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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Gerechtshof Den Haag (Netherlands) lodged on 7 August 2014 — TOP Logistics BV and Van Caem International BV v Bacardi & Co. Ltd and Bacardi International Ltd

(Case C-379/14)

(2014/C 388/02)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Parties to the main proceedings

Appellants: TOP Logistics BV, Van Caem International BV

Respondents: Bacardi & Co. Ltd, Bacardi International Ltd

Questions referred

These questions concern goods originating outside the EEA which, after having been brought into the territory of the EEA (neither by the trade mark proprietor nor with its consent), are placed, in a Member State of the European Union, under the external transit procedure or under the customs warehousing procedure (within the meaning of the Community Customs Code: Regulation (EEC) No 2913/92 ([1]) (old) and Regulation (EC) No 450/2008 ([2])).

1. Where, in circumstances such as those in the case at issue, such goods are subsequently placed under a duty suspension arrangement, must those goods then be regarded as having been imported within the meaning of Article 5(3)(c) of Directive 89/104/EEC ([3]) (now Directive 2008/95/EC) ([4]), with the result that there is '[use] (of the sign) in the course of trade' that can be prohibited by the trade mark proprietor pursuant to Article 5(1) of that directive?

2. If Question 1 is answered in the affirmative, must it then be accepted that, in circumstances such as those in the case at issue, the mere presence in a Member State of such goods (which have been placed under a duty suspension arrangement in that Member State) does not prejudice, or cannot prejudice, the functions of the trade mark, with the result that the trade mark proprietor which invokes national trade mark rights in that Member State cannot oppose that presence?

([1]) Council Regulation of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).
([2]) Regulation of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code (Modernised Customs Code) (OJ 2008 L 145, p. 1).
([3]) First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).
([4]) Directive of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Juzgado de lo Mercantil No 9 de Barcelona (Spain) lodged on 11 August 2014 — Jorge Sales Sinués v Caixabank, S.A.

(Case C-381/14)

(2014/C 388/03)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 9 de Barcelona

Parties to the main proceedings

Applicant: Jorge Sales Sinués

Defendant: Caixabank, S.A.

Questions referred

Given that the Spanish system provides in Article 43 of the LEC ([1]) that, where an individual action is brought concurrently by a consumer, the effect is that that action must be stayed and treated as a preliminary issue pending final judgment in collective proceedings, and that the consumer is bound by the decision in those proceedings without having had the opportunity to put forward the appropriate pleas or adduce evidence with full equality of arms:

1. Can it be considered [that the Spanish legal system provides for] an effective means or mechanism pursuant to Article 7 (1) of Directive 93/13 ([2])?

2. To what extent does the effect of a stay of proceedings preclude a consumer from complaining that the unfair terms included in the contract concluded with him are void, and, therefore, infringe Article 7(1) of the directive?

3. Does the fact that a consumer is unable to dissociate himself from collective proceedings constitute an infringement of Article 7(3) of Directive 93/13?

4. Or, on the other hand, is the effect of a stay of proceedings provided for in Article 43 of the LEC compatible with Directive 93/13 on the grounds that the rights of consumers are fully safeguarded by a collective action, because the Spanish legal system provides for other equally effective procedural mechanisms for the protection of consumers' rights and by the principle of legal certainty?

([1]) Ley de Enjuiciamiento Civil (Spanish Code of Civil Procedure).
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Juzgado de Primera Instancia de Barcelona (Spain) lodged on 11 August 2014 — Alta Realitat S.L. v Erlock Films and Ulrich Thomsen

(Case C-384/14)

(2014/C 388/04)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Barcelona

Parties to the main proceedings

Applicant: Alta Realitat S.L.

Defendants: Erlock Films and Ulrich Thomsen

Questions referred

1) Must Article 8(1) of Regulation (EC) No 1393/2007 ([1]) be interpreted to the effect that the national court hearing the action may determine, on the basis of all the information in the court-file at its disposal, whether an addressee understands a [particular] language?

If Question 1 is to be answered in the affirmative:

2) Must Article 8(1) of Regulation (EC) No 1393/2007 be interpreted to the effect that, where the national court hearing the action has determined, on the basis of all the information in the court-file at its disposal, that [the] addressee does understand a [particular] language, the person effecting service in such a situation does not have to offer the addressee the option of refusing the document?

3) Must Article 8(1) of Regulation (EC) No 1393/2007 be interpreted to the effect that, if the addressee of a notice refuses a document drafted in a certain language, following a declaration from the court hearing the action that that person has a sufficient level of understanding of that language, the refusal of the document is not justified, and the court hearing the action may apply the consequences provided for in the legislation of the State of transmission to this type of unjustified refusal of a document and, if the procedural rules of the State of transmission so provide, treat the document as having been served on the addressee?

([1]) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. OJ 2007 L 324, p. 79.

Request for a preliminary ruling from the Juzgado de lo Mercantil No 9 de Barcelona (Spain) lodged on 12 August 2014 — Youssouf Drame Ba v Catalunya Caixa SA

(Case C-385/14)

(2014/C 388/05)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 9 de Barcelona

Parties to the main proceedings

Applicant: Youssouf Drame Ba

Defendant: Catalunya Caixa SA

Questions referred

Given that the Spanish system provides in Article 43 of the LEC ([1]) that, where an individual action is brought concurrently by a consumer, the effect is that that action must be stayed and treated as a preliminary issue pending final judgment in collective proceedings, and that the consumer is bound by the decision in those proceedings without having had the opportunity to put forward the appropriate pleas or adduce evidence with full equality of arms:

1. Can it be considered [that the Spanish legal system provides for] an effective means or mechanism pursuant to Article 7 (1) of Directive 93/13? ([2])

2. To what extent does the effect of a stay of proceedings preclude a consumer from complaining that the unfair terms included in the contract concluded with him are void, and, therefore, infringe Article 7(1) of the directive?

3. Does the fact that a consumer is unable to dissociate himself from collective proceedings constitute an infringement of Article 7(3) of Directive 93/13?

4. Or, on the other hand, is the effect of a stay of proceedings provided for in Article 43 of the LEC compatible with Directive 93/13 on the grounds that the rights of consumers are fully safeguarded by a collective action, because the Spanish legal system provides for other equally effective procedural mechanisms for the protection of consumers' rights and by the principle of legal certainty?

([1]) Ley de Enjuiciamiento Civil (Spanish Code of Civil Procedure).
([2]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Klagenævnet for Udbud (Denmark) lodged on 20 August 2014 — MT Højgaard A/S and Züblin A/S v Banedanmark

(Case C-396/14)

(2014/C 388/06)

Language of the case: Danish

Referring court

Klagenævnet for Udbud

Parties to the main proceedings

Applicants: MT Højgaard A/S and Züblin A/S

Defendant: Banedanmark

Question referred

Is the principle of equal treatment in Article 10, cf. Article 51 of Directive 2004/17/EC ([1]) of the European Parliament and of the Council to be interpreted as precluding, in situation such as the one at issue here, a contracting authority from awarding the contract to a tenderer which had not applied for pre-selection and therefore was not pre-selected?

