ISSN 1977-091X

Official Journal of the European Union

C 9

English edition

Information and Notices

Volume 56

12 January 2013

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Price:
EUR 3

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NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 9/01)

Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union*

OJ C 399, 22.12.2012

Past publications

OJ C 389, 15.12.2012

OJ C 379, 8.12.2012

OJ C 373, 1.12.2012

OJ C 366, 24.11.2012

OJ C 355, 17.11.2012

OJ C 343, 10.11.2012

These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by the new Member of the Court of Justice

(2013/C 9/02)

Following his appointment as Advocate General at the Court of Justice by decisions of the Representatives of the Governments of the Member States of the European Union of 25 April 2012, [1] for the period from 7 October 2012 to 6 October 2018, Mr Wahl took the oath before the Court of Justice on 28 November 2012.

[1] OJ L 121, 8.5.2012, p. 21.

Designation of the Chamber responsible for cases of the kind referred to in Articles 193 and 194 of the Rules of Procedure of the Court

(2013/C 9/03)

At its meeting on 6 November 2012, the Court designated the Fourth Chamber of the Court as the Chamber that is, in accordance with Article 191 of the Rules of Procedure, responsible for cases of the kind referred to in Articles 193 and 194 of those Rules, for a period of one year expiring on 6 October 2013.

GENERAL COURT

Assignment of Judges to Chambers

(2013/C 9/04)

On 29 November 2012, the Plenary Meeting of the General Court decided, in response to the entry into office of Mr Wahl as Advocate General at the Court of Justice, to amend the decisions of the Plenary Meetings of 20 September 2010, ([1]) 26 October 2010, ([2]) 29 November 2010, ([3]) 20 September 2011, ([4]) 25 November 2011, ([5]) 16 May 2012, ([6]) 17 September 2012 ([7]) and 9 October 2012 ([8]) on the assignment of Judges to Chambers.

For the period from 29 November 2012 to the entry into office of the Swedish Member, the assignment of Judges to Chambers is as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Azizi, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias, Ms Kancheva and Mr Buttigieg, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

(a) Mr Frimodt Nielsen and Ms Kancheva, Judges;
(b) Mr Frimodt Nielsen and Mr Buttigieg, Judges;
(c) Ms Kancheva and Mr Buttigieg, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;
Mr Dehousse, Judge;
Mr Schwarcz, Judge.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Czúcz, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias, Ms Kancheva and Mr Buttigieg, Judges.

Third Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;
Ms Labucka, Judge;
Mr Gratsias, Judge.

Fourth Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fourth Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;
Ms Jürimäe, Judge;
Mr Van der Woude, Judge.

([1]) OJ 2010 C 288, p. 2.
([2]) OJ 2010 C 317, p. 5.
([3]) OJ 2010 C 346, p. 2.
([4]) OJ 2011 C 305, p. 2.
([5]) OJ 2011 C 370, p. 5.
([6]) OJ 2012 C 174, p. 2.
([7]) OJ 2012 C 311, p. 2.
([8]) OJ 2012 C 343, p. 2.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fifth Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber;
Mr Vadapalas, Judge;
Mr O'Higgins, Judge.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Ms Martins Ribeiro, Mr Soldevila Fragoso, Mr Popescu and Mr Berardis, Judges.

Sixth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;
Mr Soldevila Fragoso, Judge;
Mr Berardis, Judge.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Seventh Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber;
Ms Wiszniewska-Białecka, Judge;
Mr Prek, Judge.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso, Mr Popescu and Mr Berardis, Judges.

Eighth Chamber, sitting with three Judges:

Mr Truchot, President of the Chamber;
Ms Martins Ribeiro, Judge;
Mr Popsecu, Judge.

For the period from 29 November 2012 until the entry into office of the Swedish Member:

— in the First Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the First Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Third Chamber sitting with three Judges. The latter, who shall not be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Third Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Third Chamber initially hearing an action and two Judges from the First Chamber sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the First Chamber sitting with three Judges, the President of the Chamber shall sit successively with the Judges referred to in (a), (b) and (c), depending on the composition to which the Judge Rapporteur is assigned. For cases in which the President is the Judge Rapporteur, the President of the Chamber shall sit successively with the Judges of each of those compositions in the order of registration of the cases, without prejudice to the connexity of the cases.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 15 November 2012 — Zhejiang Aokang Shoes Co. Ltd v Council of the European Union, Wenzhou Taima Shoes Co. Ltd, European Commission, Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas

(Case C-247/10 P) [1]

(Appeal — Dumping — Regulation (EC) No 1472/2006 — Imports of certain footwear with uppers of leather originating in China and Vietnam — Regulation (EC) No 384/96 — Article 2(7)(b) — Market economy treatment — Article 9(6) — Individual treatment — Article 17(3) — Sampling — Article 20(5) — Rights of the defence)

(2013/C 9/05)

Language of the case: English

Parties

Appellant: Zhejiang Aokang Shoes Co. Ltd (represented by: M. Sánchez Rydelski, Rechtsanwalt)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix and R. Szostak, Agents, and by G. Berrisch, Rechtsanwalt, and N. Chesaites, Barrister), Wenzhou Taima Shoes Co. Ltd, European Commission (represented by: H. van Vliet and T. Scharf, Agents), Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas

Re:

Appeal lodged against the judgment of the General Court (Eighth Chamber) in Joined Cases T-407/06 and T-408/06 *Zhejiang Aokang Shoes and Wenzhou Taima Shoes* v *Council* [2010] ECR II-747, by which the General Court dismissed an action for the annulment in part of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1).

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 4 March 2010 in Joined Cases T-407/06 and T-408/06 Zhejiang Aokang Shoes and Wenzhou Taima Shoes v Council;*

2. *Annuls Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam in so far as it concerns Zhejiang Aokang Shoes Co. Ltd;*

3. *Orders the Council of the European Union to pay the costs incurred by Zhejiang Aokang Shoes Co. Ltd. both at first instance and in connection with the present proceedings;*

4. *Orders the European Commission to bear its own costs, both at first instance and in connection with the present proceedings.*

[1] OJ C 209, 31.7.2010.

Judgment of the Court (Fourth Chamber) of 8 November 2012 — European Commission v Republic of Finland

(Case C-342/10) [1]

(Failure of a Member State to fulfil obligations — Free movement of capital — Article 63 TFEU — EEA Agreement — Article 40 — Taxation of dividends paid to non-resident pension funds)

(2013/C 9/06)

Language of the case: Finnish

Parties

Applicant: European Commission (represented by: R. Lyal and I. Koskinen, acting as Agents)

Defendant: Republic of Finland (represented by: J. Heliskoski, acting as Agent)

Interveners in support of the defendant: Kingdom of Denmark (represented by: C. Vang, acting as Agent), French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Noort, acting as Agents), Kingdom of Sweden (represented by: A. Falk and S. Johannesson, acting as Agents), United Kingdom of Great Britain and Northern Ireland (represented by H. Walker, acting as Agent, and G. Facenna, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of Art. 63 TFEU and Art. 40 of the EEA Agreement — Tax discrimination — National legislation making dividends paid by resident companies to foreign pension funds subject to a stricter tax regime than that applicable to national pension funds

Operative part of the judgment

The Court:

1. *Declares that, by introducing and maintaining in force a scheme under which dividends paid to foreign pension funds are taxed in a discriminatory manner, the Republic of Finland has failed to fulfil its obligations under Article 63 TFEU and Article 40 of the European Economic Area Agreement of 2 May 1992.*

2. *Orders the Republic of Finland to bear its own costs and to pay those incurred by the European Commission.*

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

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Hildesheim v BLC Baumarkt GmbH & Co. KG

(Case C-511/10) ([1])

(Sixth VAT Directive — Article 17(5), third subparagraph — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Criterion for calculating the deductible proportion of VAT)

(2013/C 9/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Hildesheim

Defendant: BLC Baumarkt GmbH & Co. KG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the third subparagraph of Article 17(5) 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 (OJ 1977 L 145, p. 1) — Right to deduct input tax — Goods and services used for both taxable and exempt transactions — Letting of a building for commercial and residential purposes — Calculation of the deductible proportion on the basis of the turnover attributed to the commercial tenants — National legislation prescribing that the proportion is to be calculated on the basis of the building's floor area attributed to those tenants

Operative part of the judgment

The third subparagraph of Article 17(5) 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 allowing Member States, for the purposes of calculating the proportion of input value added tax deductible for a given operation, such as the construction of a mixed-use building, to give precedence, as the key to allocation, to an allocation key other than that based on turnover appearing in Article 19(1) of that directive, on condition that the method used guarantees a more precise determination of the said deductible proportion.

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (Fifth Chamber) of 8 November 2012 — European Commission v Hellenic Republic

(Case C-528/10) ([1])

(Failure to fulfil obligations — Transport — Development of the Community's railways — Directive 2001/14/EC — Articles 6(2) to (5) and 11 — Railway infrastructure capacity and charges levied for the use of railway infrastructure — Regulatory body — Failure to transpose within the prescribed period)

(2013/C 9/08)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic (represented by: S. Chala)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek and T. Müller and by J. Očková, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 6(2) and (5) and 11 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 29)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the necessary measures, inter alia so far as concerns the units in which charges are levied for the use of infrastructure in the railways sector, to which Articles 6(2) to (5) and 11 of Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification, as amended by Directive 2007/58/EC of the European Parliament and of the Council of 23 October 2007, relate, the Hellenic Republic has failed to fulfil its obligations under those articles;*

2. *Orders the Hellenic Republic to pay the costs;*

3. *Orders the Czech Republic and the Italian Republic to bear their own costs.*

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (Third Chamber) of 15 November 2012 — Stichting Al-Aqsa v Council of the European Union (C-539/10 P), Kingdom of the Netherlands v Stichting Al-Aqsa, Council of the European Union, European Commission (C-550/10 P)

(Joined Cases C-539/10 P and C-550/10 P) ([1])

(Appeals — Common foreign and security policy — Combating terrorism — Restrictive measures against certain persons and entities — Freezing of assets — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Inclusion of an organisation on the list of persons, groups and entities involved in terrorist acts and maintaining it on that list — Conditions — Decision of a competent authority — Repeal of a national measure — Actions for annulment — Admissibility of the appeal — Right to respect for property — Principle of proportionality — Article 253 EC — Obligation to state the reasons on which a decision is based)

(2013/C 9/09)

Language of the case: Dutch

Parties

(C-593/10 P)

Appellant: Stichting Al-Aqsa (represented by: M.J.G. Uiterwaal and A.M. van Eik, advocaten)

Other party to the proceedings: Council of the European Union (represented by: E. Finnegan, B. Driessen and R. Szostak, Agents)

Interveners in support of the Council of the European Union: Kingdom of the Netherlands (represented by: C.M. Wissels and M. Bulterman, Agents), European Commission (represented by: S. Boelaert and M.P. van Nuffel, Agents)

(C-550/10 P)

Appellant: Kingdom of the Netherlands (represented by: C.M. Wissels and M. Noort, Agents

Other parties to the proceedings: Stichting Al-Aqsa (represented by: A.M. van Eik, advocaat), Council of the European Union (represented by: E. Finnegan, B. Driessen and R. Szostak, Agents), European Commission (represented by: S. Boelaert and P. van Nuffel, Agents)

Re:

Appeal brought against the judgment delivered by the General Court (Seventh Chamber) on 9 September 2010 — *Al-Aqsa* v *Council* (T-348/07), by which the General Court annulled Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC; Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/445; Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2007/868; Council Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2008/583; and Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2009/62, in so far as those acts concern Stichting Al-Aqsa.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 9 September 2010 in Case T–348/07 Al Aqsa v Council;*

2. *Dismisses the action and the appeal brought by Stichting Al Aqsa;*

3. *Orders Stichting Al Aqsa to bear, in addition to its own costs, those incurred by the Kingdom of the Netherlands and the Council of the European Union in the context of the present appeals and those incurred by the Council at first instance;*

4. *Orders the European Commission, as intervener before the General Court of the European Union and before the Court of Justice of the European Union, and the Kingdom of the Netherlands, as intervener before the General Court, to bear their own costs incurred at both instances.*

([1]) OJ C 46, 12.2.2011.

Judgment of the Court (Grand Chamber) of 6 November 2012 — Éditions Odile Jacob SAS v European Commission, Lagardère SCA

(Case C-551/10 P) ([1])

(Appeal — Concentrations of undertakings in the book publishing market — Regulation (EEC) No 4064/89 — Nominee holding agreement — Ineffective grounds)

(2013/C 9/10)

Language of the case: French

Parties

Appellant: Éditions Odile Jacob SAS (represented by: O. Fréget, M. Struys, M. Potel and L. Eskenazi, avocats)

Other parties to the proceedings: European Commission (represented by: A. Bouquet, O. Beynet and S. Noë, acting as Agents), Lagardère SCA (represented by: A. Winckler, F. de Bure and J. B. Pinçon, avocats)

Re:

Appeal brought against the judgment of 13 September 2010 in Case T-279/04 *Éditions Jacob* v *Commission*, by which the General Court dismissed Odile Jacob's action for annulment of Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the Agreement on the European Economic Area (Case COMP/M.2978 — Lagardère/Natexis/VUP) — Manifest error of assessment — Breach of the principles of legal certainty, protection of legitimate expectations and equal treatment

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Éditions Odile Jacob SAS to pay the costs.*

([1]) OJ C 46, 12.2.2011.

