions relating to the supply of the service based on that know-how?

3. In the circumstances of the main proceedings and in the light of the considerations set out in the second question, in order to identify the person supplying the service for the purposes of VAT is it relevant, in addition to the analysis of the underlying contractual transaction, that the creator of the know-how, as a natural person, exercises influence, or decisive influence, or issues directions regarding the way the service based on that know-how is supplied?

4. If the answer to the third question is in the affirmative, when determining the extent of that influence and those directions, what circumstances can be taken into account, or, more specifically, on the basis of what criteria may it be found that a decisive influence is exercised over the supply of the service and that the real financial content of the underlying transaction was for the benefit of the undertaking which grants the licence?

5. In the circumstances of the main proceedings, in considering whether a tax advantage has been gained, is it relevant when analysing the relations between the traders and the persons involved in the transaction that the taxable persons who took part in the contested contractual transaction, which is intended to avoid tax, are legal persons, when the tax authority of a Member State attributes the adoption of strategic and operational decisions on exploitation to a natural person? If so, must account be taken of the Member State in which that natural person took those decisions? In circumstances such as those obtaining in the present case, if it can be found that the contractual position of the parties is not decisive, is it relevant for the purpose of interpretation that subcontractors carry out the management of the technical instruments, human resources and financial transactions necessary for the supply of the internet-based service at issue here?

6. If it can be established that the terms of the licensing agreement do not reflect real financial content does the reclassification of the contract terms and the restoration of the situation which would have obtained if the transaction involving the abusive practice had not taken place imply that the tax authority of the Member State may make a different decision as to the Member State of supply and, therefore, the place where the tax is payable, even though the company which acquired the licence paid the tax payable in the Member State where it is established and in accordance with the legal requirements laid down in that Member State?

7. Must Articles 49 TFEU and 56 TFEU be interpreted as meaning that a contractual arrangement such as that at issue in the main proceedings, under which a company which is a taxable person in a Member State, transfers by means of a licensing agreement the know-how for the supply of services providing adult content through interactive communication technology to an undertaking which is a taxable person in another Member State, in circumstances where the burden of VAT of the Member State of residence of the company which acquired the licence is more advantageous as regards the service transferred, is contrary to those articles and may represent a abuse of the freedom of establishment and the freedom to supply services.

8. In circumstances such as those obtaining in the present case, what significance must be attached to the tax advantage which may be presumed to arise and to the commercial considerations taken into account by the company which grants the licence? In that connection and more specifically, is it relevant for the purposes of interpretation that the 100 % owner and manager of the commercial company which grants the licence is the natural person who originally created the know-how?

9. In analysing abusive conduct may circumstances such as those of the main proceedings, for instance the technical and infrastructure data relating to the setting up and performance of the service which is the subject of the transaction at issue and the preparation and human resources available to the company which grants the licence to supply the service in question, be taken into account and, if so, what significance do they have?

10. In the situation analysed in the present case, must Articles 2(1)(c), 24(1), 43 and 273 of the VAT Directive, in conjunction with Articles 4(3) and 325 TFEU, be interpreted as meaning that, in the interests of the proper observance of the obligation of the Member States of the Union to collect the total amount of VAT effectively and punctually and prevent the loss to the public coffers entailed by tax evasion and avoidance across the borders of the Member States, in the case of a transaction for the supply of services and in order to identify the person supplying the service, the tax authority of the Member State, at the evidence-gathering stage of the administrative tax procedure and in order to clarify the facts, is entitled to admit data, information and evidence, and, therefore, records of intercepted communication, obtained without the knowledge of the taxable person by the investigating body of the tax authority in the context of a criminal procedure and to use them as a basis for its assessment of the tax implications, and that, for its part, the administrative court hearing the action brought against the administrative decision of the tax authority of the Member State is entitled to carry out an assessment of those matters as evidence, while examining the legality of that evidence?

11. In the situation analysed in the present case, must Articles 2(1)(c), 24(1), 43 and 273 of the VAT Directive, in conjunction with Articles 4(3) and 325 TFEU, be interpreted as meaning that, in the interests of the proper observance of the obligation of the Member States of the Union to collect the total amount of VAT effectively and punctually and compliance with the obligation of the Member States to guarantee observance of the obligations imposed on the taxable person, the discretion with regard to the means available to the tax authority of the Member State includes the option for that Member State to use evidence obtained initially for the purpose of criminal proceedings to prevent tax avoidance, including where national law itself does not allow information to be obtained without the knowledge of the person concerned in the context of an administrative procedure to prevent tax avoidance, or subjects it in the context of criminal proceedings to guarantees which are not provided in the administrative tax proceedings, recognizing at the same time the right of the administrative authority to act in accordance with the principle of the freedom of evidence?

