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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 46/01)

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

OJ C 38, 9.2.2013

Past publications

OJ C 32, 2.2.2013

OJ C 26, 26.1.2013

OJ C 9, 12.1.2013

OJ C 399, 22.12.2012

OJ C 389, 15.12.2012

OJ C 379, 8.12.2012

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 19 December 2012 — Brookfield New Zealand Ltd, Elaris SNC v Community Plant Variety Office (CPVO), Schniga GmbH

(Case C-534/10 P) ([1])

(Appeal — Community plant variety rights — Regulation (EC) No 2100/94 — Article 73(2) — Decision of the Board of Appeal of the CPVO refusing an application for a Community plant variety right — Discretion — Review by the General Court — Article 55(4) read in conjunction with Article 61(1)(b) — Right of the CPVO to make a new request for the submission of plant material)

(2013/C 46/02)

Language of the case: English

Parties

Appellants: Brookfield New Zealand Ltd, Elaris SNC (represented by: M. Eller, avvocato)

Other parties to the proceedings: Community Plant Variety Office (CPVO) (represented by: M. Ekvad and M. Lightbourne, acting as Agents), Schniga GmbH, (represented by: G. Würtenberger, Rechtsanwalt)

Re:

Appeal brought against the judgment of the General Court (Sixth Chamber) of 13 September 2010 in Case T-135/08 *Schniga* v *CPVO — Elaris and Brookfield New Zealand*, by which that Court annulled the decision of the Board of Appeal of the Community Plant Variety Office (CPVO) of 21 November 2007 annulling the decision granting Schniga GmbH a Community plant variety right for the 'Gala Schnitzer' apple variety and the decisions dismissing the objections lodged by SNC Elaris and by Brookfield New Zealand

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Brookfield New Zealand Ltd and Elaris SNC to pay the costs.*

([1]) OJ C 38, 5.2.2011.

Judgment of the Court (Fourth Chamber) of 19 December 2012 — European Commission v Kingdom of Belgium

(Case C-577/10) ([1])

(Failure of a Member State to fulfil obligations — Article 56 TFEU — Freedom to provide services — National legislation which imposes a prior declaration requirement on self-employed service providers established in other Member States — Criminal penalties — Obstacle to freedom to provide services — Objectively justified distinction — Overriding requirements in the public interest — Prevention of fraud — Protection against unfair competition — Protection of self-employed workers — Proportionality)

(2013/C 46/03)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Traversa, C. Vrignon and J.-P. Keppenne, acting as Agents)

Defendant: Kingdom of Belgium (represented by: M. Jacobs and C. Pochet, acting as Agents, and by S. Rodrigues, avocat)

Intervener: Kingdom of Denmark (represented by: C. Vang, S. Juul Jørgensen and V. Pasternak Jørgensen, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 56 TFEU — National legislation which imposes a prior notification requirement on independent service providers established in other Member States (the 'Limosa' declaration) — Restriction on the freedom to provide services — Discriminatory nature of the restriction — Lack of justification and proportionality

Operative part of the judgment

The Court:

1. *Declares that, by adopting Articles 137(8), 138, third indent, 153 and 157(3) of the Programme Law (I) of 27 December 2006, in the version in force since 1 April 2007, namely by imposing a prior declaration requirement on self-employed service providers established in Member States other than the Kingdom of Belgium in respect of their activity in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 56 TFEU;*

2. *Orders the Kingdom of Belgium to pay the costs;*

3. *Orders the Kingdom of Denmark to bear its own costs.*

([1]) OJ C 72, 5.3.2011.

Judgment of the Court (First Chamber) of 19 December 2012 — European Commission v Italian Republic

(Case C-68/11) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 1999/30/EC — Pollution control — Limit values for concentrations of PM_{10} in ambient air)

(2013/C 46/04)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and S. Mortoni, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of 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 (OJ 1999 L 163, p. 41; now 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 for PM_{10} particles in ambient air exceeded from 2005

Operative part of the judgment

The Court:

1. *Declares that, by having failed to ensure that, for the years 2006 and 2007, 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 55 Italian zones and agglomerations referred to in the European Commission's letter of formal notice of 2 February 2009, the Italian 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 Italian Republic to bear their own costs.*

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (Second Chamber) of 19 December 2012 (request for a preliminary ruling from the Gerechtshof te 's-Gravenhage — Netherlands) — Leno Merken BV v Hagelkruis Beheer BV

(Case C-149/11) ([1])

(Community trade mark — Regulation (EC) No 207/2009 — Article 15(1) — 'Genuine use of the trade mark' — Territorial scope of use — Use of the Community trade mark in a single Member State — Whether sufficient)

(2013/C 46/05)

Language of the case: Dutch

Referring court

Gerechtshof te 's-Gravenhage

Parties to the main proceedings

Applicant: Leno Merken BV

Defendant: Hagelkruis Beheer BV

Re:

Request for a preliminary ruling — Gerechtshof te's-Gravenhage — Interpretation of Article 15(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) — Use of the mark — Genuine use — Meaning — Use of a Community trade mark on the territory of just one Member State — Use regarded as genuine by that State if it were an identical national mark.

Operative part of the judgment

Article 15(1) of Regulation No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the territorial borders of the Member States should be disregarded in the assessment of whether a trade mark has been put to 'genuine use in the Community' within the meaning of that provision.

A Community trade mark is put to 'genuine use' within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the European Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.

([1]) OJ C 179, 18.6.2011.

Judgment of the Court (Grand Chamber) of 19 December 2012 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Azienda Sanitaria Locale di Lecce, Università del Salento v Ordine degli Ingegneri della Provincia di Lecce and Others

(Case C-159/11) ([1])

(Public contracts — Directive 2004/18/EC — Article 1(2)(a) and (d) — Services — Study and evaluation of the seismic vulnerability of hospital structures — Contract concluded between two public entities, one of which is a university — Public entity capable of being classified as an economic operator — Contract for pecuniary interest — Consideration not exceeding the costs incurred)

(2013/C 46/06)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: Azienda Sanitaria Locale di Lecce, Università del Salento

Defendants: Ordine degli Ingegneri della Provincia di Lecce, the Consiglio Nazionale degli Ingegneri, the Associazione delle Organizzazioni di Ingegneri, di Architettura e di Consultazione Tecnico Economica (OICE), Etacons srl, Ing. Vito Prato Engineering srl, Barletti — Del Grosso e Associati srl, Ordine degli Architetti della Provincia di Lecce, Consiglio Nazionale degli Architetti, Pianificatori, Paesaggisti e Conservatori

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Article 1(2)(a) and (d), Article 2 and Article 28 of, and Annex II, categories 8 and 12, to 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) — Contract attributed outside a procedure for awarding public works contracts — Provision of a service consisting in the conducting of a study and evaluation of the seismic vulnerability of certain hospitals — Contracts concluded between two public administrative authorities, the party providing the services being a university — Contracts for consideration, in which the consideration does not exceed the costs incurred

Operative part of the judgment

European Union public procurement law precludes national legislation which authorises the conclusion, without an invitation to tender, of a contract by which public entities establish cooperation among each other where — this being for the referring court to establish — the purpose of such a contract is not to ensure that a public task that those entities all have to perform is carried out, where that contract is not governed solely by considerations and requirements relating to the pursuit of objectives in the public interest or where it is such as to place a private provider of services in a position of advantage vis-à-vis his competitors.