Judgment of the Court (Grand Chamber) of 6 November 2012 — European Commission v Éditions Odile Jacob SAS, Wendel Investissement SA, Lagardère SCA and Lagardère SCA v Éditions Odile Jacob SAS, European Commission, Wendel Investissement SA

(Joined Cases C-553/10 P and C-554/10 P) ([1])

(Appeals — Merger of undertakings in the book publishing market — Annulment of the decision to approve an investment company as the purchaser of the assets sold — Significance of a trustee's possible lack of independence)

(2013/C 9/11)

Language of the case: French

Parties

Appellants: European Commission (represented by: O. Beynet, A. Bouquet and S. Noë, acting as Agents), Lagardère SCA (represented by: A. Winckler, F. de Bure and J.-B. Pinçon, avocats)

Other parties to the proceedings: Éditions Odile Jacob SAS (represented by: O. Fréget, M. Struys and L. Eskenazi, avocats), Wendel Investissement SA (represented by: M. Trabucchi, F. Gordon and C. Baldon, avocats), Lagardère SCA (represented by: A. Winckler, F. de Bure and J.-B. Pinçon, avocats), European Commission (represented by: O. Beynet, A. Bouquet and S. Noë, acting as Agents)

Re:

Appeals brought against the judgment of the General Court (Sixth Chamber) of 13 September 2010 in Case T-452/04 *Éditions Jacob* v *Commission* by which the General Court annulled Commission Decision D(2004)203365 of 30 July 2004 relating to the approval of Wendel Investissement as purchaser of the assets sold in accordance with Commission Decision 2004/422/EC of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the Agreement on the European Economic Area (Case COMP/M.2978 — Lagardère/Natexis/VUP) — Significance of the trustee's possible lack of independence — Distortion of the facts — Infringement of the obligation to state reasons

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders the European Commission and Lagardère SCA to bear their own costs and to pay those incurred by Éditions Odile Jacob SAS;*

3. *Orders Wendel Investissement SA to bear its own costs.*

([1]) OJ C 46, 12.2.2011.

Judgment of the Court (First Chamber) of 15 November 2012 — European Commission v Portuguese Republic

(Case C-34/11) [1]

(Failure of a Member State to fulfil obligations — Pollution control — Limit values for concentrations of PM10 in ambient air)

(2013/C 9/12)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade, A. Alcover San Pedro and S. Petrova, Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and M.J. Lois, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 13 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1) — Limit values and alert thresholds for the protection of human health — Concentrations of PM_{10} in ambient air

Operative part of the judgment

The Court:

1. *Declares that, by having failed to ensure that, for the years 2005 to 2007, the daily concentrations of PM_{10} in ambient air did not exceed the limit values set in Article 5(1) of Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, in the zones and agglomerations of Braga, Porto Litoral, Área Metropolitana de Lisboa Norte and Área Metropolitana de Lisboa Sul, the Portuguese Republic has failed to fulfil its obligations under that provision;*

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

3. *Orders the European Commission and the Portuguese Republic to bear their own costs.*

[1] OJ C 103, 2.4.2011.

Judgment of the Court (Grand Chamber) of 13 November 2012 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — Test Claimants in the FII Group Litigation v Commissioners of Inland Revenue, The Commissioners for Her Majesty's Revenue & Customs

(Case C-35/11) [1]

(Articles 49 TFEU and 63 TFEU — Payment of dividends — Corporation tax — Case C-446/04 — Test Claimants in the FII Group Litigation — Interpretation of the judgment — Prevention of economic double taxation — Equivalence of the exemption and imputation methods — Meaning of 'tax rates' and 'different levels of taxation' — Dividends from third countries)

(2013/C 9/13)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Claimants: Test Claimants in the FII Group Litigation

Defendants: Commissioners of Inland Revenue, The Commissioners for Her Majesty's Revenue & Customs

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 49 TFEU and 63 TFEU — Freedom of establishment — Free movement of capital — Tax legislation — Corporation tax — Interpretation of the Court's judgment of 12 December 2006 in Case C-446/04 *Test Claimants in the FII Group Litigation* — Meaning of 'tax rates' and 'different levels of taxation' — Tax rate to be taken into account for the purpose of determining whether the levels of taxation are the same for naturally-sourced and foreign-sourced dividends

Operative part of the judgment

1. *Articles 49 TFEU and 63 TFEU must be interpreted as precluding legislation of a Member State which applies the exemption method to nationally-sourced dividends and the imputation method to foreign-sourced dividends if it is established, first, that the tax credit to which the company receiving the dividends is entitled under the imputation method is equivalent to the amount of tax actually paid on the profits underlying the distributed dividends and, second, that the effective level of taxation of company profits in the Member State concerned is generally lower than the prescribed nominal rate of tax.*

2. *The answers given by the Court to the second and fourth questions asked in the case which gave rise to the judgment of 12 December 2006 in Case C-446/04 Test Claimants in the FII Group Litigation also apply where:*

   — *the foreign corporation tax to which the profits underlying the distributed dividends have been subject was not or was not wholly paid by the non-resident company paying those dividends to the resident company, but was paid by a company resident in a Member State that is a direct or indirect subsidiary of the first company;*

   — *advance corporation tax has not been paid by the resident company which receives the dividends from a non-resident company, but was paid by its resident parent company under a group income election.*

3. *European Union law must be interpreted as meaning that a parent company resident in a Member State, which in the context of a group taxation scheme, such as the group income election at issue in the main proceedings, has, in breach of the rules of European Union law, been compelled to pay advance corporation tax on the part of the profits from foreign-sourced dividends, may bring an action for repayment of that unduly levied tax in so far as it exceeds the additional corporation tax which the Member State in question was entitled to levy in order to make up for the lower nominal rate of tax to which the profits underlying the foreign-sourced dividends were subject compared with the nominal rate of tax applicable to the profits of the resident parent company.*

4. *European Union law must be interpreted as meaning that a company that is resident in a Member State and has a shareholding in a company resident in a third country giving it definite influence over the decisions of the latter company and enabling it to determine its activities may rely upon Article 63 TFEU in order to call into question the consistency with that provision of legislation of that Member State which relates to the tax treatment of dividends originating in the third country and does not apply exclusively to situations in which the parent company exercises decisive influence over the company paying the dividends.*

5. *The reply given by the Court to the third question asked in the case which gave rise to the judgment in Test Claimants in the FII Group Litigation does not apply where the subsidiaries established in other Member States to which advance corporation tax could not be surrendered are not subject to tax in the Member State of the parent company.*

(1) OJ C 103, 2.4.2011.

Judgment of the Court (Third Chamber) of 8 November 2012 (reference for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg — Germany) — Yoshikazu Iida v Stadt Ulm

(Case C-40/11) (1)

(Articles 20 TFEU and 21 TFEU — Charter of Fundamental Rights of the European Union — Article 51 — Directive 2003/109/EC — Third-country nationals — Right of residence in a Member State — Directive 2004/38/EC — Third-country nationals who are family members of Union citizens — Third-country national neither accompanying nor joining a Union citizen in the host Member State and remaining in the citizen's Member State of origin — Right of residence of a third-country national in the Member State of origin of a citizen residing in another Member State — Citizenship of the Union — Fundamental rights)

(2013/C 9/14)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: Yoshikazu Iida

Defendant: Stadt Ulm

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof Baden-Württemberg — Interpretation, in the light of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, of Article 21(1) TFEU and Articles 2(2)(d), 3(1), 7(2) and 10(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (OJ 2004 L 158, p. 77) — Interpretation of Article 6(1) and (3) TEU, and Article 24(3), Article 45(1) and the first sentence of Article 51(1) of the Charter of Fundamental Rights of the European Union — National of a Member State (a minor), who has moved her principal place of residence together with her mother to another Member State — Right to reside, in the Member State of origin of the child, of the father, a third-country national with custody rights — Scope of the Charter of Fundamental Rights of the European Union — Concept of 'implementation of Union law'

Operative part of the judgment

Outside the situations governed by Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC and where there is no other connection with the provisions on citizenship of European Union law, a third-country national cannot claim a right of residence derived from a Union citizen.

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (First Chamber) of 15 November 2012 (reference for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Raiffeisen-Waren-Zentrale Rhein-Main eG v Saatgut-Treuhandverwaltungs GmbH

(Case C-56/11) ([1])

(Community plant variety rights — Regulation (EC) No 2100/94 — Processing services — Obligation of the supplier of processing services to provide information to the holder of the Community right — Requirements regarding the time and content of an application for information)

(2013/C 9/15)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Raiffeisen-Waren-Zentrale Rhein-Main eG

Defendant: Saatgut-Treuhandverwaltungs GmbH

Re:

Reference for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) and of Article 9(2) and (3) of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights (OJ 1995 L 173, p. 14) — Obligation of the supplier of processing services to provide information to the holder of the Community right — Requirements regarding the time and content of an application for information capable of forming the basis of the obligation to provide information

Operative part of the judgment

1. *Article 9(3) of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights, as amended by Commission Regulation (EC) No 2605/98 of 3 December 1998, is to be interpreted as meaning that the obligation of the supplier of processing services to provide information on the protected varieties in question is established if the request for information referring to a given marketing year was submitted before the expiry of that marketing year. However, there may be such an obligation so far as concerns information relating to up to three preceding marketing years, in so far as the holder of a Community plant variety right submitted a first request in respect of the same varieties and the same supplier of processing services during the first of the preceding marketing years covered by the request for information.*

2. *The sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights read in conjunction with Article 9 of Regulation No 1768/95, as amended by Regulation No 2605/98, is to be interpreted as meaning that the request for information made by the holder of a Community plant variety right to a supplier of processing services need not contain evidence to support the indications put forward therein. Moreover, the fact that a farmer has planted under contract a protected plant variety cannot, by itself, constitute an indication that a supplier of processing services has processed or intends to process the product of the harvest obtained by planting propagating material of that variety for planting. Such a fact may, however, in the light of the other circumstances of the case, lead to the conclusion that there is such an indication, which is for the referring court to determine in the dispute before it.*

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (First Chamber) of 15 November 2012 (reference for a preliminary ruling from the Finanzgericht Düsseldorf, Germany) — Pfeifer & Langen KG v Hauptzollamt Aachen

(Case C-131/11) ([1])

(Agriculture — Regulation (EEC) No 1443/82 — Article 3(4) — Application of the quota system in the sugar sector — Surplus quantity of sugar found by the national authorities of a Member State during an a posteriori investigation carried out at the producer's premises — Whether that surplus is to be taken into account when establishing the final production figures for the marketing year during which the difference came to light)

(2013/C 9/16)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Pfeifer & Langen KG

Defendant: Hauptzollamt Aachen

Re:

Reference for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Article 3(4) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector (OJ 1982 L 158, p. 17) — Surplus quantity of isoglucose found subsequently by the authorities of a Member State during an inspection — Whether it is possible to take that surplus into account when establishing the final production figures for the marketing year during which the surplus came to light

Operative part of the judgment

Article 3(4) of Commission Regulation (EEC) No 1443/82 of 8 June 1982 laying down detailed rules for the application of the quota system in the sugar sector, as amended by Commission Regulation (EC) No 392/94 of 23 February 1994, must be interpreted as not being applicable in a situation in which a surplus quantity of sugar has been found by the national authorities in the context of an a posteriori investigation carried out at the producer's premises if the surplus quantity constitutes C sugar.

([1]) OJ C 179, 18.6.2011.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Najvyšší súd Slovenskej republiky — Slovakia) — Daňové riaditeľstvo Slovenskej republiky v Profitube spol. s r.o.

(Case C-165/11) ([1])

(Sixth VAT Directive — Applicability — Community customs code — Goods from a non-member State placed under the customs warehousing procedure in the territory of a Member State — Processing of the goods under inward processing arrangements in the form of a system of suspension — Goods sold and placed once again under the customs warehousing procedure — Goods kept in the same customs warehouse during all the transactions — Supply of goods effected for consideration in national territory — Chargeable event for VAT)

(2013/C 9/17)

Language of the case: Slovak

Referring court

Najvyšší súd Slovenskej republiky

Parties to the main proceedings

Applicant: Daňové riaditeľstvo Slovenskej republiky

Defendant: Profitube spol. s r.o.

Re:

Reference for a preliminary ruling — Najvyšší súd Slovenskej republiky — Interpretation of Arts 3(3), 37(2), 79, 84, 98, 114 and 166 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), Arts 2, 3, 5(1), 7, 10, 16 and 33a of the 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 (OJ 1977 L 145, p. 1) and Article 1, point 7 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) — Goods placed after their importation from a non-member State in a public customs warehouse of the Member State, to be subsequently processed in that customs warehouse under the inward processing system in the form of the suspension system and finally passed on, without release into free circulation, by the processor in the same warehouse to another company of the same Member State and again placed under the customs warehouse system — Applicability of the VAT system — Meaning of delivery of goods for consideration in national territory — Meaning of abuse of rights — Steel rolls processed into steel sections

Operative part of the judgment

Where goods from a non-member State have been placed under the customs warehousing procedure in a Member State, and have then been processed under inward processing arrangements in the form of a system of suspension and subsequently sold and placed once again under the customs warehousing procedure, remaining throughout all those transactions in the same customs warehouse situated in the territory of that Member State, the sale of such goods is subject to value added tax under Article 2(1) 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, as amended by Council Directive 2004/66/EC of 26 April 2004, unless the said Member State has made use of the facility opened to it to exempt that sale from the tax under Article 16(1) of that directive, which it is for the national court to verify.

([1]) OJ C 194, 2.7.2011.

Judgment of the Court (Second Chamber) of 15 November 2012 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Steglitz v Ines Zimmermann

(Case C-174/11) [1]

(Sixth VAT Directive — Exemptions — Article 13A(1)(g) and (2) — Services closely linked to welfare and social security work supplied by bodies governed by public law or organisations recognised as charitable — Recognition — Conditions not applicable to organisations other than bodies governed by public law — Discretion of the Member States — Limits — Principle of fiscal neutrality)

(2013/C 9/18)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Steglitz

Defendant: Ines Zimmermann

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 13A(1)(g) and (2)(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 (OJ 1977 L 145, p. 1) — Exemption of services linked to welfare and social security work that are supplied by bodies governed by public law or by other organisations recognised as charitable — National legislation making the exemption of out-patient care services subject to certain conditions which are not applicable, however, if the services in question are supplied by certain associations approved by the State, or by members of those associations

Operative part of the judgment

Under Article 13A(1)(g) 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, interpreted in the light of the principle of fiscal neutrality, the VAT exemption for out-patient services supplied by commercial service-providers may not be made subject to a condition such as that at issue in the main proceedings, by virtue of which the costs relating to those services must, during the preceding calendar year, have been borne wholly or partly by the statutory social security or social welfare authorities in at least two thirds of cases, where that condition is not capable of ensuring equal treatment in relation to the recognition, for the purposes of that provision, of the 'charitable' nature of organisations other than bodies governed by public law.