([1]) Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Appeal brought on 2 September 2014 by Quimitécnica.com — Comércio e Indústria Química, SA and José de Mello — Sociedade Gestora de Participações Sociais, SA against the judgment delivered by the General Court (Eighth Chamber) on 26 June 2014 in Case T-564/10 Quimitécnica.com and de Mello v Commission

(Case C-415/14 P)

(2014/C 388/07)

Language of the case: Portuguese

Parties

Appellants: Quimitécnica.com — Comércio e Indústria Química, SA and José de Mello- Sociedade Gestora de Participações Sociais, SA (represented by: J. Calheiros, advogado)

Other party to the proceedings: European Commission

Form of order sought

— Set aside, pursuant to the second subparagraph of Article 256(1) TFEU, the judgment of the General Court of the European Union of 26 June 2014 in Case T-564/10 dismissing the proceedings brought by the appellants against the European Commission for the annulment of the Commission's decision, adopted by its accounting officer by letter of 8 October 2010, in so far as that decision required that the financial guaranteed to be provided in accordance with Article 85 of Regulation (EC EURATOM) No 2342/2002 ([1]) should be a guarantee from a bank with a long-term 'AA' credit rating, and ordered the appellants to bear their own costs and to pay the costs incurred by the Commission.

— Order the Commission to pay the costs.

— Grant, further to the setting aside of the judgment under appeal, the appellants' claims at first instance and, as a consequence, annul in part the decision adopted by the Commission's accounting officer by letter of 8 October 2010 in so far as that decision required that the financial guaranteed to be provided in accordance with Article 85 of Regulation (EC EURATOM) No 2342/2002 should be a guarantee from a bank with a long-term 'AA' credit rating.

— Order the Commission to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

The appellants rely on two grounds of appeal:

1. First ground of appeal — error of law in the grounds of the judgment under appeal, which dismissed as unfounded the appellants' argument before the General Court to the effect that the decision adopted by the Commission on 8 October 2010 failed to state adequate reasons, in so far as it required the provision of a financial guarantee from a bank with a long-term 'AA' credit rating.

   — The judgment under appeal recognises that the decision adopted on 8 October 2010 does not give express reasons for the requirement that the bank issuing the guarantee should have a credit rating. However, it is argued that the basis of the Commission's reasoning relies on that very requirement.

   — Article 296 TFEU requires all legal acts, including decisions, to state the reasons on which they are based.

   — The 'basis of the Commission's reasoning' takes as its starting point the grounds of the judgment, not contested measure itself.

   — That applies all the more so because the '*protection of the financial interests of the Union*', which formed the 'basis of the Commission's reasoning' may be adequately safeguarded in particular by means of the guarantee proposed by the appellants in the letter sent to the Commission on 3 September 2010.

   — Moreover, in 2010, when the Commission imposed that requirement, to choose as criterion for the provision of a bank guarantee simply the credit rating was at that time wholly inappropriate, so that that criterion, since it was open to question from an objective standpoint, called for a stronger, clearer and more specific statement of reasons.

   — Furthermore, since, where the Commission grants an additional period within which to make a payment, it does so in the exercise of its discretion, the requirement to give reasons is even more pronounced than that which applies when the Commission is exercising a circumscribed power.

   — It should be added that the decision does not refer to any Community rule on which such a requirement could be based.

— In view of the fact that, as recognised in the judgment under appeal, the decision adopted by the Commission on 8 October 2010 does not contain any express reason for the requirement for the bank issuing the guarantee to have a credit rating, the judgment under appeal was incorrect in so far as it found that the contested measure was not vitiated by an inadequate statement of reasons, as claimed by the appellants in the proceedings before the General Court.

2. Second ground of appeal — error of law in the grounds of the judgment under appeal, in so far as it dismissed as unfounded the appellants' argument before the General Court alleging breach of the Treaty — the principle of proportionality.

— It is apparent from Article 85 of Regulation No 2342/2002 that, as long as the requirements and conditions laid down in that provision are fulfilled, the person responsible on behalf of the Community for taking a decision (in this case, the accounting officer) *must determine* the request submitted to that person by the undertaking concerned for an additional specific period within which to complete payment and grant that request, as long as those requirements are satisfied and the lawful conditions for the granting of such permission fulfilled.

— The 'broad powers of discretion' conferred on the Commission's accounting officer under Article 85 of Regulation No 2342/2002 cover the determination of the request submitted to that person by the undertaking concerned for an additional specific period within which to complete payment and the granting of the request, not the type of bank guarantee which the Commission's accounting officer considers acceptable, so that, in reviewing the contested measure, it is not sufficient merely to check whether the measure is manifestly inappropriate for the purpose of attaining the objectives pursued, as claimed, incorrectly, in the judgment under appeal.

— An at-first-demand guarantee, along the lines of the model required by the Commission, issued by a credit institution, constitutes a proper and appropriate means of ensuring payment of the amounts due. Thus, the whole Portuguese legal system (and, in general, that of the other countries of the European Union) accepts the provision of a bank guarantee for the most diverse purposes, including that of suspending the execution of judicial decisions, in particular any enforcement proceedings brought by the Commission before the national courts and tribunals in connection with a failure to pay.

— In the present case, the guarantee proposed by the appellants (and not accepted by the Commission) would be issued by the Banco Comercial Português, S.A., a credit institution having its head office in the European Union, subject to the rules of supervision and consolidation defined by the Community institutions. Thus, there seems to be no justification, in order to defend the Community's rights, for ruling out the possibility of the guarantee being issued by the said bank and requiring it to be issued by a bank with long-term 'AA' rating.

— Furthermore, the public is aware of the current situation in which the ratings of Portuguese banks have been affected by the change in the rating of the Portuguese Republic. Thus, there is no bank based in Portugal that fulfils the rating criteria (long-term 'AA') required in the Commission decision. That situation was referred to in the judgment under appeal, under the heading '*Facts of the dispute*'. Nevertheless, it was not taken into account in the grounds of that judgment.

— Accordingly, the Commission decision does not fulfil the criterion of necessity (which constitutes an important dimension of the principle of proportionality) since, of the possible measures, the Commission opted for the one that, in the current circumstances, is most prejudicial to the interests of the appellants.

— Thus, there is a clear lack of proportionality between the requirement imposed by the Commission (guarantee issued by a European bank with long-term 'AA' rating) and the objective sought (protection of the right of the Commission to receipt of the amounts due), so that the judgment under appeal erred in so far as it considered that the contested measure did not infringe the principle of proportionality.

