Official Journal of the European Union

C 381

English edition

Information and Notices

Volume 58

16 November 2015

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(2015/C 381/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Eighth Chamber) of 17 September 2015 — Confederazione Cooperative Italiane, Cooperativas Agro-Alimentarias, Fédération française de la coopération fruitière, légumière and horticole (Felcoop) (C-455/13 P), European Commission (C-457/13 P), Italian Republic (C-460/13 P) v Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav) and Others

(Joined Cases C-455/13 P, C-457/13 P and C-460/13 P) ([1])

(Appeals — Agriculture — Common organisation of the markets — Fruit and vegetable sector — Regulation (EC) No 1580/2007 — Article 52(2a) — Implementing Regulation (EU) No 543/2011 — Articles 50(3) and 60(7) — Aid to producer organisations — Products processed from fruit and vegetables — Flat rate covering certain processing operations — Eligibility of investments and actions connected with the processing — Actions for annulment — Admissibility — Whether directly concerned)

(2015/C 381/02)

Language of the case: English

Parties

(Case C-455/13 P)

Appellants: Confederazione Cooperative Italiane, Cooperativas Agro-Alimentarias, Fédération française de la coopération fruitière, légumière and horticole (Felcoop) (represented by: M. Merola and C. Santacroce, avvocati)

(Case C-457/13 P)

Appellant: European Commission (represented by: K. Skelly, A. Marcoulli and B. Schima, acting as Agents)

Interveners in support of the European Commission: French Republic (represented by: D. Colas and C. Candat, acting as Agents), Sociedad Cooperativa de Exportación de Frutos Cítricos Anecoop (Anecoop) S. Coop., Cooperativa Agrícola Nuestra Señora del Oreto (CANSO) Coop. V., Cooperativa Agrícola 'Sant Bernat' (Carlet) Coop. V., Cooperativa Agrícola SCJ (COPAL) Coop. V., Grupo AN S. Coop., Acopaex S. Coop., Las Marismas de Lebrija Sociedad Cooperativa Andaluza (Las Marismas), Associació de Cooperatives Agràries de les Terres de Lleida (ACTEL), Unió Corporació Alimentária (UNIO) SCCL, Union Coopérative Agricole France Prune (France Prune), Agrial SCA, Triskalia, Union Fermière Morbihannaise (UFM), VOG Products Soc. agr. coop., Consorzio Padano Ortofrutticolo (CO.PAD.OR.) Soc. agr. coop., Consorzio Casalasco del Pomodoro Soc. agr. coop., Agricoltori Riuniti Piacentini (ARP) Soc. agr. coop., Orogel Fresco Soc. agr. coop., Conserve Italia Soc. agr. coop., Fruttagel Soc. agr. coop. (represented by: M. Merola and C. Santacroce, avvocati), Unione Nazionale tra le Organizzazioni di Produttori Ortofrutticoli, Agrumari e di Frutta in Guscio (Unaproa) (represented initially by S. Crisci and subsequently by G. Coppo, avvocati)

(Case C-460/13 P)

Appellant: Italian Republic (represented by: G. Palmieri, acting as Agent, and S. Varone, avvocato dello Stato)

Other parties to the proceedings: Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon), Associazione Italiana Industrie Prodotti Alimentari (AIIPA), Campil-Agro-Industrial do Campo do Tejo Lda, Evropaïka Trofima AE, FIT — Fomento da Indústria do Tomate SA, Konservopoiia Oporokipeftikon Filippos AE, Panellinia Enosi Konservopoion, Elliniki Etairia Konservon AE, Anonimos Viomichaniki Etairia Konservon D. Nomikos, Italagro — Indústria de Transformação de Produtos Alimentares SA, Kopaïs AVEE Trofimon & Poton, Serraïki Konservopoiia Oporokipeftikon Serko AE, Sociedade de Industrialização de Produtos Agrícolas — Sopragol SA, Sugalidal — Indústrias de Alimentação SA, Sutol — Indústrias Alimentares Lda, ZANAE Zymai Artopoiias Nikoglou AE Viomichania Emporio Trofimon, AIT — Associação dos Industriais de Tomate (represented by: S. Estima Martins and R. Oliveira, advogados), Confederazione Cooperative Italiane, Cooperativas Agro-Alimentarias, Fédération française de la coopération fruitière, légumière and horticole (Felcoop), VOG Products Soc. agr. coop., Consorzio Padano Ortofrutticolo (CO.PAD.OR.) Soc. agr. coop., Consorzio Casalasco del Pomodoro Soc. agr. coop., ARP Agricoltori Riuniti Piacentini Soc. agr. coop., Orogel Fresco Soc. agr. coop., Conserve Italia Soc. agr. coop.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union in Anicav and Others v Commission (T-454/10 and T-482/11, EU:T:2013:282) in that it declared admissible the actions brought in Cases T-454/10 and T-482/11 which seek the annulment of the second subparagraph of Article 52(2a) of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector, as amended by Commission Regulation (EU) No 687/2010 of 30 July 2010, and Articles 50(3) and 60 (7) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors;*

2. *Dismisses the actions for annulment brought in Cases T-454/10 and T-482/11 as inadmissible;*

3. *Orders Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon), Associazione Italiana Industrie Prodotti Alimentari (AIIPA), Campil-Agro-Industrial do Campo do Tejo Lda, Evropaïka Trofima AE, FIT — Fomento da Indústria do Tomate SA, Konservopoiia Oporokipeftikon Filippos AE, Panellinia Enosi Konservopoion, Elliniki Etairia Konservon AE, Anonymos Viomichaniki Etaireia Konservon D. Nomikos, Italagro — Indústria de Transformação de Produtos Alimentares SA, Kopaïs AVEE Trofimon & Poton, Serraïki Konservopoiia Oporokipeftikon Serko AE, Sociedade de Industrialização de Produtos Agrícolas — Sopragol SA, Sugalidal — Indústrias de Alimentação SA, Sutol — Indústrias Alimentares Lda, and ZANAE Zymai Artopoiias Nikoglou AE Viomichania Emporio Trofimon to pay the costs incurred at first instance and/or in the appeals by Confederazione Cooperative Italiane, Cooperativas Agro-Alimentarias, Fédération française de la coopération fruitière, légumière et horticole (Felcoop), the European Commission in Case C-457/13 P, the Italian Republic, Sociedad Cooperativa de Exportación de Frutos Cítricos Anecoop (Anecoop) S. Coop, Cooperativa Agrícola Nuestra Señora del Oreto (CANSO) Coop. V., Cooperativa Agrícola 'Sant Bernat' (Carlet) Coop. V., Cooperativa Agrícola SCJ (COPAL) Coop. V., Grupo AN S. Coop., Acopaex S. Coop., Las Marismas de Lebrija Sociedad Cooperativa Andaluza (Las Marismas), Associació de Cooperatives Agràries de les Terres de Lleida (ACTEL), Unió Corporació Alimentária (UNIO) SCCL, Union Coopérative Agricole France Prune (France Prune), Agrial SCA, Triskalia, Union Fermière Morbihannaise (UFM), VOG Products Soc. agr. coop., Consorzio Padano Ortofrutticolo (CO.PAD.OR.) Soc. agr. coop., Consorzio Casalasco del Pomodoro Soc. agr. coop., Agricoltori Riuniti Piacentini (ARP) Soc. agr. coop., Orogel Fresco Soc. agr. coop., Conserve Italia Soc. agr. coop., Fruttagel Soc. agr. coop. and Unione Nazionale tra le Organizzazioni di Produttori Ortofrutticoli, Agrumari e di Frutta in Guscio (Unaproa);*

4. *Orders AIT — Associação dos Industriais de Tomate and the French Republic to bear their own costs.*

(1) OJ C 325, 9.11.2013.
OJ C 344, 23.11.2013.
OJ C 352, 30.11.2013.

Judgment of the Court (Seventh Chamber) of 1 October 2015 (request for a preliminary ruling from the Kammarrätten i Sundsvall — Sweden) — OKG AB v Skatteverket

(Case C-606/13) (1)

(Reference for a preliminary ruling — Directive 2003/96/EC — Articles 4 and 21 — Directive 2008/118/EC — Directive 92/12/EEC — Article 3(1) — Scope — Rules of a Member State — Levying of a tax on the thermal power of nuclear reactors)

(2015/C 381/03)

Language of the case: Swedish

Referring court

Kammarrätten i Sundsvall

Parties to the main proceedings

Applicant: OKG AB

Defendant: Skatteverket

Operative part of the judgment

1. *Articles 4(2) and 21(5) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as not precluding a national rule, such as the one at issue in the main proceedings, which provides for the levying of a tax on the thermal power of nuclear reactors, in so far as such a tax does not come within the scope of that directive.*

2. *Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products must be interpreted as meaning that a tax on the thermal power of a nuclear reactor is not an excise duty for the purposes of that directive.*

(1) OJ C 39, 8.2.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Fővárosi Törvényszék — Hungary) — ERSTE Bank Hungary Zrt v Attila Sugár

(Case C-32/14) (1)

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts concluded between a seller or supplier and a consumer — Mortgage loan agreement — Article 7(1) — Stopping the use of unfair terms — Adequate and effective means — Acknowledgement of the debt — Notarised instrument — Affixation of the enforcement clause by a notary — Enforceable order — Notary's obligations — Examination by the national court of its own motion of unfair terms — Judicial review — Principles of equivalence and effectiveness)

(2015/C 381/04)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: ERSTE Bank Hungary Zrt

Defendant: Attila Sugár

Operative part of the judgment

Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which allows a notary who drew up, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it when no review of the unfairness of the contractual terms has been performed at any stage.

([1]) OJ C 102, 7.4.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Curtea de Apel Cluj — Romania) — Smaranda Bara and Others v Președintele Casei Naționale de Asigurări de Sănătate, Casa Națională de Asigurări de Sănătate, Agenția Națională de Administrare Fiscală (ANAF)

(Case C-201/14) ([1])

(Reference for a preliminary ruling — Directive 95/46/EC — Processing of personal data — Articles 10 and 11 — Data subjects' information — Article 13 — Exceptions and limitations — Transfer by a public administrative body of a Member State of personal tax data for processing by another public administrative body)

(2015/C 381/05)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: Smaranda Bara and Others

Defendants: Casa Națională de Asigurări de Sănătate, Președintele Casei Naționale de Asigurări de Sănătate, Agenția Națională de Administrare Fiscală (ANAF)

Operative part of the judgment

Articles 10, 11 and 13 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, must be interpreted as precluding national measures, such as those at issue in the main proceedings, which allow a public administrative body of a Member State to transfer personal data to another public administrative body and their subsequent processing, without the data subjects having been informed of that transfer or processing.

([1]) OJ C 223, 14.7.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Kúria — Hungary) — Weltimmo s.r.o. v Nemzeti Adatvédelmi és Információszabadság Hatóság

(Case C-230/14) ([1])

(Reference for a preliminary ruling — Protection of individuals with regard to the processing of personal data — Directive 95/46/EC — Articles 4(1) and 28(1), (3) and (6) — Controller who is formally established in a Member State — Impairment of the right to the protection of personal data concerning natural persons in another Member State — Determination of the applicable law and the competent supervisory authority — Exercise of the powers of the supervisory authority — Power to impose penalties)

(2015/C 381/06)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Weltimmo s.r.o.

Defendant: Nemzeti Adatvédelmi és Információszabadság Hatóság

Operative part of the judgment

1) *Article 4(1)(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as permitting the application of the law on the protection of personal data of a Member State other than the Member State in which the controller with respect to the processing of those data is registered, in so far as that controller exercises, through stable arrangements in the territory of that Member State, a real and effective activity — even a minimal one — in the context of which that processing is carried out.*

In order to ascertain, in circumstances such as those at issue in the main proceedings, whether that is the case, the referring court may, in particular, take account of the fact (i) that the activity of the controller in respect of that processing, in the context of which that processing takes place, consists of the running of property dealing websites concerning properties situated in the territory of that Member State and written in that Member State's language and that it is, as a consequence, mainly or entirely directed at that Member State, and (ii) that that controller has a representative in that Member State, who is responsible for recovering the debts resulting from that activity and for representing the controller in the administrative and judicial proceedings relating to the processing of the data concerned.

By contrast, the issue of the nationality of the persons concerned by such data processing is irrelevant.

2) *Where the supervisory authority of a Member State, to which complaints have been submitted in accordance with Article 28(4) of Directive 95/46, reaches the conclusion that the law applicable to the processing of the personal data concerned is not the law of that Member State, but the law of another Member State, Article 28(1), (3) and (6) of that directive must be interpreted as meaning that that supervisory authority will be able to exercise the effective powers of intervention conferred on it in accordance with Article 28(3) of that directive only within the territory of its own Member State. Accordingly, it cannot impose penalties on the basis of the law of that Member State on the controller with respect to the processing of those data who is not established in that territory, but should, in accordance with Article 28(6) of that directive, request the supervisory authority within the Member State whose law is applicable to act.*

3) *Directive 95/46 must be interpreted as meaning that the term 'adatfeldolgozás' (technical manipulation of data), used in the Hungarian version of that directive, in particular in Articles 4(1)(a) and 28(6) thereof, must be understood as having the same meaning as that of the term 'adatkezelés' (data processing).*

(1) OJ C 245, 28.7.2014.