[1] OJ C 226, 30.7.2011.

Judgment of the Court (Third Chamber) of 15 November 2012 (reference for a preliminary ruling from the Fővárosi Törvényszék (formerly Fővárosi Bíróság) — Hungary) — Bericap Záródástechnikai bt v Plastinnova 2000 kft

(Case C-180/11) [1]

(Directive 2004/48/EC — Rules governing the examination of evidence in a dispute before a national court before which an application for annulment of the protection of a utility model has been brought — Powers of the national court — Paris Convention — TRIPS Agreement)

(2013/C 9/19)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék (formerly Fővárosi Bíróság)

Parties to the main proceedings

Applicant: Bericap Záródástechnikai bt

Defendant: Plastinnova 2000 kft

Intervener: Magyar Szabadalmi Hivatal

Re:

Reference for a preliminary ruling — Fővárosi Bíróság — Interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the Agreement establishing the World Trade Organisation, the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883, and of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Rules for the examination of evidence in a dispute before a national court before which an application for annulment of the protection of a utility model has been brought — Powers of the national court

Operative part of the judgment

Inasmuch as the provisions of Articles 2(1) and 3(2) of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, interpreted in the light of Article 2(1) of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883, last revised at Stockholm on 14 July 1967 and amended on 28 September 1979, and of Article 41(1) and (2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO) signed at Marrakesh on 15 April 1994 and approved

by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986 to 1994), are not applicable to an invalidation procedure such as that at issue in the main proceedings, those provisions do not preclude that, in such judicial proceedings, the court:

— *is not bound by the claims and other statements made by the parties and is entitled to order of its own motion the production of any evidence that it may deem necessary;*

— *is not bound by an administrative decision made in relation to an application for invalidation or by the findings of fact in that decision, and*

— *is not entitled to re-examine evidence which was already submitted in connection with a previous application for invalidation.*

([1]) OJ C 232, 6.8.2011.

Judgment of the Court (Grand Chamber) of 6 November 2012 (reference for a preliminary ruling from the Rechtbank van koophandel te Brussel — Belgium) — Europese Gemeenschap v Otis NV, General Technic-Otis Sàrl, Kone Belgium NV, Kone Luxembourg Sàrl, Schindler NV, Schindler Sàrl, ThyssenKrupp Liften Ascenseurs NV, ThyssenKrupp Ascenseurs Luxembourg Sàrl

(Case C-199/11) ([1])

(Representation of the European Union before national courts — Articles 282 EC and 335 TFEU — Claim for damages in respect of loss caused to the European Union by a cartel — Article 47 of the Charter of Fundamental Rights of the European Union — Right to fair hearing — Right of access to a tribunal — Equality of arms — Article 16 of Regulation No 1/2003)

(2013/C 9/20)

Language of the case: Dutch

Referring court

Rechtbank van koophandel te Brussel

Parties to the main proceedings

Applicant: Europese Gemeenschap

Defendants: Otis NV, General Technic-Otis Sàrl, Kone Belgium NV, Kone Luxembourg Sàrl, Schindler NV, Schindler Sàrl, ThyssenKrupp Liften Ascenseurs NV, ThyssenKrupp Ascenseurs Luxembourg Sàrl

Re:

Reference for a preliminary ruling — Rechtbank van koophandel te Brussel — Interpretation of Article 282 EC (now Article 335 TFEU) — Representation of the European Union before national courts — Action for damages — Rules governing the bringing of such an action by the institutions

Operative part of the judgment

1. *European Union law must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, the European Commission is not precluded from representing the European Union before a national court hearing a civil action for damages in respect of loss caused to the European Union by an agreement or practice prohibited by Articles 81 EC and 101 TFEU which may have affected certain public contracts awarded by various institutions and bodies of the European Union, there being no need for the Commission to have authorisation for that purpose from those institutions and bodies.*

2. *Article 47 of the Charter of Fundamental Rights of the European Union does not preclude the European Commission from bringing an action before a national court, on behalf of the European Union, for damages in respect of loss sustained by the Union as a result of an agreement or practice which has been found by a decision of the Commission to infringe Article 81 EC or Article 101 TFEU.*

([1]) OJ C 219, 23.7.2011.

Judgment of the Court (Fifth Chamber) of 8 November 2012 (references for a preliminary ruling from the Arbeitsgericht Passau — Germany) — Alexander Heimann (C-229/11), Konstantin Toltschin (C-230/11) v Kaiser GmbH,

(Joined Cases C-229/11 and C-230/11) ([1])

(Social policy — Directive 2003/88/EC — Short-time working ('Kurzarbeit') — Reduction of paid annual leave on the basis of short-time working — Allowance in lieu)

(2013/C 9/21)

Language of the case: German

Referring court

Arbeitsgericht Passau

Parties to the main proceedings

Applicants: Alexander Heimann (C-229/11), Konstantin Toltschin (C-230/11)

Defendant: Kaiser GmbH,

Re:

References for a preliminary ruling — Arbeitsgericht Passau — Interpretation of Article 31(2) of the Charter of Fundamental Rights (OJ 2010 C 83, p. 389) and of Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — Reduction in the usual hours worked in the undertaking, as a result of short-time working ('Kurzarbeit') — National legislation providing for a reduced entitlement to paid annual leave on the basis of the reduction in the number of working days under short-time working

Operative part of the judgment

Article 31(2) of the Charter of Fundamental Rights of the European Union and Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as meaning that they do not preclude national legislation or practice, such as a social plan agreed between an undertaking and its works council, under which the paid annual leave of a worker on short-time working is calculated according to the pro rata temporis rule.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Fourth Chamber) of 8 November 2012 — European Commission v Hellenic Republic

(Case C-244/11) ([1])

(Failure of a Member State to fulfil obligations — Articles 43 EC and 56 EC — Scheme under which prior authorisation is required for the acquisition of voting rights representing 20 % or more of the share capital in certain 'strategic public limited companies' — Arrangements for ex post control of certain decisions taken by those companies)

(2013/C 9/22)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: E. Montaguti and G. Zavvos, Agents)

Defendant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, Agents)

Re:

Failure of a Member State to fulfil obligations — National legislation under which prior approval is required for the acquisition of voting rights corresponding to 20 % or more of the total share capital in companies of national strategic importance — Breach of Articles 49 TFEU and 63 TFEU

Operative part of the judgment

The Court:

1. *Declares that, by laying down the requirements referred to in Article 11(1), read in conjunction with Article 11(2), and those referred to in Article 11(3) of Law 3631/2008 on the creation of a national fund for social cohesion, the Hellenic Republic has failed to fulfil its obligations under Article 43 EC on the freedom of establishment;*

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

([1]) OJ C 219, 23.07.2011.

Judgment of the Court (Grand Chamber) of 6 November 2012 (reference for a preliminary ruling from the Asylgerichtshof (Austria)) — K v Bundesasylamt

(Case C-245/11) ([1])

(Regulation (EC) No 343/2003 — Determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national — Humanitarian clause — Article 15 of that regulation — Person who enjoys asylum in a Member State and is dependent on the assistance of an asylum seeker because she suffers from a serious illness — Article 15(2) of the regulation — Obligation on that Member State, which is not responsible according to the criteria laid down in Chapter III of that regulation, to examine the application for asylum made by that asylum seeker — Conditions)

(2013/C 9/23)

Language of the case: German

Referring court

Asylgerichtshof

Parties to the main proceedings

Applicant: K

Defendant: Bundesasylamt

Re:

Reference for a preliminary ruling — Asylgerichtshof — Interpretation of Article 3(2) and Article 15 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1) — Responsibility of a Member State to examine, for humanitarian reasons, an application for asylum made to it, even if it is not responsible for that examination in accordance with the criteria set out in Regulation (EC) No 343/2003 — Close relationship between the asylum-seeker and a person who is very vulnerable and who already enjoys the right to asylum in that Member State

Operative part of the judgment

In circumstances such as those in the main proceedings, Article 15(2) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that a Member State which is not responsible for examining an application for asylum pursuant to the criteria laid down in Chapter III of that regulation becomes so responsible. It is for the Member State which has become the responsible Member State within the meaning of that regulation to assume the obligations which go along with that responsibility. It must inform in that respect the Member State previously responsible. This interpretation of Article 15(2) also applies where the Member State which was responsible pursuant to the criteria laid down in Chapter III of Regulation No 343/2003 did not make a request in that regard in accordance with the second sentence of Article 15(1) of that regulation.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Third Chamber) of 8 November 2012 (reference for a preliminary ruling from the Hamburgisches Oberverwaltungsgericht — Germany) — Atilla Gülbahce v Freie und Hansestadt Hamburg

(Case C-268/11) ([1])

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 of the Association Council — Article 6(1), first indent — Rights of Turkish workers duly registered as belonging to the labour force — Retroactive withdrawal of a residence permit)

(2013/C 9/24)

Language of the case: German

Referring court

Hamburgisches Oberverwaltungsgericht

Parties to the main proceedings

Applicant: Atilla Gülbahce

Defendant: Freie und Hansestadt Hamburg

Re:

Reference for a preliminary ruling — Hamburgisches Oberverwaltungsgericht — Interpretation of Article 10(1) and Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the EEC-Turkey Association — Grant to a Turkish worker, spouse of a national of the host Member State, of a residence permit of limited duration and a work permit of unlimited duration — Withdrawal, with retroactive effect on grounds of the separation from his spouse of which the competent authorities were not informed, of decisions extending the duration of the residence permit — Conditions for basing the right of residence on Article 10(1) of Decision No 1/80, in the light of the work permit of unlimited duration

Operative part of the judgment

The first indent of Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the completion of the period of one year of legal employment provided for in the first indent of Article 6(1) of Decision No 1/80.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Simvoulio tis Epikratias, Greece) — Techniko Epimelitirio Elladas (TEE) and Others v Ipourgos Esoterikon, Dimosias Diikisis kai Apokentrosis, Ipourgos Metaforon kai Epikinonion, Ipourgos Ikonomias kai Ikonomikon

(Case C-271/11) ([1])

(Air transport — Regulation No 2042/2003 — Technical requirements and administrative procedures in the field of civil aviation — Continuing airworthiness of aircraft — Approval of members of staff involved in tasks of inspection — Qualifications required)

(2013/C 9/25)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias, Greece

Parties to the main proceedings

Applicants: Techniko Epimelitirio Elladas (TEE), Sillogos Ellinon Diplomatouchon Aeronafpigon Michanikon (SEA), Alexandros Tsiapas, Antonios Ikonomopoulos, Apostolos Batategas, Vasilios Kouloukis, Georgios Ikonomopoulos, Ilias Iliadis, Ioannis Tertigkas, Panellinios Sillogos Aerolimenikon Ipiresias Politikis Aeroporias, Eleni Theodoridou, Ioannis Karnesiotis, Alexandra Efthimiou, Eleni Saatsaki

Defendants: Ipourgos Esoterikon, Dimosias Diikisis kai Apokentrosis, Ipourgos Metaforon kai Epikinonion, Ipourgos Ikonomias kai Ikonomikon,

Re:

Reference for a preliminary ruling — Simvoulio tis Epikratias — Interpretation of Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (OJ 2003 L 135, p. 1) — Compatibility of national legislation dividing the task of inspecting aircraft among four categories of inspectors (Airworthiness and Avionics Inspectors, Flight Operations Inspectors, Cabin Safety Inspectors and Licensing Inspectors)

Operative part of the judgment

1. *Article 2 and provision M.B.902 of Annex I to Commission Regulation (EC) No 2042/2003 of 20 November 2003 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks must be interpreted as meaning that it is open to the Member States, when adopting measures to complement the implementation of that regulation, to distribute, within the competent authority provided for by provision M.B.902, the tasks of inspection of aircraft airworthiness among a number of specialised categories of inspectors.*

2. *Provision M.B.902(b), point 1, of Annex I to Regulation No 2042/2003 must be interpreted as meaning that any individual who is responsible for inspecting any aspect whatsoever of the airworthiness of aircraft must have five years experience covering all aspects involved in ensuring the continuing airworthiness of an aircraft, and those aspects alone.*

3. *Provision M.B.902(b), point 1, of Annex I to Regulation No 2042/2003 must be interpreted as meaning that Member States may determine the circumstances in which the experience of at least five years in continuing airworthiness which must be possessed by the staff responsible for reviewing aircraft airworthiness has been acquired. In particular, Member States may choose to take into account experience acquired by work within an aircraft maintenance workshop, to recognise experience acquired during workplace-based practical training during aeronautical studies or also experience linked to having performed the duties of an airworthiness inspector in the past.*

4. *Provision M.B.902(b) of Annex I to Regulation No 2042/2003 must be interpreted as not making any distinction between holders of an aircraft maintenance licence, within the meaning of Annex III to that regulation, headed 'Part-66', and holders of a higher education degree.*

5. *Provision M.B.902(b) of Annex I to Regulation No 2042/2003 must be interpreted as meaning that only those individuals who have first undergone all the education and training required by that provision and whose knowledge and competencies on the conclusion of such training programmes have been subject to appraisal may perform the duties of inspectors of the airworthiness of aircraft.*

6. *Provision M.B.902(b), point 4, of Annex I to Regulation No 2042/2003 must be interpreted as meaning that only those individuals who have previously occupied a position with appropriate responsibilities, demonstrating both their capacity to carry out all the necessary technical controls and also the capacity to assess whether or not the results of those controls permit the issue of documents certifying the airworthiness of the inspected aircraft may perform the duties of inspectors of the airworthiness of aircraft.*

7. *Regulation No 2042/2003 must be interpreted as meaning that the authorities of Member States are under no obligation to provide that the individuals who were performing the duties of inspecting aircraft airworthiness at the date when that regulation entered into force are to continue, automatically and without any selection procedure, to perform such duties.*

([1]) OJ C 232, 6.8.2011.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v Gemeente Vlaardingen

(Case C-299/11) ([1])