([1]) OJ C 173, 11.6.2011.

Judgment of the Court (First Chamber) of 19 December 2012 (request for a preliminary ruling from the Commissione tributaria regionale di Milano — Italy) — 3D I srl v Agenzia delle Entrate — Ufficio di Cremona

(Case C-207/11) ([1])

(Taxation — Directive 90/434/EEC — Common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States — Articles 2, 4 and 9 — Transfer of assets — Taxation of the capital gains obtained by the transferring company at the time of the transfer of assets — Deferral of taxation — Requirement that a reserve fund for the suspended tax corresponding to the value of the capital gains obtained be carried over in the balance sheet of the transferring company)

(2013/C 46/07)

Language of the case: Italian

Referring court

Commissione tributaria regionale di Milano

Parties to the main proceedings

Appellant: 3D I srl

Respondent: Agenzia delle Entrate — Ufficio di Cremona

Re:

Request for a preliminary ruling — Commissione tributaria regionale di Milano — Interpretation of Articles 2, 4 and 8(1) and (2) of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (OJ 1990 L 225, p. 1) — Transfer of assets — National legislation providing for the taxation of the capital gains arising from a transfer of assets and for the capital gain to correspond to the difference between the initial cost of acquiring the assets in exchange for the shares or holdings transferred and their current market value — Exemption where the transferring company carries over in its own balance sheet a special reserve fund equivalent to the capital gains arising upon the transfer

Operative part of the judgment

Articles 2, 4 and 9 of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States must be interpreted as not precluding, in a situation such as the one at issue in the main proceedings, the consequence of a transfer of assets being the taxation of the transferring company on the capital gain arising from that transfer, unless the transferring company carries over in its own balance sheet an appropriate reserve fund equivalent to the capital gain arising upon that transfer.

([1]) OJ C 211, 16.7.2011.

Judgment of the Court (Fourth Chamber) of 19 December 2012 — European Commission v Ireland

(Case C-279/11) ([1])

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Incorrect transposition — Annexe II — Point 1(a) to (c) — Judgment of the Court of Justice — Finding of infringement — Article 260 TFEU — Pecuniary penalties — Lump sum payment — Member State's ability to pay — Economic crisis — Assessment on the basis of current economic data)

(2013/C 46/08)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Oliver and K. Mifsud-Bonnici, acting as Agents)

Defendant: Ireland (represented by: E. Creedon and D. O'Hagan, acting as Agents, and E. Regan, SC, and de C. Toland, BL)

Re:

Failure of a Member State to fulfil obligations — Failure to comply with the judgment of the Court of 20 November 2008 in Case C-66/06 *Commission* v *Ireland* concerning the infringement of Article 2(1) and Article 4(2) to (4) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) — Application for the imposition of a penalty payment and a lump sum.

Operative part of the judgment

The Court:

1. *Declares that, by failing to take the measures necessary to comply with the judgment of 20 November 2008 in Case C-66/06 Commission v Ireland, Ireland has failed to fulfil its obligations under Article 260 TFEU.*

2. *Orders Ireland to pay to the Commission, into the account 'European Union own resources', a lump sum of EUR 1 500 000.*

3. *Orders Ireland to pay the costs.*

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Eighth Chamber) of 19 December 2012 — Mitteldeutsche Flughafen AG, Flughafen Leipzig-Halle GmbH v European Commission, Federal Republic of Germany, Arbeitsgemeinschaft Deutscher Verkehrsflughäfen eV (ADV)

(Case C-288/11 P) ([1])

(Appeal — State aids — Concept of 'undertaking' — Economic activity — Airport infrastructure construction — Runway)

(2013/C 46/09)

Language of the case: German

Parties

Appellants: Mitteldeutsche Flughafen AG, Flughafen Leipzig-Halle GmbH (represented by: M. Núñez Müller and J. Dammann, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: B. Martenczuk and T. Maxian Rusche, acting as agents), Federal Republic of Germany, Arbeitsgemeinschaft Deutscher Verkehrsflughäfen eV (ADV) (represented by: L. Giesberts and G. Kleve, Rechtsanwälte)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Joined Cases T-443/08 and T-455/08 *Freistaat Sachsen and Others* v *Commission* and *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle* v *Commission*, by which the General Court partially dismissed an action for partial annulment of Commission Decision 2008/948/EC of 23 July 2008 on measures by Germany to assist DHL and Leipzig-Halle Airport (OJ 2008 L 346, p. 31) — Applicability of the provisions of European Union law on State aid to aid granted for the construction of airport infrastructure — Concept of 'undertaking' within the meaning of Article 107(1) TFEU — Temporal application of the Commission's guidelines.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH to bear their own costs and to pay the costs incurred by the European Commission;*

3. *Orders Arbeitsgemeinschaft Deutscher Verkehrsflughäfen eV (ADV) to bear its own costs*

([1]) OJ C 252, 27.8.2011.

Judgment of the Court (Second Chamber) of 19 December 2012 (request 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-310/11) ([1])

(Taxation — VAT — Second Directive 67/228/EEC — Article 8(a) — Sixth Directive 77/388/EEC — Supply of goods — Basis of assessment — Commission paid by a mail order company to its agent — Purchases by third-party customers — Price reduction after the chargeable event — Direct effect)

(2013/C 46/10)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Appellant: Grattan plc

Respondent: The Commissioners for Her Majesty's Revenue & Customs

Re:

Request for a preliminary ruling — First-tier Tribunal (Tax Chamber) — Interpretation of Article 8(a) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax (OJ, English Special Edition 1967, p. 16) — Basis of assessment — Supply of goods — Commission paid by a mail order company to its agent, acting as intermediary in the supply of goods to the final consumer — Commission taking the form either of a payment of money or of a credit against amounts owed to the company in respect of goods purchased by the agent for the agent's own use — Retrospective reduction of the basis of assessment of supplies of goods made before 1 January 1978, by virtue of the direct effect of Article 8(a) of the directive and/or application of the principles of fiscal neutrality or equal treatment

Operative part of the judgment

Article 8(a) of Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes — Structure and procedures for application of the common system of value added tax must be interpreted as not conferring upon a taxable person the right to treat the basis of assessment of a supply of goods as retrospectively reduced where, after the time of that supply of goods, an agent received a credit from the supplier which the agent elected to take either as a payment of money or as a credit against amounts owed to the supplier in respect of supplies of goods that had already taken place.

([1]) OJ C 282, 24.9.2011.