Judgment of the Court (Grand Chamber) of 29 September 2015 (request for a preliminary ruling from the Naczelny Sąd Administracyjny — Poland) — Gmina Wrocław v Minister Finansów

(Case C-276/14) (1)

(Reference for a preliminary ruling — Value added tax — Directive 2006/112/EC — Article 9(1) — Article 13(1) — Taxable persons — Interpretation of the word 'independently' — Municipal body — Economic activities carried out by an organisational entity of a municipality other than as a public authority — Whether such an entity may be regarded as a 'taxable person' within the meaning of the provisions of Directive 2006/112 — Articles 4(2) and 5(3) TEU)

(2015/C 381/07)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Applicant: Gmina Wrocław

Defendant: Minister Finansów

Operative part of the judgment

Article 9(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that bodies governed by public law, such as the municipal budgetary entities at issue in the main proceedings, cannot be regarded as taxable persons for the purposes of value added tax in so far as they do not satisfy the criterion of independence set out in that provision.

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Fourth Chamber) of 1 October 2015 (request for a preliminary ruling from the Tribunale di Firenze — Italy) — Criminal proceedings against Skerdjan Celaj

(Case C-290/14) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2008/115/EC — Return of illegally staying third-country nationals — Return decision accompanied by an entry ban of three years' duration — Breach of an entry ban — Third-country national previously removed — Sentence of imprisonment in case of new unlawful entry into the national territory — Compatibility)

(2015/C 381/08)

Language of the case: Italian

Referring court

Tribunale di Firenze

Party in the main proceedings

Skerdjan Celaj

Operative part of the judgment

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as not, in principle, precluding legislation of a Member State which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban.

([1]) OJ C 292, 1.9.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Raad van State — Netherlands) — R.L. Trijber, trading as Amstelboats v College van burgemeester en wethouders van Amsterdam (C-340/14), J. Harmsen v Burgemeester van Amsterdam (C-341/14)

(Joined Cases C-340/14 and C-341/14) ([1])

(Reference for a preliminary ruling — Directive 2006/123/EC — Services in the internal market — Leisure boating — Window prostitution businesses — Article 2(2)(d) — Scope — Not included — Services in the field of transport — Freedom of establishment — Authorisation scheme — Article 10(2)(c) — Conditions for granting the authorisation — Proportionality — Language requirement — Article 11(1)(b) — Duration of the authorisation — Restriction of the number of authorisations available — Overriding reason relating to the public interest)

(2015/C 381/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: R.L. Trijber, trading as Amstelboats (C–340/14), J. Harmsen (C–341/14)

Defendants: College van burgemeester en wethouders van Amsterdam, Burgemeester van Amsterdam

Operative part of the judgment

1) *Article 2(2)(d) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, must be interpreted as meaning that, subject to the checks to be carried out by the referring court, an activity, such as that which is the subject of the application for authorisation in the main proceedings, which consists in providing, for payment, a service of carrying passengers on a boat for a waterway tour of a city for event-related purposes, does not constitute a service in the 'field of transport' within the meaning of that provision which is excluded from the scope of that directive.*

2) *Article 11(1)(b) of Directive 2006/123 must be interpreted as precluding the grant by the competent national authorities of authorisations for an unlimited period for the exercise of an activity such as that at issue in the main proceedings, where the number of authorisations granted for that purpose by those authorities is limited for overriding reasons relating to the public interest.*

3) *Article 10(2)(c) of Directive 2006/123 must be interpreted as not precluding a measure, such as that at issue in the main proceedings, under which the grant of authorisation for the exercise of an activity, such as that at issue in Case C-341/14, consisting in the operation of window prostitution businesses by renting rooms out in shifts is subject to the condition that the service provider is able to communicate with the recipients of those services, in this case prostitutes, where that condition is such as to ensure that the legitimate objective of general interest pursued — namely the prevention of criminal offences related to prostitution — is secured, and does not go beyond what is necessary to achieve that objective, which is for the referring court to determine.*

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 — Electrabel SA and Dunamenti Erőmű Zrt v European Commission

(Case C-357/14 P) ([1])

(Appeal — State aid — Aid granted by the Hungarian authorities to certain electricity generators — Power purchase agreements concluded between a public undertaking and certain electricity generators — Decision declaring that aid incompatible with the common market and ordering its recovery — Meaning of 'party' capable of bringing an appeal before the Court — Accession of Hungary to the European Union — Date relevant to the assessment of the existence of aid — Concept of State aid — Advantage — Private investor test — Methodology for calculating the amount of aid)

(2015/C 381/10)

Language of the case: English

Parties

Appellants: Electrabel SA and Dunamenti Erőmű Zrt (represented by: J. Philippe, F.-H. Boret and A.-C. Guyon, avocats, and by P. Turner QC)

Other party to the proceedings: European Commission (represented by: L. Flynn and K. Talabér-Ritz, acting as Agents)

Operative part of the judgment

The Court:

1) *Dismisses the appeal;*

2) *Orders Dunamenti Erőmű Zrt. to bear its own costs and to pay those incurred by the European Commission;*

3) *Orders Electrabel SA to bear its own costs.*

(1) OJ C 329, 22.9.2014.

Judgment of the Court (Seventh Chamber) of 1 October 2015 (request for a preliminary ruling from the Conseil de prud'hommes de Paris — France) — O v Bio Philippe Auguste SARL

(Case C-432/14) (1)

(Reference for a preliminary ruling — Social policy — Principles of equal treatment and non-discrimination on grounds of age — Directive 2000/78/EC — Equal treatment in employment and occupation — Article 2(1) and 2(2)(a) — Difference in treatment on grounds of age — Whether situations comparable — Grant of a payment, on the expiry of a fixed-term employment contract, intended to compensate for insecurity — Exclusion of young people working during their school holidays or university vacations)

(2015/C 381/11)

Language of the case: French

Referring court

Conseil de prud'hommes de Paris

Parties to the main proceedings

Applicant: O

Defendant: Bio Philippe Auguste SARL

Operative part of the judgment

The principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which an end-of-contract payment, paid in addition to an employee's salary on the expiry of a fixed-term employment contract where the contractual relationship is not continued in the form of a contract for an indefinite period, is not payable in the event that the contract is concluded with a young person for a period during his school holidays or university vacation.

(1) OJ C 431, 1.2.2014.

Judgment of the Court (Third Chamber) of 1 October 2015 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Agenzia Italiana del Farmaco (AIFA), Ministero della Salute v Doc Generici Srl

(Case C-452/14) ([1])

(Reference for a preliminary ruling — Article 267 TFEU — Obligation to bring the matter before the Court of Justice — Approximation of laws — Proprietary medicinal products — Medicinal products for human use — Marketing authorisation — Variation — Fees — Regulation (EC) No 297/95 — Regulation (EC) No 1234/2008 — Scope)

(2015/C 381/12)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Agenzia Italiana del Farmaco (AIFA), Ministero della Salute

Defendant: Doc Generici Srl

Operative part of the judgment

1) *Neither Council Regulation (EC) No 297/95 of 10 February 1995 on fees payable to the European Agency for the Evaluation of Medicinal Products, as amended by Commission Regulation (EU) No 273/2012 of 27 March 2012, nor Commission Regulation (EC) No 1234/2008 of 24 November 2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products, as amended by Commission Regulation (EU) No 712/2012 of 3 August 2012, requires a competent national authority to demand, in respect of the change of address of a marketing authorisation holder, payment of as many charges as there are marketing authorisations requiring variation, and nor do those regulations prohibit such an authority from demanding such payment.*

2) *Article 267 TFEU must be interpreted as meaning that a court or tribunal against whose decisions there is no judicial remedy under national law is required, in circumstances such as those in the main proceedings, to comply with its obligation to bring the matter before the Court of Justice.*

([1]) OJ C 448, 15.12.2014.

Order of the Court (Third Chamber) of 3 September 2015 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen — Belgium) — Vivium SA v Belgische Staat

(Case C-250/15) ([1])

(Reference for a preliminary ruling — Factual and legislative context of the dispute in the main proceedings — Insufficient information — Manifest inadmissibility)

(2015/C 381/13)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Vivium SA

Defendant: Belgische Staat

Operative part of the order

The request for a preliminary ruling brought by the Rechtbank van eerste aanleg te Antwerpen (Belgium) by decision of 13 May 2015 (Case C-250/15) is manifestly inadmissible.

([1]) OJ C 262, 10.8.2015.

Appeal brought on 22 April 2015 by Marpefa, S.L. against the order of 3 February 2015 of the General Court (Sixth Chamber) in Case T-708/14, Marpefa v OHIM

(Case C-181/15 P)

(2015/C 381/14)

Language of the case: Spanish

Parties

Appellant: Marpefa, S.L. (represented by: I. Barroso Sánchez-Lafuente, abogado)

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

Kabushiki Kaisha Sony Computer Entertainment

By order of 6 October 2015, the Court of Justice (Seventh Chamber) dismissed the appeal.

Appeal brought on 9 July 2015 by Changshu City Standard Parts Factory, Ningbo Jinding Fastener Co. Ltd against the judgment of the General Court (Fourth Chamber) delivered on 29 April 2015 in Joined Cases T-558/12 and T-559/12: Changshu City Standard Parts Factory and Ningbo Jinding Fastener Co. Ltd v Council of the European Union

(Joined Cases C-376/15 P and C-377/15 P)

(2015/C 381/15)

Language of the case: English

Parties

Appellants: Changshu City Standard Parts Factory, Ningbo Jinding Fastener Co. Ltd (represented by: R. Antonini, avvocato, E. Monard, avocat)

Other parties to the proceedings: Council of the European Union, European Commission, European Industrial Fasteners Institute AISBL (EIFI)

Form of order sought

The appellants claim that the Court should:

1) set aside the judgment of the General Court in Joined Cases T-558/12 and T-559/12 Changshu City Standard Parts Factory and Ningbo Jinding Fastener Co. Ltd v Council of the European Union;

2) grant the form of order sought by the Appellants in their application made to the General Court and annul Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation EC No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ([1]), insofar as it relates to the Appellants;

3) order the Council to bear the costs of the proceedings before the General Court and the Court of Justice, including those of the Appellants;

4) order the intervening parties to bear their own costs.

Pleas in law and main arguments

The Appellants argue that the General Court, in particular as regards the notion of 'all [comparable] export transactions' and the relationship between the provisions concerned, erred in law by misconstruing Articles 2(10) and 2(11) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ([2]) and Articles 2.4 and 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; and imposed an unreasonable burden of proof on the Appellants.

The Appellants further argue that the General Court erred in law by misconstruing Articles 2(10) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and Article 2.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, failed to address certain claims of the Appellants and erred in law when assessing the requirement to state reasons under Article 296 TFEU.

([1]) OJ L 275, p. 1.
([2]) OJ L 343, p. 51.

Request for a preliminary ruling from the Tribunale di Taranto (Italy) lodged on 10 August 2015 — Criminal proceedings against Davide Durante

(Case C-438/15)

(2015/C 381/16)

Language of the case: Italian

Referring court

Tribunale di Taranto

Party to the main proceedings

Davide Durante

Question referred

Must Articles 43, 49 and 56 et seq. TFEU be interpreted as precluding national legislation in the field of betting and gambling which, for the purposes of the launching of a fresh call for tenders for the award of licences as provided for by Article [10](9 g) of Law No 44 of 26 April 2012, regards as grounds for exclusion from the tendering procedure a tenderer's failure to demonstrate economic and financial capacity, without providing, for the purpose of that demonstration, when references are supplied by one bank only, for appropriate criteria other than the stipulated requirement of two different references given by two different banking institutions?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Veneto (Italy) lodged on 17 August 2015 — Associazione Italia Nostra Onlus v Comune di Venezia and Others

(Case C-444/15)

(2015/C 381/17)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Veneto

Parties to the main proceedings

Applicant: Associazione Italia Nostra Onlus

Defendants: Comune di Venezia, Ministero per i beni e le attività culturali, Regione del Veneto, Ministero delle Infrastrutture e dei Trasporti, Ministero della Difesa Capitaneria di Porto di Venezia, Agenzia del Demanio

Questions referred

1. Is Article 3(3) of Directive 2001/42/EC ([1]), in so far as it also concerns the situation referred to in Article 3(2)(b), valid, in the light of the environmental rules laid down by the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights, to the extent that it removes the systematic requirement to perform a Strategic Environmental Assessment in respect of plans and programmes which were deemed to require an implications assessment pursuant to Articles 6 and 7 of Directive 92/43/EEC ([2])?

2. In the event that the Court finds that the above measure is valid, must Article 3(2) and (3) of Directive 2001/42/EC, read in conjunction with recital 10 of that Directive, which states that 'all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment' be interpreted as precluding legislation, such as the national legislation in question, which, in defining 'small areas at local level' in Article 3(3) of Directive 2001/42/EC, only refers to quantitative criteria?

3. If the above question is answered in the negative, must Article 3(2) and (3) of Directive 2001/42/EC, read in conjunction with recital 10 of that Directive, which states that 'all plans and programmes which have been determined to require assessment pursuant to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna are likely to have significant effects on the environment, and should as a rule be made subject to systematic environmental assessment', be interpreted as precluding legislation, such as the national legislation in question, which removes the automatic and compulsory requirement for all new and expansion-related development projects in urban areas covering up to forty hectares or urban-area regeneration or development projects in existing urban areas covering up to ten hectares to undergo the Strategic Environmental Assessment procedure, even where, in view of the potential effects on the sites, they had formerly been deemed to require an implications assessment pursuant to Articles 6 and 7 of Directive 92/43/EEC?

([1]) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

([2]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 18 August 2015 — Signum Alfa Sped Kft. v Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság

(Case C-446/15)

(2015/C 381/18)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Signum Alfa Sped Kft.

