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Decision of the Court of Justice of the European Union

of 10 June 2014

concerning the deposit of the historical archives of the Court of Justice of the European Union at the Historical Archives of the European Union (European University Institute)

(2015/C 406/02)

THE COURT OF JUSTICE OF THE EUROPEAN UNION,

Having regard to the Protocol on the Statute of the Court of Justice of the European Union ('the Protocol') and, in particular, Articles 35 and 53 thereof and Article 7(1) of Annex I thereto;

Having regard to Article 20(3) of the Rules of Procedure of the Court of Justice, Article 26 of the Rules of Procedure of the General Court and Article 19(2) of the Rules of Procedure of the Civil Service Tribunal;

Having regard to Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community [1], as amended by Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 [2];

Having regard to the Agreement between the European Communities and the European University Institute (EUI) dated 17 December 1984 concerning the contract for the deposit at the EUI of the historical archives of the Communities and their opening to the public by the EUI, and in particular Article 3 thereof;

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [3];

Having regard to the decision of the Administrative Committee of 29 April 2013 on the composition of the catalogue of the historical archives;

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

Purpose

1. This Decision lays down the internal rules concerning the deposit of the historical archives of the Court of Justice of the European Union at the Historical Archives of the European Union (European University Institute).

2. This Decision shall be supplemented by regulations of the Court of Justice, the General Court and the Civil Service Tribunal concerning the detailed rules on the custody and the opening to the public of documents held by those courts in connection with their judicial role and by the decision of the Registrar of the Court of Justice of the European Union concerning the detailed rules on the custody and the opening to the public of documents held by the Court of Justice of the European Union in the exercise of its administrative functions.

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[1] OJ L 43, 15.2.1983, p. 1.
[2] OJ L 243, 27.9.2003, p. 1.
[3] OJ L 8, 12.1.2001, p. 1.

Article 2

Scope

1. This Decision shall apply to the historical archives of the Court of Justice of the European Union resulting from the activities of the courts and the services constituting the institution.

2. Historical archives of the Court of Justice of the European Union shall be defined as all originals or equivalent documents listed in the catalogue for more than 30 years, in accordance with the classification plan adopted by the Administrative Committee. So far as concerns documents relating to judicial proceedings, the 30-year period shall be calculated as from the date on which the relevant proceedings were closed.

3. The classification plan of the catalogue of the historical archives of the Court of Justice of the European Union shall be amended on the basis of the decisions taken by the Administrative Committee.

Article 3

Deposit of the historical archives

1. The Court of Justice of the European Union shall deposit its historical archives at the EUI under the conditions laid down in this Decision and in an agreement concluded with the EUI for that purpose.

2. Liability and the financial conditions governing the deposit, digitalisation, transport costs and transfer costs of the historical archives of the Court of Justice of the European Union at the EUI shall be defined in the agreement made between the Court of Justice of the European Union and the EUI.

3. Paragraph 1 shall not prevent the Court of Justice of the European Union from excluding, for legal reasons or for requirements related to proper functioning, certain originals or equivalent documents from the deposit.

Article 4

Detailed rules on the opening to the public of the historical archives

1. Before giving access to a deposited document, the EUI shall seek the authorisation of the Court of Justice of the European Union. That request shall be examined by the Court of Justice of the European Union, in particular in the light of the exceptions under Articles 35 and 53 of the Statute of the Court of Justice of the European Union and Article 7(1) of Annex I thereto and Article 2 of Regulation (EEC, Euratom) No 354/83, as amended. The documents may be made available by category in so far as it is determined by the Court of Justice of the European Union that none of those exceptions is applicable.

2. The requests concerning documents relating to judicial proceedings shall be examined by the court concerned which shall check, in accordance with the detailed rules adopted by that court, that none of the exceptions arising from Article 2 of Regulation (EEC, Euratom) No 354/83 precludes access being given. Under no circumstances shall access be given to documents relating to the secrecy of the deliberations.

3. The EUI shall make available to the public, in the form of copies unless the user shows a special and duly substantiated interest in obtaining access to the original in accordance with Article 1(5) of Regulation (EEC, Euratom) No 354/83, the historical archives of the Court of Justice of the European Union which are deposited with it, subject to the application of paragraphs 1 and 2 of this Article.

4. The detailed rules on the opening of the historical archives transferred by the Court of Justice of the European Union to the EUI shall be available on the website of each of the two institutions by means of the presentation of the catalogue and the access conditions.

Done at Luxembourg, 10 June 2014.

Registrar

A. CALOT ESCOBAR

President

V. SKOURIS

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 15 October 2015 — European Commission v Federal Republic of Germany

(Case C-137/14) ([1])

(Failure of a Member State to fulfil obligations — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Article 11 — Directive 2010/75/EU — Industrial emissions (integrated pollution prevention and control) — Article 25 — Access to justice — Non-compliant national procedural rules)

(2015/C 406/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: C. Hermes and G.Wilms, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents)

Intervener in support of the defendant: Republic of Austria (represented by: C. Pesendorfer, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by restricting:*

— *under Paragraph 46 of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz), the annulment of decisions on the ground of procedural defect to where there has been no environmental impact assessment or pre-assessment and to cases where the applicant establishes that there is a causal link between the procedural defect and the outcome of the decision;*

— *in accordance with Paragraph 2(3) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, the standing to bring proceedings and the scope of the review by the courts to the objections which have already been raised within the time-limit set during the administrative procedure which led to the adoption of the decision;*

— *under Paragraph 5(1) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, in procedures initiated after 25 June 2005 and closed before 12 May 2011, the standing to bring proceedings of environmental associations to the legal provisions which confer individual public-law rights;*

— *in accordance with Paragraph 2(1), read in conjunction with Paragraph 5(4) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, in procedures which were initiated after 25 June 2005 and closed before 12 May 2011, the scope of the review by the courts of actions brought by environmental associations to the legal provisions which confer individual public-law rights, and*

— *by excluding, in accordance with Paragraph 5(1) and (4) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, from the scope of the national legislation administrative procedures initiated before 25 June 2005,*

the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);

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

3. *Orders the European Commission, the Federal Republic of Germany and the Republic of Austria to bear their own costs.*

([1]) OJ C 159, 26.5.2014.

Judgment of the Court (Fourth Chamber) of 15 October 2015 — European Commission v Hellenic Republic

(Case C-167/14) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Article 260(2) TFEU — Financial penalties — Lump sum payment and penalty payment)

(2015/C 406/04)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos and E. Manhaeve, acting as Agents)

Defendant: Hellenic Republic (represented by: E. Skandalou, acting as Agent)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take all the necessary measures to comply with the judgment in Commission v Greece (C-440/06, EU:C:2007:642), the Hellenic Republic has failed to fulfil its obligations under Article 260(1) TFEU;*

2. *If the failure to fulfil obligations found in point 1 has continued until the day of delivery of the present judgment, orders the Hellenic Republic to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 3 640 000 for each six-month period of delay in implementing the measures necessary to comply with the judgment in Commission v Greece (C-440/06, EU:C:2007:642), from the date of delivery of the present judgment until the judgment in Commission v Greece (C-440/06, EU:C:2007:642) has been complied with in full, the actual amount of which must be calculated at the end of each six-month period by reducing the total amount relating to each of those periods by a percentage corresponding to the proportion that the number of population equivalents of the agglomerations whose urban waste water treatment and collection systems have been rendered compliant with the judgment in Commission v Greece (C-440/06, EU:C:2007:642) at the end of the period in question bears to the number of population equivalents of the agglomerations not having such systems on the day of delivery of the present judgment;*

3. *Orders the Hellenic Republic to pay to the European Commission, into the 'European Union own resources' account, a lump sum of EUR 10 million;*

4. *Orders the Hellenic Republic to pay the costs.*

([1]) OJ C 261, 11.8.2014.

Judgment of the Court (Second Chamber) of 15 October 2015 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Grupo Itevelesa SL, Applus Iteuve Technology, Certio ITV SL, Asistencia Técnica Industrial SAE v OCA Inspección Técnica de Vehículos SA, Generalidad de Cataluña

(Case C-168/14) ([1])

(Reference for a preliminary ruling — Articles 49 TFEU and 51 TFEU — Freedom of establishment — Directive 2006/123/EC — Scope — Services in the internal market — Directive 2009/40/EC — Access to vehicle roadworthiness testing activities — Exercise by a private body — Activities connected with the exercise of official authority — Prior authorisation scheme — Overriding reasons relating to the public interest — Road safety — Territorial distribution — Minimum distance between roadworthiness testing centres — Maximum market share — Justification — Whether appropriate for the purpose of achieving the objective pursued — Coherence — Proportionality)

(2015/C 406/05)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Grupo Itevelesa SL, Applus Iteuve Technology, Certio ITV SL, Asistencia Técnica Industrial SAE

Defendants: OCA Inspección Técnica de Vehículos SA, Generalidad de Cataluña

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 vehicle roadworthiness testing activities are excluded from the scope of application of that directive.*

2. *The first paragraph of Article 51 TFEU must be interpreted as meaning that the activities of vehicle roadworthiness testing centres, such as those covered by the legislation at issue in the main proceedings, are not connected with the exercise of official authority within the meaning of that provision, notwithstanding the fact that the operators of those centres have the power to take vehicles off the road in cases where vehicles display, during the control, safety defects creating an imminent danger.*

3. *Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the authorisation for an undertaking or group of undertakings to open a vehicle roadworthiness testing centre subject to the condition, first, that there is a minimum distance between that centre and centres belonging to that undertaking or group of undertakings which are already authorised and, secondly, that that undertaking or group of undertakings will, if such an authorisation is granted, not hold a market share in excess of 50 %, unless it is established that that condition is genuinely appropriate in order to achieve the objectives of consumer protection and road safety and does not go beyond what is necessary for that purpose, these being matters for the referring court to determine.*

([1]) OJ C 175, 10.6.2014.