(Taxation — VAT — Taxable transactions — Application for the purposes of a business of goods obtained 'in the course of such business' — Treatment as a supply for consideration — Sports pitches belonging to the taxable person and transformed by a third person)

(2013/C 9/26)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendant: Gemeente Vlaardingen

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 5(5), Article 5(7)(a) and Article 11(A)(1)(b) 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 (OJ 1977 L 145, p. 1) — Taxable transactions — Use of materials for the purposes of the business — Use, for exempt activities of a business, of land owned by it and converted to its order by a third person for remuneration

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, as amended by Council Directive 95/7/EC of 10 April 1995, read in conjunction with Article 11(A)(1)(b) of that directive, must be interpreted as meaning that the application by a taxable person, for the purposes of an economic activity exempt from value added tax, of sports pitches which he owns and which he has had transformed by a third person can be subject to value added tax calculated on the basis of the aggregate arrived at by adding to the transformation costs the value of the ground on which the pitches lie, to the extent that the taxable person has not yet paid the value added tax relating to that value or to those costs, and provided that the pitches at issue are not covered by the exemption provided for in Article 13(B)(h) of the Sixth Directive.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Fifth Chamber) of 8 November 2012 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen — Belgium) — KGH Belgium NV v Belgische Staat

(Case C-351/11) ([1])

(Customs debt — Post-clearance recovery of import or export duties — Entry of duty in the accounts — Practical procedures)

(2013/C 9/27)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: KGH Belgium NV

Defendant: Belgische Staat

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Antwerpen — Interpretation of Article 217(1) and (2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Post-clearance recovery of import or export duties — Entry in the accounts of the duties — Practical procedures

Operative part of the judgment

Article 217(2) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that, since that article does not lay down any practical procedures for the entry in the accounts within the meaning of that provision, the Member States are free to determine the practical procedures for the entry in the accounts of amounts of duty resulting from a customs debt, without being under an obligation to determine, in their national legislation, how the entry in the accounts is to be made. That entry must be made in a way which ensures that the competent customs authorities enter the exact amount of the import duty or export duty resulting from a customs debt in the accounting records or on any other equivalent medium, so that, inter alia, the entry in the accounts of the amounts concerned may be established with certainty, including with regard to the person liable.

([1]) OJ C 282, 24.9.2011.

Judgment of the Court (Third Chamber) of 15 November 2012 — Council of the European Union v Nadiany Bamba, European Commission

(Case C-417/11 P) ([1])

(Appeal — Common foreign and security policy — Specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire — Freezing of funds — Article 296 TFEU — Obligation to state the reasons on which a decision is based — Rights of the defence — Right to an effective legal remedy — Right to respect for property)

(2013/C 9/28)

Language of the case: French

Parties

Appellant: Council of the European Union (represented by: M. Bishop and B. Driessen and by E. Dumitriu-Segnana, Agents)

Other parties to the proceedings: Nadiany Bamba, (represented: initially by P. Haïk, and subsequently by P. Maisonneuve, lawyers), European Commission (represented by: E. Cujo and M. Konstantinidis, Agents)

Intervener in support of the applicant: French Republic (represented by: G. de Bergues and É. Ranaivoson, Agents)

Re:

Appeal brought against the judgment of the General Court (Fifth Chamber) of 8 June 2011 in Case T-86/11 *Bamba* v *Council* in which the General Court annulled Council Decision 2011/18/CFSP of 14 January 2011 amending Council Decision 2010/656/CFSP renewing the restrictive measures against Côte d'Ivoire and Council Regulation (EU) No 25/2011 of 14 January 2011 amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (OJ 2011 L 11, p. 1), in so far as those measures concern Ms Nadiany Bamba — Freezing of funds — Obligation to state reasons — Error of law

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 8 June 2011 in Case T-86/11 Bamba v Council;*

2. *Dismisses Ms Bamba's action;*

3. *Orders Ms Bamba to pay, in addition to her own costs, those incurred by the Council of the European Union in connection with the present appeal and at first instance;*

4. *Orders the French Republic and the European Commission to bear their own costs.*

([1]) OJ C 311, 22.10.2011.

Judgment of the Court (First Chamber) of 8 November 2012 (reference for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Lagura Vermögensverwaltung GmbH v Hauptzollamt Hamburg-Hafen

(Case C-438/11) ([1])

(Community customs code — Article 220(2)(b) — Post-clearance recovery of import duties — Legitimate expectations — Impossibility of verifying the accuracy of a certificate of origin — Notion of 'certificate based on an incorrect account of the facts provided by the exporter' — Burden of proof — Scheme of generalised tariff preferences)

(2013/C 9/29)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Lagura Vermögensverwaltung GmbH

Defendant: Hauptzollamt Hamburg-Hafen

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000 (OJ 2000 L 311, p. 17) — Export of goods from a non-member country to the European Union — Subsequent verification of the proof of origin — Impossibility of retroactively establishing whether the content of a certificate of origin issued by the competent authorities of that non-member country is correct — Protection of the importer's legitimate expectations

Operative part of the judgment

Article 220(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, must be interpreted as meaning that if, owing to the fact that the exporter has ceased production, the competent authorities of the non-member country are unable, through a subsequent verification, to determine whether the certificate of origin Form A that they issued is based on a correct account of the facts by the exporter, the burden of proving that the certificate was based on a correct account of the facts by the exporter rests with the person liable for payment.

([1]) OJ C 347, 26.11.2011.

Judgment of the Court (Third Chamber) of 15 November 2012 (reference for a preliminary ruling from the Landgericht Bremen — Germany) — Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts, Nürnberger Allgemeine Versicherungs-AG, Krones AG v Samskip GmbH

(Case C-456/11) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Articles 32 and 33 — Recognition of judgments — Concept of 'judgment' — Effects of a judgment on international jurisdiction — Jurisdiction clause)

(2013/C 9/30)

Language of the case: German

Referring court

Landgericht Bremen

Parties to the main proceedings

Applicants: Gothaer Allgemeine Versicherung AG, ERGO Versicherung AG, Versicherungskammer Bayern-Versicherungsanstalt des öffentlichen Rechts, Nürnberger Allgemeine Versicherungs-AG, Krones AG

Defendant: Samskip GmbH

Re:

Reference for a preliminary ruling — Landgericht Bremen — Interpretation of Articles 31 and 32 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 (OJ 2001 L 12, p. 1) — Recognition of judgments issued in a Member State — Purely procedural judgment ('Prozeßurteil') — Judgment concerning the interpretation of a clause allocating jurisdiction, by which the national court declares that it lacks jurisdiction in holding that the court of a third State has jurisdiction — Extent of recognition

Operative part of the judgment

1. *Article 32 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it also covers a judgment by which the court of a Member State declines jurisdiction on the basis of a jurisdiction clause, irrespective of how that judgment is categorised under the law of another Member State.*

2. *Articles 32 and 33 of Regulation No 44/2001 must be interpreted as meaning that the court before which recognition is sought of a judgment by which a court of another Member State has declined jurisdiction on the basis of a jurisdiction clause is bound by the finding — made in the grounds of a judgment, which has since become final, declaring the action inadmissible — regarding the validity of that clause.*

([1]) OJ C 331, 12.11.2011.

Judgment of the Court (Third Chamber) of 8 November 2012 (reference for a preliminary ruling from the Stockholms tingsrätt — Sweden) — Ulf Kazimierz Radziejewski v Kronofogdemyndigheten i Stockholm

(Case C-461/11) ([1])

(Freedom of movement for workers — Article 45 TFEU — Total or partial debt relief procedure — Debtor who is a natural person — National legislation making the grant of debt relief subject to a residence condition)

(2013/C 9/31)

Language of the case: Swedish

Referring court

Stockholms tingsrätt

Parties to the main proceedings

Applicant: Ulf Kazimierz Radziejewski

Defendant: Kronofogdemyndigheten i Stockholm

Re:

Reference for a preliminary ruling — Stockholms tingsrätt — Interpretation of Article 45 TFEU — Freedom of movement for persons — Compatibility with Article 45 TFEU of national legislation making the grant of debt relief proceedings in respect of natural persons subject to a condition of residence in national territory — Debtor who is a national of Member State A, resident in Member State B, having made an application for debt relief in Member State A, the place of origin of his debts — Links with the place the application was made

Operative part of the judgment

Article 45 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which makes the grant of debt relief subject to a condition of residence in the Member State concerned.

([1]) OJ C 340, 19.11.2011.

Judgment of the Court (Third Chamber) of 8 November 2012 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-469/11 P) ([1])

(Appeal — Action for damages — Rejection of a bid submitted in a European Union tendering procedure — Limitation period — Point from which time starts to run — Application of the extension of time on account of distance)

(2013/C 9/32)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, dikigoros)

Other party to the proceedings: European Commission (represented by: E. Manhaeve and M. Wilderspin, acting as Agents)

Re:

Appeal against the order of the General Court (First Chamber) of 22 June 2011 in Case T-409/09 *Evropaïki Dynamiki* v *Commission* dismissing as in part inadmissible and in part manifestly unfounded an action for damages for the loss allegedly suffered by the applicant as a result of the decision of the Commission rejecting the bid submitted by the applicant in the course of a tendering procedure — Periods prescribed for bringing proceedings — Extensions on account of distance

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.*

([1]) OJ C 331, 12.11.2011.

Judgment of the Court (First Chamber) of 15 November 2012 (reference for a preliminary ruling from the Oberlandesgericht Köln — Germany) — Susanne Leichenich v Ansbert Peffekoven, Ingo Horeis

(Case C-532/11) ([1])

(Directive 77/388/EEC — VAT — Exemptions — Article 13B(b) — Leasing or letting of immovable property — Houseboat, without a system of propulsion, permanently attached alongside a riverbank — Leasing of the houseboat, including the landing stage, the plot of land and the area of water contiguous therewith — Exclusive use for the permanent operation of a restaurant-discotheque — Single supply)

(2013/C 9/33)

Language of the case: German

Referring court

Oberlandesgericht Köln

Parties to the main proceedings

Applicant: Susanne Leichenich

Defendant: Ansbert Peffekoven, Ingo Horeis,

Interveners in support of the defendants: Dr. Leyh, Dr. Kossow & Dr. Ott KG, Wirtschaftsprüfungsgesellschaft, Steuerberatungsgesellschaft

Re:

Reference for a preliminary ruling — Oberlandesgericht Köln — Interpretation of Article 13(B)(b) of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Scope of the VAT exemption provided for under that provision for the leasing or letting of immovable property — Leasing of an area of water and a boat intended for commercial use as a restaurant and nightclub

Operative part of the judgment

1. *On a proper interpretation of Article 13B(b) of the 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, the concept of the leasing or letting of immovable property includes the leasing of a houseboat, including the space and the landing stage contiguous therewith, which is fixed by attachments which are not easily removable to the bank and bed of a river, stays in a demarcated and identifiable location in the river water and is exclusively used, according to the terms of the leasing contract, for the permanent operation of a restaurant-discotheque at that location. That leasing constitutes a single exempt supply, without it being necessary to distinguish between the leasing of the houseboat and that of the landing stage.*

2. *Such a houseboat does not constitute a vehicle within the meaning of Article 13B(b), point 2, of the Sixth Directive 77/388.*

([1]) OJ C 25, 28.1.2012.

Judgment of the Court (Eighth Chamber) of 15 November 2012 (reference for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — SIA Kurcums Metal v Valsts ieņēmumu dienests

(Case C-558/11) ([1])

(Common Customs Tariff — Tariff classification — Combined Nomenclature — 'Taifun' composite cables manufactured in Russia, made of polypropylene and steel thread — Corrugated clips with rounded tips connected by means of a pin — Anti-dumping duties on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey)

(2013/C 9/34)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: SIA Kurcums Metal

Defendant: Valsts ieņēmumu dienests

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) and Article 1 of Council Regulation (EC) No 1601/2001 of 2 August 2001 imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey (OJ 2001 L 211, p. 1) — 'Taifun' composite cables manufactured in Russia, made of polypropylene and steel thread — Classification in subheading 5607 49 11 or subheading 7312 10 98 of the Combined Nomenclature — Corrugated clips with rounded tips connected by means of a pin — Classification in subheading 7317 00 90 or subheading 7326 90 98 of the Combined Nomenclature — Definitive anti-dumping duties

Operative part of the judgment

1. *Subheading 5607 49 11 of the Combined Nomenclature in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1549/2006 of 17 October 2006, must be interpreted as meaning that cables such as those at issue in the main proceedings, which consist of both polypropylene and wound steel thread, do not fall as such within that subheading.*

2. *General rule 3(b) for the interpretation of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, must be interpreted as meaning that the tariff classification of cables such as those at issue in the main proceedings is not to be carried out pursuant to that rule, subject to verification by the referring court, in the light of all the elements of fact placed before it, that neither of the two materials of which those cables are composed in itself gives those cables their essential character.*

3. *Article 1 of Council Regulation (EC) No 1601/2001 of 2 August 2001 imposing a definitive anti-dumping duty and definitively collecting the provisional anti-dumping duty imposed on imports of certain iron or steel ropes and cables originating in the Czech Republic, Russia, Thailand and Turkey must be interpreted as meaning that cables such as those at issue in the main proceedings, on the assumption that they are covered by subheading 7312 10 98 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, fall within the scope of that provision.*

4. *Subheading 7317 00 90 of the Combined Nomenclature in Annex I to Regulation No 2658/87, as amended by Regulation No 1549/2006, must be interpreted as meaning that corrugated clips with rounded tips connected by means of a pin, such as those at issue in the main proceedings, do not fall within that subheading.*

([1]) OJ C 13, 14.1.2012.

