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(2014/C 409/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 11 September 2014 (request for a preliminary ruling from the Finanzgericht Köln — Germany) — Kronos International Inc. v Finanzamt Leverkusen

(Case C-47/12) ([1])

(Reference for a preliminary ruling — Articles 49 TFEU and 54 TFEU — Freedom of establishment — Articles 63 TFEU and 65 TFEU — Free movement of capital — Tax legislation — Corporation tax — Legislation of a Member State designed to eliminate double taxation of distributed profits — Imputation method applied to dividends distributed by companies resident in the same Member State as the company receiving them — Exemption method applied to dividends distributed by companies resident in a different Member State from the company receiving them or in a third State — Difference in treatment of losses of the company receiving the dividends)

(2014/C 409/02)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Kronos International Inc.

Defendant: Finanzamt Leverkusen

Operative part of the judgment

1. *The compatibility with EU law of national rules, such as those at issue in the main proceedings, under which a company resident in a Member State cannot set off corporation tax paid in another Member State or in a third State by capital companies distributing dividends, because of the exemption of those dividends from tax in the first Member State when they stem from shareholdings representing at least 10 % of the capital of the company making the distribution and, in the case in point, the actual shareholding of the capital company receiving the dividends exceeds 90 % and the recipient company has been incorporated in accordance with the law of a third State, must be assessed in the light of Articles 63 TFEU and 65 TFEU;*

2. *Article 63 TFEU must be interpreted as not precluding application of the exemption method to dividends distributed by companies resident in other Member States and in third States, when the imputation method is applied to dividends distributed by companies resident in the same Member State as the company receiving them and, if the latter company records losses, the imputation method results in the tax paid by the resident company that made the distribution being fully or partially refunded.*

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Fourth Chamber) of 11 September 2014 (request for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel — Belgium) — Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt

(Joined Cases C-204/12 to C-208/12) ([1])

(References for a preliminary ruling — Regional support scheme providing for the issuance of tradable green certificates for facilities situated in the region concerned producing electricity from renewable energy sources — Obligation for electricity suppliers to surrender annually to the competent authority a certain quota of certificates — Refusal to take account of guarantees of origin originating from other Member States of the European Union and from States which are parties to the EEA Agreement — Administrative fine in the event of failure to surrender certificates — Directive 2001/77/EC — Article 5 — Free movement of goods — Article 28 EC — Articles 11 and 13 of the EEA Agreement — Directive 2003/54/EC — Article 3)

(2014/C 409/03)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: Essent Belgium NV

Defendant: Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt

Intervening parties: Vlaams Gewest, Vlaamse Gemeenschap (C-204/12, C-206/12 and C-208/12)

Operative part of the judgment

1) *Article 5 of Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market must be interpreted as not precluding a national support scheme, such as that at issue in the main proceedings, which provides for the issuance, by the competent regional regulatory authority, of tradable certificates in respect of green electricity produced on the territory of the region concerned and which places electricity suppliers under an obligation, subject to an administrative fine, to surrender annually to that authority a certain number of those certificates corresponding to a proportion of the total volume of the electricity that they have supplied in that region, without those suppliers being allowed to fulfil that obligation by using guarantees of origin originating from other Member States of the European Union or non-member States which are parties to the EEA Agreement.*

2) *Articles 28 EC and 30 EC and Articles 11 and 13 of the Agreement on the European Economic Area of 2 May 1992, must be interpreted as not precluding a national support scheme as described in paragraph 1 of the present operative part, provided that:*

— *mechanisms are established which ensure the creation of a genuine market for certificates in which supply can match demand, reaching some kind of balance, so that it is actually possible for the relevant suppliers to obtain certificates under fair terms;*

— *the method of calculation and amount of the administrative fine to be paid by suppliers who have not fulfilled that obligation are fixed in such a way as not to exceed what is necessary to encourage producers actually to increase their production of green electricity and suppliers subject to that obligation actually to purchase the required certificates, by avoiding in particular penalising those suppliers in an excessive manner.*

3) *The rules on non-discrimination contained in Article 18 TFEU, Article 4 of the Agreement on the European Economic Area of 2 May 1992 and Article 3(1) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC respectively, must be interpreted as not precluding a national support scheme as described in paragraph 1 of the present operative part.*

(1) OJ C 227, 28.7.2012.

Judgment of the Court (Third Chamber) of 11 September 2014 — MasterCard Inc., MasterCard International Inc., MasterCard Europe SPRL v European Commission, Banco Santander SA, Royal Bank of Scotland plc, HSBC Bank plc, Bank of Scotland plc, Lloyds TSB Bank plc, MBNA Europe Bank Ltd, British Retail Consortium, EuroCommerce AISBL, United Kingdom of Great Britain and Northern Ireland

(Case C-382/12 P) (1)

(Appeal — Cross-appeals — Admissibility — Article 81 EC — Open system of payment by debit, charge and credit cards — Multilateral fallback interchange fees — Association of undertakings — Restrictions of competition by effect — Standard of judicial review — Concept of 'ancillary restriction' — Objectively necessary and proportionate nature — Appropriate 'counterfactual hypotheses' — Two-sided systems — Treatment of annexes to the application at first instance)

(2014/C 409/04)

Language of the case: English

Parties

Appellants: MasterCard Inc., MasterCard International Inc., MasterCard Europe SPRL (represented by: E. Barbier de la Serre, V. Brophy and B. Amory, avocats, and T. Sharpe QC)

Other parties to the proceedings: European Commission (represented by: V. Bottka and N. Khan, acting as Agents), Banco Santander SA, Royal Bank of Scotland plc (represented by: D. Liddell, Solicitor, and M. Hoskins, Barrister), HSBC Bank plc (represented by: R. Thompson QC), Bank of Scotland plc, Lloyds TSB Bank plc (represented by: K. Fountoukakos-Kyriakakos and S. Wisking, Solicitors, and J. Flynn QC), MBNA Europe Bank Ltd (represented by: A. Davis, Solicitor), British Retail Consortium (represented by: R. Marchini, advocate, and A. Robertson, Barrister), EuroCommerce AISBL (represented by: J. Stuyck, advocaat), United Kingdom of Great Britain and Northern Ireland (represented by: M. Holt and C. Murrell, acting as Agents, J. Turner QC and J. Holmes, Barrister)

Operative part of the judgment

The Court:

1) *Dismisses the main appeal and the cross-appeals;*

2) *Orders MasterCard Inc., MasterCard International Inc. and MasterCard Europe SPRL to bear their own costs relating to the main appeal and the cross-appeals, and to pay the European Commission's costs relating to the main appeal;*

3) *Orders Royal Bank of Scotland plc, Bank of Scotland plc and Lloyds TSB Bank plc to bear their own costs and to pay the European Commission's costs relating to their respective cross-appeals;*

4) *Orders HSBC Bank plc, MBNA Europe Bank Ltd, British Retail Consortium, EuroCommerce AISBL and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

(1) OJ C 319, 20.10.2012.

Judgment of the Court (Second Chamber) of 11 September 2014 — European Commission v Federal Republic of Germany

(Case C-525/12) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Framework for Community action in the field of water policy — Recovery of the costs for water services — Concept of 'water services')

(2014/C 409/05)

Language of the case: German

Parties

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

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

Interveners in support of the defendant: Kingdom of Denmark (represented by: M. Wolff and V. Pasternak Jørgensen, acting as Agents), Hungary (represented by: M.Z. Fehér and K. Szíjjártó, acting as Agents), Republic of Austria (represented by: C. Pesendorfer, acting as Agent), Republic of Finland (represented by: J. Heliskoski and H. Leppo, acting as Agents), Kingdom of Sweden (represented by: A. Falk, C. Meyer-Seitz, U. Persson and S. Johannesson, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by: S. Behzadi-Spencer and J. Beeko, acting as Agents, assisted by G. Facenna, Barrister)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Kingdom of Denmark, Hungary, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 26, 26.1.2013.

Judgment of the Court (Fifth Chamber) of 11 September 2014 — European Commission v Federal Republic of Germany

(Case C-527/12) ([1])

(Failure of a Member State to fulfil obligations — State aid incompatible with the internal market — Obligation to recover — Article 108(2) TFEU — Regulation (EC) No 659/1999 — Article 14(3) — Commission decision — Measures to be taken by the Member States)

(2014/C 409/06)

Language of the case: German

Parties

Applicant: European Commission (represented by: T. Maxian Rusche and F. Erlbacher, acting as Agents)

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

Operative part of the judgment

The Court:

1. *Declares that, by failing to take all necessary measures to recover from the beneficiary the State aid which was the subject of Commission Decision 2011/471/EU of 14 December 2010 on State aid granted by Germany to the Biria group (C 38/05 (ex NN 52/04)), the Federal Republic of Germany has failed to fulfil its obligations under Article 108(2) TFEU, Article 14(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of [Article 108 TFEU], and Articles 1 to 3 of that decision;*

2. *Orders the Federal Republic of Germany to pay the costs.*

(1) OJ C 26, 26.1.2013.

Judgment of the Court (Seventh Chamber) of 11 September 2014 — Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd v Council of the European Union, European Commission, European Industrial Fasteners Institute AISBL (EIFI)

(Case C-602/12 P) (1)

(Appeal — Dumping — Regulation (EC) No 384/96 — First indent of Article 2(7)(c) — Regulation (EC) No 2026/97 — Regulation (EC) No 91/2009 — Imports of certain iron or steel fasteners originating in the People's Republic of China — Market economy treatment — Costs of major inputs substantially reflecting market values — State subsidy for the steel sector in general — Effect)

(2014/C 409/07)

Language of the case: English

Parties

Appellants: Gem-Year Industrial Co. Ltd, Jinn-Well Auto-Parts (Zhejiang) Co. Ltd (represented by: Y. Melin and V. Akritidis, avocats)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix and S. Boelaert, Agents, assisted by G. Berrisch, Rechtsanwalt), European Commission (represented by: M. França and T. Maxian Rusche, Agents), European Industrial Fasteners Institute AISBL (EIFI) (represented by: J. Bourgeois, avocat)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Gem-Year Industrial Co. Ltd and Jinn-Well Auto-Parts (Zhejiang) Co. Ltd to pay the costs incurred by the Council of the European Union and by the European Industrial Fasteners Institute AISLB (EIFI) in the present proceedings;*

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

(1) OJ C 101, 6.4.2013.

Judgment of the Court (Fifth Chamber) of 11 September 2014 (request for a preliminary ruling from the Consiglio di Stato (Italy)) — Ministero dell'Interno v Fastweb SpA

(Case C-19/13) (1)

(Reference for a preliminary ruling — Public procurement — Directive 89/665/EEC — Article 2d(4) — Interpretation and validity — Procedures for review of the award of public supply and public works contracts — Ineffectiveness of the contract — Exception)

(2014/C 409/08)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ministero dell'Interno

Defendant: Fastweb SpA

*Intervening party:*Telecom Italia SpA

Operative part of the judgment

1. *On a proper construction of Article 2d(4) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, where a public contract is awarded without prior publication of a contract notice in the Official Journal of the European Union, but that was not permissible under Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, the contract may not be declared ineffective if the conditions laid down in that provision are in fact satisfied, which it is for the referring court to determine.*

2. *Examination of the second question has not revealed anything which might affect the validity of Article 2d(4) of Directive 89/665, as amended by Directive 2007/66.*

([1]) OJ C 86, 23.3.2013.

Judgment of the Court (Third Chamber) of 10 September 2014 (request for a preliminary ruling from the Krajský súd v Prešove — Slovakia) — Monika Kušionová v SMART Capital a.s.

(Case C-34/13) ([1])

(Request for a preliminary ruling — Directive 93/13/EEC — Unfair terms — Consumer credit agreement — Article 1(2) — Term reflecting a mandatory statutory provision — Scope of the directive — Articles 3(1), 4, 6(1) and 7(1) — Security for credit in the form of a charge on immovable property — Whether it is possible to enforce the charge by means of a sale by auction — Judicial review)

(2014/C 409/09)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: Monika Kušionová

Defendant: SMART Capital a.s.

Operative part of the judgment

1) *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which allows the recovery of a debt that is based on potentially unfair contractual terms by the extrajudicial enforcement of a charge on immovable property provided as security by the consumer, in so far as that legislation does not make it excessively difficult or impossible in practice to protect the rights conferred on consumers by that directive, which is a matter for the national court to determine.*

2) *Article 1(2) of Directive 93/13 must be interpreted as meaning that a contractual term included in a contract concluded by a seller or supplier with a consumer falls outside the scope of that directive only if that contractual term reflects the content of a mandatory statutory or regulatory provision, which is a matter for the national court to determine.*

(1) OJ C 141, 18.5.2013.

Judgment of the Court (Third Chamber) of 11 September 2014 — Groupement des cartes bancaires (CB) v European Commission, BNP Paribas, BPCE, formerly Caisse Nationale des Caisses d'Épargne and de Prévoyance (CNCEP), Société Générale SA

(Case C-67/13 P) (1)

(Appeal — Competition — Agreements, decisions and concerted practices — Article 81(1) EC — Payment cards system in France — Decision by an association of undertakings — Issuing market — Pricing measures applicable to 'new entrants' — Membership fee, mechanism for 'regulating the acquiring function' and 'dormant member "wake-up"' mechanism — Concept of restriction of competition 'by object' — Examination of the degree of harm to competition)

(2014/C 409/10)

Language of the case: French

Parties

Appellant: Groupement des cartes bancaires (CB) (represented by: F. Pradelles, O. Fauré and C. Ornellas-Chancerelles, avocats, and by J. Ruiz Calzado, abogado)

Other parties to the proceedings: European Commission (represented by: O. Beynet, V. Bottka and B. Mongin, acting as Agents), BNP Paribas (represented by: O. de Juvigny, D. Berg and P. Heusse, avocats), BPCE, formerly Caisse Nationale des Caisses d'Épargne and de Prévoyance (CNCEP) (represented by: A. Choffel, S. Hautbourg, L. Laidi and R. Eid, avocats), Société Générale SA (represented by: P. Guibert and P. Patat, avocats)

Operative part of the judgment

The Court:

1) *Sets aside the judgment of the General Court of the European Union of 29 November 2012 in Case T-491/07 CB v Commission;*

2) *Refers the case back to the General Court of the European Union;*

3) *Reserves the costs.*

(1) OJ C 114, 20.4.2013.

Judgment of the Court (Second Chamber) of 11 September 2014 (request for a preliminary ruling from the Cour de cassation — Belgium) — Philippe Gruslin v Beobank SA, formerly Citibank Belgium SA

(Case C-88/13) (1)

(Reference for a preliminary ruling — Freedom of establishment — Freedom to provide services — Undertakings for collective investment in transferable securities (UCITS) — Directive 85/611/EEC — Article 45 — Concept of 'payments to unit-holders' — Delivery to unit-holders of certificates for registered units)

(2014/C 409/11)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Philippe Gruslin

Defendant: Beobank SA, formerly Citibank Belgium SA

Operative part of the judgment

The obligation laid down in Article 45 of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as amended by European Parliament and Council Directive 95/26/EC of 29 June 1995, under which an undertaking for collective investment in transferable securities which markets its units within the territory of a Member State other than that in which it is situated is required to make payments to unit-holders in the Member State of marketing, must be interpreted as not including the delivery to unit-holders of certificates providing evidence of title to units which are registered in their name in the register of unit-holders kept by the issuer.

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Second Chamber) of 11 September 2014 (request for a preliminary ruling from the Raad van State (Netherlands)) — Essent Energie Productie BV v Minister van Sociale Zaken en Werkgelegenheid

(Case C-91/13) ([1])

(EEC-Turkey Association Agreement — Article 41(1) of the Additional Protocol and Article 13 of Decision No 1/80 — Scope — Introduction of new restrictions on the freedom of establishment, the freedom to provide services and the conditions for access to employment — Prohibition — Freedom to provide services — Articles 56 TFEU and 57 TFEU — Posting of workers — Nationals of non-Member States — Requirement for a work permit for the deployment of labour)

(2014/C 409/12)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Essent Energie Productie BV

Respondent: Minister van Sociale Zaken en Werkgelegenheid

Operative part of the judgment

Articles 56 TFEU and 57 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, under which, where workers who are nationals of non-member countries are made available by an undertaking established in another Member State to a user undertaking established in the first Member State, which uses them to carry out work on behalf of another undertaking established in the same Member State, such making available is subject to the condition that those workers have been issued with work permits.