([1]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

GENERAL COURT

Judgment of the General Court of 23 September 2014 — Mikhalchanka v Council

(Joined Cases T-196/11 and T-542/12) ([1])

(Common foreign and security policy — Restrictive measures taken against Belarus — Freezing of funds and economic resources — Restrictions on the entry into and transit through the European Union — Inclusion and retention of the applicant's name on the list of persons concerned — Journalist — Action for annulment — Time-limit for instituting proceedings — Partial inadmissibility — Rights of the defence — Obligation to state reasons — Error of assessment)

(2014/C 388/08)

Language of the case: French

Parties

Applicant: Aliaksei Mikhalchanka (Minsk, Belorus) (represented by: M. Michalauskas, lawyer)

Defendant: Council of the European Union (represented by: in Case T 196/11, F. Naert and M. M. Joséphidès and, in Case T-542/12, F. Naert and J. P. Hix, acting as Agents)

Re:

Application, first, for annulment in part of Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 28, p. 40), Council Regulation (EC) No 84/2011 of 31 January 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 28, p. 17), Council Implementing Decision 2011/174/CFSP of 21 March 2011 implementing Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 76, p. 72), Council Implementing Regulation (EC) No 271/2011 of 21 March 2011 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 76, p. 13), and, second, of Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1), Council Regulation (EU) No 1014/2012 of 6 November 2012 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 1) and Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7), in so far as all of those acts concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls, in so far as they concern Mr Mikhalchanka:*

— *Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus;*

— *Council Implementing Decision 2011/174/CFSP of 21 March 2011 implementing Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus;*

— *Council Implementing Regulation (EC) No 271/2011 of 21 March 2011 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus;*

— *Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus;*

— *Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.*

2. *Dismisses the Council's request to maintain the temporal effects of the contested acts.*

3. *Dismisses the remainder of the action.*

4. *Orders the Council to bear, in addition to its own costs, the costs incurred by Mr Mikhalchanka.*

([1]) OJ C 165, 9.6.2012.

Judgment of the General Court of 23 September 2014 — Ipatau v Council

(Case T-646/11) ([1])

(Common foreign and security policy — Restrictive measures taken against Belarus — Freezing of funds and economic resources — Restrictions on the entry into and transit through the European Union — Action for annulment — Time-limit for instituting proceedings — Admissibility — Obligation to state reasons — Rights of the defence — Error of assessment)

(2014/C 388/09)

Language of the case: French

Parties

Applicant: Vadzim Ipatau (Minsk, Belarus) (represented by: M. Michalauskas, lawyer)

Defendant: Council of the European Union (represented by: F. Naert and B. Driessen, acting as Agents)

Re:

Action for annulment of Council Decision 2011/666/CFSP of 10 October 2011 amending Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2011 L 265, p. 17), in so far as it concerns the applicant, Council Implementing Regulation (EU) No 1000/2011 of 10 October 2011 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2011 L 265, p. 8) in so far as it concerns the applicant, the Council decision of 14 November 2011 rejecting the applicant's request to have his name removed from Council Decision 2011/69/CFSP of 31 January 2011 amending Council Decision 2010/639/CFSP concerning restrictive measures against certain officials of Belarus (OJ 2011 L 28, p. 40) and Council Implementing Regulation (EU) No 84/2011 of 31 January 2011 amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus (OJ 2011 L 28, p. 17), and annulment of Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures against Belarus (OJ 2012 L 285, p. 1) and Council Implementing Regulation (EU) No 1017/2012 of 6 November 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 307, p. 7), in so far they concern the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Vadzim Ipatau to bear, in addition to his own costs, the costs incurred by the Council of the European Union.*

([1]) OJ C 258, 25.8.2012.

Judgment of the General Court of 18 September 2014 — Georgias and Others v Council and Commission

(Case T-168/12) ([1])

(Common foreign and security policy — Restrictive measures adopted against certain persons and entities in view of the situation in Zimbabwe — Freezing of funds — Non-contractual liability — Causal link — Sufficiently serious breach of a rule of law intended to confer rights on individuals — Manifest error of assessment — Obligation to state reasons)

(2014/C 388/10)

Language of the case: English

Parties

Applicants: Aguy Clement Georgias (Harare, Zimbabwe); Trinity Engineering (Private) Ltd (Harare); and Georgiadis Trucking (Private) Ltd (Harare) (represented initially by M. Robson and E. Goulder, Solicitors, and H. Mercer QC, and subsequently by M. Robson, H. Mercer QC and I. Quirk, Barrister)

Defendants: Council of the European Union (represented by: B. Driessen and G. Étienne, acting as Agents) and European Commission (represented by: M. Konstantinidis and S. Bartelt, acting as Agents)

Re:

Application for compensation for the damage allegedly suffered by the applicants following the adoption of Commission Regulation (EC) No 412/2007 of 16 April 2007 amending Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (OJ 2007 L 101, p. 6).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Aguy Clement Georgias, Trinity Engineering (Private) Ltd and Georgiadis Trucking (Private) Ltd to bear their own costs and to pay those incurred by the Council of the European Union and the European Commission.*

([1]) OJ C 165, 9.6.2012.

Judgment of the General Court of 23 September 2014 — Nuna International v OHIM — Nanu-Nana Joachim Hoepp (nuna)

(Case T-195/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark nuna — Earlier Community word marks NANA and NANU-NANA — Relative ground for refusal — No likelihood of confusion — No similarity between the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 388/11)

Language of the case: English

Parties

Applicant: Nuna International BV (Erp, Netherlands) (represented by: A. Alpera Plazas, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Nanu-Nana Joachim Hoepp GmbH & Co. KG (Bremen, Germany) (represented by: A. Nordemann, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 February 2012 (Case R 476/2011-1), relating to opposition proceedings between Nanu-Nana Joachim Hoepp GmbH & Co. KG and Nuna International BV.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 15 February 2012 (Case R 476/2011-1), relating to opposition proceedings between Nanu-Nana Joachim Hoepp GmbH & Co. KG and Nuna International BV, as regards the 'strollers; buggies; safety car seats for children' in Class 12 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and the 'baby walkers' and 'sleeping bags for baby and children' in Class 20;*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 209, 14.7.2012.

Judgment of the General Court of 18 September 2014 — Central Bank of Iran v Council

(Case T-262/12) ([1])

(Common foreign and security policy — Restrictive measures adopted against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Action for annulment — Lis pendens — Obligation to state reasons — Rights of the defence)

(2014/C 388/12)

Language of the case: English

Parties

Applicant: Central Bank of Iran (Tehran, Iran) (represented by: M. Lester, Barrister)

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

Re:

Application for, in essence, annulment of (i) Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22) and Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58), in so far as they listed or maintained the listing, after review, of the applicant in Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39) and (ii) Council Regulation (EU) No 267/2012 of 23 March 2012 concerning the adoption of restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), and Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation No 267/2012 (OJ 2012 L 282, p. 16), in so far as they listed or maintained the listing, after review, of the applicant in Annex IX to Regulation No 267/2012.

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1), in so far as it listed Central Bank of Iran in Annex IX thereto;*

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

3. *Orders the Council of the European Union to bear one half of its own costs and to pay one half of the costs of Central Bank of Iran;*

4. *Orders Central Bank of Iran to bear one half of its own costs and to pay one half of the costs of the Council.*

(1) OJ C 243, 11.8.2012.

Judgment of the General Court of 18 September 2014 — Holcim (Romania) v Commission

(Case T-317/12) (1)

(Non-contractual liability — Scheme for greenhouse gas emission allowance trading — Liability for fault — Commission's refusal to disclose information on and to prohibit all transactions involving emission allowances allegedly stolen — Sufficiently serious breach of a rule of law conferring rights on individuals — Strict liability)

(2014/C 388/13)

Language of the case: English

Parties

Applicant: Holcim (Romania) SA (Bucharest, Romania) (represented by: L. Arnauts, lawyer)

Defendant: European Commission (represented by: K. Mifsud-Bonnici and E. White, Agents)

Re:

First, an application, based on liability for fault, seeking compensation for the damage allegedly sustained by the applicant because of the Commission's refusal to disclose to it information concerning greenhouse gas emission allowances allegedly stolen from it and to prohibit all transactions involving those allowances and, secondly, an application for damages on the basis of strict liability.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Holcim (Romania) SA to bear its own costs and to pay the costs of the European Commission.*

(1) OJ C 287, 22.9.2012.