Judgment of the Court (First Chamber) of 19 December 2012 — European Commission v Planet AE

(Case C-314/11 P) ([1])

(Appeals — Protection of the financial interests of the European Union — Identification of the level of risk associated with an entity — Early warning system — OLAF investigation — Decisions — Requests for activation of W1a and W1b warnings — Reviewable measures — Admissibility)

(2013/C 46/11)

Language of the case: Greek

Parties

Appellant: European Commission (represented by: D. Triantafyllou and F. Dintilhac, acting as Agents)

Other party to the proceedings: Planet AE (represented by: V. Christianos, dikigoros)

Re:

Appeal brought against the order of the General Court (Sixth Chamber) of 13 April 2011 in Case T-320/09 *Planet AE* v *Commission* dismissing the plea of inadmissibility raised by the European Commission in an action for the annulment of Commission decisions, taken following investigation by the European Anti-Fraud Office (OLAF), to activate, in the early warning system (EWS), a 'W1a' registration and subsequently a 'W1b' registration, identifying the level of risk associated with the applicant as a party awarded a public service contract concerning a project for institutional and sectoral modernisation in Syria, funded under the MEDA programme (OJ 2005 S 203-199730).

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

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

([1]) OJ C 238, 13.8.2011.

Judgment of the Court (First Chamber) of 19 December 2012 (request for a preliminary ruling from the Sąd Rejonowy w Koszalinie — Poland) — Krystyna Alder, Ewald Alder v Sabina Orłowska, Czesław Orłowski

(Case C-325/11) ([1])

(Regulation (EC) No 1393/2007 — Service of documents — Party domiciled in the territory of another Member State — Representative domiciled in national territory — None — Procedural documents placed in the case file — Presumption of knowledge)

(2013/C 46/12)

Language of the case: Polish

Referring court

Sąd Rejonowy w Koszalinie

Parties to the main proceedings

Applicants: Krystyna Alder, Ewald Alder

Defendants: Sabina Orłowska, Czesław Orłowski

Re:

Request for a preliminary ruling — Sąd Rejonowy w Koszalinie (Poland) — Interpretation of Article 18 TFEU and of Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324 of 10 December 2007, p. 79) — National legislation which establishes, for a party who is resident in another Member State and has not appointed a representative resident in national territory, a presumption that that party is aware of procedural documents which have been placed in the case file

Operative part of the judgment

Article 1(1) of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another Member State are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first Member State, in which the judicial proceedings are taking place.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Third Chamber) of 19 December 2012 (request for a preliminary ruling from the Elegktiko Sinedrio — Greece) — Epitropos tou Elegktikou Sinedriou sto Ipourgio Politismou kai Tourismou v Ipourgio Politismou kai Tourismou — Ipiresia Dimosionomikou Elenchou

(Case C-363/11) ([1])

(Request for a preliminary ruling — Concept of 'court or tribunal of a Member State' within the meaning of Article 267 TFEU — Proceedings intended to lead to a decision of a judicial nature — National court of auditors ruling on prior authorisation of public expenditure — Inadmissibility)

(2013/C 46/13)

Language of the case: Greek

Referring court

Elegktiko Sinedrio

Parties to the main proceedings

Applicant: Epitropos tou Elegktikou Sinedriou sto Ipourgio Politismou kai Tourismou

Defendant: Ipourgio Politismou kai Tourismou — Ipiresia Dimosionomikou Elenchou

Third party: Konstantinos Antonopoulos

Re:

Request for a preliminary ruling — Elegktiko Synedrio — Interpretation of clause 4(1) of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) and Article 153 TFEU — Employment condition or working condition — Meaning — Conditions of remuneration for time engaged in trade union activities, as leave for trade union business — Inclusion

Operative part of the judgment

The reference for a preliminary ruling from the Elegktiko Sinedrio (Greece) made by decision of 1 July 2011 is inadmissible.

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Grand Chamber) of 19 December 2012 (reference for a preliminary ruling from the Fővárosi Bíróság — Hungary) — Mostafa Abed El Karem El Kott, Chadi Amin A Radi, Hazem Kamel Ismail v Bevándorlási és Állampolgársági Hivatal

(Case C-364/11) ([1])

(Directive 2004/83/EC — Minimum standards for determining who qualifies for refugee status or subsidiary protection status — Stateless persons of Palestinian origin who have in fact availed themselves of assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — The right of those stateless persons to recognition as refugees on the basis of the second sentence of Article 12(1)(a) of Directive 2004/83 — Conditions under which applicable — Cessation of UNRWA assistance 'for any reason' — Evidence — Consequences for the persons concerned seeking refugee status — Persons 'ipso facto … entitled to the benefits of [the] Directive' — Automatic recognition as a'refugee' within the meaning of Article 2(c) of Directive 2004/83 and the granting of refugee status in accordance with Article 13 thereof)

(2013/C 46/14)

Language of the case: Hungarian

Referring court

Fővárosi Bíróság

Parties to the main proceedings

Applicants: Mostafa Abed El Karem El Kott, Chadi Amin A Radi, Hazem Kamel Ismail

Defendant: Bevándorlási és Állampolgársági Hivatal

intervening party: **ENSZ Menekültügyi Főbiztossága**,

Re:

Reference for a preliminary ruling — Fővárosi Bíróság — Interpretation of Articles 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) — Stateless persons of Palestinian origin who have availed themselves of the protection of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) — Whether such a stateless person is *ipso facto* entitled to the benefits of Directive 2004/83/EC where the protection provided by that agency ceases — Circumstances under which the protection may be deemed to have come to an end — The meaning of being 'entitled to the benefits of this Directive'

Operative part of the judgment

1. *The second sentence of Article 12(1)(a) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the cessation of protection or assistance from organs or agencies of the United Nations other than the High Commission for Refugees (HCR) 'for any reason' includes the situation in which a person who, after actually availing himself of such protection or assistance, ceases to receive it for a reason beyond his control and independent of his volition. It is for the competent national authorities of the Member State responsible for examining the asylum application made by such a person to ascertain, by carrying out an assessment of the application on an individual basis, whether that person was forced to leave the area of operations of such an organ or agency, which will be the case where that person's personal safety was at serious risk and it was impossible for that organ or agency to guarantee that his living conditions in that area would be commensurate with the mission entrusted to that organ or agency.*

2. *The second sentence of Article 12(1)(a) of Directive 2004/83 must be interpreted as meaning that, where the competent authorities of the Member State responsible for examining the application for asylum have established that the condition relating to the cessation of the protection or assistance provided by the United Nations Relief and Works Agency for Palestine Refugees in the*

Near East (UNRWA) is satisfied as regards the applicant, the fact that that person is ipso facto 'entitled to the benefits of [the] directive' means that that Member State must recognise him as a refugee within the meaning of Article 2(c) of the directive and that person must automatically be granted refugee status, provided always that he is not caught by Article 12(1)(b) or (2) and (3) of the directive.

([1]) OJ C 347, 26.11.2011.