Judgment of the Court (First Chamber) of 6 November 2012 — European Commission v Hungary

(Case C-286/12) ([1])

(Failure of a Member State to fulfil obligations — Social policy — Equal treatment in employment and occupation — Directive 2000/78/EC — Articles 2 and 6(1) — National scheme requiring compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 — Legitimate objectives justifying a difference in treatment vis-à-vis workers under the age of 62 — Proportionality of the duration of the transitional period)

(2013/C 9/35)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: J. Enegren and K. Talabér-Ritz, Agents)

Defendant: Hungary (represented by: M.Z. Fehér, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National rules requiring compulsory retirement of judges, prosecutors and notaries on reaching the age of 62 — Lack of legitimate objectives justifying that difference in treatment as compared with workers under the age of 62 — Disproportionate nature of the transitional period (one year)

Operative part of the judgment

The Court:

1. *Declares that, by adopting a national scheme requiring compulsory retirement of judges, prosecutors and notaries when they reach the age of 62 — which gives rise to a difference in treatment on grounds of age which is not proportionate as regards the objectives pursued —, Hungary has failed to fulfil its obligations under Articles 2 and 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;*

2. *Orders Hungary to pay the costs.*

([1]) OJ C 217, 21.7.2012.

Order of the Court (Seventh Chamber) of 4 October 2012 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — Vivaio dei Molini Azienda Agricola Porro Savoldi ss v Autorità per la Vigilanza sui Contratti Pullici di lavori, servizi e forniture

(Case C-502/11) ([1])

(Public works contracts — Directive 93/37/EEC — Article 6 — Principles of equal treatment and openness — Admissibility of rules reserving the right to participate in public tendering procedures to companies engaged in a commercial activity and excluding civil partnerships (società semplici) — Institutional and statutory objectives — Agricultural undertakings)

(2013/C 9/36)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Vivaio dei Molini Azienda Agricola Porro Savoldi ss

Defendant: Autorita per la Vigilanza sui Contratti Pullici di lavori, servizi e forniture

in the presence of: SOA CQOP Costruttori Qualificati Opere Pubbliche SpA, Unione Provinciale Agricoltori di Brescia

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Article 6 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) — Principle of non-discrimination — National legislation reserving the right to participate in public tendering procedures to companies engaged in a commercial activity and excluding agricultural undertakings in the form of civil partnerships (società semplici)

Operative part of the order

European Union law, in particular Article 6 of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by Commission Directive 2001/78/EC of 13 September 2001, precludes national legislation, such as that at issue in the main proceedings, which prohibits an undertaking such as a civil partnership having the status of 'contractor' within the meaning of Directive 93/37 from participating in public procurement procedures solely on the ground of its legal form.

([1]) OJ C 347, 26.11.2011.

Order of the Court of 15 October 2012 — Internationaler Hilfsfonds eV v European Commission

(Case C-554/11 P) ([1])

(Appeal — Access to documents — Refusal of full access to documents relating to contract LIEN 97-2011 — Action for annulment — Fresh examination in the course of proceedings — Bringing a separate annulment action)

(2013/C 9/37)

Language of the case: German

Parties

Appellant: Internationaler Hilfsfonds eV (represented by: H. Kaltenecker, Rechtsanwalt)

Other party to the proceedings: European Commission (represented by: P. Costa de Oliveira and T. Scharf, Agents)

Re:

Appeal against the order of the Court (Fourth Chamber) of 21 September 2011 in Case T-141/05 RENV *Internationaler Hilfsfonds* v *Commission*, by which the Court ordered that there is no longer any need to give a ruling on the applicant's form of order seeking the annulment of the decision of the European Commission of 14 February 2005, rejecting its request for access to the file relating to contract LIEN 97-2011 — Procedural irregularities before the Court — Failure to deal with Cases T-141/05 RENV and T-36/10 in a coordinated manner — Burden and amount of costs

Operative part

1. *The appeal is dismissed.*

2. *Internationaler Hilfsfonds eV is ordered to pay the costs.*

([1]) OJ C 25, 28.1.2012.

Order of the Court (First Chamber) of 4 October 2012 (reference for a preliminary ruling from the Rechtbank van koophandel te Antwerpen — Belgium) — Pelckmans Turnhout NV v Walter Van Gastel Balen NV, Walter Van Gastel NV, Walter Van Gastel Schoten NV, Walter Van Gastel Lifestyle NV

(Case C-559/11) ([1])

(Articles 92(1) and 103(1), and first subparagraph of Article 104(3) of the Rules of Procedure — Directive 2005/29/EC — Unfair commercial practices — National legislation prohibiting the opening of an establishment seven days a week)

(2013/C 9/38)

Language of the case: Dutch

Referring court

Rechtbank van koophandel te Antwerpen

Parties to the main proceedings

Applicant: Pelckmans Turnhout NV

Defendants: Walter Van Gastel Balen NV, Walter Van Gastel NV, Walter Van Gastel Schoten NV, Walter Van Gastel Lifestyle NV

Re:

Reference for a preliminary ruling — Rechtbank van koophandel te Antwerpen — Interpretation of Articles 34 TFEU, 35 TFEU, 49 TFEU and 56 TFEU and of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') — Concept of business-to-consumer commercial practices — Opening of an establishment seven days a week and advertising of that practice.

Operative part of the order

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive

84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as meaning that it does not apply to national legislation, such as that at issue in the main proceedings, which does not pursue objectives related to consumer protection.

([1]) OJ C 32, 4.2.2012.

Order of the Court of 12 July 2012 — Muhamad Mugraby v Council of the European Union, European Commission

(Case C-581/11 P) ([1])

(Appeal — Action for a declaration of failure to act — Infringement of fundamental rights and of the Association Agreement between the European Community and the Republic of Lebanon — Failure of the Council and of the Commission to take measures against the Republic of Lebanon — Action for damages — Appeal clearly unfounded and clearly inadmissible)

(2013/C 9/39)

Language of the case: English

Parties

Appellant: Muhamad Mugraby (represented by: S. Delhaye, avocate)

Other parties to the proceedings: Council of the European Union (represented by: B. Driessen and M.-M. Joséphidès, acting as Agents), European Commission (represented by: S. Boelaert and F. Castillo de la Torre, acting as Agents)

Re:

Appeal brought against the order of the General Court (Third Chamber) of 6 September 2011 in Case T-292/09 *Mugraby* v *Council and Commission* dismissing an action for failure to act seeking a declaration that the Council and the Commission unlawfully omitted to take a decision on the then applicant's request concerning the adoption of measures against Lebanon on account of the alleged violation by the latter of the then applicant's fundamental rights and of the Association Agreement between the Community and the Republic of Lebanon, and dismissing, moreover, an action seeking compensation for the harm allegedly suffered by the then applicant as a result of those Community institutions' failure to act

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Mugraby shall pay the costs.*

([1]) OJ C 25, 28.1.2012.

Order of the Court (Seventh Chamber) of 18 September 2012 — Omnicare Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Astellas Pharma GmbH

(Case C-587/11 P) ([1])

(Appeal — Community trade mark — Application for registration of the word sign 'OMNICARE CLINICAL RESEARCH' — Opposition — Decision of the Board of Appeal rejecting the application — Action — Judgment of the General Court dismissing that action — Withdrawal of the opposition — Appeal — No need to adjudicate)

(2013/C 9/40)

Language of the case: English

Parties

Appellant: Omnicare Inc. (represented by: M. Edenborough, QC)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, acting as Agent), Astellas Pharma GmbH (represented by: M.L. Polo Carreño, abogada)

Re:

Appeal brought against the judgment of the General Court (First Chamber) of 9 September 2011 in Case T-289/09 *Omnicare* v *OHIM — Astellas Pharma (OMNICARE CLINICAL RESEARCH)*, in which the General Court dismissed an action, brought by the applicant for the word mark 'OMNICARE CLINICAL RESEARCH' for services in Class 42, for the annulment of Decision R 401/2008-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 14 May 2009 annulling the Opposition Division's decision rejecting the opposition brought by the proprietor of the national mark 'OMNICARE' for services in Classes 35, 41 and 42 — Interpretation and application of Article 8(1)(b) of Regulation No 207/2009 — Concept of genuine use of an earlier mark — Mark used for services provided free of charge

Operative part of the order

1. *There is no need to adjudicate on the appeal brought by Omnicare Inc.*

2. *Omnicare Inc. shall pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in the course of the present proceedings and the proceedings for interim measures.*

3. *Omnicare Inc. and Astellas Pharma GmbH shall each bear their own costs.*

([1]) OJ C 25, 28.1.2012.

Reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 27 July 2012 — Wolfgang Glatzel v Freistaat Bayern

(Case C-356/12)

(2013/C 9/41)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Wolfgang Glatzel

Defendant: Freistaat Bayern

Question referred

Is point 6.4 of Annex III to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences [1] as amended by Commission Directive 2009/113/EC of 25 August 2009 [2] compatible with Article 20, Article 21(1) and Article 26 of the Charter of Fundamental Rights of the European Union in so far as that provision requires — without permitting any derogation — that applicants for Category C1 and Category C1E driving licences have a minimum visual acuity of 0.1 in their worse eye even if those persons use both eyes together and have a normal field of vision when using both eyes?

[1] OJ 2006 L 403, p. 18.
[2] OJ 2009 L 223, p. 31.

Appeal brought on 3 September 2012 by the Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-396/09 Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case C-401/12 P)

(2013/C 9/42)

Language of the case: Dutch

Parties

Appellant:	Council of the European Union (represented by: M. Moore and K. Michoel, Agents)
Other parties to the proceedings:	Vereniging Milieudefensie,
	Stichting Stop Luchtverontreiniging Utrecht, European Commission,
	Kingdom of the Netherlands,
	European Parliament

Form of order sought

The Council claims that the Court should:

— set aside the judgment of 14 June 2012 in Case T-396/09;

— dismiss the action of the applicants at first instance in its entirety;

— order the applicants at first instance jointly and severally to pay the Council's costs in the present case.

Pleas in law and main arguments

The Council takes the view that the judgment of the General Court in the abovementioned case is vitiated by two errors of law. The Council is of the view that the General Court did not correctly interpret and apply the 'Nakajima' [1] and 'Fediol' [2] case-law. Consequently, the Council is of the view that the General Court erred in finding that it could review the legality of Regulation (EC) No 1367/2006 [3] in the light of the Aarhus Convention [4] on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Furthermore, the Council is of the view that the choice made by the legislature in Regulation No 1367/2006 is any event fully consistent with the Aarhus Convention. In this respect, the General Court's interpretation of Article 9(3) of the Aarhus Convention is incorrect, in so far as the General Court disregards the discretion afforded to the contracting parties.

The Council therefore requests the Court of Justice to set aside the judgment of the General Court in Case T-396/09, and to give final judgment in the matter by dismissing the action of the applicants at first instance in its entirety.

[1] Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2169.
[2] Case 70/87 *Fediol* v *Commission* [1989] ECR 1825.
[3] Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).
[4] Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

Appeal brought on 24 August 2012 by the European Parliament against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-396/09 Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case C-402/12 P)

(2013/C 9/43)

Language of the case: Dutch

Parties

Appellant:	European Parliament (represented by: L. Visaggio and G. Corstens, Agents)
Other parties to the proceedings:	Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht, European Commission, Kingdom of the Netherlands, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber) of 14 June 2012 in Case T-396/09;

— rule on the substance of the case and dismiss the action of the applicants at first instance;

— order the applicants at first instance to pay the costs of this appeal.

Pleas in law and main arguments

The Parliament takes the view that the General Court erred in law in finding that it could review the validity of Regulation (EC) No 1367/2006 [1] in relation to Article 9(3) of the Aarhus Convention [2] even though this provision does not have direct effect. According to the Parliament, this finding of the General Court is based on a fundamentally incorrect interpretation of both the settled case-law on the possibility for individuals to rely on the provisions of an international agreement with the aim of challenging the validity of a European Union act, and of the nature and scope of the international obligations at issue in the present case.

In concrete terms, the General Court applied the case-law flowing from the Fediol [3] and Nakajima [4] judgments, but disregarded the fact that this case-law — which moreover has thus far remained confined to an extremely small number of cases — can be applied only by way of exception and under very specific conditions. In the judgment under appeal, the General Court failed to examine whether these conditions were actually present in this case, and in any event failed to take account of the exceptional nature of that case-law.

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[1] Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

[2] Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

[3] Case 70/87 *Fediol* v *Commission* [1989] ECR 1825.

[4] Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2169.

Appeal brought on 27 August 2012 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-396/09 Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case C-403/12 P)

(2013/C 9/44)

Language of the case: Dutch

Parties

Appellant:	European Commission (represented by: P. Oliver, J.-P. Keppenne, G. Valero Jordana, P. van Nuffel, Agents)
Other parties to the proceedings:	Vereniging Milieudefensie, Stichting Stop Luchtverontreiniging Utrecht, Kingdom of the Netherlands, European Parliament, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber) of 14 June 2012 in Case T-396/09;

— rule on the substance of the case and dismiss the action for annulment of Commission Decision C(2006)6121; and

— order the applicants in Case T-396/09 to pay the costs incurred by the Commission in that case and in the present case.

Pleas in law and main arguments

The appeal essentially relates to whether the General Court was permitted, having regard particularly to the judgment of 8 March 2011 in Case C-240/09, to assess the validity of Article 10(1), in conjunction with Article 2(1)(g) of Regulation (EC) No 1367/2006, ([1]) in the light of Article 9(3) of the Aarhus Convention. ([2])

The Commission puts forward two grounds of appeal.

By its first ground of appeal, the Commission states that although the General Court did indeed correctly cite the strict conditions under which, according to the case-law of the Court of Justice, individuals may rely on rules of international law laid down by conventions in order to assess the validity of legal acts of the European Union (in particular that an assessment in the light of the provisions of a convention is possible only where the nature and the broad logic of that convention do not preclude this and the provisions relied upon appear, as regards their content, to be unconditional and sufficiently precise), it erred in finding that the exception to these conditions which follows from the Fediol and Nakajima case-law (Case 70/87 and Case C-69/89) applied also to Article 9(3) of the Aarhus Convention.

The Court of Justice already held, in its judgment in Case C-240/09, that Article 9(3) of the Aarhus Convention does not have direct effect. Furthermore, since the Fediol and Nakajima case-law is an exception, it must be interpreted strictly; that case-law has until now been applied only to the area of commercial policy, and can only be applied to other policy areas if the conditions for doing so are clearly fulfilled, which is not the case here. Indeed, Article 10(1) of Regulation No 1367/2006 makes no reference to the legal rules of the Aarhus Convention and, moreover, this provision does not provide for the implementation of a specific obligation of that convention for the purposes of the Nakajima case-law. Lastly, Article 9(3) of the Aarhus Convention is insufficiently clear and precise to enable the exception provided for in the Nakajima case-law to be applied.