12. Does Article 8(2) of the ECHR, in conjunction with Article 52(2) of the Charter, prevent recognition that the tax authority of the Member State has the authority described in questions 10 and 11, or in the circumstances of the present case, can it be considered justified, in order to combat tax avoidance, to use in the context of an administrative tax procedure, conclusions drawn from information obtained without the knowledge of the person concerned, with a view to the effective collection of tax and for the sake of the financial well-being of the country?

13. If the answer to questions 10 and 12 is that the tax authority of the Member State may use such evidence in the administrative procedure, is the tax authority of the Member State required, in order to guarantee the effectiveness of the right to good administration and the rights of the defence pursuant to Articles 7, 8, 41 and 48 of the Charter, in conjunction with Article 51(1) of the Charter, to hear the taxable person in the course of the administrative procedure, to guarantee him access to the conclusions suggested by the information obtained without his knowledge and to respect the purpose for which the data appearing in the evidence were obtained, or, in that context, does the fact that the information collected without the knowledge of the person concerned is intended solely for an investigation of a criminal nature prevent from the outset the use of such evidence?

14. In the event that evidence is obtained in breach of Articles 7, 8, 41 and 48 of the Charter, in conjunction with Article 47 of the Charter, does national legislation under which the challenging in judicial proceedings of the procedural legality of decisions given in tax matters can only succeed and result in the setting aside of the decision if, according to the circumstances of the case, there is the possibility in practice that the contested decision would have been different if the procedural error had not occurred and if, moreover, that defect affected the substantive legal position of the applicant, or do the procedural errors made in that way have to be taken into account in a wider context, regardless of the influence the procedural error which infringes the Charter has on the outcome of the proceedings?

15. Does the effectiveness of Article 47 of the Charter require that, in a procedural situation such as the present, the administrative court hearing the action against the administrative decision of the tax authority of the Member State may review the legality of the obtaining of evidence collected for the purpose of criminal proceedings without the knowledge of the person concerned in the context of criminal proceedings, in particular when the taxable person against whom the criminal proceedings have been brought in parallel has no knowledge of that documentation and has been unable to contest its legality before a court?

16. Also having regard to question 6, must Council Regulation (EU) No 904/2010 ([2]) of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax, in the light, in particular, of its seventh recital, according to which, for the purposes of collecting the tax owed, Member States should cooperate to help ensure that VAT is correctly assessed and, in order to do so, they must not only monitor the correct application of tax owed in their own territory, but should also provide assistance to other Member States for ensuring the correct application of tax relating to activity carried out on their own territory but owed in another Member State, be interpreted as meaning that, in a situation where the facts are as in the present case, the tax authority of the Member State which discovers the tax debt must make a request to the tax authority of the Member State in which the taxable person was subject to a tax inspection and complied with its obligation to pay tax?

17. If the answer to question 16 is in the affirmative and the decisions adopted by the tax authority of the Member State are challenged before a court and are found to be unlawful in procedural terms on that ground, in other words, on the basis of failure to obtain information and the absence of a request, what action should the court hearing the action against the administrative decisions adopted by the tax authority of the Member State take, having regard also to the considerations set out in question 14?

([1]) OJ L 347, p. 1.
([2]) OJ L 268, p. 1.

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 15 September 2014 — Fazenda Pública v Beiragás — Companhia de Gás das Beiras SA

(Case C-423/14)

(2014/C 439/26)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicant: Fazenda Pública

Defendant: Beiragás — Companhia de Gás das Beiras SA

Questions referred

1. Does EU law, and in particular the provisions of Article 78(a) of Directive 2006/112/EC ([1]), preclude ... the land use tax paid by the gas distributor from being passed on to the final consumer, without interest or other charges and regardless of the price that the consumer pays for the gas consumed, that is, without being incorporated in that price?

   If the answer to that question is negative, the following question is referred for a preliminary ruling:

2. Does EU law, and in particular the provisions of Articles 73 to 79 of Directive 2006/112/EC, preclude ... the land use tax paid by the gas distributor, when it is passed on to the final consumer, without interest or other charges and regardless of the price that the consumer pays for the gas consumed, from being considered as a taxable amount [for the purposes of VAT]?