Judgment of the Court (Fourth Chamber) of 19 December 2012 — European Commission v Ireland

(Case C-374/11) ([1])

(Failure of a Member State to fulfil obligations — Directive 75/442/EEC — Domestic waste waters discharged through septic tanks in the countryside — Judgment of the Court finding that a Member State has failed to fulfil obligations — Article 260(2) TFEU — Measures to ensure compliance with a judgment of the Court — Financial penalties — Penalty payment — Lump sum)

(2013/C 46/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: E. White, acting as Agent)

Defendant: Ireland (represented by: D. O'Hagan and E. Creedon, acting as Agents, A. Collins, SC, and M. Gray, BL)

Re:

Failure of a Member State to fulfil obligations — Non-compliance with the judgment of the Court of 29 October 2009 in Case C-188/08 *Commission* v *Ireland*, concerning infringement of Articles 4, 7, 8, 9, 10, 11, 12, 13 and 14 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), as regards domestic waste waters discharged through septic tanks — Waste not covered by other legislation — Application for the imposition of a periodic penalty payment and the payment of a lump sum

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all of the measures necessary to ensure compliance with the judgment of 29 October 2009 in Case C-188/08 Commission v Ireland establishing that Ireland has failed to fulfil its obligations under Articles 4 and 8 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, Ireland has failed to fulfil its obligations under Article 260(1) TFEU;*

2. *Orders Ireland to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 12 000 for each day of delay in adopting the measures necessary to ensure compliance with the judgment in Case C-188/08 Commission v Ireland, with effect from the date on which judgment is delivered in the present case until the date of full compliance with the judgment in Case C-188/08 Commission v Ireland;*

3. *Orders Ireland to pay to the European Commission, into the 'European Union own resources' account, the lump sum of EUR 2 000 000;*

4. *Orders Ireland to pay the costs.*

([1]) OJ C 282, 24.9.2011.

Judgment of the Court (Seventh Chamber) of 19 December 2012 — Bavaria NV v European Commission

(Case C-445/11 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Dutch beer market — Commission decision finding an infringement of Article 81 EC — Fines — Duration of the administrative procedure — Level of the fine)

(2013/C 46/16)

Language of the case: Dutch

Parties

Appellant: Bavaria NV (represented by: O. Brouwer, P.W. Schepens and N. Al-Ani, advocaten)

Other party to the proceedings: European Commission (represented by: P. Van Nuffel and F. Ronkes Agerbeek, acting as Agents, assisted by M. Slotboom, advocat)

Re:

Appeal brought against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 16 June 2011 in Case T-235/07 *Bavaria* v *Commission* by which the General Court annulled Article 1 of Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case COMP/B/37.766 — Dutch beer market) in so far as the European Commission found that Bavaria NV had participated in an infringement consisting in the occasional coordination of commercial conditions, other than prices, offered to individual consumers in the on-trade segment in the Netherlands

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Bavaria NV to pay the costs.*

([1]) OJ C 340, 19.11.2011.

Judgment of the Court (Seventh Chamber) of 19 December 2012 — Heineken Nederland BV, Heineken NV v European Commission

(Case C-452/11 P) ([1])

(Appeal — Competition — Agreements, decisions and concerted practices — Dutch beer market — Commission decision establishing a breach of Article 81 EC — Fines — Duration of the administrative procedure — Level of the fine)

(2013/C 46/17)

Language of the case: Dutch

Parties

Appellants: Heineken Nederland BV, Heineken NV (represented by: T. Ottervanger and M. de Jong, advocaten)

Other party to the proceedings: European Commission (represented by: P. Van Nuffel and F. Ronkes Agerbeek, Agents, and by M. Slotboom, advocat)

Re:

Appeal brought against the judgment delivered by the General Court (Sixth Chamber, Extended Composition) on 16 June 2011 in Case T-240/07 *Heineken Nederland and Heineken* v *Commission*, by which the General Court annulled Article 1 of Commission Decision C(2007) 1697 of 18 April 2007 relating to a proceeding under Article 81 [EC] (Case COMP/B/37.766 — Dutch beer market) in so far as the European Commission found that Heineken NV and Heineken Nederland BV had participated in an infringement consisting in the occasional coordination of commercial conditions, other than prices, offered to individual consumers in the 'on-trade' sector in the Netherlands

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Heineken Nederland BV and Heineken NV to pay the costs.*

([1]) OJ C 340, 19.11.2011.

Judgment of the Court (Eighth Chamber) of 19 December 2012 (request for a preliminary ruling from the Varhoven administrativen sad — Bulgaria) — Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite v Orfey Balgaria EOOD

(Case C-549/11) ([1])

(VAT — Directive 2006/112/EC — Articles 63, 65, 73 and 80 — Establishment by natural persons of a building right in favour of a company in exchange for construction services by that company for those persons — Barter contract — VAT on construction services — Chargeable event — When chargeable — Payment on account of the entire consideration — Payment on account — Basis of assessment for a transaction in the event of consideration in the form of goods or services — Direct effect)

(2013/C 46/18)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad — Bulgaria

Parties to the main proceedings

Applicant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — grad Burgas pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Defendant: Orfey Balgaria EOOD

Re:

Request for a preliminary ruling — Varhoven administrativen sad — Interpretation of Articles 63, 65, 73 and 80 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p.1) — Occurrence of the chargeable event for VAT on the supply of a construction service — Creation by natural persons of a building right for a company in exchange for construction services by that company for those persons — Advance payment — National legislation laying down as basis of assessment for a transaction, in the event of consideration in the form of goods or services, the open market value of the supply of goods or services

Operative part of the judgment

1. *Articles 63 and 65 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the main proceedings, where a building right is established in favour of a company in order to erect a building, by way of consideration for construction services of certain real property in that building and that company has undertaken to deliver on a turn-key basis to the persons who established that building right, they do not preclude the VAT on those construction services from*

becoming chargeable as from the moment when the building right is established, that is to say, before those services are performed, provided that, at the time that right is established, all the relevant information concerning that future supply of services is already known and, therefore, in particular, the services in question are precisely identified, and the value of that right may be expressed in monetary terms, which it is for the national court to verify.

2. *In circumstances such as those of the main proceedings, where the transaction is not completed between parties having ties within the meaning of Article 80 of Directive 2006/112, which it is for the national court to verify, Articles 73 and 80 of that directive must be interpreted as precluding a national provision, such as that at issue in the main proceedings, under which, when the consideration for a transaction is made up entirely of goods or services, the taxable amount of the transaction is the open market value of the goods or services supplied.*

3. *Articles 63, 65 and 73 of Directive 2006/112 have direct effect.*

([1]) OJ C 13, 14.1.2012.

Judgment of the Court (Third Chamber) of 19 December 2012 (request for a preliminary ruling from the Tribunal Administrativo e Fiscal do Porto — Portugal) — Grande Área Metropolitana do Porto (GAMP) v Comissão Directiva do Programa Operacional Potencial Humano, Ministério do Ambiente e do Ordenamento do Território, Ministério do Trabalho e da Solidariedade Social

(Case C-579/11) ([1])

(Structural funds — Regulation (EC) No 1083/2006 — Geographical eligibility — Implementation of an investment co-financed by the European Union from a place located outside of the eligible regions and by an operator established in such a place)

(2013/C 46/19)

Language of the case: Portuguese

Referring court

Tribunal Administrativo e Fiscal do Porto

Parties to the main proceedings

Applicant: Grande Área Metropolitana do Porto (GAMP)

Defendants: Comissão Directiva do Programa Operacional Potencial Humano, Ministério do Ambiente e do Ordenamento do Território, Ministério do Trabalho e da Solidariedade Social

Iintervening parties: Instituto Nacional de Administração, Sindicato dos Quadros Técnicos do Estado, Instituto Superior de Ciências do Trabalho e da Empresa, Instituto do Desporto de Portugal

Re:

Request for a preliminary ruling — Tribunal Administrativo e Fiscal do Porto — Interpretation of Articles 174, 175 and 176 TFEU, of Articles 5 to 8, 22, 32, 34, 35 and 56 of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25) and Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ 2003 L 154, p. 1) — Structural operations — EU funding — Operational Programmes — Eligibility of expenditure — Common classification of territorial units for statistics (NUTS)

Operative part of the judgment

The provisions of European Union primary law concerning economic, social and territorial cohesion and Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 must be interpreted as not precluding an investment co-financed by the European Union from being implemented from a place located outside of the eligible regions and by an operator established in such a place, provided that the investment targets specifically and identifiably the eligible regions.