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Fourth Chamber) of 10 September 2014 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Gemeente 's-Hertogenbosch v Staatssecretaris van Financiën

(Case C-92/13) ([1])

(Reference for a preliminary ruling — Sixth VAT Directive — Article 5(7)(a) — Taxable transactions — 'Supplies made for consideration' — First occupation by a municipal authority of premises built for it on land belonging to it — Activities engaged in as a public authority and as a taxable person)

(2014/C 409/13)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Gemeente 's-Hertogenbosch

Defendant: Staatssecretaris van Financiën

Operative part of the judgment

Article 5(7)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as applying to a situation, such as that at issue in the main proceedings, in which a municipality takes first occupation of a building which it has had built on its own land and of which it intends to use 94 % of the area for its activities as a public authority and 6 % of that area for its activities as a taxable person, including 1 % for exempt activities in respect of which no right to deduct value added tax exists. However, the subsequent use of the building for the activities of the municipality may give rise to a right to deduct the tax paid in respect of the application provided for by that provision only in the proportion corresponding to its use for the purposes of the taxable transactions, pursuant to Article 17(5) of that directive.

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Fifth Chamber) of 11 September 2014 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — A v B and Others

(Case C-112/13) ([1])

(Article 267 TFEU — National constitution — Interlocutory procedure for the mandatory review of constitutionality — Assessment as to whether a national law is consistent both with EU law and with national constitutional law — Jurisdiction and the enforcement of judgments in civil and commercial matters — Where the defendant has no known domicile or place of residence in the territory of a Member State — Prorogation of jurisdiction where the defendant enters an appearance — Court-appointed representative in absentia for the defendant)

(2014/C 409/14)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: A

Defendants: B, C, D, E, F, G, H

Operative part of the judgment

1) *EU law and, in particular, Article 267 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which ordinary courts hearing an appeal or adjudicating at final instance are under a duty, if they consider a national statute to be contrary to Article 47 of the Charter, to apply, in the course of the proceedings, to the constitutional court for that statute to be generally struck down, and may not simply refrain from applying that statute in the case before them, to the extent that the priority nature of that procedure prevents — both before the submission of a question on constitutionality to the national court responsible for reviewing the constitutionality of laws and, as the case may be, after the decision of that court on that question — all the other national courts or tribunals from exercising their right or fulfilling their obligation to refer questions to the Court of Justice for a preliminary ruling. On the other hand, EU law and, in particular, Article 267 TFEU must be interpreted as not precluding such national legislation to the extent that those ordinary courts remain free:*

   — *to make a reference to the Court at whatever stage of the proceedings they consider appropriate, and even at the end of the interlocutory procedure for the review of constitutionality, in respect of any question which they consider necessary,*

   — *to adopt any measure necessary to ensure interim judicial protection of rights conferred under the EU legal order, and*

   — *to disapply, at the end of such an interlocutory procedure, the national legislative provision at issue if they consider it to be contrary to EU law.*

   It is for the referring court to ascertain whether the national legislation at issue before it can be construed in such a way as to meet those requirements of EU law.

2) *Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, if a national court appoints, in accordance with national legislation, a representative in absentia for a defendant upon whom the documents instituting proceedings have not been served because his place of domicile is not known, the appearance entered by that representative does not amount to an appearance being entered by that defendant for the purposes of Article 24 of that regulation.*

([1]) OJ C 226, 3.8.2013.

Judgment of the Court (Fourth Chamber) of 11 September 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Technische Universität Darmstadt v Eugen Ulmer KG

(Case C-117/13) ([1])

(Reference for a preliminary ruling — Directive 2001/29/EC — Copyright and related rights — Exceptions and limitations — Article 5(3)(n) — Use for the purpose of research or private study of works and other subject-matter — Book made available to individual members of the public by dedicated terminals in publicly accessible libraries — Meaning of work not subject to 'purchase or licensing terms' — Right of the library to digitise a work contained in its collection in order to make it available to users by dedicated terminals — Making the work available by dedicated terminals which permit it to be printed out on paper or to be stored on a USB stick)

(2014/C 409/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Technische Universität Darmstadt

Defendant: Eugen Ulmer KG

Operative part of the judgment

1. *The concept of 'purchase or licensing terms' provided for in Article 5(3)(n) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be understood as requiring that the rightholder and an establishment, such as a publicly accessible library, referred to in that provision must have concluded a licensing agreement in respect of the work in question that sets out the conditions in which that establishment may use that work.*

2. *Article 5(3)(n) of Directive 2001/29, read in conjunction with Article 5(2)(c) of that directive, must be interpreted to mean that it does not preclude Member States from granting to publicly accessible libraries covered by those provisions the right to digitise the works contained in their collections, if such act of reproduction is necessary for the purpose of making those works available to users, by means of dedicated terminals, within those establishments.*

3. *Article 5(3)(n) of Directive 2001/29 must be interpreted to mean that it does not extend to acts such as the printing out of works on paper or their storage on a USB stick, carried out by users from dedicated terminals installed in publicly accessible libraries covered by that provision. However, such acts may, if appropriate, be authorised under national legislation transposing the exceptions or limitations provided for in Article 5(2)(a) or (b) of that directive provided that, in each individual case, the conditions laid down by those provisions are met.*

([1]) OJ C 171, 15.6.2013.

Judgment of the Court (Second Chamber) of 10 September 2014 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Holger Forstmann Transporte GmbH & Co. KG v Hauptzollamt Münster

(Case C-152/13) ([1])

(Reference for a preliminary ruling — Taxation — Directive 2003/96/EC — Taxation of energy products and electricity — Exceptions — Energy products contained in the standard tanks of commercial motor vehicles and intended to be used as fuel by those vehicles — Definition of 'standard tanks' within the meaning of Article 24(2) of that directive — Tanks fitted by a coachbuilder or a manufacturer's dealer)

(2014/C 409/16)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Holger Forstmann Transporte GmbH & Co. KG

Defendant: Hauptzollamt Münster

Operative part of the judgment

The term 'standard tanks', referred to in the first indent of Article 24(2) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, must be interpreted as not excluding tanks fixed permanently to commercial motor vehicles intended for the direct supply of fuel to those vehicles when the tanks have been fitted by a person other than the manufacturer, in so far as the tanks enable fuel to be used directly, both for the purpose of propulsion of the vehicles and, where appropriate, for the operation, during transport, of refrigeration systems and other systems.

(1) OJ C 189, 29.6.2013.

Judgment of the Court (Third Chamber) of 11 September 2014 (request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Proceedings brought by K Oy

(Case C-219/13) (1)

(Reference for a preliminary ruling — Common system of value added tax — Directive 2006/112/EC — Article 98(2) — Annex III, point 6 — Reduced rate of VAT applicable only to books printed on paper — Books published on physical supports other than paper subject to the standard rate of VAT — Fiscal neutrality)

(2014/C 409/17)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Party to the main proceedings

K Oy

Operative part of the judgment

The first subparagraph of Article 98(2) of and point 6 of Annex III to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2009/47/EC of 5 May 2009, must be interpreted as not precluding, provided that the principle of fiscal neutrality inherent in the common system of value added tax is complied with, which is for the referring court to ascertain, national legislation, such as that at issue in the main proceedings, under which books published in paper form are subject to a reduced rate of value added tax and books published on other physical supports such as CDs, CD-ROMs or USB keys are subject to the standard rate of value added tax.

(1) OJ C 178, 22.6.2013.

Judgment of the Court (Second Chamber) of 10 September 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Iraklis Haralambidis v Calogero Casilli

(Case C-270/13) (1)

(Reference for a preliminary ruling — Freedom of movement for workers — Article 45(1) and (4) TFEU — Concept of worker — Employment in the public service — Post of President of a Port Authority — Participation in the exercise of powers of a public authority — Nationality requirement)

(2014/C 409/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Iraklis Haralambidis

Defendant: Calogero Casilli

Intervening parties: Autorità Portuale di Brindisi, Ministero delle Infrastrutture e dei Trasporti, Regione Puglia, Provincia di Brindisi, Comune di Brindisi, Camera di Commercio Industria Artigianato ed Agricoltura di Brindisi

Operative part of the judgment

In circumstances such as those at issue in the main proceedings, Article 45(4) TFEU must be interpreted as not authorising a Member State to reserve to its nationals the exercise of the duties of President of a Port Authority.

(1) OJ C 207, 20.7.2013.

Judgment of the Court (First Chamber) of 11 September 2014 — European Commission v Portuguese Republic

(Case C-277/13) (1)

(Failure of a Member State to fulfil obligations — Directive 96/67/EC — Article 11 — Air transport — Groundhandling service — Selection of suppliers)

(2014/C 409/19)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and F.W. Bulst, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, T. Falcão and V. Moura Ramos, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take the necessary measures for the organisation of a procedure for the selection of suppliers authorised to provide groundhandling services for the categories of 'baggage handling', 'ramp handling' and 'freight and mail handling' at Lisbon, Porto and Faro airports, in accordance with Article 11 of Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports, the Portuguese Republic has failed to fulfil its obligations under that article;*

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

(1) OJ C 233, 10.8.2013.

Judgment of the Court (Seventh Chamber) of 11 September 2014 (request for a preliminary ruling from the Eparkhiako Dikastirio Lefkosias — Cyprus) — Sotiris Papasavvas v O Fileleftheros Dimosia Etairia Ltd and Others

(Case C-291/13) (1)

(Reference for a preliminary ruling — Directive 2000/31/EC — Scope — Defamation proceedings)

(2014/C 409/20)

Language of the case: Greek

Referring court

Eparkhiako Dikastirio Lefkosias

Parties to the main proceedings

Applicant: Sotiris Papasavvas

Defendants: O Fileleftheros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis

Operative part of the judgment

1) *Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') must be interpreted as meaning that the concept of 'information society services', within the meaning of that provision, covers the provision of online information services for which the service provider is remunerated, not by the recipient, but by income generated by advertisements posted on a website.*

2) *In a case such as that at issue in the main proceedings, Directive 2000/31 does not preclude the application of rules of civil liability for defamation.*

3) *The limitations of civil liability specified in Articles 12 to 14 of Directive 2000/31 do not apply to the case of a newspaper publishing company which operates a website on which the online version of a newspaper is posted, that company being, moreover, remunerated by income generated by commercial advertisements posted on that website, since it has knowledge of the information posted and exercises control over that information, whether or not access to that website is free of charge.*

4) *The limitations of civil liability specified in Articles 12 to 14 of Directive 2000/31 are capable of applying in the context of proceedings between individuals relating to civil liability for defamation, where the conditions referred to in those articles are satisfied.*

5) *Articles 12 to 14 of Directive 2000/31 do not allow information society service providers to oppose the bringing of legal proceedings for civil liability against them and, consequently, the adoption of a prohibitory injunction by a national court. The limitations of liability provided for in those articles may be invoked by the provider in accordance with the provisions of national law transposing them or, failing that, for the purpose of an interpretation of that law in conformity with the directive. By contrast, in a case such as that in the main proceedings, Directive 2000/31 cannot, in itself, create obligations on the part of individuals and therefore cannot be relied on against those individuals.*

([1]) OJ C 207, 20.7.2013.

Judgment of the Court (Fourth Chamber) of 11 September 2014 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Österreichischer Gewerkschaftsbund v Wirtschaftskammer Österreich — Fachverband Autobus-, Luftfahrt- und Schifffahrtsunternehmungen

(Case C-328/13) ([1])

(Reference for a preliminary ruling — Directive 2001/23/EC — Safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses — Obligation on the transferee to maintain the terms and conditions agreed in a collective agreement until the entry into force of another collective agreement — Concept of collective agreement — National legislation providing that a rescinded collective agreement continues to have effect until the entry into force of another collective agreement)

(2014/C 409/21)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Österreichischer Gewerkschaftsbund

Defendant: Wirtschaftskammer Österreich — Fachverband Autobus-, Luftfahrt- und Schifffahrtsunternehmungen

Operative part of the judgment

Article 3(3) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as meaning that the terms and conditions laid down in a collective agreement, which, pursuant to the law of a Member State, despite the rescission of that agreement, continue to produce their effects as regards the employment relationship which was governed by them before the agreement was terminated, constitute 'terms and conditions agreed in any collective agreement' so long as that employment relationship is not subject to a new collective agreement or a new individual agreement is not concluded with the employees concerned.

([1]) OJ C 274, 21.9.2013.

Judgment of the Court (Ninth Chamber) of 11 September 2014 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Ministerstvo práce a sociálních věcí v B.

(Case C-394/13) ([1])

(Reference for a preliminary ruling — Social security for migrant workers — Regulation (EEC) No 1408/71 and Regulation (EC) No 883/2004 — National legislation applicable — Determination of the competent Member State for the purpose of granting a family benefit — Situation in which a migrant worker and her family live in a Member State in which their centre of interest is located and family benefit has been paid — Application for family benefit in the Member State of origin after entitlement to benefits in the Member State of residence has expired — National legislation of the Member State of origin providing that such benefits are to be granted to any person registered as permanently resident in that State)

(2014/C 409/22)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Ministerstvo práce a sociálních věcí

Defendant: B.

Operative part of the judgment

1. *Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, in particular Article 13 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State. Article 13 of that regulation must be interpreted as also precluding a Member State which is not the competent State in so far as concerns the person in question from granting family benefits to such a person unless there are specific and particularly close connecting factors between the situation at issue and the territory of that first Member State;*

2. *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, in particular Article 11 thereof, must be interpreted as precluding a Member State from being regarded as the competent State for the purpose of granting a family benefit to a person on the sole ground that the person concerned is registered as being permanently resident in its territory, where neither that person nor the members of his family work or habitually reside in that Member State.*

(1) OJ C 260, 7.9.2013.

Judgment of the Court (Second Chamber) of 10 September 2014 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — Vilniaus energija UAB v Lietuvos metrologijos inspekcijos Vilniaus apskrities skyrius

(Case C-423/13) (1)

(Request for a preliminary ruling — Free movement of goods — Measures having equivalent effect — Directive 2004/22/EC — Metrological verification of measuring systems — Hot-water meter satisfying all the requirements of that directive and connected to a remote (telemetric) data-transmission device — Prohibition of the use of that meter without a prior metrological verification of the system)

(2014/C 409/23)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: Vilniaus energija UAB

Defendant: Lietuvos metrologijos inspekcijos Vilniaus apskrities skyrius

Operative part of the judgment

Article 34 TFEU and Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments must be interpreted as precluding national legislation and practice according to which a hot-water meter which satisfies all the requirements of that directive and is connected to a remote (telemetric) data-transmission device is to be regarded as a measuring system and, as a result, cannot be used for its intended purpose so long as it has not been subject, together with that device, to a metrological verification as a measuring system.

(1) OJ C 304, 19.10.2013.

Judgment of the Court (Seventh Chamber) of 11 September 2014 (request for a preliminary ruling from the hof van beroep te Antwerpen (Belgium)) — Ronny Verest and Gaby Gerards v Belgische Staat

(Case C-489/13) (1)

(Reference for a preliminary ruling — Income tax — Legislation for the avoidance of double taxation — Taxation of income from immovable property received in a Member State other than the Member State of residence — Method of exemption with maintenance of progressivity in the Member State of residence — Difference in treatment between immovable property situated in the Member State of residence and in another Member State)

(2014/C 409/24)

Language of the case: Dutch

Referring court

hof van beroep te Antwerpen

Parties to the main proceedings

Appellants: Ronny Verest and Gaby Gerards

Respondent: Belgische Staat

Operative part of the judgment

Article 63 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, in so far as it is liable to lead, when a progressivity clause contained in a convention for the prevention of double taxation is applied, to a higher rate of tax on income merely because the method for determining income from immovable property results in income deriving from immovable property that is not rented out situated in another Member State being assessed at a higher amount than income from such property situated in the first Member State. It is for the referring court to ascertain whether that is in fact the effect of the legislation at issue in the dispute in the main proceedings.