Defendant: Nemzeti Adó- és Vámhivatal Kiemelt Adó- és Vám Főigazgatóság

Questions referred

1. Are the provisions of Directive 2006/112 ([1]) concerning the deduction of VAT to be interpreted as meaning that the tax authorities may in general require a taxable person, who wishes to exercise his right to deduct VAT to check, in order that the tax authorities should not treat the financial transaction as a sham, whether the issuer of the invoice for the services in respect of which he wishes to exercise the right to deduct has the necessary personal and material resources for providing the service in question, both when the service is provided and when the check is made, and whether he has satisfied his obligations as regards declaration and payment of VAT, or to be in possession of documents relating to the financial transaction, other than the invoice, that do not contain formal defects? May the issuer of the invoice be required to carry on its economic activity without any irregularity, not only at the time of the legal transaction forming the basis of the right to deduct VAT, but also at the time of the tax inspection?

2. If the tax authorities, having regard to the circumstances described in the first question, should declare that, although the financial transaction has taken place, the content of the invoice lacks verisimilitude, because that transaction was not performed between the parties mentioned in the invoice, are the tax authorities required, in view of the fact that, as a general rule, the burden of proof lies with them, also to ascertain who the persons are that performed the legal transaction in such a case and who it was that issued the invoice, or may the tax authorities refuse the right to deduct claimed by the taxable person, without conclusive proof of the abovementioned elements of fact, without information or circumstances indicating the name or role of the third person, but merely on the basis of what has been declared in that respect by the tax authorities themselves?

3. Are the provisions of Directive 2006/112 concerning the deduction of VAT to be interpreted as meaning that the tax authorities, even if they do not deny that the financial transaction recorded in the invoice has taken place or that the invoice formally satisfies the legal requirements, may refuse the right to deduct VAT without examining due diligence — virtually basing their decision on strict liability — on the grounds that, because the financial transaction was not performed between the parties mentioned in the invoice, the fact that the content of the invoice lacks verisimilitude precludes, ex hypothesi, examination of due diligence, or rather, in such circumstances, the tax authorities refusing the right to deduct are required also to show that the taxable person wishing to exercise the right to deduct knew of the irregular conduct — designed, as the case may be, to evade tax — of the undertaking with which he maintained contractual relations, or even participated in that irregular conduct?

4. If the answer to the previous question is in the affirmative, is it compatible with the provisions of Directive 2006/112 and with the principles of fiscal neutrality, legal certainty and proportionality, affirmed by the Court of Justice of the European Union in its case-law, for that legislation to be interpreted as meaning that the due diligence of the addressee of the invoice may be examined only if it can be shown that there was a transaction between the parties, that is to say, if the financial transaction took place between the parties in the manner specified in the invoice, and that there are only other kinds of irregularities, for example formal defects, particularly bearing in mind that the national tax legislation contains provisions relating to invoices with formal defects or invoices issued without any financial transaction?

([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 Consiglio di Stato (Italy) lodged on 20 August 2015 — Regione autonoma della Sardegna v Comune di Portoscuso

(Case C-449/15)

(2015/C 381/19)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Regione autonoma della Sardegna

Defendant: Comune di Portoscuso

Question referred

Do the principles of freedom of establishment, non-discrimination and safeguarding competition, respectively laid down in Articles 49, 56 and 106 TFEU, and the precept of reasonableness implicit therein, preclude national legislation under which the validity of concessions of economically significant publicly-owned maritime, lakeside and waterway assets is to be repeatedly extended through a succession of legislative acts, the duration of that validity being statutorily increased for at least 11 years, with the effect that the same concessionaire retains the exclusive right to exploit the asset economically, even though the period of validity under the concession awarded to that concessionaire has meanwhile expired, whereby interested economic operators are deprived of any opportunity of obtaining a concession for the asset on the basis of a public tendering procedure?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 24 August 2015 — Autorità Garante della Concorrenza e del Mercato v Italsempione — Spedizioni Internazionali SpA

(Case C-450/15)

(2015/C 381/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità Garante della Concorrenza e del Mercato

Defendant: Italsempione — Spedizioni Internazionali SpA

Question referred

Does the principle of proportionality, which must guide the process of quantifying fines — as affirmed by Article 49 of the Charter of Fundamental Rights of the European Union — preclude an interpretation of Article 23(2)(a) of Regulation No 1/2003 ([1]), in the version consolidated by the European Commission through the Guidelines on the method of setting fines (2006/C 201/02), and practice, including national practice, according to which the fine to be applied to undertakings which have breached the prohibition of anti-competitive agreements is to be calculated by applying the circumstances to the basic amount resulting from the calculation of the various factors which have to be taken into account under EU law, and in any event before the reduction to 10 % of turnover, with the risk that the application of the extenuating circumstances to the basic amount may prove entirely unsuitable for having the effect of personalising the fine, the circumstances of which, by contrast, are predetermined by the adjustment of the relevant amount according to the characteristics of the specific case?

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

Request for a preliminary ruling from the Augstākā tiesa (Latvia) lodged on 31 August 2015 — Verners Pudāns

(Case C-462/15)

(2015/C 381/21)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: Verners Pudāns

Defendant: Valsts ieņēmumu dienests

Question referred

Must Article 29(1) of Council Regulation (EC) No 73/2009 of 19 January 2009 ([1]) establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, be interpreted as allowing, in principle, a Member State to apply income tax to payments under the support schemes listed in Annex I to that regulation?

([1]) OJ 2009 L 30, p. 16.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 3 September 2015 — Jean-Michel Adrien, Frédéric Baron, Catherine Blanchin, Marc Bouillaguet, Anne-Sophie Chalhoub, Denis d'Ersu, Laurent Gravière, Vincent Cador, Roland Moustache, Jean Richard de la Tour, Anne Schneider, Bernard Stamm and Eléonore von Bardeleben v Premier ministre, Ministre des finances et des comptes publics, Ministre de la décentralisation et de la fonction publique

(Case C-466/15)

(2015/C 381/22)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Jean-Michel Adrien, Frédéric Baron, Catherine Blanchin, Marc Bouillaguet, Anne-Sophie Chalhoub, Denis d'Ersu, Laurent Gravière, Vincent Cador, Roland Moustache, Jean Richard de la Tour, Anne Schneider, Bernard Stamm and Eléonore von Bardeleben

Defendants: Premier ministre, Ministre des finances et des comptes publics, Ministre de la décentralisation et de la fonction publique

Question referred

Is national legislation which permits an official on secondment to an institution of the European Union to choose, for the duration of his secondment, either to suspend his payment of contributions to the pension scheme in his State of origin, in which case his pension under that scheme is fully aggregated with the retirement benefits connected with the secondment, or to continue with the payments, in which case his pension under that scheme is limited to the amount required in order to bring the total amount of the pensions, including the pension acquired under the scheme applicable to the position to which he is seconded, to the amount of the pension he would have acquired if he had not been seconded contrary to the obligations under Article 45 of the Treaty on the Functioning of the European Union, read in the light of Article 48 TFEU, and to the principle of sincere cooperation referred to in Article 4 of the Treaty on the European Union?

Appeal brought on 4 September 2015 by Servizi assicurativi del commercio estero SpA (SACE) and Sace BT SpA against the judgment delivered by the General Court (Seventh Chamber) on 25 June 2015 in Case T-305/13 SACE and Sace BT v Commission

(Case C-472/15 P)

(2015/C 381/23)

Language of the case: Italian

Parties

Appellants: Servizi assicurativi del commercio estero SpA (SACE), Sace BT SpA (represented by: M. Siragusa and G. Rizza, avvocati)

Other parties to the proceedings: European Commission, Italian Republic

Form of order sought

SACE claims that, in granting the present appeal, the Court of Justice should set aside the decision of the General Court as set out in the operative part of the judgment under appeal and, without there being any need to refer the case back to the General Court, grant the forms of order sought by the applicants at first instance and, accordingly:

— Annul in its entirety Decision C (2013) 1501 final of the European Commission of 20 March 2013 on measure SA.23425 implemented by Italy in 2004 and 2009 in favour of SACE BT SpA;

— in the alternative, annul that decision in part, only in so far as concerns the plea/s in law upheld; and

— order the Commission to pay the costs of the proceedings, including the costs of the application for interim measures in Case T-305/13 R.

Pleas in law and main arguments

First ground of appeal, concerning whether the measures at issue may be imputed to the Italian State: breach of Article 107(1) TFEU, as interpreted by the Court in its judgment in '*Stardust Marine*' (Case C-482/99); clear misinterpretation of paragraph 177(b)(i) of the grounds of the contested decision; substantive inaccuracy of the findings of fact, as is apparent from the documents submitted to the General Court, and distortion of the content of the contested decision; illogical reasoning; improper substitution of the grounds of the contested decision; misapplication of the principle that the question whether a decision on State aid is lawful must be assessed in the light of the information available to the Commission at the time it adopted the decision, with regard to the two letters from MEF to SACE SpA produced by the Italian Government as an annex to its statement in intervention.

— The judgment under appeal established the following principle: the fact that the operation at issue might pursue the interests of the public undertaking that coincide with a general-interest objective does not necessarily meant that such an undertaking was able to adopt its decision without taking account of the requirements of the public authorities. According to the General Court, there is nothing to prevent the State from requiring a public undertaking to carry out an operation of a commercial nature which, although it might potentially satisfy the private investor operating in a market economy ('PIME') test, will in any event remain imputable to the State. Accordingly, the Commission was not requested, for the purpose of satisfying the requirements of imputability, to show that the conduct of the public undertaking would have been different if it had acted autonomously. Adopting that line of reasoning, the General Court departed from the principles laid down in '*Stardust Marine*'. It follows from its ruling that the mere fact that a public undertaking is controlled by the State and is subject to particular rules as to its mode of organisation is, in itself, sufficient for it to be concluded that public authorities are always, and in any event by definition, involved in the adoption of decisions to intervene in favour of the subsidiaries of such an undertaking. In a case such as the present, imputability to the State may be ruled out only where it is proved that the administrative board of the parent company has taken a decision from which it is apparent that it is not possible also to pursue, in parallel, interests of a general nature. In the present case, that decision could have been only the decision to wind up SACE BT, to which the Commission would not, by definition, have objected. Where, on the other hand, the measure adopted by the public undertaking may, in the abstract, also pursues a general-interest objective or has been adopted also taking such an interest into account, it must be assumed that the administrative board so decided because, in adopting such a decision, it could not but take account of the requirements of the public authorities, and it is neither permissible nor possible to adduce evidence to the contrary.

— The general indicators of imputability relied on by the Commission and endorsed by the General Court have no bearing on the degree of autonomy with which the administrative board of SACE SpA managed and manages the undertaking; that applies not only if those indicators are considered individually but also if they are considered as a whole. Those indications serve to prove nothing other than the fact that, in 2009, the Italian State controlled SACE SpA because it owned all the shares in that company. However, the judgment in *Stardust Marine* requires that the indicators used should demonstrate that State involvement is closely connected to the measure in question, having regard to the compass of the measure, its content or the conditions which it contains. The judgment under appeal expressly acknowledges that the indicators of imputability used in the contested decision — all of which, with one exception, relate to SACE's activities in non-market risk insurance, a sector in which SACE BT is not present — relate in fact to the general context in which SACE SpA operates as well as the individual circumstances of the present case and the context in which the contested measures were adopted. Notwithstanding that acknowledgment, the General Court omitted to state that those indicators cannot, by their nature, provide direct justification for the presumption that the State was actually involved in the adoption of the measures in question. In so doing, the General Court shifted the focus of the examination of imputability to the whole network of the relations between the State and undertakings corresponding to the organisational model of undertakings in public ownership — expressly categorised under Italian law as public limited liability companies — and as a result deprived the specific subject-matter, the specific nature and the specific content of the measures in question and the actual reasons for their adoption of any relevance whatsoever. In fact, the indicators used by the Commission indicate that it is highly unlikely that there was any State involvement in the adoption of the disputed measures.

— On the other hand, in examining the requirements of imputability, the General Court failed to have regard to the accepted fact that, by law, the MEF [Ministry of Economy and Finance] does not have powers of management or coordination over the activities of investee companies, as SACE argued in the proceedings, citing the relevant provisions. Moreover, the General Court misapplied the principle that the question whether a decision on State aid is lawful must be assessed in the light of the information available to the Commission at the time it adopted the decision, with regard to the two letters from MEF to SACE SpA produced by the Italian Government as an annex to its statement in intervention. Indeed, those letters simply confirm the principle that the relationship between MEF and SACE SpA is characterised by autonomous management, which the Commission was well aware of, if for no other reason than the fact that this was illustrated on a number of occasions by the Italian Government to the Commission in the course of the detailed investigation procedure under Article 108(2) TFEU. The two documents were therefore put forward simply to confirm what had already argued and do not entail any significant change to the essential elements of the measures under consideration.

Second ground of appeal, relating to the absence of the advantage allegedly conferred on SACE BT by the second contested measure; breach of Article 107(1) TFEU and misapplication of the PIME test; substantive inaccuracy of the findings of fact, as is apparent from the documents submitted to the General Court; distortion of the argument that SACE SpA actually benefited from an implicit 5/12 increase in the rate of commission received by comparison with that paid by SACE BT to private reinsurers; incorrect categorisation of that argument as an inadmissible 'new plea in law'.