([1]) OJ C 32, 4.2.2012.

Reference for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 15 October 2012 — SKP v Ján Bríla

(Case C-460/12)

(2013/C 46/20)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Appellant: SKP, k.s.

Respondent: Ján Bríla

Questions referred

1. Are Article 38 of the Charter of Fundamental Rights of the European Union and Articles 6(1) and 7(1) of Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts to be interpreted as precluding legislation of a Member State, such as that at issue in this case, preventing a national court, when adjudicating, on the application of a supplier, on a time-barred claim against a consumer from taking limitation of the action into account of its own motion, even when unfair contract terms are being enforced against the consumer?

2. If the answer to the first question is in the negative, are Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts to be interpreted as meaning that the court must, of its own motion, advise the consumer as to his right to argue that the creditor's claim is time-barred?

[1] OJ 1993 L 95, p. 29

Reference for a preliminary ruling from the Okresný súd Svidník (Slovakia) lodged on 19 October 2012 — Pohotovosť, s.r.o. v Miroslav Vašuta

(Case C-470/12)

(2013/C 46/21)

Language of the case: Slovak

Referring court

Okresný súd Svidník

Parties to the main proceedings

Applicant: Pohotovosť, s.r.o.

Defendant: Miroslav Vašuta

Questions referred

1. Are Articles 6(1), 7(1) and 8 of Council Directive 93/13/EEC [1] on unfair terms in consumer contracts and Article 47 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 38 thereof, to be interpreted as precluding national legislation such as Paragraph 37(1) and (3) of the Exekučný poriadok, which does not allow a consumer protection association to intervene in enforcement proceedings?

2. Where the answer to the first question is that that legislation does not conflict with Community law, is Paragraph 37(1) and (3) of the Exekučný poriadok to be interpreted as not precluding the national court from granting a consumer protection association leave to intervene in enforcement proceedings in accordance with Articles 6(1), 7(1) and 8 [of Council Directive 93/13/EEC]?

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

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 9 November 2012 — Walter Vapenik v Josef Thurner

(Case C-508/12)

(2013/C 46/22)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Walter Vapenik

Defendant: Josef Thurner

Question referred

Is Article 6(1)(d) of Regulation (EC) No 805/2004 [1] to be interpreted as applying only to contracts between business persons as creditors and consumers as debtors, or is it sufficient for at least the debtor to be the consumer for the provision also to apply to claims of a consumer against another consumer?

[1] Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ 2004 L 143, p. 15)

Request for a preliminary ruling from the Hof van Beroep te Gent (Belgium) lodged on 9 November 2012 — Bloomsbury NV v Belgische Staat

(Case C-510/12)

(2013/C 46/23)

Language of the case: Dutch

Referring court

Hof van Beroep te Gent

Parties to the main proceedings

Applicant: Bloomsbury NV

Defendant: Belgische Staat

Question referred

Should Article 2.3-4-5 of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, [1] be interpreted as meaning that, in a case where a company acquires an important asset free of charge and there is therefore no purchase value which it can enter in the accounts, with the result that a misleading impression is created of the company's assets, liabilities, financial position and profit or loss, the important asset in question acquired free of charge should nevertheless be entered in the accounts at its true value?

[1] OJ 1978 L 222, p. 11.

Reference for a preliminary ruling from the Kúria (Hungary) lodged on 19 November 2012 — OTP Bank Nyilvánosan Működő Részvénytársaság v Hochtief Solutions AG

(Case C-519/12)

(2013/C 46/24)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: OTP Bank Nyilvánosan Működő Részvénytársaság

Defendant: Hochtief Solutions AG

Question referred

Does a claim between parties which are not in a direct contractual relationship, asserted by an applicant company, which has granted credit, against a (foreign) member of a company which has received credit, that member having had a controlling interest in the latter company at the material time, qualify as a contract under Article 5(1)(a) of Council Regulation (EC) No 44/2001, [1] where the applicant company alleges that the company receiving the loan is liable for the debts of the controlled company?

[1] 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.

Reference for a preliminary ruling from Employment Tribunal (United Kingdom) made on 26 November 2012 — ZJR Lock v British Gas Trading Limited & Others

(Case C-539/12)

(2013/C 46/25)

Language of the case: English

Referring court

Employment Tribunal

Parties to the main proceedings

Applicant: ZJR Lock

Defendants: British Gas Trading Limited & Others

Questions referred

1. Where

   (i) a worker's annual pay comprises of basic pay and commission payments made under a contractual right to commission

   (ii) the commission is paid by reference to sales made and contracts entered into by the employer in consequence of the worker's work

   (iii) commission is paid in arrears and the amount of commission received in a given reference period fluctuates according to the value of sales achieved and contracts entered into and the time of such sales

   (iv) during periods of annual leave, the worker does not undertake any work that would entitle him to those commission payments and accordingly does not generate commission in respect of such periods

   (v) during the pay period which includes a period of annual leave, the worker is entitled to basic pay and will continue to receive commission payments based on commission earned earlier; and

(vi) his average commission earnings over the course of the year will be lower than they would be if the worker had not taken leave, because, during the leave period, he will not have undertaken any work that would entitle him to commission payments

does Article 7 of Directive 93/104/EC [1], as amended by Directive 2003/88/EC [2], require that Member States take measures to ensure that a worker is paid in respect of periods of annual leave by reference to the commission payments he would have earned during that period, had he not taken leave, as well as his basic pay?

2. What are the principles which inform the answer to question 1.?

3. If the answer to question 1 is 'Yes', what principles (if any) are required to be adopted by member states in calculating the sum that is payable to the worker by reference to the commission that the worker would or might have earned if he had not taken annual leave?

[1] Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time OJ L 307, p. 18

[2] 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 L 299, p. 9

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 28 November 2012 — Rena Schmeel v Federal Republic of Germany

(Case C-540/12)

(2013/C 46/26)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Rena Schmeel

Defendant: Federal Republic of Germany

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, [1] to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Federal civil servants?

2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?

3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience?

4. If Question 3 is also answered in the affirmative: does the interpretation of European primary and/or secondary law, where a non-discriminatory right to remuneration has not been implemented, permit a legal consequence other than retrospective remuneration of those discriminated against at the highest pay step in their pay grade?

Does the legal consequence of infringement of the prohibition of discrimination in that case follow from European primary and/or secondary law itself, here in particular Directive 2000/78/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union law?