([1]) OJ C 352, 30.11.2013.

Judgment of the Court (Third Chamber) of 10 September 2014 (request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany)) — Mohamed Ali Ben Alaya v Bundesrepublik Deutschland

(Case C-491/13) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Directive 2004/114/EC — Articles 6, 7 and 12 — Conditions of admission of third-country nationals for the purposes of studies — Refusal to admit a person who meets the conditions laid down in Directive 2004/114 — Discretion enjoyed by the competent authorities)

(2014/C 409/25)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Mohamed Ali Ben Alaya

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 12 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service must be interpreted as meaning that the Member State concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Articles 6 and 7 of that directive and provided that that Member State does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.

([1]) OJ C 344, 23.11.2013.

Order of the Court (Tenth Chamber) of 4 September 2014 — Cooperativa tra i Lavoratori della Piccola Pesca di Pellestrina Soc. coop. arl and Others (C-94/13 P), Alfier Costruzioni Srl and Others (C-95/13 P), Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, previously Cooperativa Mare Azzurro Soc. coop. arl, Cooperativa vongolari Sottomarina Lido Soc. coop. arl (C-136/13 P), Axitea SpA, previously La Vigile San Marco SpA (C-174/13 P), Vetrai 28 Srl, previously Barovier & Toso vetrerie artistiche riunite Srl, and Others (C-180/13 P), Confindustria Venezia, previously Unione degli industriali della provincia di Venezia (Unindustria), and Others (C-191/13 P), Manutencoop Società Cooperativa, previously Manutencoop Soc. coop. Arl, and Astrocoop Universale Pulizie, Manutenzioni e Trasporti Soc. coop. arl (Italy) (C-246/13 P) v Cooperativa Pescatori di San Pietro in Volta Soc. coop. arl and Others, Italian Republic, European Commission

(Joined Cases C-94/13 P, C-95/13 P, C-136/13 P, C-174/13 P, C-180/13 P, C-191/13 P and C-246/13 P) ([1])

(Appeal — State aid — Aid granted to firms in Venice and Chioggia — Article 181 of the Rules of Procedure of the Court)

(2014/C 409/26)

Language of the cases: Italian

Parties

Appellants: Cooperativa tra i Lavoratori della Piccola Pesca di Pellestrina Soc. coop. arl, Cooperativa Coopesca — Organizzazione tra Produttori e Lavoratori della Pesca — Chioggia Soc. coop. arl, Cooperativa San Marco fra Lavoratori della Piccola Pesca — Burano Soc. coop. arl (C-94/13 P), Alfier Costruzioni Srl, Azin Asfalti Srl, Barbato Srl, Group Srl, previously Impresa Costruzioni Civili e Montaggi Srl (ICCEM), Rossi Renzo Costruzioni Srl, Vettore Costruzioni Srl (C-95/13 P), Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, previously Cooperativa Mare Azzurro Soc. coop. arl, Cooperativa vongolari Sottomarina Lido Soc. coop. arl (C-136/13 P), Axitea SpA, previously La Vigile San Marco SpA (C-174/13 P), Vetrai 28 Srl, previously Barovier & Toso vetrerie artistiche riunite Srl, Carlo Moretti Srl, Ferro & Lazzarini Srl, Fornace Mian Srl, previously Formia International Srl, Amelio Cenedese, previously Gino Cenedese & Figlio, La Murrina SpA, Nason & Moretti Srl, in liquidation, Venini SpA, De Majo Illuminazione Srl, previously Vetreria De Majo Srl (C-180/13 P), Confindustria Venezia, previously Unione degli industriali della provincia di Venezia (Unindustria), Comitato 'Venezia vuole vivere', Fiorital Srl, Ellemme Sas, previously Jesurum di M. e A. Levi Morenos Sas, Grafiche Veneziane Soc. coop. arl, previously Grafiche Veneziane Srl, Cantiere navale De Poli SpA, Capgemini BST SpA, previously Aive Srl, Tessuti Artistici Fortuny SpA, Rubelli SpA, previously Lorenzo Rubelli SpA, Tecnomare SpA (C-191/13 P), Manutencoop Società Cooperativa, previously Manutencoop Soc. coop. Arl, and Astrocoop Universale Pulizie, Manutenzioni e Trasporti Soc. coop. arl (C-246/13 P) (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: Cooperativa Pescatori di San Pietro in Volta Soc. coop. arl, Murazzo — Piccola Soc. coop. arl, RAM — Società Cooperativa fra Lavoratori della Pesca, Raccoglitori ed Allevatori di Molluschi, Confcooperative — Unione Provinciale di Venezia, Sacaim SpA, Camata Costruzioni Sas, Dal Carlo Mario & C. Srl, ACEA — Associazione dei Costruttori Edili ed Affini di Venezia e Provincia, Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C., Alfredo Barbini Srl, Aureliano Toso Srl, AVMazzega Srl, Effetre SpA, Mazzuccato International Srl, Tfz Internazionale Srl, V. Nason & C. Srl, Vetreria LAG Srl, Siram SpA, Bortoli Ettore Srl, Arsenale Venezia SpA, Albergo Quattro Fontane Snc, Hotel Gabrielli Srl, previously Hotel Gabrielli Sandwirth SpA, GE.AL.VE. Srl, Metropolitan SpA, previously Metropolitan Srl, Hotel Concordia Srl, previously Hotel Concordia Snc, Società per l'industria alberghiera (SPLIA), Principessa Srl, in liquidation, Albergo ristorante 'All'Angelo' Snc, Albergo Saturnia Internazionale SpA, Savoia e Jolanda Srl, Hotels Biasutti Srl, previously Hotels Biasutti Snc, Ge.A.P. Srl, Rialto Inn Srl, Bonvecchiati Srl, European Commission (represented by: V. Di Bucci, G. Conte and D. Grespan, acting as Agents), Italian Republic.

Operative part of the order

1. *The appeals are dismissed.*

2. *Cooperativa tra i Lavoratori della Piccola Pesca di Pellestrina Soc. coop. arl, Cooperativa Coopesca — Organizzazione tra Produttori e Lavoratori della Pesca — Chioggia Soc. coop. arl, Cooperativa San Marco fra Lavoratori della Piccola Pesca — Burano Soc. coop. arl, Alfier Costruzioni Srl, Azin Asfalti Srl, Barbato Srl, Group Srl, Rossi Renzo Costruzioni Srl, Vettore Costruzioni Srl, Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, Cooperativa vongolari Sottomarina Lido Soc. coop. arl, Axitea SpA, Vetrai 28 Srl, Carlo Moretti Srl, Ferro & Lazzarini Srl, Fornace Mian Srl, Amelio Cenedese, La Murrina SpA, Nason & Moretti Srl, Venini SpA, De Majo Illuminazione Srl, Confindustria Venezia, Comitato 'Venezia vuole vivere', Fiorital Srl, Ellemme Sas, Grafiche Veneziane Soc. coop. arl, Cantiere navale De Poli SpA, Capgemini BST SpA, Tessuti Artistici Fortuny SpA, Rubelli SpA, Tecnomare SpA and Manutencoop Società Cooperativa are ordered to pay the costs.*

([1]) OJ C 129, 4.5.2013.
OJ C 147, 25.5.2013.
OJ C 207, 20.7.2013.

Order of the Court (Tenth Chamber) of 4 September 2014 — Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C. v Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperativa Mare Azzurro Soc. Coop. rl, Cooperativa vongolari Sottomarina Lido Soc. coop. rl, European Commission

(Case C-145/13 P) ([1])

(Appeal — State aid — Aid to firms established in Venice and Chioggia — Article 181 of the Rules of Procedure of the Court)

(2014/C 409/27)

Language of the case: Italian

Parties

Appellant: Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C. (represented by: R. Volpe and C. Montagner, avvocatesse)

Other parties to the proceedings: Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperativa Mare Azzurro Soc. Coop. rl, Cooperativa vongolari Sottomarina Lido Soc. coop. rl, and European Commission (represented by: V. Di Bucci, G. Conte and D. Grespan, acting as Agents)

Operative part of the order

1. *The appeal is dismissed.*

2. *Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C shall pay the costs.*

([1]) OJ C 207, 20.7.2013.

Order of the Court (Tenth Chamber) of 4 September 2014 — Albergo Quattro Fontane Snc, (C-227/13 P), Hotel Gabrielli Srl, formerly Hotel Gabrielli Sandwirth SpA, (C-228/13 P), GE.AL.VE. Srl, (C-229/13 P), Metropolitan SpA, formerly Metropolitan Srl, (C-230/13 P), Hotel Concordia Srl, formerly Hotel Concordia Snc, (C-231/13 P), Società per l'industria alberghiera (SPLIA), (C-232/13 P), Principessa Srl, in liquidation, (C-233/13 P), Albergo Saturnia Internazionale SpA, (C-234/13 P), Savoia e Jolanda Srl, (C-235/13 P), Biasutti Hotels Srl, formerly Hotels Biasutti Snc, (C-236/13 P), Ge.A.P. Srl, (C-237/13 P), Rialto Inn Srl, (C-238/13 P), Bonvecchiati Srl, (C-239/13 P); other parties: Comitato 'Venezia vuole vivere', Manutencoop Società Cooperativa, formerly Manutencoop Soc. coop. arl and Astrocoop Universale Pulizie, Manutenzioni e Trasporti Soc. coop. arl, Albergo ristorante 'All'Angelo' Snc, European Commission

(Joined Cases C-227/13 P to C-239/13 P) ([1])

(Appeal — State aid — Aid to firms in Venice and Chioggia — Article 181 of the Rules of Procedure of the Court of Justice)

(2014/C 409/28)

Language of the case: Italian

Parties

Appellants: Albergo Quattro Fontane Snc, (C-227/13 P), Hotel Gabrielli Srl, formerly Hotel Gabrielli Sandwirth SpA, (C-228/13 P), GE.AL.VE. Srl, (C-229/13 P), Metropolitan SpA, formerly Metropolitan Srl, (C-230/13 P), Hotel Concordia Srl, formerly Hotel Concordia Snc, (C-231/13 P), Società per l'industria alberghiera (SPLIA), (C-232/13 P), Principessa Srl, in liquidation, (C-233/13 P), Albergo Saturnia Internazionale SpA, (C-234/13 P), Savoia e Jolanda Srl, (C-235/13 P), Biasutti Hotels Srl, formerly Hotels Biasutti Snc, (C-236/13 P), Ge.A.P. Srl, (C-237/13 P), Rialto Inn Srl, (C-238/13 P), Bonvecchiati Srl, (C-239/13 P) (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: Comitato 'Venezia vuole vivere', Manutencoop Società Cooperativa, formerly Manutencoop Soc. coop. arl and Astrocoop Universale Pulizie, Manutenzioni e Trasporti Soc. coop. arl, Albergo ristorante 'All'Angelo' Snc, European Commission (represented by: V. Di Bucci, G. Conte and D. Grespan, acting as Agents)

Operative part of the order

1. *The appeals are dismissed.*

2. *Albergo Quattro Fontane Snc, Hotel Gabrielli Srl, GE.AL.VE. Srl, Metropolitan SpA, Hotel Concordia Srl, Società per l'industria alberghiera (SPLIA), Principessa Srl, Albergo Saturnia Internazionale SpA, Savoia e Jolanda Srl, Biasutti Hotels Srl, Ge.A.P. Srl, Rialto Inn Srl and Bonvecchiati Srl shall pay the costs.*

([1]) OJ C 207 of 20.7.2013.

Order of the Court (Eighth Chamber) of 4 September 2014 — Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Industrial Química del Nalón SA, Bilbaína de Alquitranes SA v European Chemicals Agency (ECHA)

(Case C-288/13 P) ([1])

(Appeals — Article 181 of the Rules of Procedure of the Court — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 59 and Annex XIII — Identification of anthracene oil as a substance of very high concern, to be made subject to the authorisation procedure — Equal treatment)

(2014/C 409/29)

Language of the case: English

Parties

Appellants: Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Industrial Química del Nalón SA, Bilbaína de Alquitranes SA (represented by: K. Van Maldegem, avocat)

Other party to the proceedings: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents, and by J. Stuyck and A.-M. Vandromme, advocaten)

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Industrial Química del Nalón SA and Bilbaína de Alquitranes SA to pay the costs.*

([1]) OJ C 252, 31.8.2013.

Order of the Court (Eighth Chamber) of 4 September 2014 — Cindu Chemicals BV, Deza a.s., Koppers Denmark A/S, Koppers UK Ltd v European Chemicals Agency (ECHA), European Commission

(Case C-289/13 P) ([1])

(Appeals — Article 181 of the Rules of Procedure of the Court — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 59 and Annex XIII — Identification of anthracene oil, anthracene low, as a substance of very high concern, to be made subject to the authorisation procedure — Equal treatment)

(2014/C 409/30)

Language of the case: English

Parties

Appellants: Cindu Chemicals BV, Deza a.s., Koppers Denmark A/S, Koppers UK Ltd (represented by: K. Van Maldegem, avocat)

Other parties to the proceedings: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents, and by J. Stuyck and A.-M. Vandromme, advocaten), European Commission (represented by: E. Manhaeve and P. Oliver, acting as Agents)

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Cindu Chemicals BV, Deza a.s., Koppers Denmark A/S and Koppers UK Ltd to pay the costs.*

([1]) OJ C 252, 31.8.2013.

Order of the Court (Eighth Chamber) of 4 September 2014 — Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Koppers Denmark A/S, Koppers UK Ltd v European Chemicals Agency (ECHA)

(Case C-290/13 P) ([1])

(Appeals — Article 181 of the Rules of Procedure of the Court — Regulation (EC) No 1907/2006 (REACH Regulation) — Article 59 and Annex XIII — Identification of anthracene oil (anthracene paste) as a substance of very high concern, to be made subject to the authorisation procedure — Equal treatment)

(2014/C 409/31)

Language of the case: English

Parties

Appellants: Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Koppers Denmark A/S, Koppers UK Ltd (represented by: K. Van Maldegem, avocat)

Other party to the proceedings: European Chemicals Agency (ECHA) (represented by: M. Heikkilä, W. Broere and T. Zbihlej, acting as Agents, and by J. Stuyck and A.-M. Vandromme, advocaten)

Operative part of the order

The Court:

1. *Dismisses the appeal;*

2. *Orders Rütgers Germany GmbH, Rütgers Belgium NV, Deza a.s., Koppers Denmark A/S and Koppers UK Ltd to pay the costs.*

([1]) OJ C 252, 31.8.2013.

Order of the Court (Ninth Chamber) of 10 July 2014 — Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) v European Commission

(Joined Cases C-379/13 P to C-381/13 P) ([1])

(Appeal — Decision 83/673/EEC — Regulation (EEC) No 2950/83 — European Social Fund — Training operations — Reduction of the financial assistance initially granted — Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests)

(2014/C 409/32)

Language of the cases: Portuguese

Parties

Appellant: Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) (represented by: L. Pinto Monteiro and N. Morais Sarmento, advogados)

Other party to the proceedings: European Commission (represented by: D. Recchia and P. Guerra e Andrade, acting as Agents)

Operative part of the order

1. *The appeals are dismissed.*

2. *Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) shall bear the costs.*

([1]) OJ C 260, 7.9.2013.

Order of the Court (Second Chamber) of 17 July 2014 — Erich Kastenholz v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Qwatchme A/S

(Case C-435/13 P) ([1])

(Appeal — Regulation (EC) No 6/2002 — Community designs — Articles 4 to 6, 25(1)(b) and (f), and 52 — Registered Community design representing watch dials — Earlier Community design — Invalidity proceedings)

(2014/C 409/33)

Language of the case: German

Parties

Appellant: Erich Kastenholz (represented by: L. Acker, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Walicka, acting as Agent), Qwatchme A/S (represented by: M. Zöbisch, Rechtsanwalt)

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Kastenholz shall bear the costs.*

(1) OJ C 304, 19.10.2013.