— The General Court — demonstrating, as did the Commission before it, the clear limits of its knowledge and understanding of the dynamics of the insurance industry, with particular reference to Excess of Loss (XoL) reinsurance — made serious and manifest errors, making findings of fact the substantive inaccuracy of which is apparent from the documents submitted to it. The reinsurer's exposure to risk in excess of the claim does not increase where the reinsurer's participation in the risk coverage is very high; this is because the higher participation in the XoL treaty is reflected in proportionately higher commission payments received. Moreover, for the reinsurer there is no increase of the risk where the ceding insurer finds itself in financial difficulty since, under a XoL treaty, the main risk of loss for the reinsurer in not connected with the difficulties of the ceding company but rather the risk of insolvency on the part of the purchasers of the insured parties. It should be added that there was absolutely no risk of default on the part of the ceding company SACE BT, even in the event of financial difficulty, given that the payment to the parent company of the commission for subscribing to the reinsurance treaty was in the form of a single advance payment and, if that payment had not been made, there would simply have been no reinsurance coverage. The XoL treaty in question did not relate only to 25 % of the risks reinsured by SACE BT and it is therefore incorrect to claim that a second treaty under which provision was made for a different rate of commission could have been negotiated with SACE SpA in so far as concerns the outstanding balance of the reinsurance coverage, as stated in the judgment under appeal. Lastly, the General Court totally distorted the argument that — as SACE SpA entered into the treaty and therefore had risk reinsurance only from 5 June 2009, even though it received in return a commission calculated on an annual basis — that company actually benefited from an implicit 5/12 increase in the rate of commission received by comparison with the commission paid by SACE BT to private reinsurers in respect of the risk period already elapsed without any claims being made. Given that those circumstances are apparent from the contested decision, the General Court erred in law in stating that they were not brought to the Commission's attention during the administrative procedure. As SACE simply put forward — in the context of its second plea in law in support of its action and by way of amplification — a further argument that the substantive requirement for a finding that there was an advantage was not fulfilled, the General court incorrectly classified the argument in question as an inadmissible new plea in law.

Third ground of appeal, concerning the absence of the advantage allegedly conferred on SACE BT by the third and fourth contested measures; breach of Article 107(1) TFEU and misapplication of the PIME test; improper substitution of the grounds of the contested decision.

— The Administrative Board of SACE SpA operated in exactly the same way as the management of other private operators, which, given the very high level of uncertainty and urgency that prevailed on the market in 2009, gave similar capital injections to companies controlled by them, notwithstanding the absence of any future cash flows forecasts providing evidence in the accounts that such companies were expected to have an adequate level of profitability, at least in the long term. That objective finding, which was apparent from simple observation of the dynamics of the market at that particular moment in time, should have prevailed over any theoretical or speculative consideration on the part of the Commission when applying the PIME test. Moreover, the contested decision does not refer to a single specific case of a private company operating under normal market conditions which, faced with serious difficulties brought about by the crisis, was wound up by its shareholders rather than being recapitalised. It is not evident and, in any event, the General Court did not explain, why SACE was none the less required to assess, ex ante, the future profitability of SACE BT and to provide the Commission with the appropriate preliminary assessment factors, in spite of the fact that it was apparent from market data that private investors had not done so. Lastly, given that the Commission considered in the course of its detailed investigation that it was not required to assess with all due attention the arguments raised by SACE concerning the application of the empirical criterion in connection with the PIME test, the General Court erred in stating that the Commission was entitled to reject those arguments, given the abstract possibility that the capital transactions carried out by private operators might, in turn, considered not to satisfy the PIME test since they entailed elements of aid.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 September 2015 — Autorità Garante della Concorrenza e del Mercato v Albini & Pitigliani SpA

(Case C-483/15)

(2015/C 381/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità Garante della Concorrenza e del Mercato

Defendant: Albini & Pitigliani SpA

Question referred

Does the principle of proportionality, which must guide the process of quantifying fines — as affirmed by Article 49 of the Charter of Fundamental Rights of the European Union — preclude an interpretation of Article 23(2)(a) of Regulation No 1/2003 ([1]), in the version consolidated by the European Commission through the Guidelines on the method of setting fines (2006/C 201/02), and practice, including national practice, according to which the fine to be applied to undertakings which have breached the prohibition of anti-competitive agreements is to be calculated by applying the circumstances to the basic amount resulting from the calculation of the various factors which have to be taken into account under EU law, and in any event before the reduction to 10 % of turnover, with the risk that the application of the extenuating circumstances to the basic amount may prove entirely unsuitable for having the effect of personalising the fine, the circumstances of which, by contrast, are predetermined by the adjustment of the relevant amount according to the characteristics of the specific case?

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

Appeal brought on 14 September 2015 by the European Commission against the judgment of the General Court (Sixth Chamber, Extended Composition) delivered on 2 July 2015 in Joined Cases T-425/04 RENV and T-444/04 RENV France and Orange v Commission

(Case C-486/15 P)

(2015/C 381/25)

Language of the case: French

Parties

Appellant: European Commission (represented by: C. Giolito, B. Stromsky, D. Grespan, and T. Maxian Rusche, members of the Legal Service)

Other parties to the proceedings: French Republic, Orange, formerly France Télécom, Federal Republic of Germany

Form of order sought

The Commission claims that the Court should:

— set aside the judgment of the General Court of the European Union (Sixth Chamber, Extended Composition) of 2 July 2015 in Joined Cases T-425/04 *French Republic* v *Commission* and T-444/04 *France Télécom* v *Commission* in so far as it:

— annulled Article 1 of Commission Decision 2006/621/EC of 2 August 2004 on the State Aid implemented by France for France Télécom ([1]);

— ordered the Commission to bear its own costs and to pay four fifths of the costs incurred by the French Republic and by Orange in Cases T-425/04 and T-444/04;

— give a definitive ruling on the case, dismissing the action brought by the applicants and ordering the applicants to pay the costs in relation to all the proceedings;

— in the alternative, refer the case back to the General Court for reconsideration and reserve the costs.

Pleas in law and main arguments

The Commission puts forward four grounds in support of its appeal.

In the first place, it submits that the statement of reasons for the judgment of the General Court is inadequate and contradictory. The General Court ignored the principles established by the judgment on appeal ([2]) and did not address in sufficient detail the arguments put forward by the Commission after the cases were referred back to the General Court.

In the second place, the Commission alleges that the General Court committed numerous infringements of Article 107(1) TFEU. Those infringements led the General Court to exclude the statements made by the government between July and December 2002 and the 'restoring the confidence of the financial markets' aspect of the announcement of 4 December 2002 from the scope of the analysis of the private investor criterion. First, by attempting to apply the prudent private investor test at a specific moment in time, the General Court disregarded the solution adopted by the Court of Justice, according to which it is necessary to place oneself in the context of the period during which the financial support measures were adopted and to take into account all the relevant information. According to the Commission, the General Court seems to have overlooked the fact that an aid measure may derive from several interlinked interventions which are inseparable from one another. Secondly, the General Court committed several errors of law as regards the link between the concept of advantage and the application of the prudent private investor criterion. In particular, the Commission alleges that the General Court limited the prudent private investor test to a limited part of the period during which the effects of the advantage manifested themselves. Thirdly, the Commission submits that the General Court excluded background factors from the scope of its examination. Fourthly, the General Court unfairly limited the joint examination of several advantages to advantages of a similar nature. Fifthly, the General Court did not apply the criterion established by the Court of Justice for determining whether State measures are indissolubly linked and must be examined together. Sixthly, the Commission contests the General Court's identification of events constituting 'breaks' in the succession of State measures during the months of September to December 2002. According to the Commission, such 'breaks' cannot justify the separate examination of measures prior and subsequent to that date. Lastly, the Commission contests the General Court's reasoning in relation to the reputational risk.

In the third place, the Commission submits that the General Court exceeded the limits of its review of the legality of administrative acts.

Finally, the Commission maintains that the General Court erroneously interpreted and even distorted the Commission's decision.

([1]) OJ 2006, L 257, p. 11.
([2]) Judgment in *Bouygues and Others* v *Commission and Others*, C-399/10 P and C-401/10 P, EU:C:2013:175.

Appeal brought on 23 September 2015 by the Kingdom of Spain against the judgment of the General Court (5th Chamber) delivered on 15 July 2015 in Case T-561/13 Spain v Commission

(Case C-506/15 P)

(2015/C 381/26)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: M. A. Sampol Pucurull, acting as Agent)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims the court should:

— In any event, allow the appeal and annul in part the judgment of the General Court, delivered on 15 July 2015, in Case T-561/13.

— Annul in part the contested decision to the extent that it excludes the expenditure, amounting to EUR 757 968,97, incurred by the Kingdom of Spain in the context of the Indemnizaciones Compensatorias de las Desventajas Naturales (ICDN) (compensatory allowances for natural handicaps; CANH) aid of Galicia's 2007-2013 Rural Development programme in respect of 'natural handicaps (measures 211 and 212)'.

— In any event, order the defendant to pay the costs.

Grounds of Appeal and main arguments

First ground: In the first ground of appeal, the Kingdom of Spain contends that the General Court erred in law in not holding, of its own motion, that there was a substantial procedural defect, in that the European Commission adopted the contested decision outside a reasonable period.

Second ground: In the second ground of appeal, the appellant maintains that the General Court erred in law by infringing Articles 10 and 14 of Commission Regulation (EC) No 1975/2006 ([1]) of 7 December 2006 laying down detailed rules for the implementation of control procedures as well as cross-compliance in respect of rural development support measures and Article 35 of Commission Regulation (EC) No 796/2004 ([2]) of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, by holding that those provisions obliged the Spanish authorities to carry out a census of the animals during the on-the-spot checks.

([1]) OJ L 368, p. 74.
([2]) OJ L 141, p. 18.

Appeal brought on 24 September 2015 by Fapricela — Indústria de Trefilaria, SA against the judgment of the General Court (Sixth Chamber) delivered on 15 July 2015 in Case T-398/10 Fapricela v Commission

(Case C-510/15 P)

(2015/C 381/27)

Language of the case: Portuguese

Parties

Appellant: Fapricela — Indústria de Trefilaria, SA (represented by: T. Caiado Guerreiro and R. Rodrigues Lopes, advogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

(i) adjust the volume of sales taken into account in the calculation of the fine;

(ii) set aside the judgment under appeal, in part, in so far as it relates to:

— the volume of sales to be taken into account;

— the burden of proof relating to the duration of the participation in the cartel;

— the attribution of a greater degree of gravity of the infringement compared with Fundia;

— the allocation of an excessive additional amount;

(iii) and accordingly, adjust the amount of the fine, specifically by:

— adjusting the volume of sales;

— adjusting the duration of the infringement;

— adjusting the reference year for calculating the fine;

— adjusting the degree of gravity of the infringement, by attributing a degree of gravity of 16 % (equal to that attributed to Fundia); and

— adjusting the additional amount;

(iv) order the Commission to pay the costs.

Pleas in law and main arguments

a) The volume of sales, taken into account by the Commission for the purposes of calculating the penalty and upheld by the General Court, is tainted by clear errors which need to be adjusted.

b) The General Court improperly allocated the burden of proof and, in that respect, infringed the principle of the presumption of innocence in the examination of the facts.

c) The General Court did not fulfil its obligation to state reasons and infringed the principle of equal treatment in its calculation of the penalty, resulting in a finding of an excessive degree of gravity of the infringement.

d) The General Court infringed the principle of proportionality in its determination of the additional amount for the purpose of deterrence, which affected, inter alia, the proportionality of the penalty.

GENERAL COURT

Order of the General Court of 16 September 2015 — Calestep v ECHA

(Case T-89/13) ([1])

(REACH — Fee due for registration of a substance — Reduction granted to micro, small and medium-sized enterprises — Error in the declaration of the size of the undertaking — Decision imposing an administrative charge — Recommendation 2003/361/EC — Action manifestly devoid of any basis in law)

(2015/C 381/28)

Language of the case: Spanish

Parties

Applicant: Calestep, SL (Estepa, Spain) (represented by: E. Cabezas Mateos, lawyer)

Defendant: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, A. Iber and C. Schultheiss, acting as Agents, and C. Garcia Molyneux, lawyer)

Re:

Application for annulment of ECHA Decision SME (2012) 4028 of 21 December 2012, finding that the applicant does not satisfy the conditions to benefit from the reduced fees for small enterprises and imposing an administrative charge on it.

Operative part of the order

1. *The action is dismissed.*

2. *Calestep, SL shall bear its own costs and pay the costs incurred by the European Chemicals Agency (ECHA), including those relating to the interim proceedings.*

([1]) OJ C 108, 13.4.2013.

Order of the General Court of 3 September 2015 — Philip Morris Benelux v Commission

(Case T-520/13) ([1])

(Access to documents of the institutions — Regulation (EC) No 1049/2001 — Draft impact assessment report prepared in the context of the proposal for a revision of the directive on tobacco products — Refusal to grant access — Disclosure after commencement of the action — No need to adjudicate)

(2015/C 381/29)

Language of the case: English

Parties

Applicant: Philip Morris Benelux (Antwerp, Belgium) (represented by: K. Nordlander, lawyer, and P. Harrison, Solicitor)

Defendant: European Commission (represented by: J. Baquero Cruz and F. Clotuche-Duvieusart, acting as Agents)

Re:

Action for the annulment of the Commission's decision of 15 July 2013 refusing the request for access to preliminary drafts of the impact assessment report attached to the Commission's proposal for a revised directive on tobacco products.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission shall pay, in addition to its own costs, the costs incurred by Philip Morris Benelux.*

(1) OJ C 344, 23.11.2013.