Judgment of the Court (First Chamber) of 15 October 2015 (request for a preliminary ruling from the Amtsgericht Laufen — Germany) — Criminal proceedings against Gavril Covaci

(Case C-216/14) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2010/64/EU — Right to interpretation and translation in criminal proceedings — Language of the proceedings — Penalty order imposing a fine — Possibility of lodging an objection in a language other than the language of the proceedings — Directive 2012/13/EU — Right to information in criminal proceedings — Right to be informed of the charge — Service of a penalty order — Procedures — Mandatory appointment by the accused person of person authorised to accept service — Period for lodging an objection running from service on the person authorised to accept service)

(2015/C 406/06)

Language of the case: German

Referring court

Amtsgericht Laufen

Party in the main criminal proceedings

Gavril Covaci

Operative part of the judgment

1. *Articles 1 to 3 of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings must be interpreted as not precluding national legislation such as that at issue in the main proceedings which, in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings, provided that the competent authorities do not consider, in accordance with Article 3(3) of that directive, that, in the light of the proceedings concerned and the circumstances of the case, such an objection constitutes an essential document.*

2. *Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, which, in criminal proceedings, makes it mandatory for an accused person not residing in that Member State to appoint a person authorised to accept service of a penalty order concerning him, provided that that accused person does in fact have the benefit of the whole of the prescribed period for lodging an objection against that order.*

([1]) OJ C 253, 4.8.2014.

Judgment of the Court (First Chamber) of 15 October 2015 (request for a preliminary ruling from the Kecskeméti Közigazgatási és Munkaügyi Bíróság — Hungary) — György Balázs v Nemzeti Adó- és Vámhivatal Dél-alföldi Regionális Vám- és Pénzügyőri Főigazgatósága

(Case C-251/14) ([1])

(Reference for a preliminary ruling — Approximation of laws — Quality of diesel fuels — National technical specification imposing additional quality requirements compared to EU law)

(2015/C 406/07)

Language of the case: Hungarian

Referring court

Kecskeméti Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: György Balázs

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

Operative part of the judgment

1. *Articles 4(1) and 5 of Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as meaning that they do not preclude a Member State from laying down in its national law quality requirements that are additional to the ones contained in that directive for the marketing of diesel fuels, such as that relating to the flash point at issue in the main proceedings, since it does not constitute a technical specification of diesel fuels relating to the protection of health and the environment for the purposes of that directive.*

2. *Article 1(6) and (11) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Council Directive 2006/96/EC of 20 November 2006, must be interpreted as meaning that a Member State is not precluded from making a national standard such as Hungarian standard MSZ EN 590:2009 at issue in the main proceedings mandatory.*

3. *Article 1(6) of Directive 98/34/EC, as amended by Directive 2006/96, must be interpreted as meaning that it does not require a national standard within the meaning of that provision to be made available in the official language of the Member State concerned.*

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Sixth Chamber) of 15 October 2015 — Debonair Trading Internacional Lda v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-270/14 P) (1)

(Appeal — Community trade mark — Regulation No 40/94 — Article 8(1)(b) — Application for Community word mark SÔ:UNIC — Earlier national and Community word marks SO…?, SO…? ONE, SO…? CHIC — Relative grounds for refusal — Likelihood of confusion — Family of marks)

(2015/C 406/08)

Language of the case: English

Parties

Appellant: Debonair Trading Internacional Lda (represented by: T. Alkin, Barrister)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: V. Melgar, acting as Agent)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Debonair Trading Internacional Lda to pay the costs.*

(1) OJ C 303, 8.9.2014.

Judgment of the Court (Second Chamber) of 15 October 2015 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Direktor na Agentsia 'Mitnitsi' v Biovet AD

(Case C-306/14) (1)

(Reference for a preliminary ruling — Directive 92/83/EEC — Harmonisation of the structures of excise duties on alcohol and alcoholic beverages — Article 27(1)(d) — Exemption from the harmonised excise duty — Ethyl alcohol — Use for cleaning and disinfection of equipment and facilities used for the production of medicines)

(2015/C 406/09)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicant: Direktor na Agentsia 'Mitnitsi'

Defendant: Biovet AD

Operative part of the judgment

Article 27(1)(d) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that the obligation to exempt laid down in that provision applies to ethyl alcohol used by an undertaking for cleaning or disinfecting equipment and facilities used in the production of medicines.

([1]) OJ C 303, 8.9.2014.

Judgment of the Court (Sixth Chamber) of 15 October 2015 (request for a preliminary ruling from the Helsingin hovioikeus — Finland) — Nike European Operations Netherlands BV v Sportland Oy, in liquidation

(Case C-310/14) ([1])

(Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Articles 4 and 13 — Insolvency proceedings — Detrimental legal acts — Action for restitution of payments made before the date on which insolvency proceedings were opened — Law of the Member State in which insolvency proceedings were opened — Law of the Member State governing the legal act at issue — Law not allowing 'any means of challenging that act in the relevant case' — Burden of proof)

(2015/C 406/10)

Language of the case: Finnish

Referring court

Helsingin hovioikeus

Parties to the main proceedings

Applicant: Nike European Operations Netherlands BV

Defendant: Sportland Oy, in liquidation

Operative part of the judgment

1. *Article 13 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that, after taking account of all the circumstances of the case, the article applies provided that the act at issue cannot be challenged on the basis of the law governing that act (lex causae).*

2. *For the purposes of the application of Article 13 of Regulation No 1346/2000 and in the event that the defendant in an action relating to the voidness, voidability or unenforceability of an act relies on a provision of the law governing that act (lex causae) under which that act can be challenged only in the circumstances provided for in that provision, it is for the defendant to plead that those circumstances do not exist and to bear the burden of proof in that regard.*

3. *Article 13 of Regulation No 1346/2000 must be interpreted as meaning that the expression 'does not allow any means of challenging that act …' applies, in addition to the insolvency rules of the law governing that act (lex causae), to the general provisions and principles of that law, taken as a whole.*

4. *Article 13 of Regulation No 1346/2000 must be interpreted as meaning that the defendant in an action relating to the voidness, voidability or unenforceability of an act must show that the law governing that act (lex causae), taken as a whole, does not allow for that act to be challenged. The national court before which such an action is brought may rule that it is for the applicant to establish the existence of a provision or principle of the lex causae on the basis of which that act can be challenged only where that court considers that the defendant has first proven, in accordance with the rules generally applicable under its national rules of procedure, that the act at issue cannot be challenged on the basis of the lex causae.*

([1]) OJ C 292, 1.9.2014.

Judgment of the Court (Sixth Chamber) of 15 October 2015 (requests for a preliminary ruling from the Juzgado de lo Social No 2 de Terrassa — Spain) — Juan Miguel Iglesias Gutiérrez (C-352/14), Elisabet Rion Bea (C-353/14) v Bankia SA, Sección Sindical UGT, Sección Sindical CCOO, Sección Sindical ACCAM, Sección Sindical CSICA, Sección Sindical SATE, Fondo de Garantía Salarial

(Joined Cases C-352/14 and C-353/14) ([1])

(Reference for a preliminary ruling — Articles 107 TFEU and 108 TFEU — Financial crisis — Aid to the financial sector — Compatibility of aid with the internal market — Decision of the European Commission — Financial entity undergoing restructuring — Dismissal of an employee — National rules concerning the levels of redundancy payments)

(2015/C 406/11)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 2 de Terrassa

Parties to the main proceedings

Applicants: Juan Miguel Iglesias Gutiérrez (C-352/14), Elisabet Rion Bea (C-353/14)

Defendants: Bankia SA, Sección Sindical UGT, Sección Sindical CCOO, Sección Sindical ACCAM, Sección Sindical CSICA, Sección Sindical SATE, Fondo de Garantía Salarial

Operative part of the judgment

Commission Decision C(2012) 8764 final of 28 November 2012 concerning the aid granted by the Spanish authorities for the restructuring and recapitalisation of the BFA Group, and Articles 107 TFEU and 108 TFEU, which form the basis for that decision, do not preclude the application, in proceedings relating to a collective redundancy that is within the scope of that decision, of national legislation under which the compensation payable to an employee whose dismissal is held to be unfair is set at an amount higher than the legal minimum.

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Fifth Chamber) of 15 October 2015 (request for a preliminary ruling from the Tribunal de première instance de Bruxelles — Belgium) — European Union v Axa Belgium SA

(Case C-494/14) ([1])

(Reference for a preliminary ruling — Officials — Staff Regulations — Articles 73, 78 and 85a — Traffic accident — National law establishing strict liability — Subrogation of the European Union — Concept of a 'third party' — Autonomous concept of EU law — Concept covering any person required, under national law, to pay compensation for the damage suffered by the victim or those entitled under him — Benefits not definitively payable by the European Union)

(2015/C 406/12)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: European Union

Defendant: Axa Belgium SA

Operative part of the judgment

1. *The concept of 'the third party' ('le tiers responsable') referred to in Article 85a(1) of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, as amended by Council Regulation (EC, ECSC, Euratom) No 781/98 of 7 April 1998, must be given an autonomous and uniform interpretation within the EU legal order.*

2. *The concept of 'the third party' ('le tiers responsable'), referred to in Article 85a(1) of the Staff Regulations of Officials of the European Communities laid down by Regulation No 259/68, as amended by Regulation No 781/98, covers any person, including insurers, required under national law to pay compensation for the damage suffered by the victim or those entitled under him.*

3. *The Staff Regulations of Officials of the European Communities laid down by Regulation No 259/68, as amended by Regulation No 781/98, may not be interpreted as meaning that, in the context of a direct action under Article 85a(4) of those regulations, the benefits that the European Union is required to provide under, first, Article 73 of those regulations, covering risks of sickness and accident, and, secondly, Article 78 of the regulations, in respect of the payment of an invalidity pension, must definitively remain its own responsibility.*

([1]) OJ C 34, 2.2.2015.