Order of the Court (Eighth Chamber) of 17 July 2014 — Cytochroma Development, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-490/13 P) (1)

(Appeals — Article 181 of the Rules of Procedure of the Court — Community trade mark — Opposition procedure — Article 169(1) of the Rules of Procedure — Appeal not brought against the operative part of the judgment under appeal — Appeal manifestly unfounded)

(2014/C 409/34)

Language of the case: English

Parties

Appellant: Cytochroma Development, Inc. (represented by: S. Malynicz, Barrister, A. Smith, Solicitor)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Operative part of the order

1. *The appeal is dismissed.*

2. *Cytochroma Development Inc. is ordered to pay the costs.*

(1) OJ C 352, of 30.11.2013.

Order of the Court (Ninth Chamber) of 17 July 2014 (request for a preliminary ruling from the Administrativen sad — Varna (Bulgaria)) — Levent Redzheb Yumer v Direktor na Teritoriyalna direktsia na Natsionalna agentsia za prihodite — Varna

(Case C-505/13) (1)

(Income tax — Article 2 TEU — Articles 20 and 21 of the Charter of Fundamental Rights of the European Union — Principles of legal certainty, effectiveness and proportionality — Farmers' right to a reduction of income tax — Exclusion of natural persons carrying out agricultural activity — Implementation of EU law — No implementation — Manifest lack of jurisdiction of the Court)

(2014/C 409/35)

Language of the case: Bulgarian

Referring court

Administrativen sad — Varna

Parties to the main proceedings

Applicant: Levent Redzheb Yumer

Defendant: Direktor na Teritoriyalna direktsia na Natsionalna agentsia za prihodite — Varna

Operative part of the order

1. *The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Administrativen sad Varna (Bulgaria), by decision of 5 September 2013.*

2. *The first and second questions referred are manifestly inadmissible in so far as they relate to the interpretation of Article 2 TEU.*

([1]) OJ C 344, 23.11.2013.

Order of the Court (Sixth Chamber) of 4 September 2014 — Metropolis Inmobiliarias y Restauraciones, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs), MIP Metro Group Intellectual Property GmbH & Co. KG

(Case C-509/13 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Application for registration of a figurative mark with the word element 'Metro' in blue and yellow — Opposition by the proprietor of the coloured Community figurative mark containing the word 'GRUPOMETROPOLIS' — Rejection of the opposition)

(2014/C 409/36)

Language of the case: German

Parties

Appellant: Metropolis Inmobiliarias y Restauraciones, SL (represented by: J. Carbonell Callicó, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Poch, acting as Agent), MIP Metro Group Intellectual Property GmbH & Co. KG (represented by: J.-C. Plate, Rechtsanwalt)

Operative part of the order

1. *The appeal is dismissed.*

2. *Metropolis Inmobiliarias y Restauraciones SL is ordered to pay the costs.*

([1]) OJ C 336, of 16.11.2013.

Order of the Court (Third Chamber) of 17 July 2014 (request for a preliminary ruling from the Monomeles Protodikeio Athinon — Greece) — Honda Giken Kogyo Kabushiki Kaisha v Maria Patmanidi AE

(Case C-535/13) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Trade marks — Right of the proprietor of a trade mark to oppose the placing on the market within the European Economic Area (EEA) of goods bearing that mark without his consent)

(2014/C 409/37)

Language of the case: Greek

Referring court

Monomeles Protodikeio Athinon

Parties to the main proceedings

Applicant: Honda Giken Kogyo Kabushiki Kaisha

Defendant: Maria Patmanidi AE

Operative part of the order

Articles 5 and 7 of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks, as amended by the Agreement on the European Economic Area of 2 May 1992, and Articles 9 and 13 of Regulation (EC) No 40/94 on the Community trade mark must be interpreted as meaning that the proprietor of a trade mark may oppose the initial placing on the market within the European Economic Area or the European Union of goods bearing that mark without his consent.

([1]) OJ C 377, 21.12.2013.

Order of the Court (Eighth Chamber) of 4 September 2014 (request for a preliminary ruling from the Consiglio di Stato — Italy) — Autorità per l'energia elettrica e il gas v Antonella Bertazzi and Others

(Case C-152/14) ([1])

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Fixed-term employment contracts in the public sector — Stabilisation procedure — Recruitment of workers employed for a fixed term as career civil servants without a public competition — Determination of length of service — Complete disregard of periods of service completed under fixed-term employment contracts — Principle of non-discrimination)

(2014/C 409/38)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità per l'energia elettrica e il gas

Defendant: Antonella Bertazzi, Annalise Colombo, Maria Valeria Contin, Angela Filippina Marasco, Guido Guissani, Lucia Lizzi and Fortuna Peranio

Operative part of the order

1. *Clause 4 of the Framework Agreement on Fixed-Term Work, concluded on 18 March 1999 and annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which completely excludes periods of service completed by a fixed-term worker for a public authority from being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, where the duties performed under fixed-term contracts are the same as those performed by a career civil servant in the same category for that authority, unless that exclusion is justified on 'objective grounds' for the purposes of clause 4(1) and/or (4), this being a matter for the referring court to determine. The mere fact that the fixed-term worker completed those periods of service on the basis of an employment relationship or contract for a fixed term does not constitute such an objective ground.*

2. *The objective of preventing reverse discrimination against career civil servants recruited after passing a general competition cannot constitute an 'objective ground' for the purposes of clause 4(1) and/or (4) of the framework agreement where, as in the case in the main proceedings, the provision of national law at issue completely and in all circumstances excludes all periods of service completed by workers under fixed-term employment contracts from being taken into account in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration.*

(1) OJ C 194, 24.6.2014.

Action brought on 24 June 2014 — European Commission v Republic of Poland

(Case C-303/14)

(2014/C 409/39)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Mifsud-Bonnici and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

The applicant claims that the Court should:

— Declare that, by not notifying the Commission of the certification bodies for personnel and companies and the titles of certificates for personnel and companies designed to record activities in relation to specific fluorinated greenhouse gases which are the subject-matter of the Commission's implementing regulations, and by failing to adopt the provisions on penalties for breaches of the provisions of Regulation (EC) No 842/2006 of the European Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases (1) and to notify those provisions to the Commission, the Republic of Poland has failed to fulfil its obligations under Article 5(2) of that regulation, in conjunction with Article 12 (3) of Commission Regulation (EC) No 303/2008, (2) Article 12(3) of Commission Regulation (EC) No 304/2008, (3) Article 7(1) of Commission Regulation (EC) No 305/2008, (4) Article 6(1) of Commission Regulation (EC) No 306/2008, (5) Article 4(2) of Commission Regulation (EC) No 307/2008, (6) Article 1 of Commission Regulation (EC) No 308/2008, (7) and Article 13(2) of Regulation (EC) No 842/2006 of the European Parliament and of the Council;

— Order the Republic of Poland to pay the costs.

Pleas in law and main arguments

Article 5(2) of Regulation No 842/2006 requires Member States to notify the Commission of their training and certification programmes for companies and personnel involved in the installation, maintenance or servicing of equipment and systems covered by Article 3(1) of that regulation and in the recovery of fluorinated greenhouse gases. This obligation is set out in greater detail by the Commission's implementing regulations adopted on the basis of Article 5(1) of Regulation No 842/2006.

The first plea is therefore based on the fact that the Republic of Poland has not to date forwarded to the Commission the names of the certification bodies for personnel and companies which carry out checks for leakage, installation, servicing or maintenance of stationary refrigeration equipment, air-conditioning equipment, heat-pump equipment, fire-protection systems and fire extinguishers, and which perform activities in connection with the recovery of those fluorinated greenhouse gases; nor has it forwarded to the Commission the titles of the certificates for personnel and companies which satisfy the requirements for certification set out in the Commission's implementing regulations. In addition, no names have been forwarded of the certification bodies for personnel carrying out activities in connection with the recovery of fluorinated greenhouse gases from high-voltage switchgear and recovering solvents containing fluorinated greenhouse gases from equipment; nor have the titles been provided of certificates for personnel satisfying the requirements for certification set out in the Commission's implementing regulations. Moreover, the Polish authorities have failed to forward to the Commission, in the form prescribed by Commission Regulation No 308/2008, the names of the attestation bodies for personnel and the titles of the attestation certificates for personnel meeting the requirements of Article 3(2) and of the annex to Regulation No 307/2008.

The second plea alleges that the Commission was not notified of the national rules on penalties for breaches of the provisions of Regulation No 842/2006. The duty to determine penalties and to notify them to the Commission is, it submits, particularly important in order to ensure full efficacy of the obligations which Articles 3, 4 and 5 of Regulation No 842/2006 impose on operators of stationary equipment. In addition, the establishment of such penalties and their notification to the Commission are of fundamental importance for the purpose of ensuring compliance with the obligations which Article 7 of that regulation imposes on the manufacturers of products and equipment containing fluorinated greenhouse gases. Failure to comply with the prohibitions laid down in Articles 8 and 9 of Regulation No 842/2006 also required to be penalised by means of national rules, within the meaning of Article 13(1) of that regulation, which had to be notified to the Commission.

(1) OJ 2006 L 161, p. 1.
(2) OJ 2008 L 92, p. 3; Commission Regulation No 303/2008 establishing minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary refrigeration, air conditioning and heat pump equipment containing certain fluorinated greenhouse gases.
(3) OJ 2008 L 92, p. 12; Commission Regulation No 304/2008 establishing minimum requirements and the conditions for mutual recognition for the certification of companies and personnel as regards stationary fire protection systems and fire extinguishers containing certain fluorinated greenhouse gases.
(4) OJ 2008 L 92, p. 17; Commission Regulation No 305/2008 establishing minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gases from high-voltage switchgear.
(5) OJ 2008 L 92, p. 21; Commission Regulation No 306/2008 establishing minimum requirements and the conditions for mutual recognition for the certification of personnel recovering certain fluorinated greenhouse gas-based solvents from equipment.
(6) OJ 2008 L 92, p. 25; Commission Regulation No 307/2008 establishing minimum requirements for training programmes and the conditions for mutual recognition of training attestations for personnel as regards air-conditioning systems in certain motor vehicles containing certain fluorinated greenhouse gases.
(7) OJ 2008 L 92, p. 28; Commission Regulation No 308/2008 establishing the format for notification of the training and certification programmes of the Member States.

Request for a preliminary ruling from the Juzgado de lo Social No 1 de Córdoba (Spain) lodged on 27 August 2014 — María Auxiliadora Arjona Camacho v Securitas Seguridad España, S.A.

(Case C-407/14)

(2014/C 409/40)

Language of the case: Spanish

Referring court

Juzgado de lo Social No 1 de Córdoba

Parties to the main proceedings

Applicant: María Auxiliadora Arjona Camacho

Defendant: Securitas Seguridad España, S.A.

Question referred

May Article 18 of Directive 2006/54/EC, (1) which refers to the dissuasive (in addition to real, effective and proportionate) nature of the compensation to be awarded to a victim of discrimination on grounds of sex, be interpreted as meaning that it enables the national court to award the victim reasonable punitive damages that are truly additional, that is to say, an additional amount which, although going beyond the full reparation of the actual loss and damage suffered by the victim, serves as an example to others (in addition to the person responsible for the damage), provided that the amount in question is not disproportionate, that also being the case even when the concept of punitive damages does not form part of the legal tradition of that national court?

(1) Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ 2006 L 204, p. 23.

Request for a preliminary ruling from the Oberlandesgericht Düsseldorf (Germany) lodged on 29 August 2014 — Dr. Falk Pharma GmbH v DAK-Gesundheit

(Case C-410/14)

(2014/C 409/41)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Dr. Falk Pharma GmbH

Defendant: DAK-Gesundheit

Questions referred

The following questions are referred to the Court of Justice of the European Union under Article 267 TFEU for a preliminary ruling on the interpretation of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts … ([1]):

1. Does the concept of a 'public contract' under Article 1(2)(a) of Directive 2004/18/EC no longer apply if a contracting authority carries out an authorisation procedure in which it awards the contract without selecting one or more economic operators ('openhouse model')?

2. If the answer to question 1 is that the selection of one or more economic operators is a characteristic of a public contract, the following question arises: is the characteristic of the selection of economic operators within the meaning of Article 1(2)(a) of Directive 2004/18/EC to be interpreted, in the light of Article 2 of that directive, as meaning that contracting authorities may refrain from selecting one or more economic operators by way of an authorisation procedure only if the following conditions are satisfied:

   — the carrying out of an authorisation procedure is published at European level,

   — clear rules concerning the conclusion of the contract and acceding to the contract are set,

   — the terms of the contract are set in advance in such a way that no economic operator is able to influence the content of the contract,

   — economic operators are granted the right to accede to the contract at any time;

   — the contracts concluded are published at European level?

([1]) OJ 2004 L 134, p. 114.

Appeal brought on 25 September 2014 by the Federal Republic of Germany against the judgment of the General Court (Fifth Chamber) delivered on 16 July 2014 in Case T-295/12 Federal Republic of Germany v European Commission

(Case C-446/14 P)

(2014/C 409/42)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: T. Henze and J. Möller, acting as Agents, Prof. Dr. T. Lübbig and Dr. M. Klasse, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. set aside in full the judgment of the General Court (Fifth Chamber) of 16 July 2014 in Case T-295/12;

2. order the European Commission to pay the costs of the proceedings.

In addition, the form of order sought by the Federal Republic of Germany at first instance is maintained in its entirety.

Pleas in law and main arguments

The subject-matter of this appeal is the judgment of the General Court of 16 July 2014 in Case T-295/12 *Federal Republic of Germany* v *European Commission*, in which the General Court dismissed the action of the Federal Republic of Germany against the decision of the European Commission of 25 April 2012 on State aid SA.25051 (C 19/2010) (ex NN 23/2010) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg (Reference: C(2012) 2557 final).

In its appeal the Federal Republic of Germany complains of an incorrect definition of the evidential criteria which the General Court established for the determination of a 'manifest error of assessment' in the event that a Member State defines a service of general economic interest (SGEI) in a sector which is not harmonised under EU law. The (alleged) recipient of the aid in the underlying administrative procedure is the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate — an establishment which received State compensatory payments for the animal health task of providing animal carcase disposal capacities in the event of an epidemic. Crucial to the issue of the classification of those compensatory payments as aid in the judgment under appeal is essentially the fact that the General Court did not classify the animal health tasks, with which the Zweckverband is entrusted, as SGEI.

The Federal Republic of Germany puts forward three grounds in support of its appeal.

The first ground alleges infringement of Article 107(1) TFEU and Article 106(2) TFEU in so far as those provisions were misinterpreted in the judgment under appeal to the effect that the German authorities had made such serious errors in the classification of the reserve capacity to cope with epidemics as SGEI that those errors must, in the view of the General Court, be classified as 'manifest'. The Federal Republic of Germany argues that the judgment under appeal encroaches upon the margin of discretion which is due to Member States when defining a SGEI. According to the Federal Republic of Germany, there is in any event no 'manifest error of assessment' in the case of the SGEI definition. The Federal Republic of Germany notes (i) that that criterion for assessment is indisputably not mentioned at all by the Commission in the underlying decision, (ii) that the Commission also stated in the proceedings before the General Court that it was not obliged to prove the presence of a 'manifest error of assessment', and (iii) that neither the Commission's considerations in the decision nor the General Court's findings in the judgment under appeal substantively support the alleged presence of a 'manifest error of assessment'.

The second ground alleges infringement of Article 107(1) TFEU owing to the erroneous finding of an economic advantage on the basis of an erroneous assessment of the '*Altmark* criteria'. ([1]) The Federal Republic of Germany argues, inter alia, that the General Court committed errors when assessing the third *Altmark* criterion (necessity of the compensatory payments). The General Court failed to recognise that the Commission erred in law in failing to assess whether the compensatory payments for the reserve capacity to cope with epidemics exceed the net additional costs of the provision of that reserve capacity. Instead, the Commission and, following it, the General Court rejected out of hand the necessity for such costs by referring to an alleged lack of need for a separate reserve capacity to cope with epidemics.

The third ground alleges failure to state adequate reasons in the judgment under appeal, particularly in that alleged errors made by the German authorities must be classified as particularly serious and 'manifest'. It is also not explained why the view of the German authorities is indefensible from any conceivable point of view.

(1) Judgment in *Altmark*, C-280/00, EU:C:2003:415.