5. Does the interpretation of European primary and/or secondary law preclude a national measure which makes the claim to (retrospective) payment or compensation dependent on the civil servants' having enforced that claim in good time?

[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).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 28 November 2012 — Ralf Schuster v Federal Republic of Germany

(Case C-541/12)

(2013/C 46/27)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Ralf Schuster

Defendant: Federal Republic of Germany

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, [1] to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Federal civil servants?

2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?

3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience?

4. If Question 3 is also answered in the affirmative: does the interpretation of European primary and/or secondary law, where a non-discriminatory right to remuneration has not been implemented, permit a legal consequence other than retrospective remuneration of those discriminated against at the highest pay step in their pay grade?

   Does the legal consequence of infringement of the prohibition of discrimination in that case follow from European primary and/or secondary law itself, here in particular Directive 2000/78/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union law?

5. Does the interpretation of European primary and/or secondary law preclude a national measure which makes the claim to (retrospective) payment or compensation dependent on the civil servants' having enforced that claim in good time?

[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)

Action brought on 27 November 2012 — European Commission v Republic of Poland

(Case C-544/12)

(2013/C 46/28)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, K. Simonsson and J. Hottiaux, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges [1] and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Articles 1, 6(2), 7, 8, 9 and 13 of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/12/EC at the daily rate of EUR 75 002,88 from the day on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2009/12/EC expired on 15 March 2011.

[1] OJ 2009 L 70, p. 11.

Appeal brought by the Federal Republic of Germany against the judgment of the General Court (Third Chamber) of 19 September 2012 in Case T-265/08 Federal Republic of Germany v European Commission, lodged on 29 November 2012

(Case C-549/12 P)

(2013/C 46/29)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (Represented by: T. Henze, acting as Agent, and by U. Karpenstein and C. Johann, Rechtsanwälte)

The other parties to the proceedings: European Commission, the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

1. set aside the judgement of the General Court of the European Union of 19 September 2012 in Case T-265/08 *Federal Republic of Germany* v *European Commission*; interveners supporting the Federal Republic of Germany: *Kingdom of Spain*, *French Republic* and *Kingdom of the Netherlands*, concerning an action for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme

in the Objective 1 area of *Land* Thüringen (Federal Republic of Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994 ***and*** annul Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land* Thüringen (Germany) (1994-1999);

2. order the Commission to pay the costs.

Grounds of appeal and main arguments

The subject matter of this appeal is the judgment of the General Court of 19 September 2012 in Case T-265/08 *Germany* v *Commission*, whereby the General Court dismissed the Federal Republic of Germany's application for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land* Thüringen (Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994.

The appellant relies on two grounds of appeal:

First, the appellant claims that the General Court breached Article 24(2) of Council Regulation (EEC) No 4253/88, ([1]) in conjunction with Article 1 of Council Regulation (EC, Euratom) No 2988/95 ([2]) and the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU; formerly Article 5 EC), in so far as it erroneously assumed that even administrative errors made by national authorities could constitute 'irregularities' justifying the application of financial corrections by the Commission (first part of the first ground of appeal). Even if a financial correction for an administrative error might in principle be conceivable, the judgment under appeal should still be set aside since the General Court unlawfully assumed that even infringements of national law and errors which do not affect the European Union budget could constitute 'irregularities' justifying financial corrections (second part of the first ground of appeal).

Secondly, the appellant submits that the General Court also breached Article 24(2) of Regulation No 4253/88, in conjunction with the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU), inasmuch as it erroneously conferred on the Commission the power to carry out financial corrections on the basis of extrapolation (first part of the second ground of appeal). Even if, in principle, the Commission had such a power to extrapolate, the General Court erred in its confirmation of the nature and manner of its application in the present case. On the one hand, a loss to the European Union budget has not been established as regards, at least, a part of the project at issue. On the other hand, the Commission should not have classified a portion of the errors complained of as systemic errors (second part of the second ground of appeal).

([1]) Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments (OJ 1988 L 374, p. 1).

([2]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Appeal brought on 6 December 2012 by El Corte Inglés, SA against the judgment of the General Court (Sixth Chamber) delivered on 27 September 2012 in Case T-39/10: El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-578/12 P)

(2013/C 46/30)

Language of the case: English

Parties

Appellant: El Corte Inglés, SA (represented by: E. Seijo Veiguela, abogada, J.L. Rivas Zurdo, abogado)

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

Form of order sought

The appellant claims that the Court should:

— Annul the judgment of the General Court of 27th September, 2012 in case T-39/10 in its entirety.

— Order the OHIM to pay the costs incurred by El Corte Inglés, SA.

— Order Emilio Pucci International BV to pay the costs incurred by El Corte Inglés, SA.

Pleas in law and main arguments

The appellant submits that there exists likelihood of confusion (article 8.1.b CTMR ([1])) between the earlier trademarks 'EMIDIO TUCCI' and 'E. TUCCI' and the contested CTM application 'PUCCI', in respect of all the designated products in classes 3, 9, 14, 18, 25 and 28, as it has proved genuine use of all its Spanish trademarks and there is one trademark (community trademark application No. 3679528) which is not subject to this obligation, and the signs in controversy are confusingly

similar. In addition, the conditions for the application of Article 8(5) CTMR 2009 are also fulfilled in the present case, as the earlier registrations enjoy a reputation in Spain in respect of articles related to fashion and the use of a similar sign by a third party would be detrimental to, and take unfair advantage of, such reputation.

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

Request for a preliminary ruling from the Amtsgericht Winsen (Luhe) (Germany) lodged on 17 December 2012 — Andrea Merten v ERGO Lebensversicherung AG

(Case C-590/12)

(2013/C 46/31)

Language of the case: German

Referring Court

Amtsgericht Winsen (Local Court, Winsen) (Luhe)

Parties in the main proceedings

Applicant: Andrea Merten

Defendant: ERGO Lebensversicherung AG

Question referred

Should Article 15(1), first sentence, of Directive 90/619/EEC, (1) in consideration of Article 31(1) of Directive 92/96/EEC (2) as amended by Articles 35 and 36, in conjunction with Article 32, of Directive 2002/83/EC, (3) be interpreted as meaning that it precludes a provision — such as Article 5a(2), fourth indent, of the German Insurance Contracts Act (VVG), as amended by the third Law transposing the Directives of the Council of the European Communities on insurance law of 21 July 1994 — under which the insurance policy holder's right to withdrawal or objection expires, at the latest, one year after the payment of the first insurance premium, even if the policy holder was not adequately informed of the right to withdrawal or objection?

(1) 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) (OJ 1990 L 330, p. 50).

(2) 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) (OJ 1992 L 360, p. 1).

(3) Directive 2002/83/EC of the European Parliament and of the Council of 05 November 2002 concerning life assurance (OJ 2002 L 345, p. 1).