([1]) 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 Szekszárdi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 15 September 2014 — Jácint Gábor Balogh v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

(Case C-424/14)

(2014/C 439/27)

Language of the case: Hungarian

Referring court

Szekszárdi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Jácint Gábor Balogh

Defendant: Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága

Questions referred

1. Does the obligation to register laid down in Articles 213(1) and 214(1) of the VAT Directive ([1]) preclude the national practice in Hungary of mandatorily requiring the registration of individuals — under the threshold for the personal exemption from VAT — who do not wish to pursue an activity subject to VAT?

2. When carrying out an *ex post* inspection, is the tax authority permitted to penalise the failure to register where the threshold for the personal exemption has not been exceeded?

3. When carrying out an *ex post* inspection, is the tax authority permitted to be subrogated in the individual's right of option, and is it permitted to exclude the possibility of the individual opting for the personal exemption in breach of the principle of procedural fairness?

([1]) 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 Bundesverwaltungsgericht (Germany) lodged on 25 September 2014 — Kreis Warendorf v Ibrahim Alo

(Case C-443/14)

(2014/C 439/28)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Kreis Warendorf

Respondent: Ibrahim Alo

Other party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Does the condition requiring residence to be taken up in a geographically limited area (municipality, district, region) of a Member State constitute a restriction of freedom of movement within the meaning of Article 33 of Directive 2011/95/EU ([1]), where the foreign national can otherwise move and reside freely in the territory of that Member State?

2. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on the objective of achieving a reasonable distribution of social assistance burdens among the relevant institutions within the territory of the State?

3. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on grounds of migration or integration policy, for instance to prevent points of social tension as a result of the accumulated settlement of foreign nationals in certain municipalities or districts? Are abstract migration or integration policy grounds sufficient in this regard or must such grounds be specifically ascertained?

(1) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 25 September 2014 — Amira Osso v Region Hannover

(Case C-444/14)

(2014/C 439/29)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Amira Osso

Respondent: Region Hannover

Other party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Does the condition requiring residence to be taken up in a geographically limited area (municipality, district, region) of a Member State constitute a restriction of freedom of movement within the meaning of Article 33 of Directive 2011/95/EU (1), where the foreign national can otherwise move and reside freely in the territory of that Member State?

2. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on the objective of achieving a reasonable distribution of social assistance burdens among the relevant institutions within the territory of the State?

3. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on grounds of migration or integration policy, for instance to prevent points of social tension as a result of the accumulated settlement of foreign nationals in certain municipalities or districts? Are abstract migration or integration policy grounds sufficient in this regard or must such grounds be specifically ascertained?

(1) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 25 September 2014 — Seusen Sume v Landkreis Stade

(Case C-445/14)

(2014/C 439/30)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Appellant: Seusen Sume

Respondent: Landkreis Stade

Other party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Questions referred

1. Does the condition requiring residence to be taken up in a geographically limited area (municipality, district, region) of a Member State constitute a restriction of freedom of movement within the meaning of Article 33 of Directive 2011/95/EU ([1]), where the foreign national can otherwise move and reside freely in the territory of that Member State?

2. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on the objective of achieving a reasonable distribution of social assistance burdens among the relevant institutions within the territory of the State?

3. Is a place of residence condition imposed on beneficiaries of subsidiary protection status compatible with Article 33 and/or Article 29 of Directive 2011/95/EU, where it is based on grounds of migration or integration policy, for instance to prevent points of social tension as a result of the accumulated settlement of foreign nationals in certain municipalities or districts? Are abstract migration or integration policy grounds sufficient in this regard or must such grounds be specifically ascertained?

([1]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

Request for a preliminary ruling from the Tribunal Superior de Justicia of Castilla La Mancha (Spain) lodged on 2 October 2014 — Manuel Orrego Arias v Subdelegación del Gobierno en Ciudad Real

(Case C-456/14)

(2014/C 439/31)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia of Castilla La Mancha

Parties to the main proceedings

Applicant: Manuel Orrego Arias

Defendant: Subdelegación del Gobierno en Ciudad Real

Question referred

The interpretation of the first paragraph of Article 3(1)(a) of Council Directive 2001/40/EC ([1]) of 28 May, and in particular on whether the term 'offence punishable by a penalty involving deprivation of liberty of at least one year', set out in that provision, refers to the penalty prescribed *in abstracto* for the offence in question or, on the contrary, to the actual term of imprisonment imposed on the convicted person and, in consequence, whether or not the decision of a Member State to expel a national of a third country sentenced to imprisonment of eight months would be recognised by other Member States.