Order of the President of the Court of 18 August 2014 — European Commission v Republic of Estonia supported by: Federal Republic of Germany, Kingdom of Belgium, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Republic of Poland, Republic of Finland, Kingdom of Sweden

(Case C-240/13) (1)

(2014/C 409/43)

Language of the case: Estonian

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

(1) OJ C 189, 29.6.2013.

Order of the President of the Court of 18 August 2014 — European Commission v Republic of Estonia supported by: Federal Republic of Germany, Kingdom of Belgium, Kingdom of the Netherlands, United Kingdom of Great Britain and Northern Ireland, Republic of Poland, Republic of Finland, Kingdom of Sweden

(Case C-241/13) (1)

(2014/C 409/44)

Language of the case: Estonian

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

(1) OJ C 189, 29.6.2013.

Order of the President of the Court of 8 July 2014 (request for a preliminary ruling from the Amtsgericht Rüsselsheim — Germany) — Peggy Kieck v Condor Flugdienst GmbH

(Case C-118/14) (1)

(2014/C 409/45)

Language of the case: German

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

(1) OJ C 184, 16.6.2014.

Order of the President of the Court of 10 July 2014 (request for a preliminary ruling from the Amtsgericht Rüsselsheim — Germany) — Henricus Cornelis Maria Niessen, Angelique Francisca Niessen Steeghs, Melissa Alexandra Johanna Niessen, Kenneth Gerardus Henricus Niessen v Condor Flugdienst GmbH

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

(2014/C 409/46)

Language of the case: German

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

([1]) OJ C 159, 26.5.2014.

GENERAL COURT

Judgment of the General Court of 7 October 2014 — Schenker v Commission

(Case T-534/11) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Administrative file and final Commission decision concerning a cartel, non-confidential version of that decision — Refusal of access — Obligation to carry out a specific, individual examination — Exception relating to the protection of the commercial interests of a third party — Exception relating to the protection of the purpose of investigations — Overriding public interest)

(2014/C 409/47)

Language of the case: German

Parties

Applicant: Schenker AG (Essen, Germany) (represented by: C. von Hammerstein, B. Beckmann and C. D. Munding, lawyers)

Defendant: European Commission (represented by: initially M. Kellerbauer, C. ten Dam and P. Costa de Oliveira, then Mr. Kellerbauer, P. Costa de Oliveira and H. Leupold, Agents)

Interveners in support of the defendant: Koninklijke Luchtvaart Maatschappij NV (Amsterdam, Netherlands) (represented by: M. Smeets, lawyer); Martinair Holland NV (Haarlemmermeer, Netherlands) (represented by: R. Wesseling and M. Bredenoord-Spoek, lawyers); Société Air France SA (Roissy-en-France, France) (represented by: A. Wachsmann abd S. Thibault-Liger, lawyers); Cathay Pacific Airways Ltd (Queensway, Hong Kong, China) (represented by: initially by B. Bär-Bouyssière, lawyer, M. Rees, Solicitor, D. Vaughan, QC, and R. Kreisberger, Barrister, then by M. Rees, D. Vaughan and R. Kreisberger); Air Canada (Québec, Canada) (represented by: J. Pheasant, Solicitor, and C. Wünschmann, lawyer); Lufthansa Cargo AG (Frankfurt-on-Main, Germany) and Swiss International Air Lines AG (Basel, Switzerland) (represented by: initially S. Völcker and E. Arsenidou, then S. Völcker and J. Orologas, lawyers)

Re:

Application for annulment of the Commission decision of 3 August 2011 refusing to grant access to the administrative file of decision C (2010) 7694 final (Case COMP/39.258 — Air Cargo), to the full version of that decision and its non-confidential version.

Operative part of the judgment

The Court:

1. *Annuls Commission decision of 3 August 2011 refusing access to the administrative file of decision C (2010) 7694 final (Case COMP/39.258 — Air Cargo), to the full version of that decision and its non-confidential version, in that the Commission has refused access to the part of the non-confidential version of the decision at issue for which the undertakings concerned by it had not requested, or continued to not request, confidentiality;*

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

3. *Orders Schenker AG to bear its own costs and half of the costs incurred by the European Commission;*

4. *Orders Koninklijke Luchtvaart Maatschappij NV, Martinair Holland NV, Société Air France SA, Cathay Pacific Airways Ltd, Air Canada, Lufthansa Cargo AG and Swiss International Air Lines AG to bear their own costs.*

([1]) OJ C 355, 3.12.2011.

Judgment of the General Court of 8 October 2014 — Lidl Stiftung v OHIM — A Colmeia do Minho (FAIRGLOBE)

(Case T-300/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark FAIRGLOBE — Earlier national word marks GLOBO — Relative ground for refusal — No proof of genuine use of the earlier marks — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Rule 22(3) and (4) of Regulation (EC) No 2868/95)

(2014/C 409/48)

Language of the case: English

Parties

Applicant: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by: M. Wolter and A. Berger, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: A Colmeia do Minho L^{da} (Aldeia de Paio Pires, Portugal)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 April 2012 (Case R 1981/2010-2) concerning opposition proceedings between A Colmeia do Minho L^{da} and Lidl Stiftung & Co. KG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 2 April 2012 (Case R 1981/2010-2), concerning opposition proceedings between A Colmeia do Minho L^{da} and Lidl Stiftung & Co. KG, in that it found that genuine use of the earlier marks had been demonstrated to the requisite legal standard;*

2. *Orders OHIM to bear its own costs and to pay those incurred by Lidl Stiftung & Co.*

([1]) OJ C 273, 8.9.2012.

Judgment of the General Court of 7 October 2014 — Tifosi Optics v OHIM — Tom Tailor (T)

(Case T-531/12) ([1])

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

(2014/C 409/49)

Language of the case: English

Parties

Applicant: Tifosi Optics, Inc. (Watkinsville, United States) (represented initially by A. Tornato and D. Hazan, and subsequently by R. Gilbey, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Tom Tailor GmbH (Hamburg, Germany) (represented by: O. Gillert, K. Vanden Bossche and B. Köhn-Gerdes, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 17 September 2012 (Case R 729/2011-2), concerning opposition proceedings between Tom Tailor GmbH and Tifosi Optics, Inc.

Operative part of the judgment

The Court:

1) *Dismisses the action.*

2) *Orders Tifosi Optics, Inc. to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Tom Tailor GmbH.*

([1]) OJ C 46, 16.2.2013.

Judgment of the General Court of 3 October 2014 — Cezar v OHIM — Poli-Eco (Insert)

(Case T-39/13) ([1])

(Community design — Invalidity proceedings — Registered Community design representing an insert — Earlier design — Novelty — Individual character — Visible features of a component part of a complex product — Assessment of the earlier design — Articles 3, 4, 5, 6 and 25(1)(b) of Regulation (EC) No 6/2002)

(2014/C 409/50)

Language of the case: English

Parties

Applicant: Cezar Przedsiębiorstwo Produkcyjne Dariusz Bogdan Niewiński (Ełk, Poland) (represented initially by M. Nentwig and G. Becker, and subsequently by M. Nentwig, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by F. Mattina, and subsequently by P. Bullock, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Poli-Eco Tworzywa Sztuczne sp. z o.o. (Szprotawa, Poland) (represented initially by B. Rokicki, and subsequently by D. Rzazewska, lawyers)

Re:

Action brought against the decision of the Third Board of Appeal of OHIM of 8 November 2012 (Case R 1512/2010-3), concerning invalidity proceedings between Poli-Eco Tworzywa Sztuczne sp. z o.o. and Cezar Przedsiębiorstwo Produkcyjne Dariusz Bogdan Niewiński.

Operative part of the judgment

The Court:

1) *Annuls the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 8 November 2012 (Case R 1512/2010-3);*

2) *Orders OHIM to bear its own costs and to pay the costs incurred by Cezar Przedsiębiorstwo Produkcyjne Dariusz Bogdan Niewiński;*

3) *Orders Poli-Eco Tworzywa Sztuczne sp. z o.o. to bear its own costs.*

(1) OJ C 101, 6.4.2013.

Judgment of the General Court of 8 October 2014 — Laboratoires Polive v OHIM — Arbora & Ausonia (DODIE)

(Case T-77/13) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark DODIE — Earlier national word mark DODOT — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Power to alter decisions)

(2014/C 409/51)

Language of the case: English

Parties

Applicant: Laboratoires Polive (Levallois-Perret, France) (represented by: A. Sion, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Arbora & Ausonia, SLU (Barcelona, Spain) (represented by: R. Guerras Mazón, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 31 October 2012 (Case R 1949/2011-2) relating to opposition proceedings between Arbora & Ausonia, SLU and Laboratoires Polive.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 31 October 2012 (Case R 1949/2011-2);*

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

3. *Orders OHIM to bear its own costs and to pay those incurred by Laboratoires Polive;*

4. *Orders Arbora & Ausonia, SLU to bear its own costs.*

(1) OJ C 108, 13.4.2013.

Judgment of the General Court of 8 October 2014 — Laboratoires Polive v OHIM — Arbora & Ausonia (dodie)

(Cases T-122/13 and T-123/13) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark dodie — Earlier national word marks DODOT — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 409/52)

Language of the case: English

Parties

Applicant: Laboratoires Polive (Levallois-Perret, France) (represented by: A. Sion, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Arbora & Ausonia, SLU (Barcelona, Spain) (represented by: R. Guerras Mazón, lawyer)

Re:

Two actions brought against two decisions of the Second Board of Appeal of OHIM of 28 November 2012 (Cases R 2324/2011-2 and R 2325/2011-2, respectively) relating to two sets of opposition proceedings between Arbora & Ausonia, SLU and Laboratoires Polive.

Operative part of the judgment

The Court:

1. *Joins Cases T-122/13 and T-123/13 for the purposes of the judgment;*

2. *Annuls the decisions of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 28 November 2012 (Cases R 2324/2011-2 and R 2325/2011-2);*

3. *Orders OHIM to bear its own costs and to pay those incurred by Laboratoires Polive;*

4. *Orders Arbora & Ausonia, SLU to bear its own costs.*

([1]) OJ C 123, 27.4.2013.

Order of the General Court of 17 September 2014 — ATC and Others v Commission

(Case T-333/10) ([1])

(Non-contractual liability — Importation of birds — Agreement on the quantified amounts of the award of compensation for the damages suffered — No need to adjudicate)

(2014/C 409/53)

Language of the case: Dutch

Parties

Applicants: Animal Trading Company (ATC) BV (Loon op Zand, Netherlands); Avicentra NV (Malle, Belgium); Borgstein Birds and Zoofood Trading VOF (Wamel, Netherlands); Bird Trading Company Van der Stappen BV (Dongen, Netherlands); New Little Bird's srl (Anagni, Italy); Vogelhuis Kloeg (Zevenbergen, Netherlands) and Giovanni Pistone (Westerlo, Belgium) (represented by: M. Osse and J. Houdijk, lawyers

Defendant: European Commission (represented initially by F. Jimeno Fernández and B. Burggraaf, and subsequently by F. Jimeno Fernández and H. Kranenborg, acting as Agents)

Re:

Action for compensation in respect of the harm allegedly suffered by the applicants as a result of the adoption first, of Commission Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds (OJ 2005 L 285, p. 60), as extended, and of Commission Regulation (EC) No 318/2007 of 23 March 2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof (OJ 2007 L 84, p. 7).

Operative part of the order

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

2. *Animal Trading Company (ATC) BV, Avicentra NV, Borgstein Birds and Zoofood Trading VOF, Bird Trading Company Van der Stappen BV, New Little Birds Srl, Vogelhuis Kloeg and M. Giovanni Pistone are to bear their own costs.*

3. *The European Commission is to bear its own costs.*

(1) OJ C 274, 9.10.2010.

Order of the General Court of 16 September 2014 — Canon Europa v Commission

(Case T-34/11) (1)

(Action for annulment — Customs Union — Common Customs Tariff — Tariff and Statistical Nomenclature — Classification in the Combined Nomenclature — Tariff subheadings — Customs duties applicable to goods classified under those subheadings — Regulatory act entailing implementing measures — Inadmissible)

(2014/C 409/54)

Language of the case: English

Parties

Applicant: Canon Europa NV (Amsterdam, Netherlands) (represented by: P. De Baere and P. Muñiz, lawyers)

Defendant: European Commission (represented by: R. Lyal and L. Keppenne, Agents)

Re:

Application to annul in part the Annex to Commission Regulation (EU) No 861/2010 of 5 October 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2010 L 284, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *There is no need to adjudicate on the applications for leave to intervene made by Konica Minolta Business Solutions Europe GmbH and Olivetti SpA.*

3. *Canon Europa NV shall bear its own costs and pay the costs incurred by the European Commission.*

(1) OJ C 80, 12.3.2011.

Order of the General Court of 16 September 2014 — Kyocera Mita Europe v Commission

(Case T-35/11) (1)

(Actions for annulment — Customs union — Common Customs Tariff — Tariff and statistical nomenclature — Classification in the Combined Nomenclature — Tariff subheadings — Customs duties applicable to goods classified under those tariff subheadings — Regulatory act entailing implementing measures — Inadmissibility)

(2014/C 409/55)

Language of the case: English

Parties

Applicant: Kyocera Mita Europe BV (Amsterdam, Netherlands) (represented by: P. De Baere and P. Muñiz, lawyers)

Defendant: European Commission (represented by: R. Lyal and L. Keppenne, acting as Agents)

Re:

Action for annulment in part of the Annex to Commission Regulation (EU) No 861/2010 of 5 October 2010 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2010 L 284, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *It is not necessary to adjudicate on the applications for leave to intervene submitted by Konica Minolta Business Solutions Europe GmbH and Olivetti SpA.*

3. *Kyocera Mita Europe BV shall bear its own costs and pay those incurred by the European Commission.*

(1) OJ C 80, 12.3.2011.

Order of the General Court of 10 September 2014 — mobile.international v OHIM — Commission (PL mobile.eu)

(Case T-519/12) (1)

(Community trade mark — Application for a declaration of invalidity — Withdrawal of the application for a declaration of invalidity — No need to adjudicate)

(2014/C 409/56)

Language of the case: German

Parties

Applicant: mobile.international GmbH (Kleinmachnow, Germany) (represented by: T. Lührig, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: European Commission

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 September 2012 (Case R 1401/2011-1) concerning invalidity proceedings between the European Commission and mobile.international GmbH.

Operative part of the order

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

2. *The applicant shall bear its own costs and pay those incurred by the defendant.*

(1) OJ C 26, 26.1.2013.

Order of the General Court of 29 September 2014 — Ronja v Commission

(Case T-3/13) ([1])

(Action for annulment — Access to documents — Regulation (EC) 1049/2001 — Documents exchanged in connection with a complaint concerning the transposition of Directive 2001/37/EC — Documents emanating from a Member State — Objection made by the Member State — Partial refusal of access — Decision granting full access following a measure of organisation of procedure — No need to adjudicate — Documents emanating from the Commission — Decision granting full access — Failure by the Commission to initiate proceedings for failure to fulfil obligations against Austria — Inadmissibility)

(2014/C 409/57)

Language of the case: German

Parties

Applicant: Ronja s.r.o. (Znojmo, Czech Republic) (represented by: E. Engin-Deniz, lawyer)

Defendant: European Commission (represented by: M. Noll-Ehlers and C. Zadra, acting as Agents)

Re:

Application, firstly, for annulment of the decisions of the Commission of 6 September and 8 November 2012 refusing to grant the applicant full access to certain letters exchanged between the Commission and the Republic of Austria concerning complaint No 2008/4340 relating to the transposition of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26) and, secondly, for a declaration that the Commission unlawfully failed to initiate proceedings for failure to fulfil obligations against the Republic of Austria for infringement of Article 13 of Directive 2001/37 and Article 34 TFEU.