Judgment of the General Court of 24 September 2014 — Sanofi v OHIM — GP Pharm (GEPRAL)

(Case T-493/12) (1)

(Community trade mark — Opposition proceedings — International registration designating the European Community — Word mark GEPRAL — Earlier international word mark DELPRAL — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 388/14)

Language of the case: English

Parties

Applicant: Sanofi SA (Paris, France) (represented by: C. Hertz-Eichenrode, 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: GP Pharm SA (Sant Quinti de Mediona, Spain)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 September 2012 (Case R 201/2012-2), concerning opposition proceedings between Sanofi SA and GP Pharm SA.

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 5 September 2012 (Case R 201/2012-2), concerning opposition proceedings between Sanofi SA and GP Pharm SA;*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 26, 26.1.2013.

Judgment of the General Court of 23 September 2014 — Tegometall International v OHIM — Irega (MEGO)

(Case T-11/13) ([1])

(Community trade mark — Invalidity proceedings — Community word mark MEGO — Relative ground for refusal — Earlier opposition proceedings — No application of the principle of res judicata)

(2014/C 388/15)

Language of the case: German

Parties

Applicant: Tegmotall International AG (Lengwil, Switzerland) (represented by: H. Timmann and E. Schaper, lawyers)

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: Irega AG (Zuchwil, Switzerland)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 25 October 2012 (Case R 1522/2011-1), concerning invalidity proceedings between Tegometall International AG and Irega AG.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 October 2012 (Case R 1522/2011-1);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Tegometall International AG before the General Court as well as the Board of Appeal.*

([1]) OJ C 55, 23.2.2013.

Judgment of the General Court of 18 September 2014 — Herdade de S. Tiago II v OHIM — Polo/Lauren (V)

(Case T-90/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark V — Earlier Community, national and Benelux figurative marks representing a polo player — Relative grounds for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Article 8(5) of Regulation No 207/2009)

(2014/C 388/16)

Language of the case: English

Parties

Applicant: Herdade de S. Tiago II — Sociedade Agrícola, SA (Lisbon, Portugal) (represented by: I. de Carvalho Simões and J. Pimenta, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and N. Bambara, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: The Polo/Lauren Company, LP (New York, United States) (represented by: R. Black and S. Davies, Solicitors)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 28 November 2012 (Case R 2240/2011-2), relating to opposition proceedings between The Polo/Lauren Company, LP and Herdade de S. Tiago II — Sociedade Agrícola, SA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Herdade de S. Tiago II — Sociedade Agrícola, SA to pay the costs.*

([1]) OJ C 123, 27.4.2013.

Judgment of the General Court of 18 September 2014 — Polo/Lauren v OHIM — FreshSide (Representation of a boy on a bicycle holding a mallet)

(Case T-265/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark representing a boy on a bicycle holding a mallet — Earlier Community and national figurative marks representing a polo player — Relative grounds for refusal — Article 8(1)(b) of Regulation (EC) No 207/2009 — Article 8(5) of Regulation No 207/2009)

(2014/C 388/17)

Language of the case: English

Parties

Applicant: The Polo/Lauren Company, LP (New York, United States) (represented by: S. Davies, Solicitor, J. Hill, Barrister, and R. Black, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and N. Bambara, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: FreshSide Ltd (London, United Kingdom) (represented by: N. Lockett, Solicitor)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 1 March 2013 (Case R 15/2012-2), relating to opposition proceedings between The Polo/Lauren Company, LP and FreshSide Ltd.

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 1 March 2013 (Case R 15/2012-2);*

2. *Orders OHIM to bear its own costs and to pay the costs incurred by The Polo/Lauren Company, LP;*

3. *Orders FreshSide Ltd to bear its own costs.*

([1]) OJ C 207, 20.7.2013.

Judgment of the General Court of 18 September 2014 — El Corte Inglés, SA v OHIM — Gaffashion (BAUSS)

(Case T-267/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark BAUSS — Earlier Community figurative mark BASS3TRES — Article 8(1)(b) of Regulation (EC) No 207/2009 — No likelihood of confusion)

(2014/C 388/18)

Language of the case: Spanish

Parties

Applicant: El Corte Inglés, SA (Madrid, Spain) (represented by: E. Seijo Veiguela and J. L. Rivas Zurdo, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Gaffashion — Comércio de Accessórios de Moda, L[da] (Viana do Castelo, Portugal)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 February 2013 (Case R 2295/2011-2), concerning opposition proceedings between El Corte Inglés, SA and Gaffashion — Comércio de Accessórios de Moda, L[da].

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders El Corte Inglés, SA to pay the costs.*

([1]) OJ C 215, 27.7.2013.

Judgment of the General Court of 23 September 2014 — Groupe Léa Nature v OHIM — Debonair Trading Internacional (SO'BiO ētic)

(Case T-341/13) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark SO'BiO ētic — Earlier Community and national word and figurative marks SO…? — Relative grounds for refusal — No likelihood of confusion — Article 8(1)(b) and (5) of Regulation (EC) No 207/2009 — Lack of genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009)

(2014/C 388/19)

Language of the case: English

Parties

Applicant: Groupe Léa Nature SA (Périgny, France) (represented by: S. Arnaud, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos and V. Melgar, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervener before the General Court: Debonair Trading Internacional Lda (Funchal, Portugal) (represented by: T. Alkin, Barrister)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 26 March 2013 (Case R 203/2011-1), relating to opposition proceedings between Debonair Trading Internacional Lda and Groupe Léa Nature SA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 26 March 2013 (Case R 203/2011-1);*

2. *Orders OHIM and Debonair Trading Internacional Lda each to bear their own costs, and to pay the costs of Groupe Léa Nature SA.*

([1]) OJ C 260, 7.9.2013.

Judgment of the General Court of 24 September 2014 — Kadhaf Al Dam v Council

(Case T-348/13) ([1])

(Common foreign and security policy — Restrictive measures taken in view of the situation in Libya — Freezing of funds and economic resources — Obligation to state reasons — Manifest error of assessment — Temporal adjustment of the effects of annulment — Non-contractual liability)

(2014/C 388/20)

Language of the case: French

Parties

Applicant: Ahmed Mohammed Kadhaf Al Dam (Cairo, Egypt) (represented by: H. de Charette, lawyer)

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

Re:

First, action for partial annulment of Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 53), Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya (OJ 2011 L 58, p. 1), Council Decision 2013/182/CFSP of 22 April 2013 amending Decision 2011/137/CFSP (OJ 2013 L 111, p. 50), Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 (OJ 2014 L 183, p. 1) and of Council Decision 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP (OJ 2014 L 183, p. 52), in so far as those acts cover the applicant and, second, a claim for damages.