([1]) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149, p. 34).

Request for a preliminary ruling from the Tribunale ordinario di Cagliari (Italy) lodged on 2 October 2014 — Criminal proceedings against Claudia Concu and Isabella Melis

(Case C-457/14)

(2014/C 439/32)

Language of the case: Italian

Referring court

Tribunale ordinario di Cagliari

Parties to the main proceedings

Claudia Concu and Isabella Melis

Questions referred

1) Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in [Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR I-0000] to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2) Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in *Costa and Cifone* to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

Request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria) lodged on 8 October 2014 — Asparuhovo Lake Investment Company OOD v Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

(Case C-463/14)

(2014/C 439/33)

Language of the case: Bulgarian

Referring court

Administrativen sad

Parties to the main proceedings

Applicant: Asparuhovo Lake Investment Company OOD

Defendant: Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno Upravlenie na Natsionalnata Agentsia za Prihodite

Questions referred

1. Should Article 24(1) and point (b) of Article 25 of Directive 2006/112/EC ([1]) be interpreted as meaning that the term 'supply of services' also covers cases involving subscription contracts for the supply of consulting services such as those at issue in the main proceedings, namely where a supplier, having qualified personnel available for supplying the services, has agreed to be on call for the customer during the term of the contract and has undertaken to refrain from entering into similar contracts with the customer's competitors?

2. Should Articles 64(1) and 63 of Directive 2006/112/EC be interpreted as meaning that, for subscribed consulting services, the chargeable event occurs on expiry of the period for which the payment was agreed, irrespective of whether and how often the customer makes use of the supplier's on-call services?

3. Should Article 62(2) of Directive 2006/112/EC be interpreted as meaning that a person supplying services in connection with a subscription consulting contract is obligated to charge value added tax for the services on expiry of the period for which the subscription fee was agreed, or does this obligation arise only if the customer has made use of the consultant's services?

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

Action brought on 13 October 2014 — European Commission v Kingdom of Denmark

(Case C-468/14)

(2014/C 439/34)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: M. Clausen. C. Cattabriga, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— Declare that, by maintaining a legal situation in which the sale of loose snuff is permitted contrary to Article 8, read in conjunction with Article 2(4) of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products ([1]), the Kingdom of Denmark has failed to fulfil its obligations under that directive;

— the order Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

The Kingdom of Denmark has failed to fulfil its obligations under Article 8 of Directive 2001/37/EC by prohibiting only sales of snuff in porous portion sachets, but not loose snuff, in Denmark. Denmark has not disputed that its national rules do not comply with EU law in so far as regards the prohibition of marketing of tobacco for oral use. A legislative proposal which would have introduced a complete prohibition on the sale of snuff in Denmark was, however, rejected by the Danish Parliament (Folketing).

Denmark has not given any further commitments that it will bring Danish rules into line with EU law. The Commission must accordingly conclude that Denmark has still failed to fulfil its obligations under Article 8 of the Directive, read in conjunction with Article 2(4) thereof.

([1]) OJ 2001 L 194, p. 26.

GENERAL COURT

Judgment of the General Court of 24 October 2014 — Technische Universität Dresden v Commission

(Case T-29/11) ([1])

(Arbitration clause — Programme of Community action in the field of public health — Contract for the funding of a project — Action for annulment — Debit note — Contractual nature of the dispute — Act not amenable to review — Inadmissibility — Reclassification of the action — Eligible costs)

(2014/C 439/35)

Language of the case: German

Parties

Applicant: Technische Universität Dresden (Dresden, Germany) (represented by: G. Brüggen, lawyer)

Defendant: European Commission (represented by: W. Bogensberger and D. Calciu, and subsequently by W. Bogensberger and F. Moro, acting as Agents, assisted by R. Van der Hout and A. Köhler, lawyers)

Re:

Application for annulment of debit note No 3241011712, issued by the Commission on 4 November 2010, for the reimbursement of the sum of EUR 55 377,62 paid to the applicant in the context of financial assistance in support of a project conducted under the programme of Community action in the field of public health (2003-2008).