Operative part of the order

1. *There is no longer any need to adjudicate on the second head of claim of Ronja s.r.o. in so far as it concerns the annulment of the decision of the European Commission of 8 November 2012 refusing to grant full access to the letters from the Republic of Austria of 19 February and 8 May 2009 sent to the Commission and exchanged between them in relation to complaint No 2008/4340 made by Ronja relating to the transposition of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26).*

2. *The remainder of the action is dismissed as inadmissible.*

3. *Ronja shall bear its own costs and those incurred by the Commission in respect of the claim for annulment in so far as it is directed against the decision of the Commission of 6 September 2012, by which the Commission granted access to the letters of 23 December 2008 and 18 March 2009, sent to the Republic of Austria and exchanged between them in relation to complaint No 2008/4340, that claim seeking full access to the documentation requested, and the claim seeking a declaration that the Commission unlawfully failed to initiate proceedings for failure to fulfil obligations against the Republic of Austria.*

4. *The Commission shall bearing its own costs and pay the costs incurred by Ronja in respect of the claim for annulment in so far as it is directed against its decision of 8 November 2012.*

([1]) OJ C 79, 16.3.2013.

Order of the General Court of 23 September 2014 — Jaczewski v Commission

(Case T-178/13) ([1])

(Action for annulment — Agriculture — Interest in bringing proceedings — Regulatory act entailing implementing measures — Lack of individual concern — Inadmissibility)

(2014/C 409/58)

Language of the case: Polish

Parties

Applicant: Grzegorz Jaczewski (Bielany, Poland) (represented by: M. Goss, lawyer)

Defendant: European Commission (represented by: P. Rossi and A. Szmytkowska, acting as Agents)

Re:

Application for partial annulment of Commission Implementing Decision C(2012) 5049 final of 24 July 2012 approving the grant of complementary national direct payments in Poland for 2012.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Grzegorz Jaczewski is ordered to pay the costs.*

([1]) OJ C 156, 1.6.2013.

Order of the General Court of 10 September 2014 — Zentralverband des Deutschen Bäckhandwerks v Commission

(Case T-354/13) ([1])

(Action for annulment — Protected geographical indication 'Kołocz śląski' or 'Kołacz śląski' — Rejection of the application for annulment of the registration — Act not amenable to review — Inadmissibility)

(2014/C 409/59)

Language of the case: German

Parties

Applicant: Zentralverband des Deutschen Bäckhandwerks eV (Berlin, Germany) (represented by: I. Jung, M. Teworte-Vey, A. Renvert and J. Saatkamp, lawyers)

Defendant: European Commission (represented by: D. Triantafyllou and G. von Rintelen, acting as Agents)

Re:

Annulment of the alleged Commission decision contained in the letter of 8 April 2013 from the Director-General of the Agriculture and Rural Development Directorate-General of the Commission rejecting as inadmissible the applicant's request for cancellation of the registration of the term 'Kołocz śląski' or 'Kołacz śląski' as a protected geographical indication.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Zentralverband des Deutschen Bäckhandwerks eV shall pay the costs.*

(1) OJ C 260, 7.9.2013.

Order of the General Court of 10 September 2014 — Lomnici v Parliament

(Case T-650/13) (1)

(Action for annulment — Petition addressed to the European Parliament concerning the new law on Slovak citizenship — Petition declared admissible — Decision to close the procedure — Act not amenable to review — Inadmissibility)

(2014/C 409/60)

Language of the case: Hungarian

Parties

Applicant: Zoltán Lomnici (Budapest, Hungary) (represented by: Z. Lomnici, lawyer)

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

Re:

Application to annul the decision of the Committee on Petitions of the European Parliament of 17 October 2013 to declare Petition No 1298/2012 closed.

Operative part of the order

1. *The European Parliament's request for a declaration that there is no need to adjudicate is rejected.*

2. *The action is dismissed as inadmissible.*

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

4. *Mr Zoltán Lomnici shall bear his own costs and pay those incurred by the Parliament.*

5. *The Slovak Republic and Hungary shall bear their own costs.*

(1) OJ C 71, 8.3.2014.

Order of the General Court of 18 September 2014 — Marcuccio v Commission

(Case T-698/13 P) (1)

(Appeal — Civil service — Officials — Application at first instance dismissed as manifestly inadmissible — Application lodged by fax and the original subsequently received not the same — Time-limit for bringing proceedings — Action lodged out of time — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2014/C 409/61)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 17 October 2013 in Case F-127/12 Marcuccio v Commission ECR-SC, EU:F:2013:161, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

3. *Mr Marcuccio is ordered to refund to the General Court the sum of EUR 2 000 pursuant to Article 90 of its Rules of Procedure.*

(1) OJ C 52, 22.2.2014.

Order of the General Court of 18 September 2014 — Marcuccio v Commission

(Case T-699/13 P) (1)

(Appeal — Civil service — Officials — Application at first instance dismissed as manifestly inadmissible — Application lodged by fax and the original subsequently received not the same — Time-limit for bringing proceedings — Action lodged out of time — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2014/C 409/62)

Language of the case: Italian

Parties

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

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

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 17 October 2013 in Case F-145/12 Marcuccio v Commission ECR-SC, EU:F:2013:162, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

3. *Mr Marcuccio is ordered to refund to the General Court the sum of EUR 2 000 pursuant to Article 90 of its Rules of Procedure.*

(1) OJ C 52, 22.2.2014.

Order of the President of the General Court of 18 September 2014 — Frucona Košice v Commission

(Case T-103/14 R II)

(Application for interim measures — State aid — Alcohol and spirits — Cancellation of a tax debt in a collective bankruptcy procedure — Decision declaring the aid incompatible with the internal market and ordering its recovery — Application for suspension of operation of a measure — Lack of any urgency — Prima facie case not made out)

(2014/C 409/63)

Language of the case: English

Parties

Applicant: Frucona Košice a.s., Košice (Slovakia), represented by K. Lasok QC, B. Hartnett and J. Holmes, Barristers, and O. Geiss, lawyer,

Defendant: European Commission (represented by: L. Armati, P. J. Loewenthal and K. Walkerová, acting as Agents)

Re:

Application for suspension of the operation of Commission Decision C(2013) 6261 final of 16 October 2013 on State aid SA.18211 (C 25/2005) (ex NN 21/2005), implemented by the Slovak Republic for Frucona Košice a.s., in so far as it orders the Slovak Republic to recover the aid.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 23 July 2014 — HB and Others v Commission

(Case T-361/14)

(2014/C 409/64)

Language of the case: German

Parties

Applicants: HB and Others (Linz, Austria) Hans Joachim Richter (Bremen, Germany); Carmen Arsene (Pitesti, Romania); Robert Coates Smith (Glatton, United Kingdom); Magdalena Anna Kuropatwinska (Warsaw, Poland); Nathalie Louise Klinge (Zuidbroek, Netherlands); and Christos Yiapanis (Paphos, Cyprus) (represented by: C. Kolar, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the European Commission decision of 26 March 2014 which rejected registration of the proposed citizens' initiative entitled 'Ethics for Animals and Kids'.

Pleas in law and main arguments

In support of the action, the applicants claim, in essence, that by the decision which rejected registration of the proposed citizens' initiative entitled 'Ethics for Animals and Kids', the Commission had failed to observe the limits of its competence and infringed its duty to protect, the general prohibition of arbitrariness and Articles 11 and 13 TFEU.

Action brought on 25 July 2014 — One of Us and Others v Parlement and Others

(Case T-561/14)

(2014/C 409/65)

Language of the case: English

Parties

Applicants: European Citizens' Initiative One of Us and Others (represented by: C. de La Hougue, lawyer)

Defendants: European Parliament, European Commission and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Commission Communication COM (2014) 355 final;

— in the alternative, annul of Article 10(1)(c) of Regulation (EU) No 211/2011;

— order the defendants to pay the applicant's costs of this procedure.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's reply to the applicants' legislative proposal and to the issues raised by the applicants in the citizens' initiative 'One of us' is unsatisfactory as the Commission i) does not respond to the fact that the human embryo is a human being and ii) does not address obvious contradictions.

2. Second plea in law, alleging violation of the democratic process as the Commission:

   — does not provide legal reasons for its refusal to transmit the applicants' proposal to the Parliament;

   — misunderstands the requirements of Regulation No 211/2011 ([1]) and maintains a monopoly of the legislative process contrary to the provisions of the Treaties on the institutional dialogue;

   — does not set out its legal and political conclusions separately as required by Regulation No 211/2011.

3. Third plea in law, alleging non-conformity of Regulation No 211/2011 with the Treaties. The applicants allege that:

   — the objectives of the Lisbon Treaty to improve the institutions' democratic legitimacy and to encourage the participation of European citizens in the democratic process are countered if a citizens' initiative can be dismissed by the Commission for subjective or arbitrary reasons without being examined by the Parliament;

   — the rule of law is infringed if the Commission's decision is not subject to legal review.

([1]) Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative (OJ 2011 L 65, p. 1).

Action brought on 31 July 2014 — Polyelectrolyte Producers Group and SNF v Commission

(Case T-573/14)

(2014/C 409/66)

Language of the case: English

Parties

Applicants: Polyelectrolyte Producers Group (Brussels, Belgium) and SNF SAS (Andrézieux Bouthéon, France) (represented by: R. Cana and A. Patsa, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the application admissible and well-founded;

— annul the contested act because it lays down an invariable concentration limit of 100 ppm for residual monomers;

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

Pleas in law and main arguments

By its present action, the applicants seek the annulment, in part, of Commission Decision 2014/256/EU of 2 May 2014 establishing the ecological criteria for the award of the EU Ecolabel for converted paper products ([1]).

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

1. First plea in law, alleging infringement of the EU Ecolabel Regulation ([2]) as the Commission has laid down an invariable concentration limit of 100 ppm for residual monomers under Section (e) of Criterion 1(B)(B3) of the annex to the contested decision. The applicants submit that the requirements laid down in the said section:

   — infringe Article 6(3) of and Annex I to the EU Ecolabel Regulation as they are not determined on a scientific basis;

   — infringe Article 6(1) of and Annex I to the EU Ecolabel Regulation as they do not take into account the latest strategic objectives of the EU in the environmental field;

   — infringe Article 6(3)(b) of the EU Ecolabel Regulation as their feasibility has not been considered by the Commission.

2. Second plea in law, alleging infringement of the duty to state reasons and the principles of equality and proportionality as the contested decision:

   — contains no indication or explanation as to the requirements laid down in Section (e) of Criterion 1(B)(B3);

   — treats both different situations equally and equal situations differently without such discrimination being objectively justified;

   — is not necessary to attain the objectives that are pursued and less onerous measures exist.

3. Third plea in law, alleging breach of the Commission's duty of good administration as it has not examined carefully and impartially all the relevant factors and circumstances when adopting the contested decision.

([1]) OJ 2014 L 135, p. 24. Notified under document C(2014) 2774.
([2]) Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ 2010 L 27, p. 1).

Action brought on 1 August 2014 — EAEPC v Commission

(Case T-574/14)

(2014/C 409/67)

Language of the case: English

Parties

Applicant: European Association of Euro Pharmaceutical Companies (EAEPC) (Brussels, Belgium) (represented by: J. Buendía Sierra, L. Ortiz Blanco, Á. Givaja Sanz and M. Araujo Boyd, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application for annulment admissible;

— annul the European Commission's decision of 27 May 2014 in Case No COMP/AT.36957 *Glaxo Wellcome*;

— order the European Commission to bear its own costs as well as those which the EAEPC may incur in connection with these proceedings.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of Commission Decision C(2014) 3654 final of 27 May 2014 in Case COMP/AT.36957 — Glaxo Wellcome, whereby the Commission rejects the applicant's complaint thereby refusing a further investigation into the alleged infringement by Glaxo Wellcome SA, now GlaxoSmithKline SA, of Article 101 TFEU in the light of the judgments of 27 September 2006, *GlaxoSmithKline Services* v *Commission* (T-168/01, ECR, EU:T:2006:265) and of 6 October 2009, *GlaxoSmithKline Services* v *Commission* (C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, ECR, EU:C:2009:610).

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

1. First plea in law, alleging that the Commission committed a manifest error of assessment in breach of Articles 101, 105 and 266 TFEU and Article 7 of Regulation No 1/2003 ([1]) in holding that the effect of the judgment *GlaxoSmithKline Services* v *Commission* (EU:C:2009:610) is that the initial decision of 2001 was considered null and void and that the situation was to be regarded as if the Commission had never adopted the 2001 Decision. The applicant further alleges that the Commission infringed its duty to give sufficient reasons and its obligation to hear the applicant on this issue before adopting a definitive decision.

2. Second plea in law, alleging that the contested decision infringes Article 101 TFEU or that the Commission failed to comply with its duty to state reasons under Article 296 TFEU when assessing the existence of an EU interest in the case. The applicant further submits that the Commission has infringed the applicant's fundamental right to be heard.

3. Third plea in law, alleging that all matters of fact and law are not analysed in the contested decision.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

Action brought on 10 August 2014 — Pro Asyl v EASO

(Case T-617/14)

(2014/C 409/68)

Language of the case: German

Parties

Applicant: Pro Asyl Bundesweite Arbeitsgemeinschaft für Flüchtlinge e.V. (Frankfurt am Main, Germany) (represented by: S. Hilbrans, lawyer)

Defendant: European Asylum Support Office (EASO)

Form of order sought

The applicant claims that the General Court should:

— Annul the defendant's decision of 10 June 2014 — EASO/ED/2014/134 in so far as access to the operating plan for sending an EU-asylum support team to Bulgaria ('Operating Plan on Bulgaria') was refused and the applicant was not guaranteed access to the register of documents under Article 11 of Regulation No 1049/2001.

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 an infringement of the applicant's right to access information

   The applicant claims that there is no exception to the applicant's general right to access information under Article 4 of Regulation (EC) No 1049/2001 ([1]) with respect to the 'Operating Plan on Bulgaria' at issue in the proceedings.

   In that regard, the applicant claims that the refusal to grant access to information is not capable of being justified in particular on the ground of protection of deliberations leading to the creation of a document under Article 4(3) of Regulation No 1049/2001 since the 'Operating Plan' was completed.

   In addition, the 'Operating Plan on Bulgaria' is not a third-party document within the meaning of Article 4(4) of Regulation No 1049/2001, since the defendant and the Republic of Bulgaria drew up the plan together. Consequently, the 'Operating Plan' did not originate from that Member State for the purposes of Article 4(5) of Regulation No 1049/2001.

2. Second plea in law, alleging an infringement of the right of access to the register

   The applicant claims in addition that the contested decision should also be annulled since it refused the applicant access to the electronic register of documents in accordance with Article 11 of Regulation No 1049/2001 or Article 11 of Decision No 6 of the EASO management board.

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

Action brought on 14 August 2014 — Bionorica v Commission

(Case T-619/14)

(2014/C 409/69)

Language of the case: German

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the defendant, in infringement of Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9), failed to entrust the European Food Safety Authority with the scientific assessment of health claims relating to plant materials for the drafting of a Community list of permitted claims for plant materials in accordance with Article 13(1) of Regulation (EC) No 1924/2006, and all the necessary conditions for the application of those claims,

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

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law.

Plea in law, alleging an infringement of Article 13(3) of Regulation (EC) No 1924/2006 ([1])

According to the applicant, the Commission's failure to act infringes Article 13(3) of Regulation No 1924/2006, which provides that 31 January 2010 is a binding deadline for transposition. The applicant claims that the Commission failed to comply with that deadline. In that regard, the applicant claims that the Commission is not entitled to construe the scientific assessment of health claims relating to plant materials as not being subject to a deadline. The defendant's failure to act, in the opinion of the applicant, undermines a uniform application of law throughout the European Union and is not compatible with the basic principle of the regulation to create uniform European rules.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

Action brought on 15 August 2014 — Diapharm v Commission

(Case T-620/14)

(2014/C 409/70)

Language of the case: German

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare that the defendant, in infringement of Article 13(3) of Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9), did not request that the European Food Safety Authority carry out the scientific assessment of health claims relating to plant substances with a view to the adoption of a Community list of permitted claims in respect of plant substances pursuant to Article 13(1) of Regulation (EC) No 1924/2006 and of all the necessary conditions for the use of those claims;

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law.