Appeal brought on 19 January 2015 by Mr Eugen Popp and Mr Stefan M. Zech against the judgment of the General Court (Fifth Chamber) of 6 November 2014 in Case T-463/12 *Eugen Popp and Stefan M. Zech* v *Office for Harmonisation in the Internal Market (Trade Marks and Designs)*

(Case C-17/15 P)

(2015/C 406/13)

Language of the case: German

Parties

Appellants: Eugen Popp and Stefan M. Zech (represented by: A. Kockläuner and O. Nilgen, Rechtsanwälte)

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

The Court of Justice of the European Union (Sixth Chamber) dismissed the appeal in a judgment of 26 October 2015 and ordered the appellants to bear their own costs.

Appeal brought on 23 July 2015 by Vichy Catalán, S.A. against the order of the General Court (Third Chamber) delivered on 25 June 2015 in Case T-302/15 Vichy Catalán v OHIM — Hijos de Rivera (Fuente Estrella)

(Case C-399/15 P)

(2015/C 406/14)

Language of the case: Spanish

Parties

Appellant: Vichy Catalán, S.A. (represented by: R. Bercovitz Álvarez, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Hijos de Rivera (Fuente Estrella)

Form of order sought

The appellant claims that the Court should:

— Annul the order under appeal, replacing it with a declaration that the application brought by the appellant in Case T-302/15 before the General Court is admissible.

— Order any parties that may appear to defend order under appeal to pay the costs of the present appeal.

Pleas in law and main arguments

The order of the General Court (Third Chamber) in which the application was dismissed as inadmissible is unlawful for the following reasons:

1. Infringement of Article 45 of the Statute of the Court of Justice of the European Union (no statute-barring when the existence of unforeseeable circumstances, or of *force majeure,* is proved), in two respects;

a. the order was made without giving sufficient time for the appellant to prove the existence of unforeseeable circumstances or *force majeure* that delayed the sending of the hard copy of the application. That has deprived the appellant of the right to a fair hearing; and

b. there were unforeseeable circumstances in the present case.

2. Incorrect interpretation of Article 43(6) of the Rules of Procedure.

3. Retroactive application, to the detriment of the appellant, of new provisions of the Rules of Procedure, which came into force on 1 July 2015, to situations which had to be subject to the previous Rules of Procedure.

Appeal brought on 3 September 2015 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 24 June 2015 in Case T-527/13 Italy v Commission

(Case C-467/15 P)

(2015/C 406/15)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and P. Němečková, Agents)

Other party to the proceedings: Italian Republic

Form of order sought

The Commission claims that the Court of Justice should:

— set aside the judgment of the General Court (Third Chamber) of 24 June 2015, of which the Commission was notified on the same day, in Case T-527/13 *Italian Republic* v *Commission*;

— dismiss the action brought at first instance and order the Italian Republic to pay the costs of both sets of proceedings.

Pleas in law and main arguments

1. The General Court unlawfully reinterpreted and reclassified the second plea in law relied on at first instance. In doing so, the General Court infringed the principle that the action is confined to the subject-matter as delimited in the application and the rule prohibiting the Court from raising of its own motion a plea relating to the substantive legality of the decision which the applicant did not raise in good time in the application.

2. The General Court infringed Article 108 TFEU and Article 1 of Council Regulation (EC) No 659/1999, ([1]) in relation to the concepts of new and existing aid. In particular, it erred in considering that aid may be considered to be existing aid even though a condition laid down by the decision declaring that aid compatible was infringed. Accordingly, the General Court ignored the settled case-law to the effect that mere failure to comply with such conditions is sufficient for it to be found that there is new aid and, in the absence of new facts enabling a different assessment to be made, justifies a new decision declaring the aid incompatible.

Furthermore, after correctly rejecting the claims concerning an alleged failure to give reasons, the General Court contradicted that assessment by criticising the Commission for failing to demonstrate that the breach of the condition altered the substance of the scheme adopted by the Council and, on that basis, erred in considering that it could partially annul the decision on the ground of an error of law.

The General Court failed to take due account of the institutional balance between the Council and the Commission provided for in Article 108 TFEU. When the Council, acting unanimously, uses its authority to declare aid, exceptionally, to be compatible with the internal market but makes the declaration of compatibility subject to compliance with certain conditions, the Commission may not decide whether those conditions are in fact essential or whether their infringement may be overlooked.

3. The General Court infringed Article 108 TFEU and Articles 4, 6, 7, 14 and 16 of Regulation No 659/1999 concerning the procedures applicable to new aid and misused aid.

Having acknowledged that failure, by a Member State, to comply with the conditions imposed when the aid was approved constitutes a form of misuse of that aid, the General Court dismissed the relevance of the provisions concerning the procedure for examining misused aid on the basis that the Commission did not base its decision on those provisions and on the basis of the view that the concepts of new and misused aid are mutually exclusive. However, the provisions relating to misused aid and those relating to new aid are identical, in so far as they are relevant to the present case. The General Court therefore erred in law by partially annulling the decision on the ground of an error in the classification of the aid, which was of no legal consequence.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Bezirksgericht Linz (Austria) lodged on 7 September 2015 — Peter Schotthöfer & Florian Steiner GbR v Eugen Adelsmayr

(Case C-473/15)

(2015/C 406/16)

Language of the case: German

Referring court

Bezirksgericht Linz

Parties to the main proceedings

Applicant: Peter Schotthöfer & Florian Steiner GbR

Defendant: Eugen Adelsmayr

Question referred

1. Is the principle of non-discrimination laid down in Article 18 TFEU to be interpreted as meaning that, where a Member State has laid down a provision in its legal system, such as Article 16(2) of the Basic Law of the Federal Republic of Germany, which prohibits the extradition of German citizens to non-Member States, the prohibition also applies to citizens of other Member States residing in the Member State at issue?

2. Are Articles 19(2) and 47 of the Charter of Fundamental Rights of the European Union to be interpreted as meaning that a Member State of the European Union must reject an application for extradition emanating from a non-Member State concerning an EU citizen residing in that Member State where the criminal proceedings from which the application for extradition arose and the decision rendered in absentia in the non-Member State did not respect the minimum standard of international law and the non-mandatory principles of the public order of the European Union (*ordre public*) or the right to a fair trial?

3. Lastly, is Article 50 of the Charter of Fundamental Rights of the European Union or the principle of *ne bis in idem* secured in the case-law of the Court of Justice to be interpreted as precluding further prosecution by a non-Member State in the case of a first conviction in the non-Member State followed by the discontinuing of proceedings in a Member State of the European Union for lack of real grounds justifying prosecution?

4. In the event that one of the first three questions is answered in the affirmative, is, inter alia, Article 6 of the Charter of Fundamental Rights of the European Union ('Right to liberty') to be interpreted as meaning that an EU citizen may not be held in custody for extradition where a non-Member State makes such an application for extradition?

Appeal brought on 9 September 2015 by Westermann Lernspielverlag GmbH against the judgment of the General Court (Second Chamber) delivered on 15 July 2015 in Case T-333/13: Westermann Lernspielverlag GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-482/15 P)

(2015/C 406/17)

Language of the case: English

Parties

Appellant: Westermann Lernspielverlag GmbH (represented by: A. Nordemann and M. C. Maier, Rechtsanwälten)

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

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court in Case T-333/13 of 15 July 2015,

— remit the case back to the General Court for further consideration,

— order the Defendant to bear the costs,

Alternatively, should the Court come to the conclusion that the judgment of the General Court of 15 July 2015 has become devoid of purpose, due to the fact that the Other Party's mark on which the opposition was based has been revoked in its entirety with effect of 13 June 2013, we kindly request the Court to:

— declare that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

Pleas in law and main arguments

The present Action is based on the following grounds:

1. infringement of the principle of the rights of defense, in particular, of the right to be heard,

2. infringement of the principle of the right to a fair hearing and trial,

3. infringement of Article 69 (c) and (d) of the Rules of Procedure of the General Court,

4. infringement of Article 8(1)(b) CTMR ([1]).

The Applicant is of the opinion that its fundamental right to be heard has not been respected by the General Court as (1) the Registrar of the General Court informed the Applicant on 3 July 2015 that the Applicant's submission — informing the General Court that the trademark forming the basis of the opposition *ex tunc* no longer exists — could not be taken into consideration and (2) as the judgment of the General Court issued on 15 July 2015 did not mention at all the fact that the other party's trade mark on which the opposition was mainly based no longer existed at the time of the judgment.

The Applicant is of the opinion that its fundamental right to a fair trial has been violated by the General Court as (1) the General Court denied the Applicant's request for a stay of the proceedings and consequently ignored the fact, that the request for revocation filed by the Applicant on 13 June 2013, as well as the cancellation request based on absolute ground filed by the Applicant on 5 January 2015 against the other party's trade mark, are legitimate means of defense which impact directly on the outcome of the present proceedings and (2) as the General Court refused to take the Applicant's observations of 12 June 2015 into consideration.

The Applicant is of the opinion that the General Court infringed Article 69 (c) and (d) of the Rules of Procedure of the General Court when it rejected both requests by the Applicant to stay the proceedings without any explanation, although in both cases the Defendant did not have any objections against such a stay of the proceedings and the Applicant provided substantial reasons why a stay of the proceedings appeared necessary.

The Applicant is of the opinion that the General Court infringed Article 8 (1) (b) CTMR as it erred in law and distorted relevant facts of the case since the assessment of likelihood of confusion was based on a mark which was revoked on 22 May 2015, with effect from 13 June 2013; thus before the Applicant filed its action before the General Court on 17 June 2013, and before the General Court issued its decision. Consequently, at the time of the judgment on 15 July 2015, the other party's Community trade mark No. 003915121, word/device:, could neither be taken into consideration nor could any conclusions be based on said mark.