Operative part of the judgment

The Court:

1. *Declares that Ms H's staffing costs, amounting to EUR 56,76, her travel expenses, amounting to EUR 1 354,08, and the service costs amounting to EUR 351,82 incurred by Technische Universität Dresden in performing Contract No 203114 (SI2.377438) concerning the funding of the project 'Collection of European Data on Lifestyle Health Determinants — Coordinating Party (LiS)' conducted under the programme of Community action in the field of public health (2003-2008) are eligible and, consequently, dismisses the European Commission's claim regarding those amounts, set out in Debit Note No 3241011712 of 4 November 2010, as unfounded;*

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

3. *Orders Technische Universität Dresden to pay the costs.*

([1]) OJ C 80, 12.3.2011

Judgment of the General Court of 24 October 2014 — Grau Ferrer v OHIM — Rubio Ferrer (Bugui va)

(Case T-543/12) ([1])

(Community trade mark — Opposition proceedings — Application for the figurative Community mark Bugui va — Earlier national figurative mark Bugui and earlier Community figurative mark BUGUI — Relative ground for refusal — Rejection of the opposition — Article 76(2) of Regulation (EC) No 207/2009) — Existence of the earlier mark — Evidence presented in support of the opposition before the Board of Appeal not taken into account — Board of Appeal's discretion — Article 42(2) and (3) of Regulation No 207/2009 — Article 15(1), second paragraph, point (a) of Regulation No 207/2009 — Genuine use of the earlier mark — Form differing in elements which do not alter the distinctive character)

(2014/C 439/36)

Language of the case: Spanish

Parties

Applicant: Xavier Grau Ferrer (Caldes de Montbui, Spain) (represented by: J. Carbonell Callicó, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Palmero Cabezas and A. Folliard-Montguiral, Agents)

Other parties to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Juan Cándido Rubio Ferrer (Xeraco, Spain) and Alberto Rubio Ferrer (Xeraco) (represented by: A. Cañizares Doménech, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 October 2012 (Joined Cases R 274/2011-4 and R 520/2011-4) relating to opposition proceedings between Xavier Grau Ferrer on the one hand and, on the other hand, Juan Cándido Rubio Ferrer and Alberto Rubio Ferrer.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 October 2012 (Joined Cases R 274/2011-4 and R 520/2011-4);*

2. *Declares that OHIM is to bear its own costs and orders it to pay the costs incurred by Mr Xavier Grau Ferrer;*

3. *Declares that Juan Cándido Rubio Ferrer and Alberto Rubio Ferrer are to bear their own costs.*

([1]) OJ C 55, 23.2.2013.

Order of the President of the General Court of 23 October 2014 — Holistic Innovation Institute v REA

(Case T-706/14 R)

(Application for interim measures — Projects funded by the European Union in the field of research and technological development — Decision refusing participation in certain projects — Application for suspension of operation — Disregard of formal requirements — Inadmissibility)

(2014/C 439/37)

Language of the case: Spanish

Parties

Applicant: Holistic Innovation Institute, SLU (Pozuelo de Alarcón, Spain) (represented by: R. Muñiz García, lawyer)

Defendant: Research Executive Agency (represented by: G. Gascard, acting as Agent)

Re:

Application for suspension of the operation of the Research Executive Agency (REA) decision ARES (2014) 2461172 of 24 July 2014 excluding the applicant from participation in the ZONeSEC and Inachus projects.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Action brought on 12 May 2014 — Arvanitis and Others v European Parliament and Others

(Case T-350/14)

(2014/C 439/38)

Language of the case: Greek

Parties

Applicants: Athanasios Arvanitis (Rhodes, Greece) and 47 other applicants (represented by: K. Papadimitriou, lawyer)

Defendants: European Parliament, European Council, Council of the European Union, European Commission, European Central Bank, Eurogroup

Form of order sought

The applicants claim that the General Court should:

— declare that the defendants failed to legislate so that the general principles of EU law, and in particular the directive on fixed-term work, apply fully upon their dismissal from the former Olimpiaki Aeroporia that was imposed by decision of the European Commission and incorporated into Greek law by Law No 3717/2008;

— grant the applicants and all the dismissed employees of the former Olimpiaki Aeroporia by a directly applicable Community measure, directive, regulation or other Community legislative act the ability to receive the compensation to which they would have been entitled as permanent employees upon their compulsory dismissal/departure from Olimpiaki Aeroporia;

— grant compensation of EUR 300 000 by a directly applicable Community measure, directive, regulation or other Community legislative act to each of the applicants for the hardship and distress that they have suffered, the gross breach of their fundamental rights and the premature cessation of their working life.