Plea in law: Infringement of Article 13(3) of Regulation (EC) No 1924/2006 ([1])

In the applicant's view the inaction of the Commission infringes Article 13(3) of Regulation No 1924/2006, which stipulates a definite deadline for implementation of 31 January 2010. The applicant submits that the Commission allowed that deadline to pass. The applicant submits in that connection that the Commission is not entitled to suspend the scientific assessment of health claims in respect of plant substances for an unlimited period. According to the applicant, the inaction on the part of the defendant fosters legal fragmentation throughout the European Union and is at variance with the fundamental purpose of the regulation of creating uniform rules throughout Europe.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

Action brought on 20 August 2014 — Beul v Parliament and Council

(Case T-640/14)

(2014/C 409/71)

Language of the case: German

Parties

Applicant: Carsten René Beul (Neuwied, Germany) (represented by: H. Pott and T. Eckhold, lawyers)

Defendants: Council of the European Union and European Parliament

Form of order sought

The applicant claims that the Court should:

— annul Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC.

Pleas in law and main arguments

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

In the first place, the applicant alleges that Regulation (EU) No 537/2014 ([1]) is not covered by any enabling provision.

In addition, the applicant takes the view that the provisions of Regulation No 537/2014 represent an unlawful infringement of the freedom to choose an occupation guaranteed in accordance with Article 6(1) TEU in conjunction with Article 15 of the Charter of Fundamental Rights of the European Union. The applicant submits that the infringement of the freedom to choose an occupation is unjustified particularly on grounds of a lack of proportionality. Furthermore, the applicant claims infringement of the principle of subsidiarity.

([1]) Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ 2014 L 158, p. 77).

Action brought on 15 September 2014 — Trioplast Industrier v Commission

(Case T-669/14)

(2014/C 409/72)

Language of the case: English

Parties

Applicant: Trioplast Industrier AB (Smålandsstenar, Sweden) (represented by: T. Pettersson, lawyer)

Defendant: European Commission

Form of order sought

The applicant seeks from the General Court the following relief:

1) Annulment:

   a) the annulment of the European Commission's letter of 3 July 2014 in Case COMP/38354 — Industrial Bags — Trioplast Industrier AB;

   b) the cancellation of, or a reduction in the amount of, the late-payment interest of EUR 674 033,32 imposed on the Applicant under the Commission's letter;

   c) an order that the Commission reimburse the Applicant for the expenses of EUR 4 686,64 incurred in providing security for payment of the late-payment interest.

2) In the alternative, damages pursuant to Article 340(2) TFEU as a result of the breaches of EU law set out in the application, for:

   a) the amount of the late-payment interest, or part thereof; and

   b) the expenses of EUR 4 686,64 incurred in providing security for the late-payment interest.

3) Damages pursuant to Article 340(2) TFEU as a result of the breaches of EU law related to the period when the Commission did not release or reduce the bank guarantee amount following the General Court's judgment in case T-40/06, for the expenses incurred in providing security, to an amount of EUR 22 783,90, or part thereof.

4) Interest on such sums as are found to be due.

5) An order that the Commission pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's letter lacks legal basis:

   — the Commission's decision of 30 November 2005 as amended by Commission decision of 7 December 2005 in Case COMP/38354 — Industrial Bags — Trioplast Industrier AB ('the 2005 Decision') never constituted a valid basis for a claim against the applicant with regard to the order for late-payment interest, since it did not specify an exact and unconditional amount of the fine for which the applicant was liable. Moreover, the decision was annulled by the General Court in its judgment of 13 September 2010 in case T-40/06 *Trioplast Industrier AB v Commission* ('the 2010 judgment'), as far as it related to setting out a fine for the applicant.

2. Second plea in law, alleging an infringement of an essential procedural requirement and lack of competence:

   — the Commission's letter constitutes a decision unlawfully taken by a member of DG Budget who lacked competence to engage the Commission in the taking of such a decision. The Commission's letter cannot be considered to merely give effect to a previous decision and, as such, be considered as an accessory measure of management. Instead, as neither the 2005 decision nor the 2010 judgment set the amount to be paid by the applicant, the Commission's letter is the decision that sets the actual amount of the fine. Such a decision cannot be taken by anyone else than the College of Commissioners to bring about binding legal effects.

3. Third plea in law, alleging an infringement of the principle of legal certainty and the principle that penalties should be specific to the offender and to the offence:

   — in requiring the applicant to pay the contested interest amount, the Commission is in effect sanctioning the applicant for a situation created by the former's breach of the principle of legal certainty and the principle that penalties should be specific to the offender and to the offence. The Commission has not yet remedied that breach.

4. Fourth plea in law, alleging an infringement of Article 266 TFEU:

   — the Commission has infringed Article 266 TFEU by not acting in accordance with the 2010 judgment. The Commission's letter demonstrates the Commission's final decision not to adopt a new formal decision specifying the exact amount that the applicant needs to pay, despite its obligation to do so after the 2010 judgment. The letter is therefore a definite and final statement that shows that the Commission will not fulfil its obligations under Article 266 TFEU.

5. Fifth plea in law, alleging an infringement of the principle of proportionality:

   — the Commission did not respect the principle of proportionality when ordering the applicant to pay late-payment interest on a fine, the sum of which has never been clear and which had been annulled in its totality, without the Commission taking a new final decision as to the amount of fine to be paid by the applicant. The purposes of the rules that give the Commission the right to claim late payment interest in other cases are not fulfilled in the present case. In the alternative, it is at least disproportionate to impose an interest rate of a punitive character, since the applicant has been prevented from avoiding that cost as a result of the Commission's own conduct.

6. Sixth plea in law, alleging that the Commission erred in law when it refused to release the applicant's bank guarantee subsequent to the 2010 judgment:

   — in the said judgment, the General Court annulled the 2005 decision, originally ordering the payment of fines, leaving the Commission without any legal claim against the applicant until the adoption of a new decision. In refusing to release the bank guarantee after the 2010 judgment, the Commission acted contrary to the ruling. This error in law directly caused the applicant further costs for continuing to provide the bank guarantee. In the alternative, the Commission should at least have reduced the amount of the bank guarantee immediately after the judgment to the maximum amount established by the General Court.

Action brought on 22 September 2014 — Italy v Commission

(Case T-673/14)

(2014/C 409/73)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: A. De Stefano, avvocato dello Stato, and G. Palmieri, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The Italian Government has brought an action before the General Court of the European Union against European Commission Decision C(2014) 4537 final of 9 July 2014, notified on 10 July 2014, concerning the establishment, by the company SEA S.p.A., of the company Airport Handling S.p.A..

By that measure, the European Commission opened a formal investigation with regard to the Italian Republic, holding, by way of preliminary findings, that:

— the establishment, by SEA S.p.A., of the company Airport Handling S.p.A. and the resulting allocation of capital amounting to EUR 25 million constitutes State aid which is incompatible with the internal market;

— the company Airport Handling S.p.A. can be regarded as the successor to the company SEA Handling S.p.A., and thus continues to benefit from the aid received by that company which is the subject-matter of Decision C(2012) 9448 final of 19 December 2012, with the result that Airport Handling S.p.A. has assumed SEA Handling S.p.A.'s obligation to repay that aid.

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

1. First plea in law, alleging infringement and misapplication of the principle of sincere cooperation and of Articles 10 and 13 of Regulation (EC) No 659/1999 of 22 March 1999.

   — The contested decision was adopted without account being taken of the evidence and assessments provided by the Italian authorities during the pre-investigation stage and was adopted in breach of the principle, repeatedly confirmed by the Court of Justice, that the Commission and the Member States have a duty to cooperate sincerely in order to overcome any difficulties which may arise during the implementation of a decision concerning the recovery of State aid.

2. Second plea in law, alleging infringement and misapplication of the principle of diligence and impartiality of administrative action.

   — The Commission did not examine with due diligence the information provided by the Italian authorities during the pre-investigation stage and, accordingly, based the contested decision on an incorrect representation of the facts.

3. Third plea in law, alleging infringement and misapplication of the principle of prudence and proportionality of administrative action.

   — The contested decision infringed the above principles, which required the Commission to await at least the outcome at first instance of the actions brought against Decision C(2012) [9448] final of 19 December 2012, and, accordingly, interfered prematurely in a start-up company's activity.

4. Fourth plea in law, alleging infringement and misapplication of Articles 108 TFEU, 120 TFEU, 145 TFEU and 146 TFEU.

   — The contested decision, on the basis of a presumed misrepresentation of the facts, has the effect of preventing SEA S.p.A. from operating on the Milan airports handling market and from guaranteeing continuity of service in its capacity as manager of those airports.

5. Fifth plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the alleged continuity between the business activities of SEA Handling and Airport Handling.

   — The contested decision errs in finding that there is continuity between SEA Handling S.p.A. and Airport Handling S.p.A.

6. Sixth plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the alleged imputability to the State of the supposed aid.

   — The contested decision errs in finding that SEA S.p.A.'s decision to establish Airport Handling S.p.A. and to provide it with initial capital stock is imputable to the Italian public authorities.

7. Seventh plea in law, alleging infringement and misapplication of Article 108 TFEU, with reference to the supposed lack of economic rationality.

   — The contested decision errs in finding that SEA S.p.A.'s decision to establish Airport Handling S.p.A. does not correspond to the conduct of a prudent market-economy economic operator.

Action brought on 19 September 2014 — Teva UK a.o. v Commission

(Case T-679/14)

(2014/C 409/74)

Language of the case: English

Parties

Applicants: Teva UK Ltd (West Yorkshire, United Kingdom), Teva Pharmaceuticals Europe BV (Utrecht, Netherlands) and Teva Pharmaceutical Industries Ltd (Jerusalem, Israel) (represented by: D. Tayar and A. Richard, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— accept the present application and declare the action admissible;

— annul Article 3 of Decision COMP/AT.39612 'Perindopril (Servier)' of 9 July 2014 insofar as it finds that Teva UK limited, Teva Pharmaceuticals Europe B.V. and Teva Pharmaceutical Industries Limited infringed Article 101 of the Treaty;

— cancel the fine imposed Teva UK limited, Teva Pharmaceuticals Europe B.V. and Teva Pharmaceutical Industries Limited in Article 7 of Decision COMP/AT.39612 'Perindopril (Servier)' of 9 July 2014;

— if the Court does not annul Article 3 of the Decision or cancel the fine in its entirety, substantially reduce it; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred legally and factually in characterising the agreement entered into by Teva and Servier in 13 June 2006 (the 'Agreement') as a restriction by object. As a legal matter, the Commission wrongly characterised as by object restrictions all agreements that are capable of restricting competition instead of only agreements that will unambiguously, by their very nature, reveal a sufficient degree of harm to competition. As a factual matter, the circumstances that prevailed when the Agreement was negotiated, in particular the genuine intellectual property risks that Teva faced, demonstrate that Teva entered into the Agreement to secure a timely market entry and not to receive an inducement in exchange for a delayed entry.

2. Second plea in law, alleging that the Commission erred legally and factually in characterising the Agreement as a restriction by effect, as the Decision does not produce evidence to the requisite standard of a restriction of competition in comparison to the relevant counterfactual.

3. Third plea in law, alleging that even if the Court finds that the Agreement falls within the ambit of Article 101(1) TFEU, the Court should conclude that the Commission has not adequately examined the arguments and the evidence provided by the applicants to support the existence of efficiencies and the fulfilment by the Agreement of all the conditions of Article 101(3) TFEU.

4. Fourth plea in law, alleging that the fine imposed on the applicants should be annulled or, at least, significantly reduced. First, the decision breached the principles of legal certainty, non-retroactivity, and legitimate expectations by imposing a substantial fine on Teva. Second, the Commission erred in departing from its guidelines on the methodology of setting fines and violated the principles of legal certainty, legitimate expectation, proportionality, and equal treatment by imposing an excessive fine on Teva.

5. Fifth plea in law, alleging that the Commission committed significant procedural errors.

Action brought on 22 September 2014 — Novomatic v OHIM — Simba Toys (African SIMBA)

(Case T-687/14)

(2014/C 409/75)

Language in which the application was lodged: German

Parties

Applicant: Novomatic AG (Gumpoldskirchen, Austria) (represented by: W. Mosing, lawyer)

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

Other party to the proceedings before the Board of Appeal: Simba Toys GmbH & Co. KG (Fürth, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 July 2014 in Case R 2098/2013-4 with the consequence that OHIM will have to reject the opposition in its entirety due to lack of similarity between the goods and/or signs or due to lack of a likelihood of confusion and allow Community trade mark application No 009752271 'African SIMBA' to proceed to registration in accordance with the application;

— Order OHIM and, in the case of a written intervention, the opposing party, to bear their own costs and to pay the costs incurred by the applicant in the appeal proceedings before the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and in the present proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark including the word elements 'African SIMBA' for goods in Class 28 — Community trade mark application No 9 752 271

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

Mark or sign cited in opposition: the national figurative mark including the word element 'SIMBA' and the international registration of the word mark 'SIMBA' for goods in Class 28

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(1)(b) and Article 75 of Regulation No 207/2009

Action brought on 22 September 2014 — Puma v OHIM — Sinda Poland (Representation of an imaginary animal)

(Case T-692/14)

(2014/C 409/76)

Language in which the application was lodged: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sinda Poland Corporation Sp. z o.o. (Warsaw, Poland)

Form of order sought

The applicant claims that the Court should:

— Annul the decision issued on 14 September 2012 (Case R 2214/2013-5) on the grounds that Article 8(1)(b) CTMR was not correctly applied, which resulted in the incorrect finding that the conflicting trade marks were not visually and conceptually similar;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Sinda Poland Corporation Sp. z.o.o. to pay the costs of the proceedings before the General Court and the Office.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing the representation of an imaginary animal for goods in class 25 — Community trade mark application No 11 142 395

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

Mark or sign cited in opposition: The international registrations Nos 369 075 and 480 105 for goods in classes 18, 25 and 28, and the international registration No 593 987 for goods and services in all classes

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Rejected the appeal

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

Action brought on 22 September 2014 — EREF/Commission

(Case T-694/14)

(2014/C 409/77)

Language of the case: English

Parties

Applicant: European Renewable Energies Federation (EREF) (Brussels, Belgium) (represented by: U. Prall, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the provisions of the Communication of the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, of 28 June 2014 (OJ C 200/1) relating to the compatibility assessment under Article 107(3)C of the Treaty in chapter 3.3.2. on the design of support schemes for renewable energy entitled 'Operating aid for renewable energy sources'.

— order the European Commission to pay all procedural costs, including the costs of the applicant.

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 a lack of competence.

— The Commission lacked the competence to adopt the Guidelines, as the European legislator has limited competence in the field of energy. Under Art. 194 TFEU, technology-neutral renewable energy support schemes cannot be imposed on the Member States as they impact their sovereign energy rights. The European Commission is not the EU legislator and cannot use guidelines to adopt 'quasi legislation' to go against the provisions of EU secondary law, i.e. the Renewable Energy Directive 2009/28/EC.

2. Second plea in law, alleging an infringement of the duty to state reasons.

— With the adoption of the Guidelines, the Commission infringed the duty to state reasons and thus an essential procedural requirement. Neither in the Guidelines themselves nor in the Impact Assessment sufficient justification for the policy choice of requiring all Member States in principle to adopt a technology-neutral competitive bidding system to support renewable energy can be found.

3. Third plea in law, alleging an infringement of the principle of proportionality.

— The Commission with the Guidelines further infringes the principle of proportionality, as the Guidelines propose instruments not suitable for the declared objectives of promoting the EU's renewable energy objectives while reducing distortive effects. Neither are those instruments proportionate, while they do create excessive burdens both on Member States almost all of which will have to reform their renewable energy support schemes, and on individuals, who will have to take on the additional administrative burden caused by the participation in the competitive bidding procedures.

4. Fourth plea in law, alleging a misuse of power.

— The Guidelines constitute a misuse of power on behalf of the Commission. With the Guidelines the Commission seems to attempt to legislate in areas where the EU legislator is not competent, and suggests that measures intrinsically aiming at the harmonization of the support for renewable energy in the EU would be for the purposes of ensuring compatibility of certain State aid measures with the internal market.

Action brought on 26 September 2014 — Omega v OHIM (Representation of a picture in black and white)

(Case T-695/14)

(2014/C 409/78)

Language of the case: German

Parties

Applicant: Omega International GmbH (Bad Oldesloe, Germany) (represented by J. Becker, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 July 2014 in Case R 1037/2014-5 and register the mark as a trade mark under application No 12 174 215;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark representing a picture in black and white for goods and services in Classes 3, 5, 32 and 33 — Community trade mark application No 12 174 215

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: The sign is capable of identifying the goods to consumers with an average degree of interest.