Finally, the Applicant requests the Court, should it conclude that the judgment of the General Court of 15 July 2015 has become devoid of purpose, due to the fact that the other party's mark on which the opposition was based has been revoked in its entirety with effect from 13 June 2013, to declare that the present action has become devoid of purpose and that there is no longer any need to adjudicate on it.

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

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 17 September 2015 — CTL Logistics GmbH v DB Netz AG

(Case C-489/15)

(2015/C 406/18)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: CTL Logistics GmbH

Defendant: DB Netz AG

Questions referred

1. Are the provisions of European law, in particular Article 30(1) (first sentence), (2), (3), (5) (first subparagraph), and (6) of Directive 2001/14/EC, ([1]) to be interpreted as precluding claims for repayment of charges for the use of railway infrastructure agreed or specified in a framework contract between an infrastructure manager and an applicant in so far as such claims are not made in the proceedings envisaged as taking place before the national regulatory body and the corresponding judicial proceedings in which decisions of that regulatory body are reviewed?

2. Are the provisions of European law, in particular Article 30(1) (first sentence), (2), (3), (5) (first subparagraph), and (6) of Directive 2001/14/EC, to be interpreted as precluding claims for repayment of charges for the use of railway infrastructure agreed or specified in a framework contract between an infrastructure manager and an applicant if the disputed charges have not previously been submitted to the national regulatory body for review?

3. Is it compatible with the requirements of EU law, which requires an infrastructure manager to comply with general requirements for setting charges, such as covering costs (Article 6(1) of Directive 2001/14/EC) or taking into account market sustainability criteria (Article 8(1) of Directive 2001/14/EC), for there to be a review in the civil courts of the equitable nature of charges for the use of railway infrastructure on the basis of a national civil law provision which permits the courts to review the fairness of performance unilaterally specified by one of the parties and, where appropriate, to specify performance themselves in the exercise of their own discretion?

4. If question 3 is answered in the affirmative: in exercising its discretion, must the civil court apply the criteria in Directive 2001/14/EC as regards the setting of charges for the use of railway infrastructure, and, if so, which ones?

5. Is the assessment by the civil courts of the fairness of charges on the basis of the national provision referred to in question 3 compatible with European law in so far as the civil courts set charges which depart from the general charging principles and the amounts of the charges of a railway manager, notwithstanding the fact that that railway manager is obliged by EU law to treat all persons entitled to access equally and in a non-discriminatory manner (Article 4(5) of Directive 2001/14/EC)?

6. Is the review by the civil courts of the equitable nature of charges imposed by an infrastructure manager compatible with EU law taking into account the fact that EU law assumes that it is the regulatory body that is competent to determine differences of opinion between an infrastructure manager and a person entitled to access as regards charges for the use of railway infrastructure, or the amount or structure of such charges, which the person entitled to access is or would be obliged to pay (third subparagraph of Article 30(5) of Directive 2001/14/EC), and the fact that the potentially large number of disputes before different civil courts means that the regulatory body would not be able to ensure the uniform application of railway regulatory law (Article 30(3) of Directive 2001/14/EC)?

7. Is it compatible with EU law, in particular Article 4(1) of Directive 2001/14/EC, for national provisions to require that all charges for the use of railway infrastructure imposed by infrastructure managers be calculated solely on the basis of direct costs?

(1) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29).

Appeal brought on 18 September 2015 by Ori Martin SA against the judgment of the General Court (Sixth Chamber) delivered on 15 July 2015 in Joined Cases T-389/10 and T-419/10

(Case C-490/15 P)

(2015/C 406/19)

Language of the case: Italian

Parties

Appellant: Ori Martin SA (represented by: G. Belotti and P. Ziotti, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

(1) primarily: set aside the judgment under appeal in so far as, by that judgment, the General Court of the European Union dismissed its action in Case T-419/10 to the extent that it sought the annulment of the contested decision for unlawfully extending joint liability to the appellant for acts committed by its subsidiary SLM; set aside the judgment for infringement of Article 47 of the Charter of Fundamental Rights [of the European Union] or, alternatively, grant the appellant fair compensation;

(2) in the alternative: amend the judgment under appeal, giving a definitive ruling on the dispute and, exercising its unlimited jurisdiction, reducing the fine imposed on the appellant, taking into account (i) the evidence produced in the proceedings at first instance, (ii) the sanctioning Guidelines in force at the time of the alleged events, and (iii) the shorter period of participation in the cartel which, for SLM/ORI, started at the end of 1999, the only date for which there is consistent evidence available to support allegations of such participation;

in any event: order the European Commission to pay the costs.

Grounds of appeal and main arguments

ORI raises, in essence, [five] grounds of appeal, intended to show that the General Court:

(a) redefined, in a way that was disproportionate and inconsistent with the evidence produced, the fine imposed on the appellant, thereby infringing Article 49(3) of the Charter of Fundamental Rights and the established principles of EU law on the subject of the proportionality of antitrust sanctions as well as the duty to state reasons;

(b) infringed EU law as regards the principle of personal responsibility on which EU competition law is based, through the unwarranted extension of joint liability to the appellant, who played no part whatsoever in the alleged events;

(c) infringed the EU legislation on the subject of the non-retroactivity of unfavourable criminal law, in particular Article 49 (1) of the Charter of Fundamental Rights;

(d) did not fully exercise its power of judicial review, with a manifest misgovernment of the evidence produced and a failure to state reasons;

(e) infringed Article 47 of the Charter of Fundamental Rights, as the case was not dealt with within a reasonable time.

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 21 September 2015 — Agenzia delle Entrate v Marco Identi

(Case C-493/15)

(2015/C 406/20)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Agenzia delle Entrate

Respondent: Marco Identi

Question referred

Must Article 4(3) TEU and Articles 2 and 22 of Sixth Directive 77/388 ([1]) on the harmonisation of the laws of the Member States relating to turnover taxes be interpreted as precluding the application, in relation to value added tax, of a provision of national law which provides for the extinguishment of debts arising from VAT in favour of taxable persons admitted to the bankruptcy discharge procedure governed by Articles 142 and 143 of Royal Decree No 267/1942?

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

Reference for a preliminary ruling from the Tribunale di Frosinone (Italy) lodged on 23 September 2015 — Criminal proceedings against Antonio Paolo Conti

(Case C-504/15)

(2015/C 406/21)

Language of the case: Italian

Referring court

Tribunale di Frosinone

Party/parties to the main proceedings

Antonio Paolo Conti

Question referred

Are Article 49 et seq. and Article 56 et seq. of the Treaty on the Functioning of the European Union, as also expanded upon by the principles laid down in the judgment of the Court of Justice of 16 February 2012 [in Joined Cases C-72/10 and C-77/10] to be interpreted as precluding national legislation which imposes an obligation to transfer, free of charge, the right to use the tangible and intangible assets constituting the network for managing and collecting bets upon cessation of that activity due to the expiry of the relevant licence or as a result of measures disqualifying the licence-holder or withdrawing the licence?

Appeal brought on 23 September 2015 by Siderurgica Latina Martin SpA (SLM) against the judgment of the General Court (Sixth Chamber) delivered on 15 July 2015 in Joined Cases T-389/10 and T-419/10

(Case C-505/15 P)

(2015/C 406/22)

Language of the case: Italian

Parties

Appellant: Siderurgica Latina Martin SpA (SLM) (represented by: G. Belotti and P. Ziotti, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— reduce the fine imposed on SLM on its own account and as a result of its joint liability, primarily taking into account: (i) the evidence produced in the proceedings at first instance; (ii) the sanctioning Guidelines in force at the time of the alleged events; and (iii) the marginal role played by the appellant and the shorter period of its participation in the cartel which, for SLM, started at the end of 1999, the only date for which there is consistent indisputable evidence available to support allegations of such participation;

— grant the appellant fair compensation for the administrative delays which characterised the Commission's management of the leniency application, an issue which was totally neglected by the General Court;

— grant the appellant leniency for its timely admissions;

— grant the appellant fair compensation for the procedural delays;

— in any event: order the European Commission to pay the costs.

Grounds of appeal and main arguments

[SLM] raises, in essence, [six] grounds of appeal, intended to show that the General Court:

— in a way that was inconsistent with the evidence produced, insufficiently redefined the fine for the appellant, thereby infringing Article 49(3) of the Charter of Fundamental Rights [of the European Union] and the established principles of EU law on the subject of the proportionality of antitrust sanctions as well as the duty to state reasons;

— by not applying the sanctioning Guidelines which were in force at the time of the events in question, infringed the EU legislation on the subject of the non-retroactivity of unfavourable criminal law, in particular Article 49(1) of the Charter of Fundamental Rights;

— did not fully exercise its power of judicial review, thereby also infringing Article 48 of the Charter of Fundamental Rights, with a manifest misgovernment of the inconsistent evidence produced, bias, and a failure to state reasons;

— neglected to take a position on the maladministration by the Commission complained of as a result of the delays in its management of the leniency application, to which the Commission failed to respond until six years after its submission;

— dismissed the distinctiveness of the appellant's leniency application, adding to the paradoxical and manifestly unfair finding that only the creators of a cartel could benefit from reduced sanctions for their offers of cooperation, as they have valuable evidence which other undertakings with marginal roles in the cartel cannot have;

— by taking 5 years to reach a decision, infringed Article 47 of the Charter of Fundamental Rights, which guarantees a person's right to have his case dealt with within a reasonable time.