Pleas in law and main arguments

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

1. First plea: Law No 3717/2008, which provided for the closure of Olimpiaki Aeroporia and the dismissal of all its temporary employees, is a purely Community measure that in essence was imposed by the institutions of the European Union, in particular the ECB and the European Commission, and all the legislative measures of the Greek Government were adopted on the recommendation and, to be more precise, after decision of the Eurogroup, ECOFIN, the ECB and the European Commission.

2. Second plea: the failure to equate the dismissed temporary employees/workers of the former Olimpiaki Aeroporia with the other, permanent, employees of Olimpiaki Aeroporia and the failure to compensate them expressly on their departure from that company has caused them direct, personal and serious harm and denied them enjoyment of their fundamental rights.

Action brought on 30 May 2014 — Grigoriadis and Others v European Parliament and Others

(Case T-413/14)

(2014/C 439/39)

Language of the case: Greek

Parties

Applicants: Grigoris Grigoriadis (Athens, Greece), Faidra Grigoriadou (Athens, Greece), Ioannis Tsolias (Thessaloniki, Greece), Dimitrios Alexopoulos (Thessaloniki, Greece), Nikolaos Papageorgiou (Athens, Greece) and Ioannis Marinopoulos (Athens, Greece), (represented by: K. Papadimitriou, lawyer)

Defendants: European Parliament, European Council, Council of the European Union, European Commission, European Central Bank, Eurogroup

Form of order sought

The applicants claim that the General Court should:

— declare that the defendants failed to legislate in order that the bonds which the applicants purchased from the Hellenic Republic are expressly exempt from the compulsory participation of holders of Greek State bonds governed by Greek law in P.S.I. (private sector involvement in debt relief);

— grant the applicants by a directly applicable Community measure, directive, regulation or other Community legislative act the ability to receive 100 % of the value of the bonds which were included in P.S.I. without their being asked and without their agreement;

— grant compensation of EUR 500 000 by a directly applicable Community measure, directive, regulation or other Community legislative act to each of the applicants for the hardship, distress and gross breach of fundamental rights that they have suffered.

Pleas in law and main arguments

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

1. First plea: The legislative and other acts which led Greece to the compulsory participation of the holders of Greek State bonds governed by Greek law in P.S.I. are in reality Community measures.

2. Second plea: The measures which the Greek Government adopted to deal with Greek public debt were in reality imposed by the institutions of the European Union, in particular the ECB and the European Commission.

3. Third plea: The defendants failed to legislate, and to explicitly exempt the applicants' bonds governed by Greek law by means of the acts of the Council of Ministers by which the terms governing the application of P.S.I. in Greece were specified.

4. Fourth plea: The failure to exempt the applicants and their express compensation from P.S.I. have caused them direct, personal and serious harm and denied them enjoyment of their fundamental rights.

5. Fifth plea: All the legislative measures of the Greek Government were adopted on the recommendation and, to be more precise, after decision of the Eurogroup, ECOFIN, the ECB and the European Commission.

Action brought on 2 September 2014 — Micula a.o. *v* Commission

(Case T-646/14)

(2014/C 439/40)

Language of the case: English

Parties

Applicants: Ioan Micula (Oradea, Romania); S.C. European Food SA (Drăgăneşti Romania); S.C. Starmill Srl (Drăgăneşti); S.C. Multipack Srl (Drăgăneşti); Viorel Micula (Oradea) (represented by: K. Hobér, J. Ragnwaldh, T. Pettersson, E. Gaillard and Y. Banifatemi, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision C(2014) 3192 final of 26 May 2014 issued in Case State aid SA.38517 (2014/NN) — Micula v Romania (ICSID arbitration award) ordering Romania to suspend any action which may lead to the execution or implementation of the award of 11 December 2013 rendered by an Arbitral Tribunal established under the auspices of the International Centre for Settlement of Investment Disputes in the case Ioan Micula, Viorel Micula and others v. Romania (ICSID Case No. ARB/05/20), as the Commission considers that the execution of the award constitutes unlawful State aid, until the Commission has taken a final decision on the compatibility of that State aid with the internal market;

— award the applicants the costs of the action.

Pleas in law and main arguments

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

1. First plea in law, alleging a lack of competence.

   — EU law is not applicable to the case and the Commission lacks the competence to issue a decision under Article 11 (1) of Regulation n° 659/1999. The Commission's decision fails to acknowledge that Romania is obligated by international law to execute the ICSID award without delay and that Romania's international law obligations take primacy over EU law. The Commission's decision infringes Article 351(1) TFEU and Article 4(3) TEU, which recognise and protect Romania's obligations under the ICSID Convention and under the Sweden-Romania Bilateral Investment Treaty.