Appeal brought on 22 September 2014 by Bernat Montagut Viladot against the judgment of the Civil Service Tribunal of 15 July 2014 in Case F-160/12 Montagut v Commission

(Case T-696/14 P)

(2014/C 409/79)

Language of the case: Spanish

Parties

Appellant: Bernat Montagut Viladot (Schaerbeek, Belgium) (represented by F. Rodríguez-Gigirey Pérez and J. Simón Sánchez, lawyers)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the General Court should:

— set aside the judgment of the Civil Service Tribunal of 15 July 2014 in Case F-160/12 *Montagut* v *Commission*;

— uphold the action brought by Mr Montagut Viladot in Case F-160/12, holding it to be admissible and well founded;

— grant the form of order sought by that party at first instance in accordance with Article 139 of the Rules of Procedure, annulling the decision dated 8 February 2012 by which Mr Montagut was excluded from the reserve list of selected candidates; and

— order the respondent to pay the costs.

Pleas in law and main arguments

The present appeal is brought against the judgment delivered by the Civil Service Tribunal on 15 July 2014 in Case F-160/12 *Montagut Viladot* v *Commission*, rejecting the action brought by the then applicant against the decision of the selection board in competition EPSO/AD/206/11 (AD 5) not to include his name on the reserve list drawn up following that competition.

In support of his appeal, the appellant relies on three grounds.

1. First ground of appeal, alleging an error of law resulting from the interpretation of the rules in Title 3, point 2, of the annex to the competition notice made by the Civil Service Tribunal and from the interpretation of the Spanish legislation on university diplomas.

   — It is claimed in this connection that the Tribunal focuses exclusively on the fact that Mr Montagut's university diploma is not an 'official diploma', a fact which he neither contests nor denies, without considering, contrary to its own case-law, that Mr Montagut's diploma is a university diploma, which is the condition required in the competition notice, namely, 'a level of education which corresponds to completed university studies of at least three years attested by a diploma'.

2. Second ground of appeal, alleging a breach of the principle of legal certainty.

   — It is claimed in this regard that the Tribunal, in its judgment, failed properly and correctly to consider the Spanish legislation — Ley de Universidades 6/2001 — in connection with Mr Montagut's university qualification for the purposes of inclusion on the reserve list, failed to comply with its own case-law in similar cases (F-97/12 *Thomé* v *Commission*), and disregarded the conditions of the notice in Title 3, point 2, of the annex to the competition notice.

3. Third ground of appeal, alleging a breach of the principle of the protection of legitimate expectations.

— It is claimed in this connection that the Tribunal, in its judgment, did not correctly assess Mr Montagut's legitimate expectation that he would be included on the reserve list after the communication of 12 August 2011, as the judgment under appeal refers only to compliance with the applicable rules.

Action brought on 29 September 2014 — MIP Metro v OHIM — Associated Newspapers (METRO)

(Case T-697/14)

(2014/C 409/80)

Language in which the application was lodged: German

Parties

Applicant: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany) (represented by: J. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal: Associated Newspapers Ltd (London, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 July 2014 in Case R 606/2013-5, in so far as it annulled the Opposition Division's decision of 4 March 2013 concerning the opposition against Community trade mark application No 779 116 'METRO' and referred the case back to the Opposition Division for examination and a decision on the case;

— Order the defendant to pay the costs, including the costs of the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: The figurative mark including the word element METRO for goods and services in Classes 9, 16, 35, 36, 38, 39, 41 and 42 — Community trade mark application No 779 116

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

Mark or sign cited in opposition: the national word mark 'METRO'

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the Opposition Division's decision was annulled and the case was referred back to the Opposition Division

Pleas in law: Infringement of Article 74(2) of Regulation No 40/94

Action brought on 24 September 2014 — TV1 v Commission

(Case T-700/14)

(2014/C 409/81)

Language of the case: German

Parties

Applicant: TV1 GmbH (Unterföhring, Germany) (represented by: C. Scherer-Leydecker, J. Mey and A. Rausch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the award decision of the European Commission relating to Stage IV of tender procedure PO/2014-03/A4 and annul the decision of the defendant not to award the contract to the applicant, communicated on 25 July 2014, as well as the decision of the defendant to award the contract for Stage IV to another undertaking, communicated on 1 August 2014;

— Annul the service contract concluded as a result of or subsequent to the award;

— Order the defendant to bear the costs, including the costs of the proceedings, experts' costs and the expenses incurred by the applicant for the purpose of the proceedings, in particular travel and accommodation costs and lawyers' remuneration;

— Order the defendant, by way of measure of enquiry in accordance with Article 64(3)(d) of the Rules of Procedure of the General Court, to produce the award document and other relevant documents and to ensure that the applicant has full access to the file.

Pleas in law and main arguments

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

1. First plea in law, alleging an abnormally low offer submitted by the undertaking which was awarded the contract

   The applicant claims that the Commission failed to carry out a thorough investigation of the, according to the applicant, abnormally low offer submitted by the undertaking which was awarded the contract, and failed to exclude that offer or the tenderer from the tender procedure. The Commission thereby failed to fulfil its obligation under Article 110(2) of Regulation No 966/2012 ([1]) in conjunction with Article 151 of Regulation No 1268/2012 ([2]) and infringed its obligation under Article 41(2) of the Charter of Fundamental Rights of the European Union to ensure good administration.

2. Second plea in law, alleging incorrect tendering documents

   The applicant claims in addition that the Commission infringed procurement law principles, in particular the principles of equal treatment and the prohibition of discrimination and fair competition, as well as Article 102 of the EU Financial Regulation.

   The applicant claims in this respect that the Commission failed to satisfy the conditions of Article 105 of the Financial Regulation concerning clear and precise tendering documents.

3. Third plea in law, alleging a wrongful assessment of the offer submitted by the undertaking which was awarded the contract

   In this regard, the applicant claims that the assessment of the offer submitted by the undertaking which was awarded the contract failed to comply with the obligation to state reasons and was based on errors of fact and law and misuse of power.

4. Fourth plea in law, alleging a wrongful assessment of the offer submitted by the applicant

   The applicant claims moreover that the information provided by the Commission concerning the offer submitted by the applicant failed to comply with the obligation to state reasons and the Commission clearly erred in its assessment of the offer submitted by the applicant.

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

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

Action brought on 3 October 2014 — Marine Harvest/Commission

(Case T-704/14)

(2014/C 409/82)

Language of the case: English

Parties

Applicant: Marine Harvest ASA (Bergen, Norway) (represented by: R. Subiotto, QC)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Decision of July 23, 2014, in Case COMP/M.7184 — Marine Harvest/Morpol (Art. 14(2) proc.);

— alternatively, annul the fines imposed on Marine Harvest pursuant to that Decision;

— in the further alternative, substantially reduce the fines imposed on Marine Harvest pursuant to that Decision;

— in any event, order the Commission to pay Marine Harvest legal and other costs and expenses in relation to this matter; and take any other measures that this Court considers appropriate.

Pleas in law and main arguments

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

1. First plea in law, claiming that the Decision errs in law and fact because it finds that Marine Harvest should have notified its acquisition of a 48,5 % stake in Morpol in December 2012 (the 'December 2012 Acquisition') under Council Regulation (EC) No 139/2004, and refrained from acquiring title to a 48,5 % shareholding in Morpol before receiving clearance of that element of the overall transaction, thereby rejecting the unitary nature of, and the applicability of Article 7(2) of Council Regulation (EC) No 139/2004 to, the December 2012 Acquisition and the subsequent public offer mandated by the December 2012 Acquisition under Norwegian public takeover rules, and which Marine Harvest always intended to launch expeditiously so as to acquire full control of Morpol.

2. Second plea in law, claiming that the Decision errs in law and fact because it finds that Marine Harvest was negligent in not notifying the December 2012 Acquisition and refraining from acquiring title to the 48,5 % shareholding in Morpol before receiving clearance of that element of the overall transaction, thereby ignoring that Marine Harvest could not reasonably have foreseen, whether objectively or subjectively, that the December 2012 Acquisition and the subsequent public offer would not fall within the scope of Article 7(2) of Council Regulation (EC) No 139/2004.

3. Third plea in law, claiming that the Decision violates the principle that no-one should be punished twice for the same offence by fining Marine Harvest for (i) failing to notify the December 2012 Acquisition before (ii) implementing it by acquiring title to the 48,5 % shareholding in Morpol.

4. Fourth plea in law, claiming, in the alternative, that the Decision's fining of Marine Harvest violates the principles of legal certainty, 'nullum crimen, nulla poena sine lege', and equal treatment, because of the novelty of the factual and legal issues in this case, and the Commission's recent handling of a comparable case, in which it did not (i) open an investigation, (ii) reach a definitive and binding conclusion on the scope of Articles 7(1) and 7(3) of Council Regulation (EC) No 139/2004, and (iii) impose a fine.

5. Fifth plea in law, claiming, in the further alternative, that the Decision contains manifest errors of law and fact and lacks reasoning in setting the fine levels in this case, because it (i) does not explain how the fines are calculated, (ii) emphasizes the gravity of the alleged violations by reference to factors that do not support it, (iii) includes in the duration of the infringement periods that it excluded in other cases on the misguided grounds that Marine Harvest was insufficiently forthcoming in the pre-notification period, (iv) sets the fines at a level that is disproportionate relative to the duration and gravity of the alleged violation, and objectives to be achieved, and (v) overlooks mitigating circumstances, including the transparent and cooperative merger control process, lack of relevant precedents, and excusable error in committing the alleged violation.

Action brought on 2 October 2014 — Grundig Multimedia v OHIM (DetergentOptimiser)

(Case T-707/14)

(2014/C 409/83)

Language of the case: English

Parties

Applicant: Grundig Multimedia AG (Stansstad, Switzerland) (represented by: S. Walter and M. Neuner, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 July 2014 given in Case R 172/2014-1;

— Order the defendant to pay the costs of proceedings, including those incurred before the Office.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'DetergentOptimiser' for goods in Class 7 — Community trade mark application No 11 949 559

Decision of the Examiner: Rejected the application

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 6 October 2014 — Herbert Smith Freehills v Council

(Case T-710/14)

(2014/C 409/84)

Language of the case: English

Parties

Applicant: Herbert Smith Freehills LLP (London, United Kingdom) (represented by: P. Wytinck, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Decision 18/c/01/14 of the Council of the European Union of 23 July 2014; and

— order the Council to pay the costs of the applicant in the present proceedings.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of the Council's Decision 18/c/01/14 of 24 July 2014 whereby the Council refused the applicant's confirmatory application for access under Regulation No 1049/2001 ([1]) to certain documents related to the adoption of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC ([2]).

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

1. First plea in law, alleging that the Council infringed Article 4(2), second indent, of Regulation No 1049/2001 in that i) not all documents identified by the Council fall within the scope of the exception relating to the protection of legal advice; and ii) there is an overriding public interest in the disclosure of the documents identified pursuant to the applicant's access to documents request.

2. Second plea in law, alleging that the Council infringed Article 4(6) of Regulation No 1049/2001 in so far as it did not provide partial access to the documents requested.

3. Third plea in law, alleging that the Council committed a manifest error of assessment with regard to the scope of the applicant's request for access to documents.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).
([2]) OJ 2014 L 127, p. 1.

Action brought on 7 October 2014 — Arcofin and Others v Commission

(Case T-711/14)

(2014/C 409/85)

Language of the case: French

Parties

Applicants: Arcofin SCRL (Schaerbeek, Belgium), Arcopar SCRL (Schaerbeek), and Arcoplus (Schaerbeek) (represented by: R. B. Martens, A. Verlinden and C. Maczkovics, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

— annul the contested decision in its entirety;

— in the alternative, annul the contested decision entirely insofar as it declares the aid measure to be incompatible with the internal market and orders the Belgian State to recover the aid and to make no payment of the guarantee to the individual shareholders of the applicants;

— in the further alternative, annul Articles 2, 3 and 4 of the contested decision insofar as those articles order the Belgian State to recover the aid and to make no payment of the guarantee to the individual shareholders of the applicants;

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of Commission Decision 2014/686/EU of 3 July 2014 (notified under document C (2014) 1021 final) on the State aid implemented by Belgium in the form of a guarantee scheme protecting the shares of individual members of financial cooperatives (State aid SA.33927 (2012/C) (ex 11/NN)) (OJ 2014 L 284, p. 53).

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

1. First plea in law, alleging infringement of Articles 107(1) TFEU, 108 TFEU and 296, second paragraph, TFEU, of Article 14 of Regulation (EC) No 659/1999, ([1]) of the principle that reasons must be given for legal acts and for procedural rules governing the burden of proof and taking of evidence, inasmuch as the Commission held, wrongly, and without providing reasons, that the applicants were the only actual beneficiaries of the aid.

2. Second plea in law, alleging infringement of Articles 107(1) TFEU and 296, second paragraph, TFEU and of the principle that reasons must be given for legal acts, and an error in the assessment of the facts, inasmuch as the Commission held, wrongly, and without providing reasons, that the guarantee scheme was likely to distort competition with other cooperatives and providers of investment products and to affect trade between Member States.

3. Third plea in law, alleging, in the alternative, infringement of Articles 107(3)(b) TFEU and 108(2) TFEU and a manifest error of assessment, inasmuch as the Commission decided, wrongly, that the guarantee scheme was incompatible with the internal market.

   The applicants submit that, if it were State aid, it ought to have been declared compatible with the internal market as being aid intended to remedy a serious disturbance in the Belgian economy, within the meaning of Article 107(3)(b) TFEU.

4. Fourth plea in law, alleging, in the further alternative, infringement of Article 108(2) TFEU, of Article 14(1) of Regulation (EC) No 659/1999, and of the principle of legitimate expectation, inasmuch as the applicants' legitimate expectation as regards the legality of the measure precluded the Commission from ordering recovery of the aid.

5. Fifth plea in law, alleging, in the further alternative, infringement of Articles 107 TFEU and 108 TFEU and of Regulation (EC) No 659/1999, a misuse of power or, at the very least, a breach of the principle of proportionality, inasmuch as a decision by which the Commission requires a Member State to adopt a particular measure in order to abolish the aid, as in the present case the decision ordering the Member State not to make any payment to individual shareholders of the applicants, manifestly exceeds the Commission's powers or is, at the very least, manifestly disproportionate.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 1999 L 83, p. 1).

Order of the General Court of 1 October 2014 — Ratioparts-Ersatzteile v OHIM — IIC (NORTHWOOD)

(Case T-509/13) ([1])

(2014/C 409/86)

Language of the case: German

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

([1]) OJ C 344, 23.11.2013.

Order of the General Court of 11 September 2014 — AEMN v Parliament

(Case T-678/13) ([1])

(2014/C 409/87)

Language of the case: French

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

([1]) OJ C 85, 22.3.2014.

Order of the General Court of 11 September 2014 — AEMN v Parliament

(Case T-679/13) ([1])

(2014/C 409/88)

Language of the case: French

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

([1]) OJ C 85, 22.3.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (3rd Chamber) of 10 September 2014 — Carneiro v Europol

(Case F-122/13) ([1])

(Civil service — Europol staff — Non-renewal of a fixed-term contract — Reclassification of a fixed-term contract as a contract of indefinite duration — Action in part manifestly inadmissible and in part manifestly lacking any legal basis)

(2014/C 409/89)

Language of the case: French

Parties

Applicant: Maria José Carneiro (Brussels, Belgium) (represented by: J. Kempeners and M. Itani, lawyers)

Defendant: European Police Office (represented by: D. Neumann and J. Arnould, Agents)

Re:

Application for annulment of Europol's decision not to extend the applicant's contract for an indefinite duration and an application for an order that Europol pay the difference between the remuneration which she could have continued to receive from Europol and any other allowance which she actually received.

Operative part of the order

1. *The action is dismissed as being in part manifestly inadmissible and in part manifestly lacking any legal basis.*

2. *Ms Carneiro is to bear her own costs and is ordered to pay the costs incurred by the European Police Office.*

([1]) OJ C 52 of 22/02/2014, p. 53.

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