Appeal brought on 24 September 2015 by Akzo Nobel NV, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV against the judgment of the General Court (Fourth Chamber) delivered on 15 July 2015 in Case T-47/10: Akzo Nobel NV, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV, Akcros Chemicals Ltd v European Commission

(Case C-516/15 P)

(2015/C 406/23)

Language of the case: English

Parties

Appellants: Akzo Nobel NV, Akzo Nobel Chemicals GmbH, Akzo Nobel Chemicals BV (represented by: C. Swaak, R. Wesseling, advocaten)

Other parties to the proceedings: European Commission, Akcros Chemicals Ltd

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 15 July 2015 in Case T-47/10 insofar as it holds that the fines originally imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. for their participation in the infringements can still be attributed to Akzo Nobel N.V. after the annulment of those fines by the General Court; and

— annul the 2009 Decision insofar as it establishes the participation of Akzo Nobel Chemicals GmbH and AkzoNobel Chemicals B.V. in the infringements, and in particular Article 1, section 1), (b) and Article 1, section 2) (b); and

— annul the 2009 Decision insofar as it attributes liability and/or a fine to Akzo Nobel N.V. on account of the unlawful conduct of Akzo Nobel Chemicals GmbH and AkzoNobel Chemicals B.V, and in particular Article 1, section 1), (a) for the period from 24 February 1987 to 28 June 1993 and Article 1, section 2) (a) for the period from 11 September 1991 to 28 June 1993 and/or Article 2, sections 6) and 23); or in the alternative

— annul the judgment of the General Court of 15 July 2015 in Case T-47/10 and refer the case back to the General Court for it to make all necessary decisions on the merits; and

— order the Commission to pay the costs of this appeal.

Pleas in law and main arguments

In support of their appeal, the Appellants submit that the General Court made an error of law in the application of rules concerning the liability of parent companies by concluding that the liability for the fines originally imposed on the subsidiaries but annulled by the General Court can still be attributed to Akzo Nobel N.V.

In a situation such as the present case in which the liability of a parent company is purely derivative of that of its subsidiaries, the liability of that parent company cannot exceed the liability for which its subsidiaries are ultimately liable. As a result, the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. should have led to the annulment of the fine imposed on Akzo Nobel N.V.

This is all the more pertinent in the case at hand where the annulment of the fines imposed on Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V. should have also led to the annulment of the entire decision vis-à-vis these two legal entities.

In 2011, following the judgment of the Court of Justice in the ArcelorMittal case, the Commission was confronted with the fact that its power to impose a fine on Elementis and Ciba/BASF was time-barred. The Commission then decided to repeal its entire 2009 decision in as far as addressed to any legal entity of these two groups of companies.

If the Commission were to have taken the same approach concerning Akzo Nobel Chemicals GmbH and Akzo Nobel Chemicals B.V., which were in the same position, the Commission would have repealed its decision finding that these entities participated in the infringement in the first place. If these same situations were to have been treated equally, the question of attribution of liability would have never occurred since there was no need or legal basis for attributing any liability for a fine to Akzo Nobel N.V. in the first place.

Appeal brought on 25 September 2015 by Trafilerie Meridionali SpA against the judgment of the General Court (Sixth Chamber) of 15 July 2015 in Case T-422/10

(Case C-519/15 P)

(2015/C 406/24)

Language of the case: Italian

Parties

Appellant: Trafilerie Meridionali SpA (represented by: P. Ferrari and G.M.T. Lamicela, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment under appeal in so far as it rejects the plea according to which Club Europa cannot be imputed to Trame (even) for the period between 9 October 2000 and 19 September 2002, and also the part of the judgment under appeal concerning the fine imposed on the appellant (paragraphs 3 and 4 of the operative part of the judgment under appeal), and therefore uphold the form of order sought at first instance before the General Court, also in respect of the fine; in the alternative, set aside the judgment under appeal in respect of the above parts and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;

— set aside the judgment under appeal in so far as it rejects the plea according to which Trame should also be granted a fine reduction as a result of an inability to pay pursuant to the principle of equal treatment, and also the part of the judgment under appeal concerning the fine imposed on the appellant (paragraphs 3 and 4 of the operative part of the judgment under appeal), and therefore uphold the form of order sought at first instance before the General Court, also in respect of the fine; in the alternative, set aside the judgment under appeal in respect of the above parts and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;

— set aside the judgment under appeal in the part concerning the calculation of the fine imposed on Trame (paragraph 3 of the operative part of the judgment under appeal), replacing it with its own decision in that respect; in the alternative, set aside the judgment in that part and refer the case back to the General Court for adjudication on the point in the light of such guidance as the Court of Justice may provide;

— set aside the judgment under appeal in so far as it orders Trame to pay its own costs relating to the main proceedings at first instance in Case T-422/10 (paragraph 5 of the operative part of the judgment under appeal), and order the Commission to pay those costs, or at least part thereof;

— order the Commission to pay the costs of the present proceedings;

— declare that the General Court failed in its duty to adjudicate within a reasonable time in the dispute brought before it by the appellant in Case T-422/10, in accordance with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union;

— adopt any other measure that it deems appropriate.

Grounds of appeal and main arguments

1. **First ground of appeal:** the imputation of Club Europa to Trame. Distortion of the evidence. Manifestly unreasonable reading and evaluation of that evidence.

   The General Court erred in law by rejecting the plea that the Club Europa could not be imputed to Trame (even) for the period between 9 October 2000 and 19 September 2002, by reason of a distortion of the evidence, or by reason of a manifestly unreasonable reading and evaluation of it. In the light of this, the judgment under appeal is also vitiated in the part concerning the fine imposed on the appellant.

2. **Second ground of appeal:** the failure to grant Trame a fine reduction as a result of an inability to pay. Failure to state reasons. Breach of Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice. Breach of Article 117 of the Rules of Procedure of the General Court.

   The General Court erred in law by failing to explain adequately, or even by implication, the reasons why it rejected the plea alleging infringement of the principle of equal treatment by the Commission when granting relief stemming from an inability to pay, with the result that the appellant was unable to know the reasons on which the judgment under appeal was based and the Court of Justice also prevented from having sufficient information in order to carry out its review. From another point of view, the General Court failed to take into account factors of crucial importance for the purpose of resolving this point. In the light of this, the judgment under appeal is also vitiated in the part concerning the fine imposed on the appellant.

3. **Third ground of appeal:** the methodology used by the General Court in the redetermination of the fine. Failure to state reasons. Breach of Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice. Breach of Article 117 of the Rules of Procedure of the General Court.

The General Court erred in law by failing to provide an adequate explanation of its methodology in calculating the fine in the context of the redetermination of the penalty to be imposed on Trame and, in particular, of the 'weight' attributed to each of the different factors relevant in that context. That failure makes it impossible, inter alia, to establish whether the General Court, when calculating the fine, acted in accordance with the principle of equal treatment.

4. **Fourth ground of appeal:** concerning the costs relating to the proceedings at first instance before the General Court.

If one or both of the grounds set out in sections A and B of the appeal is upheld, this must also have an impact on the General Court's conclusion in paragraphs 411 and 412 of the judgment under appeal, according to which each party is required to bear its own costs. Accordingly, the judgment must also be set aside in so far as it also requires the appellant to bear its own costs relating to the main proceedings at first instance in Case T-422/10, and the Commission must be ordered to pay those costs, or at least part thereof.

5. **Fifth ground of appeal:** the right to judicial protection within a reasonable time. Breach of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union. Trame claims that the General Court failed to comply with its obligation to adjudicate within a reasonable time in the dispute brought before it by the appellant in Case T-422/10, and that it consequently breached the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union.

Action brought on 29 September 2015 — Kingdom of Spain v Council of the European Union

(Case C-521/15)

(2015/C 406/25)

Language of the case: Spanish

Parties

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

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision (EU) 2015/1289 ([1]) of 13 July 2015 imposing a fine on Spain for the manipulation of deficit data in the Autonomous Community of Valencia, or

— alternatively, reduce the fine by limiting it only to those periods after 13 December 2011, the date on which Regulation 1173/2011 ([2]) entered into force, and

— in any event, order the Council of the European Union to pay the costs.

Pleas in law and main arguments

1. Infringement of Article 8(3) of Regulation 1173/2011 and Article 2(1) and (3) of Decision 2012/678/EU ([3]) and breach of the rights of the defence of the Kingdom of Spain. Prior to opening the file, an investigation was initiated outside of the procedure laid down in Decision 2012/678/EU. Thus, evidence obtained in visits which did not fulfill the requirements of Article 2.3 of that decision was used, to the detriment of the rights of the defence of Spain.

2. Infringement of the right to good administration with respect to the composition of the investigation team. It is not consistent with the requirement of objective impartiality that the same people were mandated to conduct both investigations. The team presented a risk of a confirmatory bias and of a retrospective bias with respect to the assessment of the strong indications that were evaluated prior to the start of the investigation. The investigation team was conditioned in such a way that its impartiality was objectively compromised.

3. Infringement of Article 8(1) of Regulation 1173/2011, since the facts do not constitute a manipulation or misrepresentation of the relevant debt and deficit data attributable to gross negligence or wilfulness of the Member State. First, the facts do not constitute a statistical manipulation or misrepresentation, but rather a mere revision of the data on debt and deficits, explained clearly and adequately. Secondly, the data which are the subject of the alleged manipulation are in no way relevant to the exercise of the regulatory oversight which, under Articles 121 and 126 TFEU, is incumbent on the institutions of the European Union. Finally, it cannot be held that the conduct of Spain amounts to gross negligence since the Spanish authorities themselves detected the error, brought it to the Commission's attention and acted with the utmost diligence and speed.

4. Lack of proportionality of the sanction having regard to the timeframe of reference for the calculation thereof. The period which is the subject of the sanction is limited to the data included in notifications from 2012 onwards, where those notifications relate to events from 11 December 2011 onwards, the date of the entry into force of Regulation 1173/2011. Therefore, the reference amount must be restricted to the data for the invoices entered into the accounts in 2011.