2. Second plea in law, alleging a manifest error of law and assessment.

   — The Commission erred in law by wrongly categorising the execution of the ICSID award as a new State aid measure and violated the applicants' legitimate expectations. The Commission's entire decision is based on the incorrect assumption that the execution of the ICSID award constitutes State aid under EU law. The ICSID award neither gives an economic advantage to the applicants, nor does it constitute a selective measure, nor a voluntary measure that is imputable to Romania, nor does it distort or threaten to distort competition.

Action brought on 19 September 2014 — Bayerische Motoren Werke v Commission

(Case T-671/14)

(2014/C 439/41)

Language of the case: German

Parties

Applicant: Bayerische Motoren Werke AG (Munich, Germany) (represented by: M. Rosenthal, G. Drauz and M. Schütte, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the fourth paragraph of Article 263 TFEU, the decision of 9 July 2014 in case SA.32009 (2011/C) in so far as it declares the amount by which the aid claimed of EUR 45 257 273 exceeds EUR 17 million (EUR 28 257 273) to be incompatible with the internal market;

— in the alternative: annul, in accordance with the fourth paragraph of Article 263 TFEU, the decision of 9 July 2014 in case SA.32009 (2011/C) in so far as it declares the amount of EUR 22,5 million which is exempt from notification in accordance with Article 6(2) of Regulation (EC) No 800/2008 ([1]) to be incompatible with the internal market;

— order the defendant to pay the costs of the proceedings in accordance with Article 87 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 108(3) TFEU

   — The applicant claims that, by infringing its obligation to conduct a diligent and impartial examination and thereby subsequently affirming, in a manifestly erroneous manner, the applicability in full of the communication on the detailed examination of large investment projects, the defendant infringed Article 108(3) TFEU.

   — The applicant further claims that, if the applicant's market position had been correctly assessed, a detailed examination should not have occurred. The carrying out of the detailed examination without prior determination of the market position and the resulting discriminatory treatment of the applicant constituted a manifest error of assessment.

2. Second plea in law: Infringement of Article 107(3)(c) TFEU

   — The applicant also argues that, by limiting, in a manifestly erroneous manner, the incentive effect and proportionality of the aid to the ex-ante estimated EUR 17 million amount of differential costs between the locations of Munich and Leipzig, the defendant infringed Article 107(3)(c) TFEU.

   — In this respect, the applicant states that the automatic nature of the detailed examination by the defendant, determined by that amount of differential costs, constitutes a manifest error of assessment which ultimately prevented a proper exercise of discretion, in particular when examining the proportionality and effects of the aid.

3. Alternative plea in law: Infringement of Article 108(3) TFEU and Regulation No 800/2008

   — The applicant claims, in the alternative, that, by prohibiting, in a manifestly erroneous manner, the Federal Republic of Germany from granting the applicant aid from the approved aid scheme of the Investitionszulagengesetz (Law on investment subsidies) in an amount which is below the notification threshold of EUR 22,5 million, the defendant infringed Article 108(3) TFEU and Regulation No 800/2008.

   — In the applicant's opinion, that limitation of the amount of the aid below the notification threshold constitutes a manifest error of assessment by which the defendant exceeded its powers and unlawfully discriminated against the applicant in comparison with aid beneficiaries which received the non-notifiable amount of EUR 22,5 million.

([1]) Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ 2008 L 214, p. 3).

Action brought on 19 September 2014 — August Wolff and Remedia v Commission

(Case T-672/14)

(2014/C 439/42)

Language of the case: German

Parties

Applicants: Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany), Remedia d.o.o. (Zagreb, Croatia) (represented by: P. Klappich, C. Schmidt and P. Arbeiter, lawyers)

Defendant: European Commission

Form of order sought

The applicants claims that the Court should:

— annul Commission Implementing Decision C(2014) 6030 final of 19 August 2014 concerning, in the framework of Article 31 of Directive 2001/83/EC of the European Parliament and of the Council, the marketing authorisations for high concentration of estradiol containing human medicinal products for topical use in so far as it requires Member States to comply with the obligations imposed in the implementing decision for the medicinal products listed in Annex I to the implementing decision and those not listed with 0,01 % estradiol by weight for topical use, with the exception of the restriction that the medicinal products named in Annex I to the implementing decision with 0,01 % estradiol by weight for topical use may be administered only intravaginally;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 31 et seq. of Directive 2001/83/EC ([1])