Order of the General Court of 10 September 2015 — Pannonhalmi Főapátság v Parliament

(Case T-453/14) (1)

(Action for annulment — Petition addressed to the Parliament concerning ownership of Lónyay castle in Rusovce (Slovak Republic) — Petition declared inadmissible — Obligation to state reasons — Action manifestly lacking any foundation in law)

(2015/C 381/30)

Language of the case: Hungarian

Parties

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

Defendant: European Parliament (represented by: A. Pospíšilová Padowska and T. Lukácsi, acting as Agents)

Re:

Application for annulment of the decision of the Petitions Committee of the European Parliament of 16 April 2014 whereby that Committee declared the petition presented by the applicant on 26 June 2013 inadmissible on the ground that it did not fall within the sphere of activity of the European Union.

Operative part of the order

1. *The action is dismissed.*

2. *Magyar Bencés Kongregáció Pannonhalmi Főapátság shall pay the costs.*

3. *There is no need to adjudicate on the applications for leave to intervene by the Slovak Republic and by Hungary.*

(1) OJ C 303, 8.9.2014.

Order of the General Court of 25 September 2015 — Kolarova v REA

(Case T-533/14 P) ([1])

(Appeals — Civil service — Member of the contract staff — REA — Powers conferred on the authority authorised to conclude contracts of employment — Delegation to the Office for the Administration and Payment of Individual Entitlements (PMO) — Appeal directed against the delegating institution — Appeal clearly inadmissible in part and clearly unfounded in part)

(2015/C 381/31)

Language of the case: French

Parties

Appellant: Desislava Kolarova (Brussels, Belgium) (represented by: F. Frabetti, lawyer)

Other party to the proceedings: Research Executive Agency (REA) (represented by: S. Payan-Lagrou, acting as Agent, assisted by B. Wägenbaur, lawyer)

Re:

Appeal brought against the Order of the Civil Service Tribunal of the European Union (Third Chamber) of 30 April 2014 in *Kolarova* v *REA* (Case F-88/13, ECR-SC, EU:F:2014:58), and seeking that that order be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Mrs Desislava Kolarova to bear her own costs and pay those incurred by the Research Executive Agency (REA) on the appeal.*

([1]) OJ C 351, 6.10.2014.

Order of the General Court of 23 September 2015 — Estonia v Commission

(Case T-555/14) ([1])

(Fisheries — Investment for fishing vessels carried out by Estonia — Decision to suspend the interim payments — Withdrawal of the decision — No need to adjudicate)

(2015/C 381/32)

Language of the case: Estonian

Parties

Applicant: Republic of Estonia (represented by: N. Grünberg and K. Kraavi Käerdi, acting as Agents)

Defendant: European Commission (represented by: E. Randvere and K. Walkerová, acting as Agents)

Re:

Application for annulment of Commission Decision C (2014) 3271 final of 14 May 2014 on the suspension of interim payments in favour of Estonia for the period 2007/2013 within the framework of the operational programme of support for Estonia from the European Fisheries Fund.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *The European Commission is ordered to pay the costs.*

(1) OJ C 372, 20.10.2014.

Order of the General Court of 17 July 2015 — EEB v Commission

(Case T-565/14) (1)

(Environment — Regulation (EC) No 1367/2006 — Commission decision concerning the notification by Poland of a transitional national plan as referred to in Article 32 of Directive 2010/75/EU on industrial emissions — Refusal of internal review — Measure of individual scope — Aarhus Convention — Period allowed for commencing proceedings — Lateness — Action in part manifestly inadmissible and in part manifestly devoid of any foundation in law)

(2015/C 381/33)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: S. Podskalská, lawyer)

Defendant: European Commission (represented by: L. Pignataro-Nolin, S. Petrova and G. Wilms, acting as Agents)

Re:

Application, first, for annulment of Commission Decision C(2014) 804 final of 17 February 2014 on the notification by the Republic of Poland of a transitional national plan referred to in Article 32 of Directive 2010/75/EU, on industrial emissions, and, secondly, for annulment of the Commission Decision of 12 June 2014 (Ares (2014) 1915757) declaring inadmissible the applicant's request that the Commission review its decision of 17 February 2014.

Operative part of the order

1. *The action is dismissed.*

2. *There is no need to adjudicate on the applications for leave to intervene of the Council of the European Union, the European Parliament and the Republic of Poland.*

3. *European Environmental Bureau (EEB) shall bear its own costs and pay those incurred by the European Commission.*

4. *EEB, the Commission, the Council, the Parliament and the Republic of Poland shall each bear their own costs relating to the applications to intervene.*

(1) OJ C 395, 10.11.2014.

Order of the General Court of 16 September 2015 — VSM Geneesmiddelen v Commission

(Case T-578/14) (1)

(Action for failure to act and for annulment — Consumer protection — Health claims relating to food — Regulation (EC) No 1924/2006 — Botanical substances — Time-limit for bringing proceedings — No interest in bringing proceedings — Non-actionable measure — Inadmissibility)

(2015/C 381/34)

Language of the case: English

Parties

Applicant: VSM Geneesmiddelen BV (Alkmaar, Netherlands) (represented by: U. Grundmann, lawyer)

Defendant: European Commission (represented initially by J. Enegren and subsequently by M. Wilderspin and S. Grünheid, acting as Agents)

Re:

Application for a declaration that the Commission failed to act in that it unlawfully failed to instruct the European Food Safety Authority (EFSA) to assess health claims relating to botanical substances as a precondition for the adoption of the definitive list of permitted claims in accordance with Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9) and, in the alternative, an application for annulment of the decision purportedly contained in the Commission's letter of 19 June 2014 refusing to instruct the EFSA to assess those claims.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *VSM Geneesmiddelen BV is ordered to pay the costs.*

(1) OJ C 339, 29.9.2014.

Order of the General Court of 14 September 2015 — Slovenia v Commission

(Case T-585/14) ([1])

(Action for annulment — Own resources of the European Union — Financial responsibility of the Member States — Obligation to pay the Commission the amount corresponding to a loss of own resources — Letter from the Commission — Act not open to challenge — Inadmissibility)

(2015/C 381/35)

Language of the case: Slovenian

Parties

Applicant: Republic of Slovenia (represented by: L. Bembič, acting as Agent)

Defendant: European Commission (represented by: P. Ondrůšek, M. Wasmeier and M. Žebre, acting as Agents)

Re:

Application for the annulment of the alleged decision of the Directorate-General for Budget of the European Commission, contained in letter BUDG/B/03MV D (2014) 1782918 of 2 June 2014, in which, the latter found, first, that the Republic of Slovenia was financially responsible for the loss of traditional own resources for the budget of the European Union relating to the issue of a sugar import licence in respect of the calendar year 2011 and, second, that that Member State should make available to the EU budget an amount equivalent to the loss of traditional own resources.

Operative part of the order

1. *The action is dismissed.*

2. *There is no need to rule on the applications for leave to intervene of the Portuguese Republic and the Kingdom of Spain.*

3. *The Republic of Slovenia is ordered to bear its own costs and pay those incurred by the European Commission.*

4. *The Republic of Slovenia, the Commission, the Portuguese Republic and the Kingdom of Spain shall each bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 372, 20.10.2014.

Order of the General Court of 16 September 2015 — Bionorica v Commission

(Case T-619/14) ([1])

(Action for failure to act — Consumer protection — Health claims made on foods — Regulation (EC) No 1924/2006 — Botanical substances — Time-limit for bringing an action — No legal interest in bringing proceedings — Act not amenable to review — Inadmissibility)

(2015/C 381/36)

Language of the case: German

Parties

Applicant: Bionorica SE (Neumark, Germany) (represented by: M. Weidner, N. Hußmann and T. Guttau, lawyers)

Defendant: European Commission (represented by: M. Wilderspin and S. Grünheid, acting as Agents)

Re:

Application seeking a declaration that the Commission failed to act in that it unlawfully refrained from ordering the European Food Safety Authority (EFSA) to evaluate the health claims relating to botanical substances as a condition prior to the adoption of the definitive list of authorised health claims in accordance with Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Bionorica SE shall pay the costs.*

([1]) OJ C 409, 17.11.2014.

Order of the General Court of 16 September 2015 — Diapharm v Commission

(Case T-620/14) ([1])

(Action for failure to act — Consumer protection — Health claims made on foods — Regulation (EC) No 1924/2006 — Botanical substances — Time-limit for bringing an action — No legal interest in bringing proceedings — Act not amenable to review — Inadmissibility)

(2015/C 381/37)

Language of the case: German

Parties

Applicant: Diapharm GmbH & Co. KG (Münster, Germany) (represented by: M. Weidner, N. Hußmann and T. Guttau, lawyers)

Defendant: European Commission (represented by: M. Wilderspin and S. Grünheid, acting as Agents)

Re:

Application seeking a declaration that the Commission failed to act in that it unlawfully refrained from ordering the European Food Safety Authority (EFSA) to evaluate the health claims relating to botanical substances as a condition prior to the adoption of the definitive list of authorised health claims in accordance with Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Diapharm GmbH & Co. KG shall pay the costs.*

([1]) OJ C 409, 17.11.2014.

Order of the General Court of 9 September 2015 — Monster Energy v OHIM (Representation of a peace symbol)

(Case T-633/14) ([1])

(Community trade mark — Period for bringing an action — Point from which time starts to run — Notification of the Board of Appeal's decision by fax machine — Receipt of the fax — Lateness — No force majeure or unforeseeable circumstances — Manifest inadmissibility)

(2015/C 381/38)

Language of the case: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 December 2013 (Case R 1285/2013-1) concerning an application for registration as a Community trade mark of a figurative sign representing a peace symbol.

Operative part of the order

1. *The action is dismissed.*

2. *Monster Energy Company shall pay the costs.*

([1]) OJ C 127, 20.4.2015.

Order of the General Court of 9 September 2015 — Monster Energy v OHIM (GREEN BEANS)

(Case T-666/14) ([1])

(Community trade mark — Period for bringing an action — Point from which time starts to run — Notification of the Board of Appeal's decision by fax machine — Receipt of the fax — Lateness — No force majeure or unforeseeable circumstances — Manifest inadmissibility)

(2015/C 381/39)

Language of the case: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 December 2013 (Case R 1530/2013-1) concerning an application for registration of the word sign GREEN BEANS as a Community trade mark.

Operative part of the order

1. *The action is dismissed.*

2. *Monster Energy Company shall pay the costs.*

([1]) OJ C 127, 20.4.2015.

Order of the General Court of 3 September 2015 — Spain v Commission

(Case T-676/14) ([1])

(Action for annulment — Article 8(3) of Regulation (EU) No 1173/2011 — Effective enforcement of budgetary surveillance in the euro area — Manipulation of statistics — Commission decision to initiate an investigation — Act not amenable to review — Preparatory act — Inadmissibility)

(2015/C 381/40)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González, Abogado del Estado)

Defendant: European Commission (represented by: J.-P. Keppenne, J. Baquero Cruz and M. Clausen, acting as Agents)

Re:

Action for annulment of Commission Decision C(2014) 4856 final of 11 July 2014 on launching of an investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The Kingdom of Spain shall pay the costs.*

([1]) OJ C 388, 3.11.2014.

Order of the General Court of 14 September 2015 — Slovakia v Commission

(Case T-678/14) ([1])

(Action for annulment — Own resources of the European Union — Financial responsibility of the Member States — Obligation to pay the Commission the amount corresponding to a loss of own resources — Letter from the Commission — Act not open to challenge — Inadmissibility)

(2015/C 381/41)

Language of the case: Slovak

Parties

Applicant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Defendant: European Commission (represented by: L. Grønfeldt, A. Tokár and M. Wasmeier, acting as Agents)

Re:

Action for the annulment of the alleged decision of the Directorate-General for Budget of the Commission, contained in letter BUDG/B/03MV D (2014) 2351197 of 15 July 2014, by which the Commission formally demanded the Slovak Republic to make funds available to the Commission for the gross amount of EUR 1 602 457,33 (of which 25 % should be deducted to cover expense incurred in collection) corresponding to a loss of traditional own resources, at the latest by the first working day following the 19th day of the second month after the letter was sent.

Operative part of the order

The Court:

1. *Dismisses the action.*

2. *Holds that there is no need to rule on the applications for leave to intervene of the Federal Republic of Germany and Romania.*

3. *Orders the Slovak Republic to bear its own costs and to pay those incurred by the European Commission.*

4. *Orders the Slovak Republic, the Commission, the Federal Republic of Germany and Romania each to bear their own costs relating to the applications for leave to intervene.*

([1]) OJ C 448, 15.12.2014.

Order of the General Court of 17 July 2015 — EEB v Commission

(Case T-685/14) ([1])

(Environment — Regulation (EC) No 1367/2006 — Commission decision concerning the notification by Bulgaria of a transitional national plan as referred to in Article 32 of Directive 2010/75/EU on industrial emissions — Refusal of internal review — Measure of individual scope — Aarhus Convention — Period allowed for commencing proceedings — Lateness — Action in part manifestly inadmissible and in part manifestly devoid of any foundation in law)

(2015/C 381/42)

Language of the case: English

Parties

Applicant: European Environmental Bureau (EEB) (Brussels, Belgium) (represented by: S. Podskalská, lawyer)

Defendant: European Commission (represented by: L. Pignataro-Nolin, S. Petrova and G. Wilms, acting as Agents)

Re:

Application, first, for annulment of Commission Decision C(2014) 2002 final of 31 March 2014 on the notification by the Republic of Bulgaria of a transitional national plan referred to in Article 32 of Directive 2010/75/EU, on industrial emissions, and, secondly, for annulment of the Commission Decision of 11 July 2014 (Ares (2014) 2317513) declaring inadmissible the applicant's request that the Commission review its decision of 31 March 2014.