([1]) OJ 2015 L 198, p. 19
([2]) Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ 2011 L 306, p. 1)
([3]) Commission Delegated Decision of 29 June 2012 on investigations and fines related to the manipulation of statistics 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 (OJ 2012 L 306, p. 21)

Appeal brought on 28 September 2015 by the European Commission against the judgment of the General Court (Sixth Chamber) of 15 July 2015 in Joined Cases T-389/10 and T-419/10

(Case C-522/15 P)

(2015/C 406/26)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Rossi, V. Bottka, acting as Agents)

Other parties to the proceedings: Siderurgica Latina Martin SpA (SLM), Ori Martin SA

Form of order sought

The Commission claims that the Court should:

(i) set aside the judgment under appeal in so far as the General Court reduced the basic amount of the fine imposed on SLM, on the grounds that the General Court, in the contested decision, failed to take account of the fact that, for part of the infringement, SLM had not participated in the external aspect of Club Italia;

(ii) set aside the judgment under in so far as the General Court reduced the basic amount of the fine imposed on SLM to EUR 1,956 million and annulled the fine imposed on SLM jointly and severally with Ori Martin;

(iii) exercising its own unlimited jurisdiction, recalculate the amount of the fine to be imposed, in accordance with that requested by the Commission;

(iv) order the applicants at first instance to pay the costs of the proceedings.

Grounds of appeal and main arguments

(i) The General Court fundamentally misread the facts by erroneously considering that the basic amount of the fine imposed by the contested decision against SLM was EUR 19,8 million, instead of EUR 15,965 million as determined by the second corrective decision, EUR 14 million of which was imposed jointly and severally with Ori Martin.

(ii) The General Court erred in law in its application of the rules on joint and several liability for fines and in the calculation of the 10 % ceiling, in so far as it fixed the final amount of the fine for which SLM is liable at EUR 1,956 million by applying the legal limit of 10 % of SLM's worldwide turnover in the reference year mentioned in Article 23(2) of Regulation (EC) No 1/2003. ([1]) In the present case, the General Court ought to have found, in the judgment, that SLM was liable, not only individually for the payment of EUR 1,956 million, but for an additional sum of EUR 13,3 million too, jointly and severally with Ori Martin. The ceilings ought to have been calculated separately for SLM, individually, for the period when it participated in the infringement during which it was not controlled by Ori Martin (the ceiling relating to the SLM's worldwide turnover), and for SLM jointly and severally with Ori Martin, for the period in which that subsidiary was controlled by its parent (the ceiling relating to Ori Martin's worldwide turnover, which in the present case was not reached).

([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 (OJ 2003 L 1, p. 1)

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 7 October 2015 — Gert Folk

(Case C-529/15)

(2015/C 406/27)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Gert Folk

Defendant: Unabhängiger Verwaltungssenat für die Steiermark

Questions referred

1. Does Directive 2004/35/EC ([1]) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 and by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 114), ('the Environmental Liability Directive') apply also to damage which, although it arises after the date specified in Article 19(1) of the Environmental Liability Directive, none the less results from the operation of a facility (a hydroelectric power station) authorised and brought into operation prior to that date and is covered by an authorisation granted under the law governing matters relating to water?

2. Does the Environmental Liability Directive, in particular Articles 12 and 13 thereof, stand in the way of a national provision which precludes persons holding fishing rights from initiating a review procedure within the meaning of Article 13 of the Environmental Liability Directive in relation to environmental damage as defined in Article 2(1)(b) of the Directive?

3. Does the Environmental Liability Directive, in particular Article 2(1)(b) thereof, preclude a national provision which excludes damage that has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question from the notion of 'environmental damage', in the case where that damage is covered by an authorisation granted under a national legislative provision?

4. If Question 3 is answered in the affirmative:

In cases where, in the granting of an authorisation under provisions of national law, no assessment has been made of the criteria laid down by Article 4(7) of Directive 2000/60/EC (or of the national measures implementing it), is, for the purpose of determining whether environmental damage within the meaning of Article 2(1)(b) of the Environmental Liability Directive has arisen, Article 4(7) of Directive 2000/60/EC to be applied directly, and is it necessary to determine whether the criteria laid down by that provision are satisfied?

([1]) OJ 2004 L 143, p. 56, in the version amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC — Statement by the European Parliament, the Council and the Commission (OJ 2006 L 102, p. 15) and by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ 2009 L 140, p. 114).

GENERAL COURT

Judgment of the General Court of 22 October 2015 — Enosi Mastichoparagogon v OHIM — Gaba International (ELMA)

(Case T-309/13) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark ELMA — Earlier Community word mark ELMEX — Refusal to register — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2015/C 406/28)

Language of the case: English

Parties

Applicants: Enosi Mastichoparagogon Chiou (Chios, Greece) (represented by: A.-E. Malami, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Gaba International Holding GmbH (Therwil, Switzerland) (represented by: G. Schindler, M. Zintler and P. Nagel, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 March 2013 (Case R 1539/2012-4) relating to opposition proceedings between Gaba International Holding GmbH and Enosi Mastichoparagogon Chiou.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Enosi Mastichoparagogon Chiou to pay the costs.*

([1]) OJ C 2263, 3.8.2013.

Judgment of the General Court of 21 October 2015 — Petco Animal Supplies Stores v OHIM — Gutiérrez Ariza (PETCO)

(Case T-664/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark PETCO — Earlier Community figurative mark PETCO — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Suspension of the administrative proceedings — Rule 20(7)(c) and Rule 50(1) of Regulation (EC) No 2868/95 — Plea which does not support the form of order sought — Prohibition on ruling ultra petita — Inadmissibility)

(2015/C 406/29)

Language of the case: English

Parties

Applicant: Petco Animal Supplies Stores, Inc. (San Diego, California, United States) (represented by: C. Aikens, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: V. Melgar and Ó. Mondéjar Ortuño, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Domingo Gutiérrez Ariza (Málaga, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 7 October 2013 (Case R 347/2013-4) relating to opposition proceedings between Domingo Gutiérrez Ariza and Petco Animal Supplies Stores, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Petco Animal Supplies Stores, Inc. to pay the costs.*

(1) OJ C 112, 14.4.2014.

Judgment of the General Court of 22 October 2015 — Hewlett Packard Development Company v OHIM (ELITEPAD)

(Case T-470/14) (1)

(Community trade mark — Application for Community word mark ELITEPAD — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2015/C 406/30)

Language of the case: English

Parties

Applicant: Hewlett Packard Development Company LP (Houston, Texas, United States) (represented by: T. Raab and H. Lauf, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 27 March 2014 (Case R 884/2013-2), concerning an application for registration of the word sign ELITEPAD as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hewlett Packard Development Company LP to pay the costs.*

(1) OJ C 292, 1.9.2014.

Judgment of the General Court of 22 October 2015 — Hewlett Packard Development Company v OHIM (ELITEDISPLAY)

(Case T-563/14) (1)

(Community trade mark — Application for Community word mark ELITEDISPLAY — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2015/C 406/31)

Language of the case: English

Parties

Applicant: Hewlett Packard Development Company LP (Houston, Texas, United States) (represented by: T. Raab and H. Lauf, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 May 2014 (Case R 1539/2013-2), concerning an application for registration of the word sign ELITEDISPLAY as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hewlett Packard Development Company LP to pay the costs.*

(1) OJ C 351, 5.10.2014.

Action brought on 13 May 2015 — Vince v OHIM (ELECTRIC HIGHWAY)

(Case T-315/15)

(2015/C 406/32)

Language of the case: English

Parties

Applicant: Dale Vince (Gloucestershire, United Kingdom) (represented by: B. Longstaff, barrister)

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

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'ELECTRIC HIGHWAY' — Application for registration No 010655819

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 3 March 2015 in Case R 1442/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the applicant's application for the mark to proceed in full to registration;

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

Pleas in law

— Incorrect interpretation of the meaning of the mark in relation to Article 7(1)(c) of Regulation No 207/2009;

— Incorrect interpretation of the relevant services in Class 39;

— The meaning of the mark asserted by the Board does not describe the services in any event;

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

Action brought on 11 September 2015 — Huhtamaki and Huhtamaki Flexible Packaging Germany v Commission

(Case T-530/15)

(2015/C 406/33)

Language of the case: English

Parties

Applicant(s): Huhtamaki Oyj (Espoo, Finland) and Huhtamaki Flexible Packaging Germany GmbH & Co.KG (Ronsberg, Germany) (represented by: H. Meyer-Lindemann, C. Graf York von Wartenburg and L. Titze, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Article 1(2) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that Huhtamaki Oyj infringed Article 101 TFEU by participating, for the period indicated at Article 1(2) d) of the Commission Decision, in a single and continuous infringement which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of Spain, from the beginning of the infringement, and Portugal, from 8 June 2000; and

— annul Article 1(3) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that the Applicants infringed Article 101 TFEU and Article 53 EEA by participating, for the periods indicated at Article 1(3) c) of the Commission Decision, in a single and continuous infringement, which consisted of several separate infringements, in the foam and rigid trays for retail food packaging sector and covering the territory of Belgium, Denmark, Finland, Germany, Luxembourg, the Netherlands, Norway, and Sweden; and

— annul Article 1(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it finds that Huhtamaki Oyj infringed Article 101 TFEU by participating, for the periods indicated at Article 1(5) d) of the Commission Decision, in a single and continuous infringement which consisted of several separate infringements, in the foam trays for retail food packaging sector and covering the territory of France; and

— annul Article 2(3) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it imposes fines in the aggregate of EUR 10 806 000on the Applicants; and

— annul Article 2(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — *Retail food packaging*, in so far as it imposes a fine of EUR 4 756 000on Huhtamaki Oyj; and

— in the alternative, substantially reduce the fines imposed on the Applicants; and

— in any case, order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Articles 101 TFEU and 53 EEA as it committed manifest errors in fact and in law, and infringed its duty to state reasons, in finding that the Applicants engaged in activities in relation to foam trays and rigid trays in 'North-West Europe' in the period between 13 June 2002 and 20 June 2006 that can be qualified, when looked at in isolation, respectively, as separate infringements of Articles 101(1) TFEU and 53 EEA.