By its second ground of appeal, the Commission submits, in the alternative, that the General Court misinterpreted Article 9(3) of the Aarhus Convention in considering that Article 10(1) of Regulation No 1367/2006 is contrary to that provision for the sole reason that the review procedure provided for in that Article 10 is limited to acts of individual scope, whereas the General Court ought to have carried out a specific examination of whether sufficient implementation was given to Article 9(3) of the Aarhus Convention through all judicial procedures available to individuals at national and Union level.

([1]) Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

([2]) Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

Appeal brought on 3 September 2012 by the Council of the European Union against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-338/08 Stichting Natuur en Milieu, Pesticide Action Network Europe v Commission

(Case C-404/12 P)

(2013/C 9/45)

Language of the case: Dutch

Parties

Appellant:	Council of the European Union (represented by: M. Moore and K. Michoel, Agents)
Other parties to the proceedings:	Stichting Natuur en Milieu, Pesticide Action Network Europe, European Commission, Republic of Poland

Form of order sought

The Council claims that the Court should:

— set aside the judgment of 14 June 2012 in Case T-338/08;

— dismiss the action of the applicants at first instance in its entirety;

— order the applicants at first instance jointly and severally to pay the Council's costs in the present case.

Pleas in law and main arguments

The Council takes the view that the judgment of the General Court in the abovementioned case is based on errors of law. Although the Council does not contest the General Court's finding that that the Commission did not act as legislature in the present case, the Council is none the less of the view that the General Court did not correctly interpret and apply the 'Nakajima' ([1]) and 'Fediol' ([2]) case-law. Consequently, the Council is of the view that the General Court erred in finding that it could review the legality of Regulation (EC) No 1367/2006 ([3]) in the light of the Aarhus Convention ([4]) on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

Furthermore, the Council is of the view that the choice made by the legislature in Regulation No 1367/2006 is any event fully consistent with the Aarhus Convention. In this respect, the General Court's interpretation of Article 9(3) of the Aarhus Convention is incorrect, in so far as the General Court disregards the discretion afforded to the contracting parties.

The Council therefore requests the Court of Justice to set aside the judgment of the General Court in Case T-338/08, and to give final judgment in the matter by dismissing the applicants' action in its entirety.

(1) Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2169.
(2) Case 70/87 *Fediol* v *Commission* [1989] ECR 1825.
(3) Regulation of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).
(4) Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

Appeal brought on 27 August 2012 by the European Commission against the judgment of the General Court (Seventh Chamber) delivered on 14 June 2012 in Case T-338/08 Stichting Natuur en Milieu, Pesticide Action Network Europe v Commission

(Case C-405/12 P)

(2013/C 9/46)

Language of the case: Dutch

Parties

Appellant: European Commission (represented by: P. Oliver, J.-P. Keppenne, G. Valero Jordana, P. van Nuffel, Agents)

Other parties to the proceedings: Stichting Natuur en Milieu, Pesticide Action Network Europe, Republic of Poland, Council of the European Union

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Seventh Chamber) of 14 June 2012 in Case T-338/08;

— rule on the substance of the case and dismiss the actions for annulment of the Commission's decisions of 1 July 2008; and

— order the applicants to pay the costs incurred by the Commission in Case T-338/08 and in this appeal.

Pleas in law and main arguments

The appellant's first plea coincides with the first plea in Case C-403/12 P.

By its second plea, the Commission submits, in the alternative, that the General Court misinterpreted the scope of Article 9(3) of the Aarhus Convention (1) in the light of the second subparagraph of Article 2(2) of that convention, by concluding that the Commission did not act 'in a legislative capacity' within the meaning of the latter provision in adopting Regulation (EC) No 149/2008. (2)

(1) Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).
(2) Commission Regulation of 29 January 2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II, III and IV setting maximum residue levels for products covered by Annex I thereto (OJ 2008 L 58, p. 1).

Reference for a preliminary ruling from the Oberlandesgericht Innsbruck (Austria) lodged on 21 September 2012 — Siegfried Pohl v ÖBB-Infrastruktur AG

(Case C-429/12)

(2013/C 9/47)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Applicant: Siegfried Pohl

Defendant: ÖBB-Infrastruktur AG

Questions referred

1. Does European Union law as it stands at present, in particular

   1. the general principle in European Union law of equal treatment,

   2. the general principle of the prohibition of discrimination on grounds of age within the meaning of Article 6(3) TEU and Article 21 of the Charter of Fundamental Rights,

   3. the prohibition of discrimination in connection with freedom of movement for workers in Article 45 TFEU,

   4. Directive 2000/78/EC, (1)

preclude national rules — partly legislative, partly in collective agreements — which by agreement are incorporated into an individual contract of employment, and under which previous periods of service of employees in the rail transport sector are not taken into account at all if they were acquired before reaching the age of 18, and if they were acquired after reaching the age of 18, where they were not completed with a 'quasi-public' undertaking in national territory or with the defendant national employer itself, are taken into account only to the extent of one half, regardless of the skills and knowledge acquired by the employee in the particular case?

2. If the answer to Question 1 is in the affirmative: It is relevant in calculating the pay outstanding, taking account of previously disregarded previous periods of service (in full up to reaching the age of 18 and as regards the second half from reaching the age of 18 to the claimant's entry into the service of the defendant) in conformity with European Union law, that the previous periods of service in the calculation were acquired in the period from 1 December 1965 to 24 November 1974, in other words long before Austria's accession to the EU/EEA and before the first judgment on the principle of equal treatment in European Union law?

3. If the answer to Question 1 is in the affirmative: Does European Union law as it stands at present, in particular the principle of effectiveness, preclude national limitation provisions under which the claim of an employee, subsequently a pensioner, against his employer for payment of additional pay, and subsequently payment of additional pension sums, deriving from the taking into account in conformity with European Union law within the meaning of Question 1 of previous periods of service abroad and of those acquired before reaching the age of 18 — a claim which he did not have under national law and objectively could not bring until delivery of the judgments in Case C-195/98 *Österreichischer Gewerkschaftsburnd — Gewerkschaft öffentlicher Dienst* on 30 November 2000 and Case C-88/08 *Hütter* on 16 June 2009 — would be time-barred in its entirety?

4. If the answer to Question 1 is in the affirmative: Is an employer in the rail transport sector with approximately 40 000 employees and a multi-level hierarchically articulated and territorially comprehensive organisation, under European Union law as it stands at present, in particular the horizontal effect of the general European Union law principle of equal treatment and/or the prohibition of discrimination in connection with freedom of movement for workers, under a duty of care to inform his employees and employees' representatives of judgments of the Court of Justice, also published in the daily press, which make it appear that a system of accrediting previous periods of service hitherto practised by the employer is contrary to European Union law, a duty which may lead inter alia to payment of additional pay?

(1) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, p. 16.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands), lodged on 3 October 2012 — Almer Beheer BV and Another v Van den Dungen Vastgoed BV and Another

(Case C-441/12)

(2013/C 9/48)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellants: Almer Beheer BV, Daedalus Holding BV

Respondents: Van den Dungen Vastgoed BV, Oosterhout II BVBA

Questions referred

1. Must Article 3(1) of the Prospectus Directive (1) be interpreted as meaning that the obligation to publish a prospectus laid down therein is also applicable in principle (that is to say, apart from the exemptions and exceptions for certain cases referred to in that directive) to an enforced sale of securities?

2. (a) If the answer to Question 1 is in the affirmative, should the concept of 'the total consideration of the offer' used in Article 1(2)(h) of the Prospectus Directive then be interpreted as meaning that the sums deriving from an enforced sale of securities must be those reasonably to be expected, with due regard for the particular nature of an enforced sale, even if the sums reasonably to be expected are well below the real economic value?

(b) If the answer to Question 1 is in the affirmative, but the answer to Question 2(a) is in the negative, how should 'the total consideration of the offer' referred to in Article 1(2)(h) of the Prospectus Directive be construed, particularly in the case of an enforced sale of securities?

(1) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ 2003 L 345, p. 64).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 3 October 2012 — Jan Sneller v DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV

(Case C-442/12)

(2013/C 9/49)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Jan Sneller

Defendant: DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV

Questions referred

1. Does Article 4(1) of Directive 87/344/EEC [1] allow a legal expenses insurer which stipulates in its policies that legal assistance in inquiries or proceedings will in principle be provided by employees of the insurer also to stipulate that the costs of legal assistance provided by a lawyer or legal representative chosen freely by the insured person will be covered only if the insurer takes the view that the handling of the case must be subcontracted to an external legal representative?

2. Will the answer to Question 1 differ depending on whether or not legal assistance is compulsory in the inquiry or proceedings concerned?

[1] Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance (OJ 1987 L 185, p. 77).

Reference for a preliminary ruling from the Landgericht Hamburg (Germany) lodged on 11 October 2012 — Werner Krieger v ERGO Lebensversicherung AG

(Case C-459/12)

(2013/C 9/50)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Werner Krieger

Defendant: ERGO Lebensversicherung AG

Question referred

Must the first indent of Article 15(1) of Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (Second Life Assurance Directive), [1] having regard to Article 31(1) of Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (Third Life Assurance Directive), [2] be interpreted as precluding a provision — such as the fourth sentence of Paragraph 5a(2) of the Versicherungsvertragsgesetz (Law on insurance contracts) in the version of the Drittes Gesetz zur Durchführung versicherungsrechtlicher Richtlinien des Rates der Europäischen Gemeinschaften (Third Law implementing directives of the Council of the European Communities on insurance law) of 21 July 1994 — under which a right of cancellation lapses one year at the latest after payment of the first premium even if the policy-holder has not been informed about the right of cancellation?

[1] OJ 1990 L 330, p. 50.
[2] OJ 1992 L 360, p. 1.

Reference for a preliminary ruling from the Gerechtshof's-Hertogenbosch (Netherlands) lodged on 15 October 2012 — Granton Advertising BV v Inspecteur van de Belastingdienst Haaglanden/kantoor Den Haag

(Case C-461/12)

(2013/C 9/51)

Language of the case: Dutch

Referring court

Gerechtshof's-Hertogenbosch

Parties to the main proceedings

Applicant: Granton Advertising BV

Defendant: Inspecteur van de Belastingdienst Haaglanden/kantoor Den Haag

Questions referred

1. Should the expression 'other securities' in Article 13 B(d)[5] of the Sixth Council Directive 77/388/EEG ([1]) (as of 1 January 2007, Article 135(1)(f) of the Eighth Directive 2006/112/EG, ([2]) subsequently amended) be interpreted as covering a Granton card, being a transferable card which is used for the (partial) payment for goods and services, and if so, is the issuing and sale of such a card therefore exempt from the levying of turnover tax?

2. If not, should the expression 'other negotiable instruments' in Article 13 B(d)(3), of the Sixth Council Directive 77/388/EEG (as of 1 January 2007, Article 135(1)(d) of the Eighth Directive 2006/112/EG, subsequently amended) be interpreted as covering a Granton card, being a transferable card which is used for the (partial) payment for goods and services, and if so, is the issuing and sale of such a card therefore exempt from the levying of turnover tax?

3. If a Granton card is an 'other security' or 'other negotiable instrument' in the aforementioned sense, is it important for the question of whether the issuing and sale thereof is exempt from the levying of turnover tax that, when that card is used, a levy on (a proportionate part of) the fee paid for it is, for all practical purposes, illusory?

([1]) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

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

Reference for a preliminary ruling from the Østre Landsret (Denmark), lodged on 17 October 2012 — ATP PensionService A/S v Skatteministeriet

(Case C-464/12)

(2013/C 9/52)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: ATP PensionService A/S

Defendant: Skatteministeriet

Questions referred

1. Is Article 13B(d)(6) 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 ([1]) to be interpreted as meaning that the term 'special investment funds as defined by Member States' includes pension funds such as those referred to in the main proceedings and having the following characteristics, where the Member State recognises the institutions presented in section 2 of the present order for reference as special investment funds:

   (a) the return to the employee (the pension customer) depends on the yield realised by the pension fund's investments,

   (b) the employer is not required to make supplementary payments in order to secure a particular return for the pension customer,

   (c) the pension fund collectively invests the funds accumulated applying a risk-spreading principle,

   (d) the bulk of the payments into the pension fund is based on collective agreements between labour-market organisations representing the individual employees and employers, and not on the personal decision of the individual employee,

   (e) the individual employee may decide, on a personal basis, to make additional contributions to the pension fund,

   (f) self-employed traders, employers and directors may opt to pay pension contributions into the pension fund,

   (g) a predetermined portion of the pension savings collectively agreed for the employees is used to purchase a life annuity,

   (h) the pension customers bear the pension fund's costs,

   (i) payments into the pension fund are deductible for the purposes of national income tax within certain quantitative limits,

   (j) payments into a personal pension plan, including a pension fund set up with a financial institution under which the contributions can be invested in a special investment fund, are deductible for the purposes of national income tax to the same extent as under point (i),

(k) the counterpart to the entitlement to deduct contributions for tax purposes under point (i) is that disbursements are taxed, and

(l) the funds accumulated are in principle to be paid out after the person concerned reaches pensionable age?

2. If the first question is answered in the affirmative, is Article 13B(d)(6) of the Sixth Directive to be interpreted as meaning that the term 'management' includes a service such as that in issue in the main proceedings (see section 1.2 of the order for reference)?

3. Is a service such as that in issue in the main proceedings concerning pension payments (see section 1.2 of the order for reference) to be regarded under the terms of Article 13B(d)(3) of the Sixth Directive as a single service or as several separate services which are to be assessed independently?

4. Is Article 13B(d)(3) of the Sixth Directive to be interpreted as meaning that the VAT exemption laid down in that provision for transactions concerning payments or transfers covers a service such as that in issue in the main proceedings concerning pension payments (see section 1.2 of the order for reference)?