Operative part of the order

1. *The action is dismissed.*

2. *There is no need to adjudicate on the applications for leave to intervene of the European Parliament and the Council of the European Union.*

3. *European Environmental Bureau (EEB) shall bear its own costs and pay those incurred by the European Commission.*

4. *EEB, the Commission, the Parliament and the Council shall each bear their own costs relating to the applications to intervene.*

([1]) OJ C 431, 1.12.2014.

Order of the General Court of 14 September 2015 — Slovakia v Commission

(Case T-779/14) ([1])

(Action for annulment — Own resources of the European Union — Financial responsibility of the Member States — Obligation to pay the Commission the amount corresponding to a loss of own resources — Letter from the Commission — Act not open to challenge — Inadmissibility)

(2015/C 381/43)

Language of the case: Slovak

Parties

Applicant: Slovak Republic (represented by: B. Ricziová, acting as Agent)

Defendant: European Commission (represented by: L. Grønfeldt, A. Tokár and M. Wasmeier, acting as Agents)

Re:

Action for the annulment of the alleged decision of the Directorate-General for Budget of the Commission, contained in letter BUDG/B/03MV D (2014) 3139078 of 24 September 2014, by which the Commission formally demanded the Slovak Republic to make funds available to the Commission for the gross amount of EUR 1 453 723,12 (of which 25 % should be deducted to cover expense incurred in collection) corresponding to a loss of traditional own resources, at the latest by the first working day following the 19th day of the second month after the letter was sent.

Operative part of the order

The Court:

1. *Dismisses the action.*

2. *Holds that there is no need to rule on the applications for leave to intervene of the Federal Republic of Germany and Romania.*

3. *Orders the Slovak Republic to bear its own costs and to pay those incurred by the European Commission.*

4. *Orders the Slovak Republic, the Commission, the Federal Republic of Germany and Romania each to bear their own costs relating to the applications for leave to intervene.*

(1) OJ C 89, 16.3.2015.

Order of the General Court of 14 September 2015 — Romania v Commission

(Case T-784/14) (1)

(Action for annulment — European Union's own resources — Financial liability of the Member States — Obligation to pay the Commission the amount corresponding to a loss of own resources — Amount of default interest — Letter from the Commission — Act not subject to appeal — Inadmissible)

(2015/C 381/44)

Language of the case: Romanian

Parties

Applicant: Romania (represented by: R. Radu, I. Hațieganu, and A. Buzoianu, acting as Agents)

Defendant: European Commission (represented by: A. Caeiros and A. Stefanuc, acting as Agents)

Re:

Application for annulment of the decision allegedly made by the Commission's Directorate-General for Budget contained in the letter BUDG/B/03MV D(2014) 3079038 of 19 September 2014, by which the Commission ordered Romania to provide it with the gross amount of EUR 14 883,79 (from which 25 % should be deducted for collection costs corresponding to a loss of traditional own resources, at the latest on the first working day following the nineteenth day of the second month following the dispatch of that letter.

Operative part of the order

1. *The action is dismissed.*

2. *There is no need to adjudicate on the applications for leave to intervene by the Slovak Republic and the Federal Republic of Germany.*

3. *Romania shall bear its own costs and pay those incurred by the Commission.*

4. *Romania, the Commission, the Slovak Republic and the Federal Republic of Germany shall each bear their own costs relating to the applications for leave to intervene.*

(1) OJ C 65, 23.3.2015.

Order of the General Court of 14 September 2015 — Spain v Commission

(Case T-841/14) ([1])

(Action for annulment — Own resources of the European Union — Financial liability of the Member States — Obligation to pay the Commission the amount corresponding to a loss of own resources — Amount of default interest — Letter from the Commission — Act not subject to appeal — Inadmissible)

(2015/C 381/45)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Gavela Llopis, abogado del Estado)

Defendant: Commission (represented by: A. Caeiros and L. Lozano Palacios, acting as Agents)

Re:

Application for annulment of the decision allegedly made by the Commission's Directorate-General for Budget contained in the letter (BUDG/B/03MV D (2014) 3486706 of 21 October 2014, by which the Commission applied Article 11 of amended Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the European Communities' own resources (OJ 2007 L 130, p. 1) and fixed at EUR 3 172 388,46 the amount of default interest to be paid by the Kingdom of Spain, at the latest on the last working day two months following the dispatch of that letter.

Operative part of the order

1. *The action is dismissed.*

2. *The Kingdom of Spain shall bear the costs.*

([1]) OJ C 73, 2.3.2015.

Order of the General Court of 21 September 2015 — De Nicola v EIB

(Case T-848/14 P) ([1])

(Appeal — Civil service — EIB staff — Reports — Promotion — 2006 evaluation and assessment exercises — Psychological harassment — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2015/C 381/46)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: G. Nuvoli and E. Raimond, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 November 2014 in *De Nicola* v *EIB* (F-55/08 RENV, ECR-SC, EU:F:2014:244), and seeking that that judgment be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Mr Carlo De Nicola to bear his own costs and to pay those incurred by the European Investment Bank (EIB) in the present proceedings.*

(1) OJ C 73, 2.3.2015.

Order of the General Court of 21 September 2015 — De Nicola v EIB

(Case T-849/14 P) (1)

(Appeal — Civil service — EIB staff — Annual assessment — Internal rules — Appeals procedure — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2015/C 381/47)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: G. Nuvoli and E. Raimond, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 18 November 2014 in *De Nicola* v *EIB* (F-59/09 RENV, ECR-SC, EU:F:2014:248), and seeking that that judgment be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Mr Carlo De Nicola to bear his own costs and to pay those incurred by the European Investment Bank (EIB) in the present proceedings.*

(1) OJ C 73, 2.3.2015.

Order of the General Court of 21 September 2015 — De Nicola v EIB

(Case T-10/15 P) (1)

(Appeal — Civil service — EIB staff — Psychological harassment — Inquiry procedure — Report of the Committee of Inquiry — Incorrect definition of psychological harassment — Decision of the President of the EIB not to follow up the complaint)

(2015/C 381/48)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Other party to the proceedings: European Investment Bank (EIB) (represented by: G. Nuvoli and E. Raimond, acting as Agents, and by A. Dal Ferro, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 11 November in *De Nicola* v *EIB* (F-52/11, ECR-SC, EU:F:2014:243), and seeking that that judgment be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Mr Carlo De Nicola to bear his own costs and to pay those incurred by the European Investment Bank (EIB) in the present proceedings.*

(1) OJ C 73, 2.3.2015.

Order of the General Court of 9 September 2015 — Alsharghawi v Council

(Case T-66/15) (1)

(Common foreign and security policy — Restrictive measures taken in view of the situation in Libya — Action for failure to act — Council's position — Subject-matter of the action ceasing to exist — No need to adjudicate)

(2015/C 381/49)

Language of the case: French

Parties

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

Defendant: Council of the European Union (represented by: V. Piessevaux and A. Vitro, acting as Agents)

Re:

Declare, on the basis of Article 265 TFEU, that the Council unlawfully refrained from re-examining its decision to include the applicant's name on the list of persons and entities covered by the restrictive measures taken in view of the situation in Libya.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The Council of the European Union shall pay the costs.*

(1) OJ C 146, 4.5.2015.

Order of the President of the General Court of 1 September 2015 — Pari Pharma v EMA

(Case T-235/15 R)

(Application for interim measures — Access to documents — Regulation (EC) No 1049/2001 — Documents held by the EMA concerning information submitted by an undertaking as part of its application for authorisation to place a medicinal product on the market — Decision to grant a third party access to the documents — Application for suspension of operation of a measure — Urgency — Prima facie case — Weighing up of interests)

(2015/C 381/50)

Language of the case: English

Parties

Applicant: Pari Pharma GmbH (Starnberg, Germany) (represented by: M. Epping and W. Rehmann, lawyers)

Defendant: European Medicines Agency (EMA) (represented by: T. Jabłoński, N. Rampal Olmedo, A. Rusanov and S. Marino, acting as Agents)

Intervener in support of the defendant: Novartis Europharm Ltd (Camberley, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Re:

Application, in essence, for the suspension of operation of Decision EMA/271043/2015 of the EMA of 24 April 2015, granting to a third party, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), access to certain documents containing information submitted in the context of an application for marketing authorisation for the medicinal product Vantobra.

Operative part of the order

1. *The operation of Decision EMA/271043/2015 of the European Medicines Agency (EMA) of 24 April 2015 is suspended, in so far as that decision grants a third party access, pursuant to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, to the assessment report (EMA/CHMP/702525/2014) concerning the similarity of Vantobra with Cayston and TOBI Podhaler and the assessment report (EMA/CHMP/778270/2014) concerning the clinical superiority of Vantobra over TOBI Podhaler.*

2. *The EMA is ordered not to disclose the two reports mentioned in point 1.*

3. *Novartis Europharm Ltd's request for access to the full case file is rejected.*

4. *The costs are reserved.*

Order of the President of the General Court of 1 September 2015 — Alcimos Consulting v ECB

(Case T-368/15 R)

(Application for interim measures — Economic and monetary policy — Decisions adopted by the Governing Council of the ECB — Provision of emergency liquidity assistance to Greek banks — Application for suspension of operation of a measure — Breach of procedural requirements — Inadmissibility)

(2015/C 381/51)

Language of the case: English

Parties

Applicant: Alcimos Consulting SMPC (Athens, Greece) (represented by: F. Rodolaki, avocat)

Defendant: European Central Bank (ECB)

Re:

Application for suspension of operation of the decisions of the Governing Council of the European Central Bank of 28 June and 6 July 2015 concerning the level of emergency liquidity assistance provided to Greek banks.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 21 September 2015 — Consorzio Vivaisti viticoli pugliesi and Negro v Commission

(Case T-436/15 R)

(Interim measures — Agriculture — Protective measures against pests of plants — Measures to prevent the introduction into and the spread within the European Union of Xylella fastidiosa — Application for suspension of operation of a measure — Failure to comply with the procedural requirements — Inadmissibility)

(2015/C 381/52)

Language of the case: Italian

Parties

Applicants: Consorzio Vivaisti viticoli pugliesi (Otrante, Italy) and Negro Daniele (Otrante) (represented by: V. Pellegrino and A. Micolani, lawyers)

Defendant: European Commission (represented by: D. Bianchi and I. Galindo Martín, acting as Agents)

Re:

Application to suspend the operation of Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Wells et al.) (OJ 2015 L 125, p. 36) in so far as that decision encompasses grapevine varieties grown in the province of Lecce.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 21 September 2015 — Eden Green Vivai Piante di Verdesca Giuseppe and Others v Commission

(Case T-437/15 R)

(Interim measures — Agriculture — Protective measures against pests of plants — Measures to prevent the introduction into and the spread within the European Union of Xylella fastidiosa — Application for suspension of operation of a measure — Failure to comply with the procedural requirements — Inadmissibility)

(2015/C 381/53)

Language of the case: Italian

Parties

Applicants: Eden Green Vivai Piante di Verdesca Giuseppe and Others (Copertino, Italy) and the other 37 applicants whose names are set out in the annex to the order (represented by: G. Manelli, lawyer)

Defendant: European Commission (represented by: D. Bianchi and I. Galindo Martín, acting as Agents)

Re:

Application to suspend the operation of Commission Implementing Decision (EU) 2015/789 of 18 May 2015 as regards measures to prevent the introduction into and the spread within the Union of Xylella fastidiosa (Wells et al.) (OJ 2015 L 125, p. 36).

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 15 July 2015 — J & Joy v OHIM — Joy-Sportswear (J AND JOY)

(Case T-387/15)

(2015/C 381/54)

Language in which the application was lodged: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua and C. Pirenne, lawyers)

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

Other party to the proceedings before the Board of Appeal: Joy-Sportswear GmbH (Ottensoos, Germany)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'J AND JOY' — Application for registration No 11 409 935

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 April 2015 in Case R 1352/2014-2

Form of order sought

The applicant requests the Office:

— to review the division opposition judgment and declare the opposition inadmissible;

— to order the opponent to bear the costs and applicant's fees in the opposition proceedings on the basis of article 81 CTM Regulation.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 15 July 2015 — J & Joy v OHIM — Joy-Sportswear (JN-JOY)

(Case T-388/15)

(2015/C 381/55)

Language in which the application was lodged: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua and C. Pirenne, lawyers)

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

Other party to the proceedings before the Board of Appeal: Joy-Sportswear GmbH (Ottensoos, Germany)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'JN-JOY' — Application for registration No 11 410 041

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 April 2015 in Case R 1353/2014-2

Form of order sought

The applicant requests the Office:

— to review the division opposition judgment and declare the opposition inadmissible;

— to order the opponent to bear the costs and applicant's fees in the opposition proceedings on the basis of article 81 CTM Regulation.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 15 July 2015 — J & Joy v OHIM — Joy-Sportswear (J&JOY)

(Case T-389/15)

(2015/C 381/56)

Language in which the application was lodged: English

Parties

Applicant: J & Joy SA (Waremme, Belgium) (represented by: A. Maqua and C. Pirenne, lawyers)

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

Other party to the proceedings before the Board of Appeal: Joy-Sportswear GmbH (Ottensoos, Germany)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark containing the word elements 'J&JOY' — Application for registration No 11 411 808

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 April 2015 in Case R 1355/2014-2

Form of order sought

The applicant requests the Office:

— to review the division opposition judgment and declare the opposition inadmissible;

— to order the opponent to bear the costs and applicant's fees in the opposition proceedings on the basis of article 81 CTM Regulation.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 2 September 2015 — Hungary v European Commission

(Case T-505/15)

(2015/C 381/57)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér, G.Koos and A. Pálfy, Agents)

Defendant: European Commission

Form of order sought

— Annul in part Commission Implementing Decision C(2015) 4076 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) insofar as it excludes from European Union financing EUR 6 324 349,33 relating to the cross compliance audit, and

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant disputes the findings of the Commission.