Operative part of the judgment

The Court:

1. *Annuls Council Decisions 2013/182/CFSP of 22 April 2013 and 2014/380/CFSP of 23 June 2014 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya in so far as it retains the name of Mr Ahmed Mohammed Kadhaf Al Dam on the lists contained in Annexes II and IV to Council Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya.*

2. *Annuls Council Implementing Regulation (EU) No 689/2014 of 23 June 2014 implementing Article 16(2) of Regulation (EU) No 204/2011 in so far as it retains the name of Mr Kadhaf Al Dam on the list contained in Annex III to Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya.*

3. *Declares that the effects of Decision 2013/182, Decision 2014/380 and Implementing Regulation No 689/2014 shall be maintained in respect of Mr Kadhaf Al Dam until the expiry of the period for bringing an appeal against the present judgment or, if an appeal is lodged during that period, until the Court of Justice's decision.*

4. *Dismisses the remainder of the action.*

5. *Orders Mr Kadhaf Al Dam to bear, in addition to his own costs, the costs incurred by the Council in connection with his claim for damages.*

6. *Orders the Council to bear, in addition to its own costs, the costs incurred by Mr Kadhaf Al Dam in connection with the action for annulment.*

([1]) OJ C 298, 12.10.2013.

Action brought on 2 July 2014 — Novartis Europharm v Commission

(Case T-511/14)

(2014/C 388/21)

Language of the case: English

Parties

Applicant: Novartis Europharm Ltd (Horsham, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision; and

— order the European Commission to pay its own costs and those of Novartis.

Pleas in law and main arguments

By its present action, the applicant seeks the annulment of Commission Decision C (2014) 2155 final of 27 March 2014 granting a marketing authorisation to Teva Generics for the medicinal product for human use 'Zoledronic acid Teva Generics — Zoledronic Acid'.

In support of the action, the applicant relies on a single plea in law, essentially identical or similar to the plea in law relied on in Cases T-472/12 *Novartis Europharm* v *Commission* ([1]) and T-67/13 *Novartis Europharm* v *Commission* ([2]).

([1]) OJ 2012 C 389, p. 8.
([2]) OJ 2013 C 101, p. 24.

Action brought on 28 July 2014 — Ackermann Saatzucht a.o. v Parliament and Council

(Case T-559/14)

(2014/C 388/22)

Language of the case: English

Parties

Applicants: Ackermann Saatzucht GmbH & Co. KG (Irlbach, Germany); Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG (Hohenmocker, Germany); Deutsche Saatveredelung AG (Lippstadt, Germany); Ernst Benary, Samenzucht GmbH, (Hann. Münden, Germany); Freiherr Von Moreau Saatzucht GmbH (Osterhofen, Germany); Hybro Saatzucht GmbH & Co. KG (Kleptow, Germany); Klemm + Sohn GmbH & Co. KG (Stuttgart, Germany); KWS Saat AG (Einbeck, Germany); Norddeutsche Pflanzenzucht Hans-Georg Lembke KG (Hohenlieth, Germany); Nordsaat Saatzuchts GmbH (Halberstadt, Germany); Peter Franck-Oberaspach (Schwäbisch Hall, Germany); P.H. Petersen Saatzucht Lundsgaard GmbH (Grundhof, Germany); Saatzucht Streng — Engelen GmbH & Co. KG (Uffenheim, Germany); Saka Pflanzenzucht GmbH & Co. KG (Hamburg, Germany); Strube Research GmbH & Co. KG (Söllingen, Germany); Gartenbau und Spezialkulturen Westhoff GbR (Südlohn-Oeding, Germany); and W. von Borries-Eckendorf GmbH & Co. KG (Leopoldshöhe, Germany) (represented by: P. de Jong, P. Vlaemminck and B. Van Vooren, lawyers)

Defendants: Council of the European Union and European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the action in annulment admissible;

— annul Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union (OJ L 150, p. 59); and

— order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the EU is a contracting party to the International Convention for the Protection of New Varieties of Plants, implemented in the EU by the Regulation on Community Plant Variety Rights ([1]). Article 15 (c) of that Regulation recognizes the so-called breeders' exemption, namely that the scope of Plant Variety Rights does not extend to 'acts done for the purpose of breeding, or discovering and developing new varieties.' The contested measure is a severe restriction of the breeders' exemption, thus violating a binding and directly effective international obligation of the EU. Furthermore, the breeders' exemption is recognized in Article 27 of the Unified Patent Court Agreement (UPCA). Although the EU is not a party to that agreement, the contested measure essentially demands that the Member States violate their international obligations deriving from the UPCA.

2. Second plea in law, alleging that as a contracting party to the Convention on Biological Diversity, and under Article 3 (5) TEU, the European Union is bound to support the preservation of biodiversity of the Earth. The contested Regulation will have a significant chilling effect on all efforts pertaining to the protection of plant biodiversity, thus impinging upon this international obligation.

3. Third plea in law, alleging that the contested measure is solely based on Article 192 (1) TFEU. It is consistent case-law that the legal basis of a measure must be based on objective factors amenable to judicial review. Insofar as the measure seeks to organize compliance measures for users on the EU internal market, the Regulation should have been based on Article 114 TFEU. The choice of legal basis has ramifications for the content of the act, since the objectives for which the legal bases can be used are entirely different, thus substantially affecting the legislative process.

4. Fourth plea in law, alleging that the Regulation manifestly violates the principle of proportionality laid down in Article 5 (4) TEU insofar as: first, the impact assessment was devoid of link between quantitative data and the conclusions which were purely based on 'qualitative' arguments; second, it manifestly failed to take account of the plant breeding sector as being severely and distinctly impacted due to the fact that genetic resources are the very essence of the sector, and not merely an ancillary part of its activities; third, the Regulation imposes manifestly disproportionate restrictions of Article 16 of the EU Charter; fourth, it imposes a *de facto* eternal obligation on the plant breeding sector to record and keep information on their activities; finally, less onerous measures are available, as is illustrated by the 'International Treaty on Plant Genetic Resources for Food and Agriculture'.

5. Fifth plea in law, alleging that the contested Regulation creates a manifest situation of legal uncertainty for plant breeders insofar as: first, its scope of application depends on whether or not States choose to exercise sovereignty over genetic resources; second, it relies on open-ended definitions which do not permit establishing whether a genetic resources is considered to have been 'utilized'; third, due to the fact that its open-ended interpretation leads to a possible *de facto* retroactive application; finally, due to the fact that the development of best practices merely 'may' reduce the risk of non-compliance for users subject to the contested measure.

([1]) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, p. 1).