5. If the fourth question is answered in the negative, is Article 13B(d)(3) of the Sixth Directive to be interpreted as meaning that the VAT exemption laid down in that provision for transactions concerning deposit and current accounts covers a service such as that in issue in the main proceedings concerning pension payments (see section 1.2 of the order for reference)?

([1]) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas (Lithuania) lodged on 25 October 2012 — Juvelta UAB v Lietuvos prabavimo rūmai

(Case C-481/12)

(2013/C 9/53)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Claimant and appellant: Juvelta UAB

Defendant and respondent: Lietuvos prabavimo rūmai

Questions referred

1. Must Article 34 of the Treaty on the Functioning of the European Union be interpreted as prohibiting national legal rules under which, when seeking to sell on the market of a Member State of the European Union articles of gold imported from another Member State which are permitted to be put on the market of that Member State (of export), those articles must be stamped with a mark, of an independent assay office authorised by a Member State, which confirms that the article bearing it has been assayed by that office and in which information intelligible to consumers of the Member State of import concerning the article's standard of fineness is specified, in circumstances where such information concerning the standard of fineness is provided in a separate and additional mark or marking stamped on the same article of gold?

2. For the answer to the first question is it significant that, as in the instance under consideration, the additional marking concerning the standard of fineness of articles of gold that is provided on the articles and is intelligible to consumers of the Member State of import (for example, marking with the three Arabic numerals '585') has not been effected by an independent assay office authorised by a Member State of the European Union, but the information provided in the marking corresponds in meaning to the information specified in the mark, stamped on the same article, of the independent assay office authorised by the Member State of export (for example, the State of export's marking with the Arabic numeral '3' specifically denotes, under the legal measures of that State, a standard of fineness of 585)?

Reference for a preliminary ruling from the Okresný súd Prešov (Slovakia) lodged on 29 October 2012 — Peter Macinský, Eva Macinská v Getfin s.r.o., Financreal s.r.o.

(Case C-482/12)

(2013/C 9/54)

Language of the case: Slovak

Referring court

Okresný súd Prešov

Parties to the main proceedings

Applicants: Peter Macinský, Eva Macinská

Defendants: Getfin s.r.o., Financreal s.r.o.

Question referred

1. Is Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts ('Directive 93/13/EEC') to be interpreted as precluding legislation of a Member State, such as Paragraph 151j(1) of the Občianský zákonník (Civil Code) in conjunction with the other provisions of legislation at issue in the present case, which enables a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien by the sale of immovable property despite the objections of the consumer and a dispute regarding the matter and without an assessment of the contract terms by a court or other independent tribunal ?

[1] OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from High Court of Justice (Chancery Division) (United Kingdom) made on 5 November 2012 — Eli Lilly and Company Ltd v Human Genome Sciences Inc

(Case C-493/12)

(2013/C 9/55)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: Eli Lilly and Company Ltd

Defendant: Human Genome Sciences Inc

Questions referred

(a) What are the criteria for deciding whether 'the product is protected by a basic patent in force' in Article 3(a) of Regulation 469/2009/EC [1] (the 'Regulation')?

(b) Are the criteria different where the product is not a combination product, and if so, what are the criteria?

(c) In the case of a claim to an antibody or a class of antibodies, is it sufficient that the antibody or antibodies are defined in terms of their binding characteristics to a target protein, or is it necessary to provide a structural definition for the antibody or antibodies, and if so, how much?

[1] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (Codified version) (Text with EEA relevance)
OJ L 152, p. 1

Appeal brought on 19 November 2012 by TeamBank AG Nürnberg against the judgment of the General Court (Third Chamber) delivered on 19 September 2012 in Case T-220/11 TeamBank AG Nürnberg v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-524/12 P)

(2013/C 9/56)

Language of the case: German

Parties

Appellant: TeamBank AG Nürnberg (represented by: D. Terheggen, Rechtsanwalt)

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

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court in Case T-220/11 in its entirety;

— grant in full the applications made at first instance in its application of 18 April 2011 before the General Court.

Grounds of appeal and main arguments

The General Court misapplied Article 8(1)(b) of Regulation No 207/2009 [1] in finding there to be a likelihood of confusion between 'f@ir Credit' and 'FERCREDIT'.

Contrary to the view taken by the General Court, there is a clear visual difference in the overall impressions of the two signs. Furthermore, account needs to be taken of the fact that the signs in dispute relate to financial services, which usually have significant financial consequences for their users. Thus, it is to be assumed that the average consumer will examine these signs particularly carefully and are highly likely to recognise the differences between them. However, the General Court did not adequately examine that circumstance.

On a correct assessment of that circumstance and the differences in the overall impression of both signs there are no relevant similarities between the signs.

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

Order of the President of the Grand Chamber of the Court of 22 October 2012 (reference for a preliminary ruling from the Landesarbeitsgericht Berlin — Germany) — Rainer Reimann v Philipp Halter GmbH & Co. Sprengunternehmen KG

(Case C-317/11) (1)

(2013/C 9/57)

Language of the case: German

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

(1) OJ C 269, 10.9.2011.

Order of the President of the Court of 2 October 2012 (reference for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — Grattan plc v The Commissioners for Her Majesty's Revenue & Customs

(Case C-606/11) (1)

(2013/C 9/58)

Language of the case: English

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

(1) OJ C 65, 3.3.2012.

Order of the President of the Court of 22 October 2012 (reference for a preliminary ruling from the Högsta domstolen — Sweden) — Eva-Marie Brännström, Rune Brännström v Ryanair Holdings plc

(Case C-150/12) (1)

(2013/C 9/59)

Language of the case: Swedish

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

(1) OJ C 157, 2.6.2012.

GENERAL COURT

Judgment of the General Court of 21 November 2012 — Germany v Commission

(Case T-270/08) ([1])

(ERDF — Reduction in financial assistance — Operational programme falling under Objective No 1 (1994-1999) for Berlin (East) (Germany))

(2013/C 9/60)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, T. Henze and C. Blaschke, acting as Agents, and C. von Donat, lawyer)

Defendant: European Commission (represented by: A. Steiblytė and B. Conte, acting as Agents)

Interveners in support of the applicant: Kingdom of Spain (represented initially by: J. Rodríguez Cárcamo and N. Díaz Abad and subsequently by: A. Rubio Gonzáles, abogados del Estado); Kingdom of the Netherlands (represented by: C. Wissels, Y. de Vries, B. Koopman, M. Bulterman and J. Langer, acting as Agents); and French Republic (represented by: G. de Bergues and N. Rouam, acting as Agents)

Re:

Annulment of Commission Decision C(2008) 1615 final of 29 April 2008 reducing the financial contribution under the European Regional Development Fund (ERDF) initially granted for the Operational Programme falling under Objective 1 (1994-1999) for Berlin (East) in the Federal Republic of Germany

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to bear its own costs and pay those incurred by the European Commission;*

3. *Orders the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands to bear their own costs.*

([1]) OJ C 247, 27.9.2008.

Judgment of the General Court of (Third Chamber) of 21 November 2012 –Spain v Commission

(Case T-76/11) ([1])

(Fisheries — Measures for the conservation of living aquatic resources — Article 105 of Regulation (EC) No 1224/2009 — Deductions from quotas allocated for a given year on account of overfishing in previous years — Temporal application — Legal certainty — Interpretation guaranteeing compliance with primary law — Principle that penalties must have a proper legal basis — Non-retroactivity)

(2013/C 9/61)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, abogado del Estado)

Defendant: European Commission (represented by: by F. Jimeno Fernández and D. Nardi, Agents)

Re:

Annulment of Commission Regulation (EU) No 1004/2010 of 8 November 2010 of operating deductions from certain fishing quotas for 2010 on account of overfishing in the previous year (OJ 2010 L 291, p. 31)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 89, 19.3.2011.

Judgment of the General Court of 21 November 2012 — Getty Images v OHIM (PHOTOS.COM)

(Case T-338/11) ([1])

(Community trade mark — Application for the Community word mark PHOTOS.COM — Absolute grounds for refusal — Lack of distinctive character — Descriptive character — No distinctiveness acquired through use — Article 7(1)(b) and (c) and Article 7(3) of Regulation (EC) No 207/2009)

(2013/C 9/62)

Language of the case: English

Parties

Applicant: Getty Images (US), Inc. (New York, United States) (represented by: P. Olson, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 6 April 2011 (Case R 1831/2010-2) concerning an application for registration of the word mark PHOTOS.COM as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Getty Images (US), Inc. to pay the costs.*

([1]) OJ C 252, 27.8.2011.

Judgment of the General Court of 21 November 2012 — Atlas v OHIM — Couleurs de Tollens (ARTIS)

(Case T-558/11) ([1])

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

(2013/C 9/63)

Language of the case: English

Parties

Applicant: Atlas sp. z o.o. (Łódź, Poland) (represented by: R. Rumpel, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Couleurs de Tollens (Clichy, France) (represented by J.-G. Monin, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 July 2011 (Case R 1253/2010-1), relating to opposition proceedings between Couleurs de Tollens-Agora and Atlas sp. z o.o.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Atlas sp. z o.o. to pay the costs, including those incurred by Couleurs de Tollens during the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 13, 14.1.2012.

Judgment of the General Court of 20 November 2012 — Phonebook of the World v OHIM — Seat Pagine Gialle (PAGINE GIALLE)

(Case T-589/11) ([1])

(Community trade mark — Invalidity proceedings — Community word mark PAGINE GIALLE — Absolute grounds for refusal — Distinctive character — Lack of descriptive character — No signs or indications which have become customary — Article 7(1)(b) to (d) of Regulation (EC) No 207/2009 — Distinctive character acquired through use — Article 7(3) of Regulation No 207/2009)

(2013/C 9/64)

Language of the case: English

Parties

Applicant: Phonebook of the World (Paris, France) (represented by: A. Bertrand, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Seat Pagine Gialle SpA (Milan, Italy) (represented by: F. Jacobacci, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 August 2011 (Case R 1541/2010-2), relating to invalidity proceedings between Phonebook of the World and Seat Pagine Gialle SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Phonebook of the World to pay the costs.*

([1]) OJ C 32, 4.2.2012.

Order of the General Court of 15 November 2012 — Marcuccio v Commission

(Case T-286/11 P) ([1])

(Appeal — Civil service — Officials — Non-contractual liability — Compensation for the damage resulting from the fact that a letter concerning the costs in a case was sent to the lawyer who represented the appellant in that case — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2013/C 9/65)

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: J. Currall and C. Berardis-Kayser, agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 16 March 2011 in Case F-21/10 *Marcuccio* v *Commission*, not published in the ECR, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

([1]) OJ C 232, 6.8.2011.

Order of the General Court of 24 October 2012 — Saobraćajni institut CIP v Commission

(Case T-219/12) ([1])

(Action for annulment and damages — Public service contracts — Exclusion of the applicant from the tendering procedure — Annulment of the tendering procedure after the action was brought — No need to adjudicate)

(2013/C 9/66)

Language of the case: English

Parties

Applicant: Saobraćajni institut CIP d.o.o. (Belgrade, Serbia) (represented by: A. Lojpur, lawyer)

Defendant: European Commission (represented by: F. Erlbacher and E. Georgieva, acting as Agents)

Re:

Application for, first, annulment of a contract notice published on 27 March 2012 concerning the preparation of technical documentation for a rail modernisation project, excluding the applicant from participating in the tendering procedure, and, second, damages.

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay those incurred by the applicant in these proceedings.*

([1]) OJ C 227, 28.7.2012.

Order of the General Court of 24 October 2012 — Saobraćajni institut CIP v Commission

(Case T-227/12) ([1])

(Action for annulment and damages — Public service contracts — Exclusion of the applicant from the tendering procedure — Annulment of the tendering procedure after the action was brought — No need to adjudicate)

(2013/C 9/67)

Language of the case: English

Parties

Applicant: Saobraćajni institut CIP d.o.o. (Belgrade, Serbia) (represented by: A. Lojpur, lawyer)

Defendant: European Commission (represented by: F. Erlbacher and E. Georgieva, acting as Agents)

Re:

Application for, first, annulment of a contract notice published on 3 April 2012 concerning the preparation of technical documentation for a rail modernisation project, excluding the applicant from participating in the tender procedure, and, second, damages.

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay those incurred by the applicant in these proceedings.*

([1]) OJ C 227, 28.7.2012.