2. Second plea in law, alleging that the Commission infringed Articles 101 TFEU and 53 EEA, as it committed a manifest error of assessment, and infringed its duty to state reasons, in finding that the Applicants participated in a single and continuous infringement in relation to foam trays and rigid trays in 'North-West Europe' during the period between 13 June 2002 and 20 June 2006.

3. Third plea in law, alleging that the Commission infringed the principles of proportionality and equal treatment, its own Guidelines on the setting of fines, and the duty to state reasons, by failing to consider, when determining the fine(s) to be imposed on the Applicants, individual circumstances which warranted reductions of the fines on the Applicants.

4. Fourth plea in law, alleging that the Commission infringed Article 101 TFEU and 23(2) of Council Regulation (EC) No 1/2003 in finding Huhtamaki Oyj to be jointly and severally liable, as the ultimate group holding company and thus as indirect parent company, for its former indirect subsidiaries' alleged participation (i) in a single and continuous infringement in the foam trays for retail food packaging sector in the territory of France from 3 September 2004 to 24 November 2005, and (ii) in a single and continuous infringement in the foam trays for retail food packaging sector in the territories of Spain and Portugal (together referred to as 'South-West Europe') from 7 December 2000 to 18 January 2005. Huhtamaki Oyj did not exercise decisive influence over Huhtamaki France SA or Huhtamaki Embalagens Portugal SA during the periods in question.

Action brought on 11 September 2015 — Coveris Rigid (Auneau) France v Commission

(Case T-531/15)

(2015/C 406/34)

Language of the case: English

Parties

Applicant: Coveris Rigid (Auneau) France (Auneau, France) (represented by: H. Meyer-Lindemann, C. Graf York von Wartenburg and L. Titze, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — Retail food packaging, in so far as it finds that the Applicant infringed Article 101 TFEU by participating, for the period indicated in Article 1(5)d) of the Commission's Decision, in a single and continuous infringement consisting of several separate infringements in the foam tray for retail food packaging sector and covering the territory of France; and

— annul Article 2(5) of the Commission's Decision C(2015)4336 final of 24 June 2015 in Case AT.39563 — Retail food packaging, in so far as it imposes a fine of EUR 4 756 000 on the Applicant; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erroneously applied the principle of personal responsibility in holding Coveris liable for alleged participation in a single and continuous infringement in the foam tray for retail food packaging sector in France. The exceptional circumstances of the case warranted the application of a holistic view in relation to the two parts of the ONO Packaging management buy-out or, alternatively, the application of the principle of economic continuity in relation to the asset deal part of the transaction. On that basis, Coveris could not be held liable for the alleged infringement.

2. Second plea in law, alleging that the Commission violated the principle of equal treatment by distinguishing between the asset deal portion of the ONO Packaging management buy-out and the share deal portion of the ONO Packaging management buy-out and consequently splitting liability between legal entities (i.e. Coveris and ONO Packaging Portugal SA) belonging to separate undertakings when attributing liability for alleged infringements committed by one and the same undertaking which remained intact following the management buy-out.

Action brought on 19 September 2015 — Hongrie v Commission

(Case T-542/15)

(2015/C 406/35)

Language of the case: English

Parties

Applicant: Hungary (represented by: D. Bonhage and F. Quast, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision C(2015) 4979 final of 14 July 2015 on the suspension of part of the interim payments from the European Regional Development Fund and the Cohesion Fund for expenditure in the programs Transport, Central Hungary, West Pannon, South Great Plain, Central Transdanubia, North Hungary, North Great Plain and South Transdanubia — CCI 2007HU161PO007, CCI 2007HU161PO003, CCI 2007HU161PO004, CCI 2007HU161PO005, CCI 2007HU161PO006, CCI 2007HU161PO009, CCI 2007HU161PO011, CCI 2007HU161PO001;

— order the European Commission to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging non-compliance of the Decision C(2015) 4979 final on suspension of interim payments from the European Regional Development Fund and the Cohesion Fund with Regulation (EC) 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ L 210, p. 25):

   — according to the applicant, the contested decision infringes Article 92 of Regulation (EC) 1083/2006 as the expenditure concerned is not linked to a serious irregularity;

   — the applicant further puts forward that the Hungarian authorities implemented the operational programmes in compliance with EU law. According to the applicant, the beneficiaries procured the works and services for the implementation of the programmes in accordance with the Public Procurement Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ L 134, p. 114);

   — finally, according to the applicant, availability of an asphalt mixing plant in a specified maximum distance to the site at bid submission was a proportionate technical suitability criterion in the procurement of the road construction works.

2. Second plea in law, alleging infringement of the right of defence:

— according to the applicant, the contested decision infringes the right of defence of Hungary, as the Commission did not take into account material matters of law and of fact which Hungary brought to its attention prior to the contested decision;

— furthermore, so the applicant claims, had it not been for this irregularity, the outcome of the procedure had been different and therefore, the infringement of the right of defence has to lead to the annulment of the contested decision.

Action brought on 18 September 2015 — Lysoform Dr. Hans Rosemann e.a. v ECHA

(Case T-543/15)

(2015/C 406/36)

Language of the case: English

Parties

Applicants: Lysoform Dr. Hans Rosemann GmbH (Berlin, Germany), Ecolab Deutschland GmbH (Monheim), Schülke & Mayr GmbH (Norderstedt), Diversey Europe Operations BV (Amsterdam, Netherlands) (represented by: K. Van Maldegem and M. Grunchard, lawyers)

Defendants: European Chemicals Agency (ECHA)

Form of order sought

The applicants claim that the Court should:

— declare the appeal admissible and well-founded;

— annul the decision of the European Chemicals Agency concerning the inclusion of the company Oxea, based in Germany, as active substance supplier on the list provided by Article 95(1) of Regulation (EU) No 528/2012 of the European Parliament and the Council of 22 May 2012 concerning the making available on the market and use of biocidal products;

— order ECHA to pay the costs of these proceedings; and

— in light of the pending appeal before ECHA's Appeal Board, stay proceedings in terms of Article 69, and in particular Article 69(d) of the Court's Rules of Procedure, until such time as ECHA's Appeal Board has decided on the admissibility of the Appeal before it.

Pleas in law and main arguments

The applicants submit that, by allowing a company to be included on list provided by Article 95 of Regulation (EU) No 528/2012 in respect of a given substance, ECHA has failed to apply the law. Its failures in that regard are founded on the three following pleas in law:

1. First plea in law, alleging that ECHA has misapplied the rules regarding the requirement that the company submit a complete dossier under Article 95 of Regulation (EU) No 528/2012.

2. Second plea in law, alleging an infringement of the principle of non-discrimination in that ECHA has treated companies which were in the same situation differently.

3. Third plea in law, alleging an infringement of Articles 62, 63 and 95 of Regulation (EU) No 528/2012 in that contrary to the requirements of this Regulation, ECHA has failed to ensure that there is a level playing field between those companies that have participated in the review programme of the give substance and those that have been free-riders.

Action brought on 29 September 2015 — Bimbo v OHIM — ISMS (BIMBO BEL SIMPLY MARKET)

(Case T-571/15)

(2015/C 406/37)

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: International Supermarket Stores (ISMS) SA (Croix, France)

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 'BIMBO BEL SIMPLY MARKET' — Application for registration No 10 335 321

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 17 July 2015 in Case R 1297/2014-4

Form of order sought

The applicant claims that the Court should:

— modify the decision of the Board of Appeal dated on 17 July 2015 in accordance with Article 65(3) CTMR, rejecting the CTM Application No 10 335 321 in its entirety;

— subsidiarity and only in the case the above claim would be rejected, the annulment of the Board of Appeal decision, dated 17 July 2015;

— order the defendants to pay the procedural costs.

Pleas in law

— Infringement of Articles 8(1)(b), 8(5), 42(2)(3), and 76(2) of Regulation No 207/2009.

Action brought on 28 September 2015 — Kozmetika Afrodita v OHIM — Núñez Martín and Machado Montesinos (KOZMETIKA AFRODITA)

(Case T-574/15)

(2015/C 406/38)

Language in which the application was lodged: Slovene

Parties

Applicant: Kozmetika Afrodita d.o.o. (Rogaška Slatina, Slovenia) (represented by: B. Grešak, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Pedro Nuñez Martín (Madrid, Spain) and Carmen Guillermina Machado Montesinos (Madrid)

Details of the proceedings before OHIM

Applicant for the contested mark: Applicant

Trade mark at issue: Community figurative mark containing the word element 'KOZMETIKA AFRODITA' — Registration No 11 798 253

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 28 July 2015 in Case R 2577/2014-4

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) of Regulation No 207/2009;

— Infringement of Rule 50(2)(h) of Regulation No 2868/95.

Action brought on 28 September 2015 — Kozmetika Afrodita v OHIM — Núñez Martín and Machado Montesinos (AFRODITA COSMETICS)

(Case T-575/15)

(2015/C 406/39)

Language in which the application was lodged: Slovene

Parties

Applicant: Kozmetika Afrodita d.o.o. (Rogaška Slatina, Slovenia) (represented by: B. Grešak, lawyer)

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

Other parties to the proceedings before the Board of Appeal: Pedro Nuñez Martín (Madrid, Spain) and Carmen Guillermina Machado Montesinos (Madrid, Spain

Details of the proceedings before OHIM

Applicant for the contested mark: Applicant

Trade mark at issue: Community figurative mark containing the word element 'AFRODITA COSMETICS' — Registration No 11 798 287

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 28 July 2015 in Case R 2578/2014-4.