Action brought on 28 July 2014 — ABZ Aardbeien Uit Zaad Holding a.o. v Parliament and Council

(Case T-560/14)

(2014/C 388/23)

Language of the case: English

Parties

Applicants: ABZ Aardbeien Uit Zaad Holding BV (Hoorn NH, Netherlands); Agriom BV (Aalsmeer, Netherlands); Agrisemen BV (Ellewoutsdijk, Netherlands); Anthura BV (Bleiswijk, Netherlands); Barenbrug Holding BV (Oosterhout, Netherlands); De Bolster BV (Epe, Netherlands); Evanthia BV (Hoek van Holland, Netherlands); Gebr. Vletter & Den Haan VOF (Rijnsburg, Netherlands); Hilverda Kooij BV (Aalsmeer, Netherlands); Holland-Select BV (Andijk, Netherlands); Könst Breeding BV (Nieuwveen, Netherlands); Koninklijke Van Zanten BV (Hillegom, Netherlands); Kweek- en Researchbedrijf Agirco BV (Emmeloord, Netherlands); Kwekerij de Wester-Bouwing BV (Rossum, Netherlands); Limgroup BV (Horst aan de Maas, Netherlands); and Ontwikkelingsmaatschappij Het Idee BV (Amsterdam, Netherlands) (represented by: P. de Jong, P. Vlaemminck and B. Van Vooren, lawyers)

Defendants: Council of the European Union and European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the action in annulment admissible;

— annul Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union (OJ L 150, p. 59); and

— order the European Parliament and the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law which are essentially identical or similar to those relied on in Case T-559/14 *Ackermann Saatzucht a.o. v Parliament and Council*.

Action brought on 27 August 2014 — Italy v Commission

(Case T-636/14)

(2014/C 388/24)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato, G. Palmieri, acting as Agent)

Defendant: European Commission

Form of order

The applicant claims that the Court should:

— annul the vacancy notice for the post of Director of the Translation Centre for the Bodies of the European Union (Luxembourg), function group AD, grade 14, (COM/2014/10356), published in the *Official Journal of the European Union* C 185 A of 17 June 2014;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against the abovementioned vacancy notice, in so far as applicants are required to apply in English, French or German.

In support of its action, the applicant puts forward two pleas in law.

1. First plea in law, alleging infringement of Article 18 TFEU and the fourth paragraph of Article 24 TFEU; of Article 22 of the Charter of Fundamental Rights of the European Union; of Articles 1 and 2 of Regulation 1/58; and of Article 1d(1) and (6) of the Staff Regulations (applicable by analogy to temporary staff and referred to in the contested notice).

   — The applicant claims in this regard that, through the reference to the Commission's website which set out that binding provision, the notice required applicants compulsorily to submit their CV and motivation letter in English, French or German, rather than in any one of the languages of the European Union.

2. Second plea in law, alleging infringement of the principles of legitimate expectations and of sincere cooperation (Article 4(3) TEU).

   — The applicant claims in this regard that, during the process for the adoption of the notice in question, even though the Commission had formally assured the Italian Government that that language discrimination would be removed, it instead acted in the opposite manner when drafting the notice and preparing the rules for the functioning of the website to which the notice refers for the submission of applications.

Action brought on 30 August 2014 — ADR Center v Commission

(Case T-644/14)

(2014/C 388/25)

Language of the case: English

Parties

Applicant: ADR Center Srl (Rome, Italy) (represented by: L. Tantalo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision set out in its letter of 27 June 2014 for a recovery action against ADR Center;

— order the immediate payment of the balance due to ADR Center of 79 700,40 EUR, per the pro forma invoice and credit notes issued November 13, 2013;

— order the immediate payment of damages suffered by ADR Center to its international reputation, and for the time devoted by its senior staff to defend a groundless claim;

— order the defendant and any interveners to pay the applicants legal costs and expenses for this procedure in an amount to be determined equitably by the Court.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision should be annulled on the grounds that the audit actions and the ensuing orders by the Commission are based on a set of rules that were never agreed upon.

2. Second plea in law, alleging that the contested decision should be annulled on the grounds that the Commission unreasonably delayed its issuance of the final audit reports and accompanying recovery orders.

3. Third plea in law, alleging that the Commission has failed to meet its burden of proof. The applicant claims in that regard that the Commission has based its final financial audit and the ensuing recovery orders on unsubstantiated findings.

4. Fourth plea in law, alleging that the findings of the Commission's audit were erroneous. The applicant claims in that regard that findings of the Commission's audit are contested based upon a number of manifest errors, procedural and substantive. The applicant also claims that the Commission has not only failed to review the very orders it has issued, the Commission has also blatantly ignored and failed to consider any and all issues that were raised by ADR Center.

Action brought on 8 September 2014 — Revolution v OHIM (REVOLUTION)

(Case T-654/14)

(2014/C 388/26)

Language of the case: English

Parties

Applicant: Revolution LLC (Washington, United States) (represented by: P. Roncaglia, F. Rossi and N. Parrotta, 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 11 June 2014 given in Case R 2143/2013-1;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The work mark 'REVOLUTION' for services in Class 36 — Community trade mark application No 11 815 297

Decision of the Examiner: Rejected the application for CTM registration

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 11 September 2014 — Peri v OHIM (Shape of a formwork coupler)

(Case T-656/14)

(2014/C 388/27)

Language of the case: German

Parties

Applicant: Peri GmbH (Weißenhorn, Germany) (represented by A. Bognár and M. Eck, 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 26 June 2014 in Case R 1178/2013-1;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The three-dimensional mark in the shape of a formwork coupler for goods in Classes 6 and 19 — Community trade mark application No 10 826 766

Decision of the Examiner: The application was rejected

Decision of the Board of Appeal: The appeal was dismissed

Pleas in law:

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

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

Action brought on 15 September 2014 — Instituto dos vinhos do Douro e do Porto v OHIM — Bruichladdich Distillery (PORT CARLOTTE)

(Case T-659/14)

(2014/C 388/28)

Language in which the application was lodged: English

Parties

Applicant: Instituto dos vinhos do Douro e do Porto, IP (Peso da Régua, Portugal) (represented by: P. Sousa e Silva, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bruichladdich Distillery Co. Ltd (Argyll, United Kingdom)

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 8 July 2014 given in Case R 946/2013-4;

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'PORT CARLOTTE' for goods in Class 33 — Community trade mark No 5 421 474

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The grounds laid down in Article 52(1)(a) in conjunction with Article 7(1)(g), Article 53(1)(c) in conjunction with article 8(4) and Article 53(2)(d) of Regulation No 207/2009

Decision of the Cancellation Division: Rejected the cancellation request

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(c) and (g) and Article 53(2)(d) of Regulation No 207/2009

Action brought on 19 September 2014 — SEA v Commission

(Case T-674/14)

(2014/C 388/29)

Language of the case: Italian

Parties

Applicant: Società per azioni esercizi aeroportuali (SEA) (Segrate, Italy) (represented by: F. Gatti, J.-F. Bellis, F. Di Gianni and A. Scalini, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision C (2014) 4537 final of 9 July 2014 whereby the European Commission initiated a formal investigation procedure concerning the setting up of Airport Handling ('the contested decision');

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: failure to state reasons in the contested decision.

   — The applicant claims in that regard that, in the contested decision, no account was taken of elements which had an essential part to play in the adoption of that decision and of which the Commission had been fully informed (for example, the fact that a Trust had been established in order to ensure a complete economic break between Airport Handling and SEA Handling, a company alleged to have received State aid SA.21420).

2. Second plea in law: misapplication of Article 107(1) TFEU as a result of an error in the assessment of important elements and objective information brought to the Commission's attention by the applicant.

   — The applicant claims in that regard that, in the contested decision, the Commission wrongly held that Airport Handling could be regarded as SEA Handling's economic successor and that the applicant's financial contribution to Airport Handling constitutes State aid for the purposes of Article 107(1) TFEU.