   — It is submitted in this connection that the contested implementing decision is based on a procedure which was initiated and conducted in a procedurally unlawful manner. In this regard, the applicants state inter alia that, contrary to the first sentence of the first paragraph of Article 31 of Directive 2001/83/EC, the procedure was initiated not before, but only after a decision on a request for renewal of the medicinal product was made and that, in addition, there was no specific case of Union interest. Furthermore, with regard to the first applicant, the initiation of the procedure entails a circumvention of the rules existing in the Member State of Germany on the renewal of medicinal products.

   — Furthermore, the applicants argue that the appropriate Scientific Risk Assessment Committee was not involved in the procedure and that, in addition, a biased member was appointed as rapporteur in the Scientific Committee on Medicinal Products involved in the procedure.

   — In addition, the first applicant claims that it was not properly consulted on an essential aspect within the framework of the expert opinion review procedure.

2. Second plea in law: Infringement of the first sentence of Article 116 and the first sentence of Article 126 of Directive 2001/83/EC

   — In this context, the applicants submit that the implementing decision is based on an incorrect assessment of the benefit-risk balance of the medicinal product. In particular, it disregards the fact that, over a more than 45-year market presence, no reports of serious risks arising from the use of the medicinal product with 0,01 % estradiol by weight had been submitted to the first applicant.

   — In addition, the Commission — which in this respect bears the burden of presentation and proof — did not put forward any new scientific data and information from which a new risk arising from the use of the medicinal product emerges.

3. Third plea in law: Infringement of the principles of proportionality and equal treatment

   — In respect of the third plea, the applicants argue that the warnings in the product information, which are provided for in the implementing decision, the further restrictions included in the marketing authorisation for the medicinal product and the obligations based thereon are disproportionate and infringe the principle of equal treatment. In particular, a restriction on the period of use whilst at the same time precluding repeated use of the medicinal product, in addition to the proposed amendments to the product information, is disproportionate. In any event, instead of restricting the period of use — whilst at the same time precluding repeated use — and the obligations based thereon, a less stringent means of examining the alleged safety concerns would have been to order the carrying out of a study.

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

Action brought on 19 September 2014 — Lupin v Commission

(Case T-680/14)

(2014/C 439/43)

Language of the case: English

Parties

Applicant: Lupin Ltd (Maharashtra, India) (represented by: M. Pullen, R. Fawcett-Feuillette, M. Boles, Solicitors, V. Wakefield, Barrister, and M. Hoskins QC)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the Decision void insofar as it finds that Lupin infringed Article 101 TFEU; and/or

— set aside or reduce the fine imposed on Lupin; and

— require the Commission to pay Lupin's costs of these proceedings.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment, in part, of Commission Decision C(2014) 4955 final of 9 July 2014 in case AT.39612 — Perindopril (Servier).

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

1. First plea in law, alleging that the Commission erred in law insofar as it found that the applicant had committed an infringement *by object* of Article 101 TFEU. The applicant submits that:

   — the Commission's finding is unlawful because it applies a wholly novel and incorrect legal test. In particular, it is dependent upon the payment of a 'significant inducement', which according to the applicant is not reflected in the existing case-law and is wrong as a matter of law;

   — the Commission's approach fails to recognise and give effect not just to the objectives of competition law, but also those of patent law and modern civil procedure. According to the applicant, the Commission should have assessed the question of restriction by object by reference to the ancillary restraints doctrine and/or by reference to the principles recognised in the Wouters judgment. Its failure to do so was wrong in law.

2. Second plea in law, alleging that the Commission erred in law insofar as it found that the applicant had committed an infringement *by effect* of Article 101 TFEU. The applicant considers that the Commission's approach to determining whether a patent settlement agreement was an infringement by effect suffered from the same flaws as its approach to object infringements.

3. Third plea in law, alleging that the Commission was wrong to impose any fine upon the applicant, alternatively the fine imposed was too high and should be reduced. The applicant contends that:

   — its alleged wrong-doing was novel and merits no fine, alternatively only a symbolic fine;

   — the fine fails to reflect the relative gravity and duration of the applicant's alleged infringement and is unfair;

   — the Commission failed to take account of the legitimate value of the intellectual property transferred by the applicant to Servier;

   — the Commission breached the principle of equal treatment in comparison with the fine imposed on Krka.

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