In that regard, the applicant states that the Commission complains that, in accordance with the fundamental principles applicable to the verification of aid, both the sanctions not imposed because of the inadequate or wholly absent verifications of cross compliance (the legal requirements of management and good agricultural and ecological conditions) and the sanctions provided for by the rules but deprived of their deterrent effect because they have not been applied or have been applied incorrectly must be regarded as fundamentally deficient verifications. Further, the Commission complains that, in a case of non-compliance considered to be 'minor' within the meaning of Article 24(2) of Regulation No 73/2009/EC, the Hungarian authorities applied tolerance thresholds on the basis of which no sanctions were imposed but which did not take into account aspects relating to animal and human health, in breach of the provisions of the EU legislation.

Action brought on 7 September 2015 — Diesel v OHIM — Sprinter megacentros del deporte (curved and angled line)

(Case T-521/15)

(2015/C 381/58)

Language in which the application was lodged: English

Parties

Applicant: Diesel SpA (Breganze, Italy) (represented by: A. Gaul, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sprinter megacentros del deporte, SL (Elche, Spain)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Figurative mark (Representation of a curved or angled line) — Application for registration No 11 404 019

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 18 June 2015 in Case R 3291/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law

— Infringement of Article 8(1)(b) Regulation No 207/2009.

Action brought on 8 September 2015 — Bimbo v OHIM — Globo (Bimbo)

(Case T-528/15)

(2015/C 381/59)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Other party to the proceedings before the Board of Appeal: Globo SpA Servizi Commerciali (Illasi, Italy)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community figurative mark containing the word element 'Bimbo' — Application for registration No 10 028 405

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 7 July 2015 in Joined Cases R 2512/2013-4 and R 2549/2013-4

Form of order sought

The applicant claims that the Court should:

— modify the contested decision in accordance with Article 65.3 CTMR, rejecting the CTM Application n° 10 028 405 in class 28;

— subsidiarity and only in the case the above claim would be rejected, annul the contested decision

— order the defendants to pay the costs, as stated in article 134 of the Rules of Procedure of the General Court (former 87.2).

Pleas in law

— Infringement of Rule 19(1) (2) (3) and Rule 20(1) of the Regulation No 2868/95;

— Infringement of Article 64(1) of the Regulation No 207/2009 and related case-law;

— Infringement of Article 43(2) and (3) of the Regulation No 207/2009;

— Infringement of Article 8(1)(b) of the Regulation No 207/2009;

— Infringement of Article 8(5) of the Regulation No 207/2009.

Action brought on 11 September 2015 — Korea National Insurance Corporation Zweigniederlassung Deutschland a.o. v Council and Commission

(Case T-533/15)

(2015/C 381/60)

Language of the case: English

Parties

Applicants: Korea National Insurance Corporation Zweigniederlassung Deutschland (Hamburg, Germany), Kim Il Su (Pyongyang, République de Corée), Kang Song Sam (Hamburg), Choe Chun Sik (Pyongyang), Sin Kyu Nam (Pyongyang), Pak Chun San (Pyongyang), So Tong Myong (Pyongyang) (represented by: M. Lester and S. Midwinter, Barristers, T. Brentnall and A. Stevenson, Solicitors)

Defendants: European Commission and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul the Council Decision (CFSP) 2015/1066 of 2 July 2015 amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 174, p. 25) and Commission Implementing Regulation (EU) 2015/1062 of 2 July 2015 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (OJ L 174, p. 16) in so far as those measures purport to include them in Annex V;

— order the defendants to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendants have failed to give adequate or sufficient reasons for including the applicants.

2. Second plea in law, alleging that the defendants have manifestly erred in considering that any of the criteria for listing in the contested measures were fulfilled in the applicants' case, there is no factual basis for their inclusion.

3. Third plea in law, alleging that the defendants have breached data protection principles.

4. Fourth plea in law, alleging that the defendants have infringed, without justification or proportion, the applicants' fundamental rights, including their right to protection of its property, business and reputation.

Action brought on 17 September 2015 — LLR-G5 v OHIM — Glycan Finance (SILICIUM ORGANIQUE G5 LLR-G5)

(Case T-539/15)

(2015/C 381/61)

Language in which the application was lodged: English

Parties

Applicant: LLR-G5 Ltd (Castlebar, Ireland) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal: Glycan Finance Corp. Ltd (Sheffield, United Kingdom)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark in colour containing the word elements 'SILICIUM ORGANIQUE G5 LLR-G5' — Community trade mark application No 10 424 703

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 11 June 2015 in Case R 291/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision to the extent that it dismissed the applicant's appeal against the decision of the Opposition Division of 27 November 2013 in case B 2 027 053, and to the extent that it granted the other party's appeal against the same decision of the Opposition Division;

— the opposition of the other party to the registration of the applicant's community trade mark application No. 1 042 4703 is dismissed;

— order OHIM and the other party, if it should intervene in these proceedings, to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 17 September 2015 — Industrie Aeronautiche Reggiane v OHIM — Audi (NSU)

(Case T-541/15)

(2015/C 381/62)

Language in which the application was lodged: English

Parties

Applicant: Industrie Aeronautiche Reggiane Srl (Reggio Emilia, Italy) (represented by: M. Gurrado, lawyer)

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

Other party to the proceedings before the Board of Appeal: Audi AG (Ingolstadt, Germany)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: Community word mark 'NSU' — Application for registration No 9 593 492

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 6 July 2015 in Case R 2132/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision and, as a result, the OHIM shall proceed with the registration of the application for CTM;

— order AUDI to bear its own costs and pay those of the Applicant, also for the proceedings before the OHIM Opposition Division and the Board of Appeal.

Pleas in law

— Audi failed to demonstrate genuine use of the earlier mark;

— Existence of a difference between components and finished products;

— Existence of a difference between bicycles and the goods indicated in the request of limitation dated 16 October 2014.

Action brought on 22 September 2015 — Guiral Broto v OHIM — Gastro & Soul (Cafe Del Sol)

(Case T-549/15)

(2015/C 381/63)

Language in which the application was lodged: Spanish

Parties

Applicant: Ramón Guiral Broto (Marbella, Spain) (represented by: J. de Castro Hermida, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gastro & Soul GmbH (Hildesheim, Germany)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community figurative mark containing the word elements 'CAFE DEL SOL' — Application for registration No 6 104 608

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 16 July 2015 in Case R 1888/2014-5

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision and allow the opposition based on the earlier mark held by Ramón Guiral Broto, Spanish mark No 2348110, in Class 42 of the International Classification.

— Rule that the opposition is upheld, confirming the decision of the Opposition Division refusing the application for the Community trade mark No 006104608 **CAFE DEL SOL** in respect of 'provision of food and drink, temporary accommodation and catering', in Class 43 of the International Classification, requested by the German commercial company Gastro & Soul GmbH, or if the Court should not have jurisdiction in that respect, to refer the matter back to a Board of Appeal of the Office for Harmonisation in the Internal Market, with the direction to uphold the opposition.

— In respect of the evidence, in addition to the evidence in the administrative proceedings, the documents accompanying the present application be held to have been produced, that is documents numbers 1 to 4, as specified in the list of documents annexed to the application.

Plea in law

The pleas and main arguments are those relied on in Case T-548/15.

Action brought on 25 September 2015 — Federcaccia Toscana and Others v Commission

(Case T-562/15)

(2015/C 381/64)

Language of the case: Italian

Parties

Applicants: Federcaccia Toscana (Florence, Italy), Moreno Periccioli (Volterra, Italy), Arcicaccia Toscana (Florence, Italy), Fabio Lupi (Cascina, Italy), Associazione dei Migratoristi Italiani per la conservazione dell'ambiente naturale (ANUU) — TOSCANA (Cerreto Guidi, Italy), Franco Bindi (Cerreto Guidi, Italy) (represented by: A. Bruni, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare that the European Commission has intentionally or negligently failed to examine the preliminary Key Concepts data acquired from Italy relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares as compared with the same data acquired from France thereby evading moreover the obligation to produce resulting transnational data relating to those three migratory species in geographically and climatically homogenous areas;

— declare that the European Commission has intentionally or negligently failed to update the Italian Key Concepts data relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares, adjusting and aligning them to the French data found to be correct and legitimate, and recognising that the beginning of the pre-mating migration of those three species takes place in the second period of ten days in February also in Italy;

— declare that the European Commission, in the absence of valid and correct conditions, sought the introduction in Italy, and in particular in Tuscany, of unjustified limitations on the hunting of woodcocks, song thrushes and fieldfares as compared to that consented to in France and in particular in Corsica, bringing forward to 20 January in Tuscany the end of the hunt for those three migrating species;

— declare unlawful, on the grounds of unequal treatment between Member States and/or Regions of the Member States and also lack of valid conditions, the procedure EU PILOT 6955/14/ENVI brought by the European Commission exclusively against the Italian State since it did not bring an identical and concurrent action against France and did not carry out any preliminary investigation aimed at acquiring corresponding elements from which it can be concluded that the effective beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares is to be deferred by one month (20 February) in Corsica compared to the beginning of the same pre-mating migration in Tuscany (20 January);

— declare unlawful the European Commission's initial and continued inaction in respect of the applicants' warning letter of 29 May 2015 by which the applicants assert and declare at the same time that the European Commission's response in the letter No ENV.D.2/MC-GM/vf/ARES (2015) 3758354 of 9 September 2015 was elusive;

— direct the European Commission to adjust the Italian Key Concepts data relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares in line with the Key Concepts data from France, thereby recognising that it takes place in the second period of ten days in February;

— in any event, direct the European Commission to adjust the Italian Key Concepts data relating to the beginning of the pre-mating migration in Tuscany of woodcocks, song thrushes and fieldfares in line with the French Key Concepts data relating to Corsica, recognising that it takes place in the second period of ten days in February;

— order the European Commission, in respect of its omissive and inadequate action, to pay compensation for the harm suffered and to be suffered by the applicant hunting associations, also at the Court's discretion, in so far as may be held to be fair.

Pleas in law and main arguments

The present action seeks principally a declaration that the Commission had unlawfully failed to take action following the letter of 29 May 2015 by which the applicant associations put the Commission on notice, requesting it to update the Italian Key Concepts and consequently to amend the date of the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares, recognising that it begins in the second period of ten days in February.

In support of their action, the applicants claim that the Key Concepts data relating to Italy is invalid, unreliable and subjective in so far as it relates to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares which show evident inconsistencies as compared with the data relating to other Member States or Regions of the Member States which are characterised by uniform geographic, environmental and climatic conditions and which have the same catchment and wintering area consisting of the Mediterranean basin.

— The applicants claim that the European Commission breached its obligation to update and adjust periodically the Key Concepts data, and take action to ensure the uniform application of the Treaties throughout all the European Union, without discrimination between Member States.

— Furthermore, the applicants claim that the Commission's wrongful conduct, characterised as omissive and inadequate, is also in breach of Article 17(1) TEU; Articles 192 and 291 TFEU; Articles 7, 10 and 16 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds and recital 4 of the preamble thereto; Paragraph 2.5.13 of the Guide to sustainable hunting under the Birds Directive, Council Directive 79/409/EEC (and Directive 2009/14/EC) on the conservation of wild birds; Regulation (EU) No 182/2011 of the European Parliament and Council of 16 February 2011; Articles 4(2) and 9 of the Charter of Fundamental Rights of the European Union, and Article 18 TFEU.

Action brought on 25 September 2015 — Monster Energy v OHIM — Mad Catz Interactive (Representation of a black square with four white stripes)

(Case T-567/15)

(2015/C 381/65)

Language in which the application was lodged: English

Parties

Applicant: Monster Energy Company (Corona, United States) (represented by: P. Brownlow, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Mad Catz Interactive, Inc. (San Diego, United States)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Figurative mark (representation of a black square with four white stripes) — Application for registration No 11 390 853

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 1 July 2015 in Case R 2368/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Board of Appeal of 4 May 2015 in Case R 2368/2014-5;

— annul the decision of the Opposition Division of 1 July 2015 in opposition No B2182320;

— reject the opposed mark in respect of class 25;

— order OHIM to pay its own costs and those of the opponent.

Pleas in law

— Infringement of Article 8(1)(b) Regulation No 207/2009;

— Infringement of Article 8(5) Regulation No 207/2009.