3. Third plea in law: breach of the fundamental principles of the protection of legitimate expectations, sound administration, proportionality and non-discrimination.

   — The applicant claims in that regard that both the conduct displayed by the departments of the Commission and the contested decision are patently contrary to those principles of EU law. In particular, with regard to the principle of proportionality, the applicant submits that the Commission should have allayed its own concerns by carrying out a thorough analysis of the information supplied by the applicant before the investigation, instead of adopting the — now contested — decision launching a formal investigation procedure.

Action brought on 22 September 2014 — Kingdom of Spain v Commission

(Case T-675/14)

(2014/C 388/30)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. García-Valdecasas Dorrego, Abogado del Estado)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the Commission Implementing Decision of 9 July 2014 excluding from EU financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), Financial Perspectives and the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) in so far as they concern the Kingdom of Spain; and

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. By the first plea, it is alleged that the imposition of a flat-rate correction in the amount of EUR 2 731 208,07 and the method of calculation used were contrary to Article 31(2) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1), to the guidelines set out in Commission document No VI/5330/97 of 23 December 1997 (Guidelines for the calculation of financial consequences when preparing the decision regarding the clearance of the accounts of the EAGGF Guarantee Section), and to Commission document AGRI/2005/64043 (Commission Communication on how the Commission intends in the context of the EAGGF-Guarantee clearance procedure to handle shortcomings in the context of cross-compliance control systems implemented by Member States) in so far as it is inappropriate to apply a flat-rate assessment, since the applicant had provided a specific evaluation of the actual risks for the fund. The implementing measures adopted by the Commission were not only incorrect, but also disproportionate and unjustified.

2. By the second plea, it is alleged that the addition of a specific correction in the amount of EUR 191 873,55 to the general flat-rate correction of 2 %, and the method of calculation, are contrary to Article 31(2) of the Regulation No 1290/2005 and to the Commission documents on the guidelines for the calculation of financial corrections, because it is not appropriate to use two methods of calculation at the same time for the same infringement. To proceed in that way is not only legally incoherent but also disproportionate and unjustified.

3. By the third plea in law, it is alleged that the correction imposed for the 2010 application year, the 2011 financial year, infringes Article 31(4) of Regulation No 1290/2005; that it implies failure to observe the principle of sincere cooperation and infringes the rights of the defence, in so far as the defendant has unduly extended the financial correction to cover a period subsequent to the 24 months preceding the Communication, even though the shortcomings had already been rectified.

Action brought on 22 September 2014 — Spain v Commission

(Case T-676/14)

(2014/C 388/31)

Language of the case: Spanish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

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

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: failure to observe the principles of legal certainty and the non-retroactivity of legislation

— According to the applicant, the principles of legal certainty and non-retroactivity, as applied to Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ 2011 L 306, p. 1) and Decision 2012/678/EU, mean that facts arising before 13 December 2011 cannot be the subject of an investigation because, at that date, the facts at issue could not be penalised. The only data in respect of which a penalty could be applied are those notified in April 2012. In fact, the period covered by the investigation must relate only to data to be found in notifications made after 2012.

The period covered by the investigation must relate only to data in the notifications made after 2012 where those data relate to facts that occurred after December 2011, the date on which the Regulation No 1173/2011 entered into force. Consequently there is no legal basis for an investigation in relation to facts that occurred before 13 December 2011.

2. Second plea in law: infringement of Article 8(3) of Regulation (EU) No 1173/2011

— According to the applicant, there is no serious evidence of facts amounting to the manipulation of data relating to the Spanish deficit and public debt. In reviewing those data, the Spanish authorities gave clear and adequate explanations.

3. Third plea in law: infringement of the Kingdom of Spain's rights of defence

— According to the applicant, the investigation that has been launched is a covert investigation, conducted outside established procedures, in breach of the rights of defence of the Kingdom of Spain.

Action brought on 19 September 2014 — Airport Handling v Commission

(Case T-688/14)

(2014/C 388/32)

Language of the case: Italian

Parties

Applicant: Airport Handling SpA (Somma Lombardo, Italy) (represented by: R. Cafari Panico and F. Scarpellini, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in its entirety, Decision C (2014) 4537 final of 9 July 2014 whereby the European Commission initiated a formal investigation procedure in Case SA.21420 (2014/NN) concerning the setting up of the company Airport Handling SpA ('the contested decision');

— in the alternative, in the unlikely event that the Court decides that only some of the complaints raised in the present action should be upheld, annul the contested decision in so far as it concerns those complaints;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement and incorrect application of Article 107(1) TFEU and Article 108(2) TFEU.

— The applicant argues that the contested decision is vitiated by the fact that the European Commission wrongly held that Airport Handling SpA was SEA Handling's successor on the basis of a presumed economic connection between the two companies and, on the strength of that incorrect assumption, adopted the decision to initiate a formal investigation procedure.

2. Second plea in law, also alleging infringement and incorrect application of Article 107(1) TFEU and Article 108(2) TFEU.

   — The applicant claims in that regard that the contested decision was wrong in so far as the Commission held that the capitalisation of Airport Handling SpA could represent State aid incompatible with the market and, on the basis of that incorrect assumption, initiated a formal investigation procedure.

3. Third plea in law, alleging breach of the principle of sound administration.

   — The applicant claims in that regard that the Commission, in adopting the contested decision, failed to fulfil its obligation to carry out an impartial and thorough examination of the information in its possession, and failed to take account of the need to weigh up the interests involved.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 17 June 2014 — ZZ v Parliament

(Case F-54/14)

(2014/C 388/33)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Bernard, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision not to appoint the applicant to the post of legal advisor to the European Parliament.

Form of order sought

The applicant claims that the Tribunal should:

— annul the decision to appoint another person as legal advisor;

— fix, as appropriate, on equitable principles, an amount of damages to compensate the applicant for the various breaches of administrative duty noted;

— order the European Parliament to pay the costs.

Action brought on 22 July 2014 — ZZ and ZZ v Commission

(Case F-70/14)

(2014/C 388/34)

Language of the case: French

Parties

Applicants: ZZ and ZZ (represented by: D. de Abreu Caldas, M. de Abreu Caldas and J.-N. Louis, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions concerning the transfer of the applicants' pension rights into the European Union pension scheme which apply the new General Implementing Provisions (GIPs) of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011 and, in addition, an order that the Commission compensate the applicants for the harm resulting from the excessively long period taken to deal with their transfer applications.

Form of order sought

— Annul the decisions calculating the increase in their respective pension rights acquired before their entry into force at the Commission;

— In addition, order the Commission to compensate the applicants for the harm suffered due to the errors committed which led to the excessively long period taken to deal with their application to transfer pension rights;

— Order the Commission to pay the costs.

Action brought on 22 July 2014 — ZZ v European External Action Service (EEAS)

(Case F-71/14)

(2014/C 388/35)

Language of the case: French

Parties

Applicant: ZZ (represented by: L.F. de Castro and J.-L. Gillain, lawyers)

Defendant: European External Action Service (EEAS)

Subject-matter and description of the proceedings

Annulment of the decision no longer to pay the allowance for living conditions (ALC), the additional payment (AP) based on the living conditions in the applicant's place of employment and a daily allowance (DA), and to pay for 49 days' leave not taken in respect of 2012 and a claim for compensation for the harm caused by a failure to offer aid or assistance and abandonment following the work-place accident suffered by the applicant.