GENERAL COURT

Judgment of the General Court of 11 January 2013 — Kokomarina v OHIM — Euro Shoe Group (interdit de me gronder IDMG)

(Case T-568/11) ([1])

(Community trade mark — Opposition proceedings — International registration designating the European Community — Figurative mark interdit de me gronder IDMG — Earlier Benelux word mark DMG — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark disputed for the first time before the General Court)

(2013/C 46/32)

Language of the case: French

Parties

Applicant: Kokomarina (Concarneau, France) (represented by: C. Charrière-Bournazel, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Euro Shoe Group (Beringen, Belgium) (represented by: I. Vernimme, lawyer

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 July 2011 (Case R 1814/2010-1), relating to opposition proceedings between Euro Shoe Unie and Kokomarina

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Kokomarina to pay the costs.*

([1]) OJ C 13, 14.1.2012.

Order of the General Court of 12 December 2012 — Vakili v Council

(Case T-255/12) ([1])

(Common foreign and security policy — Restrictive measures taken against Iran in order to prevent nuclear proliferation — Freezing of funds — Withdrawal from the list of persons concerned — No need to adjudicate)

(2013/C 46/33)

Language of the case: French

Parties

Applicant: Bahman Vakili (Tehran, Iran) (represented by: J.-M. Thouvenin, lawyer)

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

Re:

Action for annulment of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 319, p. 71); Council Implementing Regulation (EU) No 1245/2001 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ 2011 L 319, p. 11) and Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ 2012 L 88, p. 1),, insofar as those acts concern the applicant, and of the decision contained in the Council's letter of 23 March 2012.

Operative part of the order

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

2. *The Council of the European Union shall pay the costs incurred by Mr Bahman Vakili and bear its own costs.*

([1]) OJ C 258, 25.8.2012.

Action brought on 6 December 2012 — Tifosi Optics v OHIM — Tom Tailor (T)

(Case T-531/12)

(2013/C 46/34)

Language in which the application was lodged: English

Parties

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

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

Other party to the proceedings before the Board of Appeal: Tom Tailor GmbH (Hamburg, 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 17 September 2012 in case R 729/2011-2, in its entirety; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'T', for goods in classes 9 and 25 — Community trade mark application No 8543183

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: Community trade mark registration No 1368232 of the figurative mark 'T', for goods in classes 9, 18 and 25; Community trade mark registration No 2747996 of the figurative mark 'T', for goods in classes 3, 6, 9, 14, 18, 21, 24, 25 and 28

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

Decision of the Board of Appeal: Annulled the contested decision and rejected the Community trade mark application

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

Action brought on 7 December 2012 — IBSolution v OHIM — IBS (IBSolution)

(Case T-533/12)

(2013/C 46/35)

Language in which the application was lodged: English

Parties

Applicant: IBSolution GmbH (Neckarsulm, Germany) (represented by: F. Ekey, lawyer)

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

Other party to the proceedings before the Board of Appeal: IBS AB (Solna, Sweden)

Form of order sought

The applicant claims that the Court should:

— Declare the action to be well founded;

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2012 in case R 771/2011-2;

— Amend the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2012 in case R 771/2011-2, by granting registration of the trade mark applied for; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'IBSolution', for services in classes 35, 41 and 42 — Community trade mark application No 8421877

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: Community trade mark registration No 38729 of the figurative mark 'IBS', for goods and services in classes 9, 16, 35, 41 and 42

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 12 December 2012 — Zafeiropoulos v European Centre for the Development of Vocational Training (Cedefop)

(Case T-537/12)

(2013/C 46/36)

Language of the case: Greek

Parties

Applicant: Panteleimon Zafeiropoulos (Thessaloniki, Greece) (represented by: M. Kontogiorgos, lawyer)

Defendant: European Centre for the Development of Vocational Training (Cedefop)

Form of order sought

The applicant claims that the General Court should:

— declare the action to be admissible;·

— annul the decision of the evaluation committee of Cedefop not to select the applicant, on the basis of the tender which he submitted in relation to the fast-track restricted competition for the award of the contract 'Provision of medical services to Cedefop staff' (Contract Notice 2012/S115-189528), and accordingly also annul the decision to award the contract (2012/S208-341369/27.10.2012), whereby the contract at issue was awarded to a paediatrician;

— annul the decision of 19/11/2012 to refuse the confirmatory application made to the defendant and order the defendant to make available to the Court and to the applicant the full text of all documents relating to the contested procedure, so that the Court may be in a position to review the lawfulness of the contested decision;

— order Cedefop to pay to the applicant the sum of EUR 100 000 in compensation for the harm which he has suffered as a consequence of the actions of Cedefop which are the subject of this action and,

— order Cedefop to pay the legal costs, and also other expenses and costs which the applicant has incurred in relation to these proceedings.

Pleas in law and main arguments

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

1. First, the applicant maintains that the contested actions of Cedefop lack adequate reasons and infringe the applicant's rights of defence and right to effective protection, since, on the basis of the content of the contested award decision and the written documents provided in response to the applicant's request, it is impossible to come to any definitive conclusion as to how the evaluation was carried out and ultimately how the tenders were ranked and, consequently, the grounds of the final decision of the defendant Cedefop were not adequately stated, in accordance with Article 296 TFEU and Article 41(2) of Directive 2004/18 EK, ([1]) and the applicant was not informed of the particular characteristics and relative advantages of the selected tender by comparison with his own tender; further the applicant has never been informed of the factors which were the basis of the evaluation committee's final decision in relation to the contested procedure for the award of the contract for the provision of medical services to Cedefop staff, notwithstanding the submission of an application therefor and a confirmatory application therefor.

2. Second, the applicant maintains that Cedefop erred as to the facts and infringed the principles of objectivity and impartiality since the assessments/evaluations of Cedefop's Evaluation Committee which are contained in the applicant's individual evaluation report are manifestly erroneous and the evaluations of the technical requirements of the tenders submitted lack objectivity.

3. Third, the applicant maintains that there was also an infringement of a fundamental condition of the contract notice in relation to the technical capacity of the tenderers and, in particular, there was an infringement of the condition which refers to the 'Technical capacity' of the candidates, since the successful tenderer lacks one of the medical specialisations required by the contract notice and should have been excluded.

4. Fourth, the applicant maintains there was an infringement of the principle of proportionality and the obligation to define the award criteria to permit objective comparative evaluation of the tenders, since Cedefop, using as an award criterion 'quality of the interview' infringed the above principle and failed to comply with the above obligation, since that criterion was formulated in such an imprecise manner that the candidates were unable to determine what was the best quality they should have in order to obtain the highest mark.

5. Fifth, the applicant maintains that the contested contract for the supply of services is contrary to the Staff Regulations of Officials of the European Union, read together with the current national legislation, under which the defendant Cedefop, as a public body which employs more than 50 workers, failed to comply with its obligation to use exclusively the services of a doctor with such a specialisation in occupational medicine.

6. Sixth, the applicant maintains that there is also an infringement of the principles of transparency since the defendant Cedefop, by failing to provide the information which was sought by the applicant, both in his application of 15 October 2012 and in his confirmatory application of 19 November 2012, infringed the provisions of Article 100(2) of the Financial Regulation No 1605/2002/EC and the provisions of Article 149(3) of Regulation No 2342/2002/EC, by reason of its failure to state reasons for its refusal decision as required by those provisions.