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) of Regulation No 207/2009;

— Infringement of Rule 50(2)(h) of Regulation No 2868/95.

Action brought on 1 October 2015 — Uribe-Etxebarría Jiménez v OHIM — Núcleo de comunicaciones y control (SHERPA)

(Case T-577/15)

(2015/C 406/40)

Language in which the application was lodged: Spanish

Parties

Applicant: Xabier Uribe-Etxebarría Jiménez (Erandio, Spain) (represented by: Esteve Sanz, lawyer)

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

Other party to the proceedings before the Board of Appeal: Núcleo de comunicaciones y control, SL (Tres Cantos (Madrid), Spain)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'SHERPA'– Community trade mark No 10 000 339

Procedure before OHIM: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of OHIM of 17 July 2015 in Case R 1135/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

— order OHIM and, where appropriate, the intervener to pay the costs.

Pleas in law

— Infringement of Articles 63(1), 64(1) and 76(1) of Regulation No 207/2009.

— Infringement of Article 42(2) and (3) of Regulation No 207/2009 and of Rule 22 of Regulation No 2868/95.

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

Action brought on 7 October 2015 — POA/Commission

(Case T-584/15)

(2015/C 406/41)

Language of the case: English

Parties

Applicant: Pagkyprios organismos ageladotrofon Dimosia Ltd (POA) (Latsia, Cyprus) (represented by: N. Korogiannakis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission to accept the dossier CY/PDO/0005/01243 lodged by the authorities of the Republic of Cyprus as meeting the conditions laid down by Regulation (EU) No 1151/2012 of the European Parliament and of the Council, of 21 November 2012, on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1), as provided by Article 50 (1) of this regulation, and to proceed to its publication in the Official Journal of the European Union with reference 2015/C 246/12;

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

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment of the Commission on the conformity of the application CY/PDO/0005/01243 with Regulation (EU) No 1151/2012

   — The application CY/PDO/0005/01243 departs from the standard CYS 94 (Part 1 & 2) 1985 concerning the milk content in the 'Halloumi' production process.

   — The application CY/PDO/0005/01243 violates Article 7 of Regulation (EU) No 1151/2012.

2. Second plea in law, alleging that the Commission did not verify the compliance of application CY/PDO/0005/01243 with the procedure laid down by Regulation (EU) No 1151/2012

   — No reasonable time was given for the right to appeal.

   — The national authorities failed to scrutinize properly the objection raised by the applicant.

Action brought on 5 October 2015 — Monster Energy v OHIM (GREEN BEANS)

(Case T-585/15)

(2015/C 406/42)

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) (OHIM)

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'GREEN BEANS' — Application for registration No 11 410 801

Contested decision: Decision of the Second Board of Appeal of OHIM of 22 July 2015 in Case R 3002/2014-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— remit the Applicant's case back to the Second Board of Appeal for a decision on the substance of the Applicant's Restitutio Application in relation to the decision of the First Board of Appeal of 2 December 2013 in Case R 1530/2013-1;

— order OHIM to pay their own costs and those of the Applicant.

Pleas in law

— Infringement of Article 58, 65(5), 75, 81(1) and 81(4) of Regulation No 207/2009;

— Infringement of Rule 65 of Regulation No 2868/95.

Action brought on 8 October 2015 — Nara tekstil sanayi ve ticaret v OHIM — NBC Fourth Realty (NaraMaxx)

(Case T-586/15)

(2015/C 406/43)

Language in which the application was lodged: English

Parties

Applicant: Nara Tekstil Sanayi Ve Ticaret Anonim Sirketi (Osmangazi-Bursa, Turkey) (represented by: M. López Camba, L. Monzón de la Flor, lawyers)

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

Other party to the proceedings before the Board of Appeal: NBC Fourth Realty Corp. (North Las Vegas, United States)

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 'NaraMaxx' — Application for registration No 11 142 461.

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 27 July 2015 in Case R 1073/2014-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, to the extent that it maintains the upholding of opposition B 2122938;

— order OHIM to pay the costs incurred by Nara Tekstil Sanayi Ve Ticaret Anonim Sirketi;

— order NBC Fourth Realty Corp. to pay the costs incurred by Nara Tekstil Sanayi Ve Ticaret Anonim Sirketi.

Plea in law

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

Action brought on 21 October 2015 — Stichting Accolade v Commission

(Case T-598/15)

(2015/C 406/44)

Language of the case: Dutch

Parties

Applicant: Stichting Accolade (Drachten, Netherlands) (represented by: H. de Boer and J. Abma, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 30 June 2015, reference C(2015) 4411 final, State Aid SA.34676 (2015/NN) — The Netherlands (Alleged sale of land at below market price by the municipality of Harlingen);

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission wrongly limited the applicant's objection to a small section of the total land transaction between the municipality of Harlingen and Ludinga VG.

2. Second plea in law, alleging that the Commission failed to apply, or wrongly applied, the private-investor test. The Commission, it is submitted, wrongly used a range of EUR 14 to EUR 24 in assessing the land transaction.

3. Third plea in law, alleging that the information and assumptions underlying the prices which formed the range used by the Commission are incompatible with one another. As a result, the applicant contends, the transactions used as a reference are not comparable to the contested transaction.

4. Fourth plea in law, alleging that an erroneous price was applied to the range.

5. Fifth plea in law, alleging a manifest error of assessment of the alleged facts concerning the indirect advantages.

6. Sixth plea in law, alleging that the Commission drew an inaccurate conclusion with regard to the measure contested by the applicant.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Single Judge) of 27 October 2015 — Labiri v Committee of the Regions

(Case F-81/14) ([1])

(Civil service — Officials — 2013 promotion procedure — Decision not to promote the applicant — Article 45(1) of the Staff Regulations — Consideration of comparative merits)

(2015/C 406/45)

Language of the case: French

Parties

Applicant: Vassilliki Labiri (Brussels, Belgium) (represented by: initially, J.-N. Louis, D. de Abreu Caldas and R. Metz, lawyers, then J.-N. Louis, R. Metz, N. de Montigny, D. Verbeke and T. Van Lysebeth, lawyers)

Defendant: European Union Committee of the Regions (represented by: J.C. Cañoto Argüelles and S. Bachotet, Agents, and, initially, B. Cambier and G. Ladrière, lawyers, then B. Cambier and T. Cambier, lawyers)

Re:

Application for annulment of the decision not to promote the applicant to the next higher grade (AD 13) in the Committee of the Regions (CoR) 2013 promotion procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Declares that Ms Labiri is to bear her own costs and orders her to pay the costs incurred by the European Union Committee of the Regions.*

([1]) OJ C 388, 3.11.2014, p. 32.

Judgment of the Civil Service Tribunal (Single Judge) of 29 October 2015 — Xenakis v Commission

(Case F-52/15) ([1])

(Civil Service — Officials — Automatic retirement — Retirement age — Request to extend the period of employment — Second paragraph of Article 52 of the Staff Regulations — Refusal to extend the period of employment — Interest of the service)

(2015/C 406/46)

Language of the case: French

Parties

Applicant: Yannis Xenakis (Woluwe-Saint-Pierre, Belgium) (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Commission (represented by: J. Currall and C. Ehrbar, acting as Agents)

Re:

Application for annulment of the Commission's decision rejecting the application to extend the applicant's service and, accordingly, confirming his automatic retirement on 31 October 2014 and application for damages in respect of the material harm allegedly suffered and the symbolic sum of EUR 1 in respect of the non-material harm alleged.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Xenakis to bear his own costs and to pay the costs incurred by the European Commission.*

(1) OJ C 190, 8.6.2015, p. 38.

Order of the Civil Service Tribunal (Single Judge) of 27 October 2015 — Ameryckx v Commission

(Case F-140/14) (1)

(Civil service — Member of the contract staff — Function group — Grading — Plea of inadmissibility — Concept of an act adversely affecting the applicant — Confirmatory decision — New and substantial fact — Manifest inadmissibility)

(2015/C 406/47)

Language of the case: French

Parties

Applicant: Marianella Ameryckx (Rhode-Saint-Genèse, Belgium) (represented by: S. Rodrigues and A. Tymen, lawyers)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, Agents)

Re:

Application for annulment of the Commission's decision refusing to 'reconstruct' the applicant's career by re-grading her, from 1 March 2005, in a higher function group, and an application for compensation in respect of the material and non-material harm allegedly incurred.

Operative part of the order

1. *The action is dismissed.*

2. *Ms Ameryckx is to bear her own costs and is ordered to pay the costs incurred by the European Commission.*

(1) OJ C 65, 23.2.2015, p. 55.

Action brought on 19 October 2015 — ZZ v Commission

(Case F-91/15)

(2015/C 406/48)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to apply the medical reservation clause in Article 32 of the CEOS, in so far as it does not give the applicant the invalidity allowance and compensation in respect of the non-material harm allegedly suffered.

Form of order sought

— Annul the decisions of the Commission of 16 September 2014 applying the medical reservation in Article 32 of the CEOS to the applicant and refusing to give him the invalidity allowance;

— Order the Commission to pay the applicant a sum of EUR 50 000 in compensation for the non-material harm suffered and to pay the costs.

Action brought on 12 October 2015 — ZZ v Commission

(Case F-132/15)

(2015/C 406/49)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to apply the medical reservation clause in Article 32 of the CEOS, retroactively, with effect from the date of entry into service of the applicant with the Commission and to suspend the invalidity and death insurance and, in addition, annulment of the decision to bar the applicant from being recruited by the Commission for a period of six years to run from the date on which her last contract ended.

Form of order sought

— Annul the decisions of the AECE concerning, firstly, the retroactive application to the applicant of the medical reservation in Article 32 of the CEOS and the suspension of the invalidity and death insurance and, secondly, the bar on the Commission's recruiting the applicant for a period of six years;

— Order the Commission to pay the costs.

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