Form of order sought

— Payment of the AP and ALC from 1 May 2012 to 31 October 2013, or, at the very least, payment thereof for the same period as that of the DA;

— Payment for the 49 days' leave not taken during 2012;

— Re-establishment of the contract or the establishment of a new contract for an indefinite period or which must, at term, be confirmed as a contract for an indefinite period or compensation for the harm connected with the fact that, absent the accident, a new contract would have been concluded between the applicant and the defendant;

— Compensation for the loss which she suffered following the accident. (i) EUR 10 000 as regards the failure to offer aid and assistance in Jordan and in Brussels on a medical, administrative and financial level; (ii) a sum equal to all the salary, allowances and benefits not paid and lost and costs incurred, medical and other, by the applicant because of the accident, provisionally estimated at EUR 50 000, in respect of the accident for which liability lies with the United Nations and the EEAS; the latter must assist and finance the action for a declaration of liability of the United Nations and all parties involved in the organisation of that period of probation. (iii) a provisional sum of EUR 50 000 in respect of the misuse of fixed-term contracts, each containing a probation clause, in particular the latter and the failure to renew it.

Action brought on 23 July 2014 — ZZ v Commission

(Case F-72/14)

(2014/C 388/36)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Ortiz Blanco and A. Givaja Sanz, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the selection board of the competition not to admit the applicant to internal competition COM/3/AD 9/13 because she was not a 'member of the temporary staff of the Commission' which is a condition for eligibility.

Form of order sought

— Annul the decision of 18 September 2013, confirmed on 22 October 2013, not to admit the applicant to competition COM/3/AD 9/13;

— Annul, in so far as necessary, the decision dated 11 April 2014 and served on the applicant on 14 April 2014 rejecting the claim of 17 December 2013;

— Order the Commission to pay the costs.

Action brought on 25 July 2014 — ZZ v Commission

(Case F-74/14)

(2014/C 388/37)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Declaration of the unlawfulness of Article 7 of Annex V and Article 8 of Annex VII to the new Staff Regulations of Officials and of the annulment of the decision withdrawing from the applicant the benefit of travelling time and reimbursement of travel costs between her place of employment and her place of origin to which she was entitled before the entry into force of that new provision of the Staff Regulations.

Form of order sought

— Declare Articles 7 of Annex V to the Staff Regulations and 8 of Annex VII to the Staff Regulations unlawful;

— Annul the decision no longer to grant the applicant any travelling time or the reimbursement of annual travel costs with effect from 2014;

— Order the Commission to pay the costs.

Action brought on 7 August 2014 — ZZ v Commission

(Case F-76/14)

(2014/C 388/38)

Language of the case: Spanish

Parties

Applicant: ZZ (represented by: G. Suárez de Castro and M. Orman, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision not to include the applicant on the reserve list for competition EPSO/AD/248/13.

Form of order sought

— Since there is a place on the reserve list for competition EPSO/AD/248/13 to constitute a reserve from which to recruit administrators in Field 1 ('Security of Buildings') and since the applicant was awarded a mark of 53,38, which is higher than the minimum mark set by EPSO of 51,01, include the applicant on the reserve list for that competition;

— Alternatively, in the light of the many irregularities in the marking of test (d), annul the marking of test (d) and re-rank the candidates in the competition on the basis of the other marks awarded, which were not vitiated by irregularities;

— If the application is upheld, order the applicant to pay the costs.

Action brought on 7 August 2014 — ZZ and Others v EEAS

(Case F-78/14)

(2014/C 388/39)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: Dario de Abreu Caldas, Micael de Abreu Caldas and Jean-Noël Louis, lawyers)

Defendant: European External Action Service (EEAS)

Subject-matter and description of the proceedings

Annulment of the decisions not to promote the applicants to the next grade in the 2013 promotion procedure of the European External Action Service (EEAS)

Form of order sought

The applicants claim that the Tribunal should:

— annul the decisions of 9 and 14 October 2013 establishing the list of officials promoted under the 2013 promotion procedure,

— order the EEAS to pay the costs.

Action brought on 7 August 2014 — ZZ v Parliament

(Case F-79/14)

(2014/C 388/40)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Lamamra and K. Evora, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision to withdraw the benefit of the household allowance, with retroactive effect, after the applicant's transfer to another institution and to limit the amount of the installation allowance to one month instead of two.

Form of order sought

— Annul the decision of the European Parliament of 5 December 2013;

— Annul the decision of the European Parliament of 8 May 2014, rejecting his claim;

— Order the Parliament to pay the costs.

Action brought on 14 August 2014 — ZZ v Committee of the Regions

(Case F-81/14)

(2014/C 388/41)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-N. Louis, D. de Abreu Caldas and R. Metz, lawyers)

Defendant: Committee of the Regions

Subject-matter and description of the proceedings

Annulment of the decision not to promote the applicant to the next grade (AD 13) in the 2013 promotion procedure of the Committee of the Regions.

Form of order sought

The applicant claims that the Tribunal should:

— annul the Committee of the Regions' decision not to promote the applicant to grade AD 13 in the 2013 promotion procedure;

— order the Committee of the Regions to pay the costs.

Action brought on 15 August 2014 — ZZ v European Commission

(Case F-82/14)

(2014/C 388/42)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: M. Cornacchia, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to exclude the applicant from Competition EPSO/AST/126/2012 because he did not inform the Selection Committee of his relationship to one of the members of the Jury.

Form of order sought

— Annul the decision of 15 May 2014 whereby the Jury for Open Competition EPSO/AST/126/2012 confirmed, through a letter from EPSO responding to the request for review submitted by the applicant on 31 January 2014, that the applicant was excluded from that competition;

— order the European Commission to pay compensation for the non-material damage suffered by the applicant as a result of the decision referred to above, valued *ex aequo et bono* at EUR 3 000;

— order the European Commission to pay the costs.

Action brought on 1st September 2014 — ZZ and others v European Commission

(Case F-86/14)

(2014/C 388/43)

Language of the case: English

Parties

Applicants: ZZ and others (represented by: O. Mader, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions reducing the total number of days of annual leave and declaration of inapplicability of Article 6 of Annex X to the Staff Regulations as modified by Article 1, point 70 of Regulation n° 1023/2013, applicable from 1st January 2014.

Form of order sought

— Annul the decisions addressed to the applicants through Sysper2 with regard to their new basic annual leave entitlement;

— declare inapplicable Article 1, point 70 lit. (a) of Regulation (EU, Euratom) No. 1023/20131 changing Article 6 of Annex X of the Staff Regulations ('Special and exceptional provisions applicable to officials serving in a third country') and the Commission's decision C(2013) 9051 final of 16 December 2013, as far they reduce the entitlement in number of annual leave days of the applicants;

— annul the Commission decision of 23 May 2014 (R/123/14) rejecting the complaints of the applicants, as far as referring to annual leave;

— order the defendant to pay the costs.

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