Order of the President of the General Court of 16 November 2012 — Akzo Nobel and Others v Commission

(Case T-345/12 R)

(Interim relief — Competition — Publication of a decision finding an infringement of Article 81 EC — Rejection of claim for confidential treatment of information provided to the Commission pursuant to its Leniency Notice — Application for interim measures — Urgency — Prima facie case — Weighing up of interests)

(2013/C 9/68)

Language of the case: English

Parties

Applicants: Akzo Nobel NV (Amsterdam, Netherlands); Akzo Nobel Chemicals Holding AB (Nacka, Sweden); and Eka Chemicals AB (Bohus, Sweden) (represented by: C. Swaak and R. Wesseling, lawyers)

Defendant: European Commission (represented by: C. Giolito, M. Kellerbauer and G. Meessen, acting as Agents)

Re:

Application for suspension of operation of Commission Decision C(2012) 3533 final of 24 May 2012 rejecting a request for confidential treatment submitted by Akzo Nobel NV, Akzo Nobel Chemicals Holding AB and Eka Chemicals AB pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (Case COMP/38.620 — Hydrogen Peroxide and perborate) and application for interim measures seeking the continuation of the confidential treatment accorded to certain information relating to the applicants in respect of Commission Decision 2006/903/EC of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement against Akzo Nobel, Akzo Nobel Chemicals Holding, Eka Chemicals, Degussa AG, Edison SpA, FMC Corporation, FMC Foret S.A., Kemira OYJ, L'Air Liquide SA, Chemoxal SA, Snia SpA, Caffaro Srl, Solvay SA/NV, Solvay Solexis SpA, Total SA, Elf Aquitaine SA and Arkema SA (Case COMP/F/C.38.620 — Hydrogen Peroxide and perborate) (OJ 2006 L 353, p. 54),

Operative part of the order

1. *The operation of Decision C(2012) 3533 of the European Commission of 24 May 2012 rejecting a claim for confidential treatment made by Akzo Nobel NV, Akzo Nobel Chemicals Holding AB and Eka Chemicals AB pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (Case COMP/38.620 — Hydrogen Peroxide and perborate) is suspended.*

2. *The Commission is ordered to refrain from publishing a version of its Decision 2006/903/EC of 3 May 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement against Akzo Nobel, Akzo Nobel Chemicals Holding, Eka Chemicals, Degussa AG, Edison SpA, FMC Corporation, FMC Foret S.A., Kemira OYJ, L'Air Liquide SA, Chemoxal SA, Snia SpA, Caffaro Srl, Solvay SA/NV, Solvay Solexis SpA, Total SA, Elf Aquitaine SA and Arkema SA (Case COMP/F/C.38.620 — Hydrogen Peroxide and perborate), which is more complete, in relation to Akzo Nobel, Akzo Nobel Chemicals Holding and Eka Chemicals, than that published in September 2007 on the Commission's website.*

3. *The application for interim relief is dismissed for the remainder.*

4. *The costs are reserved.*

Order of the President of the General Court of 14 November 2012 — Intrasoft v Commission

(Case T-403/12 R)

(Interim measures — Public contracts — Procurement procedure — Rejection of a bid — Application for a stay of execution — Lack of urgency)

(2013/C 9/69)

Language of the case: English

Parties

Applicant: Intrasoft International SA (Luxembourg, Luxembourg) (represented by: S. Pappas, lawyer)

Defendant: European Commission (represented by: F. Erlbacher and E. Georgieva, acting as Agents)

Re:

Application for a stay of execution, first, of the decision of the Delegation of the European Union to the Republic of Serbia of 10 August 2012 rejecting the tender submitted by the applicant in the tendering procedure EuropeAid/131367/C/SER/RS concerning technical assistance to the customs administration of Serbia to support the modernisation of the customs system (OJ 2011/S 160-262712), and, secondly, of the decision of the Delegation of the European Union to the Republic of Serbia of 12 September 2012 informing the applicant that the evaluation committee had recommended that the contract be awarded to another tenderer.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 25 October 2012 — Tridium v OHIM — q-bus Mediatektur (SEDONA FRAMEWORK)

(Case T-467/12)

(2013/C 9/70)

Language in which the application was lodged: English

Parties

Applicant: Tridium, Inc. (Richmond, Unites States) (represented by: M. Nentwig, lawyer)

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

Other party to the proceedings before the Board of Appeal: q-bus Mediatektur GmbH (Berlin, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 August 2012 in case R 1943/2011-2; and

— Order the defendant to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SEDONA FRAMEWORK', for goods in class 9 — Community trade mark application No 9067372

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: International trade mark registration No 934023 of the figurative mark '~sedna', for goods in class 9

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 29 October 2012 — Meta Group v Commission

(Case T-471/12)

(2013/C 9/71)

Language of the case: Italian

Parties

Applicant: Meta Group Srl (Rome, Italy) (represented by: A. Bartolini, V. Coltelli and A. Formica, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Note No 939970 of the D.G. Enterprise and Industry of the European Commission of 2 August 2012, received by the applicant on 20 August 2012 and signed by the Director of the 'Industrial Innovation and Mobility Industries' Unit, concerning the 'launch recovery procedure to FP5-FP6 payment contracts No 517557 IRE6 INNOVATION COACH, 517539 IRE6 MARIS, 517548 IRE6 RIS MAZOVIA, 030583 CONNECT-2-IDEAS, 039982 EASY, 014660 RIS MALOPOLSKA, 517529 IINNSOM, 014637 RIS TRNAVA and 014668 RIS WS' signed by the Director Dr Carlo Pettinelli, by which the Commission's decision 'to recover the amount of EUR 345 451.03 under the above agreement' was communicated.

— And, in so far as necessary:

— Annul Note No 660283 of the D. G. Enterprise and Industry of the European Commission of 1 June 2012 signed by the Director of the 'Industrial Innovation and Mobility Industries' Unit and concerning the same matter, which is also contested as an internal measure relating to the recovery procedure which concluded with the adoption of the provision referred to in the above paragraph.

— Annul the Note of 27 September 2012 concerning the recovery of the amount claimed by setting this off against amounts in the applicant's credit balance in connection with the projects which had received grant funding.

— Annul the Note of 27 September 2012 concerning the recovery of the amount claimed by setting this off against amounts in the applicant's credit balance.

— Annul the Budget Execution (general budget and EDF) Note of the European Commission of 10 October 2012, by which the applicant was notified of the setting off against further amounts in its credit balance, amounting in total to EUR 294 290.59.

— Annul all previous and subsequent measures, whether related or subordinate.

— Accordingly:

— Order the Commission to pay the sum of EUR 294 290,59, together with the sum of EUR 54 705,97, and compensation in respect of the resulting loss.

Pleas in law and main arguments

The present action concerns the grant agreements concluded by the applicant and the Commission in the context of the 'Fifth and Sixth Framework Programmes for Research and Technological Development of the European Union'.

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

1. First plea in law, alleging breach of Article 1.1 of the grant agreement, breach of the principle of reasonableness and manifest error in the assessment of the facts.

— It is submitted in this regard that the applicant has provided evidence that the remuneration of its own worker members is fully in line with market values and with the remuneration received by self-employed 'parasubordinate' workers and employees pursuing similar activities. Iner alia, the employment on the basis of 'continuous and coordinated contractual relationships' of international experts engaged in activities connected with the projects in question is perfectly legitimate.

2. Second plea in law, alleging breach of the principle that administrative action should be proportionate and breach of the principles of sound administration, transparency and that criteria must be determined in advance.

— It is submitted in this regard that the existence of a multiplicity of criteria which may be used for the purpose of determining the methods of calculating remuneration should have led the administration to adopt the criterion most favourable to private individuals. Once it was realised that there is considerable variation among the rates paid on the Italian and European markets for the same services, the appropriate course of conduct for the administration would have been to adopt a solution liable to cause the least detriment possible.

3. Third plea in law, alleging breach of the principle that administrative action should be reasonable, on the grounds of manifest contradiction and unequal treatment.

— It is submitted in this regard that while the justification given in the contested measure for the recovery is that the method used for calculating eligible costs and remuneration is unlawful, that measure is clearly at variance with decisions previously adopted by the Commission, since the very same methodology which is the subject of complaint here has been also been viewed in a positive light by that institution.

4. Fourth plea in law, alleging breach of the principle of legitimate expectations, the principle of good faith and the principles of the protection of acquired rights and legal certainty and breach of the duty of care.

— It is submitted in this regard that the Commission's conduct has given rise to a legitimate expectation on the part of the applicant, in so far as the administration's decision that the grant agreement relating to the ECOLINK + project was to be concluded 'in accordance with the solution elaborated to the noteworthy findings of a recent audit report' [sic] and the decision to provide in the subsequent amendment to that agreement that, as regards the Shareholders, it was necessary to use 'the methodology annexed to the contract and the relative costs are reported in the company's books' [sic] show that it may be inferred that the Commission had in fact, by that stage, indicated its acceptance of the methods of calculating costs proposed by META.

5. Fifth plea in law, alleging insufficient reasoning, breach of the rule that the parties should be heard, the principle of sound administration, breach of the procedures laid down by the grant agreements and of the Code of proper administrative conduct.

Action brought on 31 October 2012 — Giorgis v OHIM — Comigel (Shape of goblets)

(Case T-474/12)

(2013/C 9/72)

Language in which the application was lodged: English

Parties

Applicant: Giorgio Giorgis (Milan, Italy) (represented by: I. Prado and A. Tornato, lawyers)

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

Other party to the proceedings before the Board of Appeal: Comigel SAS (Saint- Julien-lès-Metz, France)

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 July 2012 in case R 1301/2011-1; and

— Order OHIM to pay the costs

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The three-dimensional mark representing a shape of goblets, for goods in class 30 — Community trade mark registration No 8132681

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The request for a declaration of invalidity was based on grounds for refusal pursuant to Article 52(1)(a) in conjunction with Articles 7(1)(b) and (d) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested CTM invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and 7(3) of Council Regulation No 207/2009.

Action brought on 29 October 2012 — LaserSoft Imaging v OHIM (WorkflowPilot)

(Case T-475/12)

(2013/C 9/73)

Language of the case: German

Parties

Applicant: LaserSoft Imaging AG (Kiel, Germany) (represented by J. Hunnekuhl, 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 decisions of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2012 and 6 August 2012 (Case R 480/2012-4) in so far as they rejected the applicant's trade mark application of 29 August 2011 and order the defendant to register the word mark 'WorkflowPilot' in the trade mark register of the Office for Harmonisation for the Internal Market in accordance with the application.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'WorkflowPilot' for goods and services in Classes 9, 41 and 42 — Community trade mark application No 10 223 774

Decision of the Examiner: the application was rejected in part

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 31 October 2012 — Saint-Gobain Glass Deutschland v Commission

(Case T-476/12)

(2013/C 9/74)

Language of the case: German

Parties

Applicant: Saint-Gobain Glass Deutschland GmbH (Aachen, Germany) (represented by: S. Altenschmidt and C. Dittrich, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the implied decision of the Commission of 4 September 2012 (reference No GestDem No 3273/2012), refusing access to the information regarding the applicant's installations with which the Federal Environment Agency of the Federal Republic of Germany provided the European Commission in the context of the list of installations in Germany covered by Directive 2003/87/EC submitted under Article 15(1) of Commission Decision 2011/278/EU of 27 April 2011;

— In the alternative, annul the implied decision of the Commission of 25 September 2012 (reference No GestDem No 3273/2012) with which access to the requested information was in any case denied;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. Infringement of Article 8(2) of Regulation (EC) No 1049/2001 ([1])

   Here the applicant submits that the preconditions for the extension of the period for answering its confirmatory application did not exist and that because of this a negative decision on the part of the Commission already existed on 4 September 2012.

2. Infringement of the first sentence of Article 3 of Regulation (EC) No 1367/2006 ([2]) in conjunction with Article 2(1) of Regulation (EC) No 1049/2001

   The applicant submits that the implied refusal of its request infringes the first sentence of Article 3 of Regulation (EC) No 1367/2006 in conjunction with Article 2(1) of Regulation (EC) No 1049/2001 as it has a right to have the environmental information sought made accessible on the basis of those provisions and there are no grounds for refusal, which have to interpreted strictly.

   In particular the applicant is of the view that the ground for refusal in the first subparagraph of Article 4(3) of Regulation No 1049/2001 does not apply. The requested documents relate solely to particulars with which the Federal Republic of Germany provided the Commission and not to an ongoing examination of those particulars by the Commission. It is not therefore to be feared that the Commission's decision-making process would be seriously undermined.

Furthermore, the applicant submits that even the opinion of the consulted authorities, which is as yet outstanding, is not a ground for refusing its request. It submits in that regard, that the exception in Article 4(5) of Regulation No 1049/2001 cannot be interpreted so broadly that it gives a Member State a right of veto on the basis of which it could, at its discretion, oppose access to the requested documents. That would be contrary to the Aarhus Convention's objective of establishing and furthering transparency in decision-making in environmental matters.

3. Infringement of the obligation to state reasons

Lastly, the applicant submits that there is infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU.

([1]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

Action brought on 3 November 2012 — Golam v OHIM — Pentafarma (METABOL)

(Case T-486/12)

(2013/C 9/75)

Language in which the application was lodged: Greek

Parties

Applicant: Sofia Golam (Athens, Greece) (represented by: N.Trovas, lawyer)

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

Other party to the proceedings before the Board of Appeal: Pentafarma-Sociedade Tecnico-Medicinal, SA (Prior Velho, Portugal)

Form of order sought

The applicant claims that the General Court should:

— uphold the present action, so as to annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 July 2012 in Case R 1901/2011-1;

— reject the opposition of the other party before the Board of Appeal and grant the application lodged by the applicant in its entirety;

— order the other party before the Board of Appeal to pay the applicant the costs of the present proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Sofia Golam

Community trade mark concerned: the word mark 'METABOL' for goods and services in Classes 5, 16 and 30 — Community trade mark application No 8885287

Proprietor of the mark or sign cited in the opposition proceedings: Pentafarma-Sociedade Tecnico-Medicinal, SA

Mark or sign cited in opposition: the Portuguese word mark 'METABOL-MG' which has been registered under No 241841, for goods in Class 5

Decision of the Opposition Division: opposition upheld in part

Decision of the Board of Appeal: decision of the Opposition Division annulled in part

Pleas in law: infringement of Articles 8(1)(a) and (b) of Council Regulation No 207/2009

Action brought on 12 November 2012 — CITEB and Belgo-Metal v Parliament

(Case T-488/12)

(2013/C 9/76)

Language of the case: French

Parties

Applicants: Cit Blaton SA (CITEB) (Schaerbeek, Belgium) and Belgo-Metal (Wetteren, Belgium) (represented by: R. Simar, lawyer)

Defendant: European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the action for annulment admissible;

— annul the decision by which the European Parliament's Directorate General for Infrastructure and Logistics, on 7 September 2012, rejected the applicants' tender and awarded the contract to another tenderer, a decision about which the applicants were informed by letters of 7 and 18 September 2012;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Articles 89(1) and (2) and 92 of the Financial Regulation, [1] of Article 135(1) and (5) of the Implementing Regulation [2] and Article 49 of Directive 2004/18, [3] and the principles of competition, transparency, equal treatment, proportionality and diligence, in so far as the contested decision does not contain the report compiled by the evaluation committee constituting the reason for the decision, and thus does not allow the applicants to check that the tender accepted is lawful.
2. Second plea in law, alleging a manifest error of assessment and an infringement of the obligation to state adequate reasons for decisions, of Article 100(2) of the Financial Regulation, of the contract documents and of the provisions governing the award of that contract, detailed and adequate reasons not being stated for the contested decision in so far as it does not include the information from the evaluation committee's report.

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[1] Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).

[2] 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)

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

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