Action brought on 29 September 2015 — Federcaccia della Regione and Others v Commission

(Case T-570/15)

(2015/C 381/66)

Language of the case: Italian

Parties

Applicants: Federcaccia della Regione Liguria (Genoa, Italy), Matteo Anfossi (Taggia, Italy), Associazione dei Migratoristi Italiani per la conservazione dell'ambiente naturale (ANUU) — LIGURIA (Genoa, Italy), Alessio Piana (Cremolino, Italy), Giovanno Bordo (Bargagli, Italy), Maria Teresa Esposito (Bargagli, Italy), Ezio Giacomo Isola (Davagna, Italy), Luca Fossardi (Recco, Italy), Adriano Zanni (Valbrevenna, Italy), Luigi Marco Tiscornia (Ne, Italy), Andrea Campanile (Cassano Spinola, Italy) (represented by: A. Bruni, A. Mozzati and P. Balletti, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare that the European Commission has intentionally or negligently failed to examine the preliminary Key Concepts data acquired from Italy relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares as compared with the same data acquired from France, thereby evading moreover the obligation to produce resulting transnational data relating to those three migratory species in geographically and climatically homogenous areas;

— declare that the European Commission has intentionally or negligently failed to update the Italian Key Concepts data relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares, adjusting and aligning them to the French data found to be correct and legitimate, and recognising that the beginning of the pre-mating migration of those three species takes place in the second period of ten days in February also in Italy;

— declare that the European Commission, in the absence of valid and correct conditions, sought the introduction in Italy, and in particular in Liguria, of unjustified limitations on the hunting of woodcocks, song thrushes and fieldfares as compared to that consented to in France and in particular in Corsica and the South of France, bringing forward to 20 January in Liguria the end of the hunt for those three migrating species;

— declare unlawful, on the grounds of unequal treatment between Member States and/or Regions of the Member States and also lack of valid conditions, the procedure EU PILOT 6955/14/ENVI brought by the European Commission exclusively against the Italian State since it did not bring an identical and concurrent action against France and did not carry out any preliminary investigation aimed at acquiring congruent elements from which it can concluded that the effective beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares is to be deferred by one month (20 February) in Corsica and the South of France compared to the beginning of the same pre-mating migration in Liguria (20 January);

— declare unlawful the European Commission's initial and continued inaction in respect of the applicants' warning letter of 29 May 2015 by which the applicants assert and declare at the same time that the European Commission's response in the letter No ENV.D.2/MC-GM/vf/ARES (2015) 3758354 of 9 September 2015 was elusive;

— direct the European Commission to adjust the Italian Key Concepts data relating to the beginning of the pre-mating migration of woodcocks, song thrushes and fieldfares in line with the Key Concepts data from France, thereby recognising that it takes place in the second period of ten days in February;

— in any event, direct the European Commission to adjust the Italian Key Concepts data relating to the beginning of the pre-mating migration in Tuscany of woodcocks, song thrushes and fieldfares in line with the French Key Concepts data relating to Corsica, recognising that it takes place in the second period of ten days in February;

— order the European Commission, in respect of its omissive and inadequate action, to pay compensation for the harm suffered and to be suffered by the applicant hunting associations, also at the Court's discretion, in so far as may be held to be fair.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case T-562/15.

Order of the General Court of 28 August 2015 — Bimbo v OHIM — Kimbo (KIMBO)

(Case T-568/13) ([1])

(2015/C 381/67)

Language of the case: English

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

([1]) OJ C 24, 25.1.2014.

Order of the General Court of 28 August 2015 — Bimbo v OHIM — Kimbo (Caffé KIMBO Espresso Napoletano)

(Case T-569/13) ([1])

(2015/C 381/68)

Language of the case: English

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

([1]) OJ C 24, 25.1.2014.

Order of the General Court of 28 August 2015 — Bimbo v OHIM — Kimbo (Caffè KIMBO)

(Case T-637/13) ([1])

(2015/C 381/69)

Language of the case: English

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

([1]) OJ C 52, 22.2.2014.

Order of the General Court of 28 August 2015 — Bimbo v OHIM — Kimbo (Caffè KIMBO GOLD MEDAL)

(Case T-638/13) ([1])

(2015/C 381/70)

Language of the case: English

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

([1]) OJ C 52, 22.2.2014.

Order of the General Court of 22 July 2015 — Swedish Match North Europe v OHIM — Skruf Snus (Oral snuff packages)

(Case T-196/14) ([1])

(2015/C 381/71)

Language of the case: English

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

([1]) C 151, 19.5.2014.

Order of the General Court of 26 August 2015 — Monard v Commission

(Case T-239/14) ([1])

(2015/C 381/72)

Language of the case: English

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

([1]) C 212, 7.7.2014.

Order of the General Court of 8 September 2015 — Chemo Ibérica v OHIM — Novartis (EXELTIS)

(Case T-252/14) ([1])

(2015/C 381/73)

Language of the case: Spanish

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

([1]) OJ C 253, 4.8.2014.

Order of the General Court of 8 September 2015 — Chemo Ibérica v OHIM — Novartis (EXELTIS)

(Case T-253/14) ([1])

(2015/C 381/74)

Language of the case: Spanish

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

([1]) OJ C 253, 4.8.2014.

Order of the General Court of 15 September 2015 — Makhlouf v Council

(Case T-592/14) ([1])

(2015/C 381/75)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Makhlouf v Council

(Case T-594/14) ([1])

(2015/C 381/76)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Othman v Council

(Case T-595/14) ([1])

(2015/C 381/77)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Cham and Bena Properties v Council

(Case T-597/14) ([1])

(2015/C 381/78)

Language of the case: French

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

([1]) OJ C 372, 20.10.2014.

Order of the General Court of 15 September 2015 — Almashreq Investment Fund v Council

(Case T-598/14) ([1])

(2015/C 381/79)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Souruh v Council

(Case T-599/14) ([1])

(2015/C 381/80)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Syriatel Mobile Telecom v Council

(Case T-600/14) ([1])

(2015/C 381/81)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 15 September 2015 — Drex Technologies v Council

(Case T-603/14) ([1])

(2015/C 381/82)

Language of the case: French

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 24 September 2015 — Primo Valore v Commission

(Case T-630/14) ([1])

(2015/C 381/83)

Language of the case: Italian

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

([1]) OJ C 361, 13.10.2014.

Order of the General Court of 2 September 2015 — SEA v Commission

(Case T-674/14) ([1])

(2015/C 381/84)

Language of the case: Italian

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

([1]) OJ C 388, 3.11.2014.

Order of the General Court of 2 September 2015 — Airport Handling v Commission

(Case T-688/14) ([1])

(2015/C 381/85)

Language of the case: Italian

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

([1]) OJ C 388, 3.11.2014.

Order of the General Court of 5 August 2015 — Parker Hannifin Manufacturing and Parker-Hannifin v Commission

(Case T-137/15) ([1])

(2015/C 381/86)

Language of the case: English

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

([1]) C 190, 8.6.2015.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 8 October 2015 — DD v FRA

(Joined Cases F-106/13 and F-25/14) ([1])

(Civil service — FRA staff — Member of the temporary staff — Career development report — Internal appeal — Accusations of discrimination — Accusations of victimisation within the meaning of Directive 2000/43 — Administrative enquiry — Disciplinary proceedings — Disciplinary penalty — Reprimand — Articles 2, 3, and 11 of Annex IX to the Staff Regulations — Termination of a contract of indefinite duration — Article 47(c)(i) of the CEOS — Right to be heard — Article 41(2)(a) of the Charter of Fundamental Rights of the European Union)

(2015/C 381/87)

Language of the case: English

Parties

Applicant: DD (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Union Agency for Fundamental Rights (represented by: M. Kjærum, acting as Agent, and P. Jenkinson, lawyer)

Re:

Case F-106/13: Application for annulment of the decision of the Director of the FRA imposing a disciplinary penalty, in the form of a reprimand, on the applicant.

Case F-25/14: Application for annulment of the decision terminating the applicant's contract and of the decision rejecting his complaint and an application for damages in respect of the non-material and material harm allegedly suffered.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 20 February 2013 by which the Director of the European Union Agency for Fundamental Rights imposed a reprimand on DD;*

2. *Annuls the decision of 13 June 2013 by which the Director of the European Union Agency for Fundamental Rights terminated DD's contract of indefinite duration as a member of the temporary staff;*

3. *Dismisses the actions in Joined Cases F-106/13 and F-25/14 as to the remainder;*

4. *Declares that the European Union Agency for Fundamental Rights is to bear its own costs and orders it to bear the costs incurred by DD.*

([1]) OJ C 45, 15.2.2014, p. 46 and OJ 184, 16.6.2014, p. 43.

Judgment of the Civil Service Tribunal (Second Chamber) of 8 October 2015 — FT v ESMA

(Case F-39/14) ([1])

(Civil service — Member of the temporary staff — Accounting Officer — Non-renewal of a fixed term contract — Competent authority — Manifest error of assessment — Burden of proof — Rule of correspondence between the application and the complaint)

(2015/C 381/88)

Language of the case: English

Parties

Applicant: FT (represented by: S. Pappas, lawyer)

Defendant: European Securities and Markets Authority (initially represented by R. Vasileva Hoff, acting as Agent, assisted by D. Waelbroeck and A. Duron, lawyers, and subsequently by R. Vasileva Hoff and A. Lorenzet, acting as Agents, assisted by D. Waelbroeck and A. Duron, lawyers)

Re:

Application for annulment of the decision not to renew the applicant's contract and for the award of damages in respect of the material loss allegedly suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that FT shall bear her own costs and orders her to pay the costs incurred by the European Securities and Markets Authority.*

([1]) OJ C 421, 24.11.2014, p. 58.

Judgment of the Civil Service Tribunal (1st Chamber) of 6 October 2015 — FE v Commission

(Case F-119/14) ([1])

(Civil service — Recruitment — Open competition — Inclusion on the reserve list — Decision of the appointing authority not to recruit a successful candidate — Respective jurisdictions of the selection board and of the appointing authority — Eligibility criteria for the competition — Minimum period of professional experience required — Methods of calculation — Manifest error of assessment by the selection board — None — Loss of an opportunity to be recruited — Compensation)

(2015/C 381/89)

Language of the case: French

Parties

Applicant: FE (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission (represented by: J. Currall and G. Gattinara, Agents)

Re:

Application for annulment of the Commission's decision ending the procedure initiated with a view to appointing the applicant — included on a reserve list for a competition — as an official, after informing him that the DG concerned had given its approval for his engagement, and finally finding that he had insufficient professional experience.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 17 December 2013 by which the European Commission refused to recruit FE;*

2. *Orders the European Commission to pay FE the sum of EUR 10 000;*

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

4. *Declares that the European Commission is to bear its own costs and orders it to pay the costs incurred by FE.*

([1]) OJ C 7, 12.1.2015, p. 56.

Judgment of the Civil Service Tribunal (1st Chamber) of 6 October 2015 — CH v Parliament

(Case F-132/14) ([1])

(Civil service — Accredited parliamentary assistants — Article 266 TFEU — Measures executing an annulling judgment of the Tribunal — Annulment of a dismissal decision — Annulment of a decision rejecting a request for assistance made under Article 24 of the Staff Regulations — Scope of the obligation to provide assistance where there is at least some evidence of harassment — Obligation on the AECE to conduct an administrative inquiry — Option for the official or member of staff to bring proceedings under national law — Advisory Committee dealing with harassment complaints between Accredited Parliamentary Assistants and Members of the European Parliament and its prevention at the workplace — Role and powers — Material and non-material harm)

(2015/C 381/90)

Language of the case: French

Parties

Applicant: CH (represented by: L. Levi, C. Bernard-Glanz and A. Tymen, lawyer)

Defendant: European Parliament (represented by: E. Taneva and M. Dean, Agents)

Re:

Application seeking annulment of the decisions taken by the European Parliament to execute the judgment of the Civil Service Tribunal of 12 December 2013, F-129/12, CH v Parliament, refusing to open an administrative inquiry in relation to the applicant's complaint alleging harassment, seeking that the applicant be paid a supplementary sum of pecuniary compensation and seeking that the applicant be granted all the benefits and incidental benefits linked to the existence of his contract as an accredited parliamentary assistant, the termination of which was annulled by the Tribunal in its judgment mentioned above, and an application seeking damages for the material and non-material harm allegedly suffered.

Operative part of the judgment

The Tribunal:

1. *Annuls the European Parliament's decision of 2 April 2014, as confirmed by the decision of 4 August 2014 rejecting the complaint, in so far as the European Parliament, in breach of Article 266 TFEU, refused to pay CH a supplementary sum of EUR 5 686 by way of execution of the judgment of 12 December 2013 in CH v Parliament (F-129/12, EU:F:2013:203);*

2. *Annuls the European Parliament's decision of 3 March 2014, as confirmed by the decision of 4 August 2014 rejecting the complaint, in so far as, following the annulment by the judgment of 12 December 2013 in CH v Parliament (F-129/12, EU:F:2013:203) of the European Parliament's decision of 15 March 2012 rejecting CH's request for assistance of 22 December 2011, the European Parliament decided not to open an administrative inquiry on the alleged psychological harassment and thus infringed Article 266 TFEU;*

3. *Dismisses the claims for annulment as to the remainder;*

4. *Orders the European Parliament to pay CH the sum of EUR 5 686, together with default interest accruing as of 1 July 2014 (the date when CH's employment was terminated) at the rate fixed by the European Central Bank for its main refinancing operations, increased by two points;*

5. *Orders the European Parliament to pay CH a sum of EUR 25 000 by way of compensation for the non-material harm suffered, together with default interest accruing as of 4 August 2014 at the rate fixed by the European Central Bank for its main refinancing operations, increased by two points;*

6. *Dismisses the claims for damages as to the remainder;*

7. *Declares that the European Parliament is to bear its own costs and orders it to pay the costs incurred by CH.*

([1]) OJ C 34, 2.2.2015, p. 52.

Order of the Civil Service Tribunal of 8 October 2015 — FK v CEPOL

(Case F-41/15) ([1])

(2015/C 381/91)

Language of the case: English

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

([1]) OJ C 178, 1.6.2015, p. 28.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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