Lastly, the applicant maintains that the application for damages is well founded, since the applicant has complied with Article 44(1)(c) of the Court's Rules of Procedure and the application to the Court sets out the facts which establish the conditions for Cedefop to incur non-contractual liability, as defined in Article 340 TFEU.

([1]) 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

Action brought on 12 December 2012 — Wedi v OHIM — Mehlhose Bauelemente für Dachrand + Fassade (BALCO)

(Case T-541/12)

(2013/C 46/37)

Language in which the application was lodged: German

Parties

Applicant: Wedi GmbH (Emsdetten, Germany) (represented by: O. Bischof, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG (Herford, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 September 2012 in Case R 2255/2011-4;

— Alternatively, suspend the proceedings in Case R 2255/2011-4 until a final decision has been made on the applicant's application of 15 November 2012 for a declaration of invalidity of the other party's Community trade mark No 006095889 Balkogrün; reference No 000007267 C of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'BALCO' for goods in Class 19 — Community trade mark application No 9 023 771

Proprietor of the mark or sign cited in the opposition proceedings: Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG

Mark or sign cited in opposition: the word marks 'Balkogrün', 'Balkoplan' and 'Balkotop' for goods in Classes 19, 21 and 27

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 18 December 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA

(Case T-547/12)

(2013/C 46/38)

Language of the case: English

Parties

Applicants: Teva Pharma BV (Utrecht, Netherlands); and Teva Pharmaceuticals Europe BV (Utrecht) (represented by: K. Bacon and D. Piccinin, Barristers, G. Morgan and C. Drew, Solicitors)

Defendant: European Medicines Agency

Form of order sought

The applicants claim that the Court should:

— Annul the decision of the European Medicines Agency, contained in its letter of 26 November 2012, refusing to validate the applicants' application for a marketing authorisation for its generic version of abacavir/lamivudine; and

— Order the European Medicines Agency to pay the applicants' costs.

Pleas in law and main arguments

In support of the action, the applicants rely on one plea in law, alleging that the refusal to validate their application for the authorisation of a generic version of a fixed dose combination medicinal product, on the basis that the product was protected by a ten year period of exclusivity is contrary to Regulation (EC) No 726/2004 [1] and Directive No 2001/83/EC [2] properly interpreted. In particular, the applicants contend that the marketing authorisation holder for the product is not entitled to enjoy a ten year period of data exclusivity, as the product is a fixed dose combination combining two active substances which have been supplied and used within the EU as components of a number of different medicinal products for some years. The applicants therefore contend that the product falls within

the same global marketing authorisation as the earlier marketing authorisations for its component parts within the meaning of the second sub-paragraph of Article 6(1) of Directive No 2001/83. Accordingly, the applicants state that it did not enjoy any further period of data exclusivity after the expiry of the data exclusivity relating to these authorisations.

([1]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (Text with EEA relevance)

([2]) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use

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Action brought on 21 December 2012 — North Drilling v Council

(Case T-552/12)

(2013/C 46/39)

Language of the case: Spanish

Parties

Applicant: North Drilling Co. (Teheran, Iran) (represented by: J. Viñals Camallonga, L. Barriola Urruticoechea and J. Iriarte Ángel, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 2 of Council Decision 2012/635/CFSP of 15 October 2012, amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns it and remove its name from the annex thereto;

— annul Article 1 of Council Implementing Regulation (EU) No 945/2012 of 15 October 2012, implementing Regulation (EU) 267/2012 concerning restrictive measures against Iran, in so far as it concerns it and remove its name from the annex thereto, and

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging manifest error

   — The first plea alleges a manifest error of assessment of the facts on which the contested provisions are based, as they lack any real factual and evidential basis.

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

   — The second plea alleges a breach of the duty to state reasons, as the contested provisions are vitiated in relation to NDC by a statement of reasons which is inadequate, general and stereotypical.

3. Third plea in law, alleging disregard for the right to judicial protection

   — The third plea alleges infringement of the right to effective judicial protection with regard to the statement of reasons for the measures, the lack of evidence in relation to the reasons stated and the rights of the defence and the right to property, given that the requirement to state reasons has not been fulfilled, which has an impact on the other rights.

4. Fourth plea in law, alleging infringement of the right to property

   — The fourth plea is based on infringement of the right to property, since that right was restricted without valid justification.

5. Fifth plea in law, alleging infringement of the principle of equal treatment

   — The fifth plea is based on infringement of the principle of equal treatment, since the relative position of the applicant has been prejudiced without reason.

6. Sixth plea in law, alleging misuse of powers

   — The sixth plea in law is based on misuse of powers, since there is objective, precise and consistent evidence which supports the argument that the sanction was adopted for purposes other than those put forward by the Council.

Action brought on 24 December 2012 — Changshu City Standard Parts Factory v Council

(Case T-558/12)

(2013/C 46/40)

Language of the case: English

Parties

Applicant: Changshu City Standard Parts Factory (Changshu City, China) (represented by: R. Antonini and E. Monard, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, insofar as it relates to the applicant; and

— Order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the exclusion from the dumping calculation of certain export transactions of the applicant violates Articles 2(11), 2(8), 2(9), 2(7)(a) and 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, the principle of non-discrimination and Article 2.4.2 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

2. Second plea in law, alleging that the rejection of certain adjustments requested by the Applicant violates Article 2(10) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and Article 2.4 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. In the alternative, the applicant considers that the Council violated Article 296 of the Treaty on the Functioning of the European Union.

Action brought on 24 December 2012 — Ningbo Jinding Fastener v Council

(Case T-559/12)

(2013/C 46/41)

Language of the case: English

Parties

Applicant: Ningbo Jinding Fastener Co. Ltd (Ningbo, China) (represented by: R. Antonini and E. Monard, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 924/2012 of 4 October 2012 amending Regulation (EC) No 91/2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China, insofar as it relates to the applicant; and

— Order the Council to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the exclusion from the dumping calculation of certain export transactions of the applicant violates Articles 2(11), 2(8), 2(9), 2(7)(a) and 9(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, the principle of non-discrimination and Article 2.4.2 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

2. Second plea in law, alleging that the rejection of certain adjustments requested by the Applicant violates Article 2(10) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community and Article 2.4 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. In the alternative, the applicant considers that the Council violated Article 296 of the Treaty on the Functioning of the European Union.

Action brought on 19 December 2012 — Beninca v Commission

(Case T-561/12)

(2013/C 46/42)

Language of the case: English

Parties

Applicant: Jürgen Beninca (Frankfurt am Main, Germany) (represented by: C. Zschocke, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Commission's Decision of 9 October 2012, refusing access to a document produced in the framework of merger proceedings (Case COMP/M.6166 — NYSE Euronext/ Deutsche Börse); and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that none of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 [1] applies. This is in particular correct for the exceptions referred to by the Commission in the Decision, namely Article 4(3), second subparagraph and Article 4(2), first indent, of the said regulation.

2. Second plea in law, alleging that if any of these exceptions would apply, the Decision fails to properly consider whether at least partial (or redacted) access to the requested document is possible pursuant to Article 4(6) of Regulation (EC) No 1049/2001.

3. Third plea in law, alleging that the applicant has a right to access to the requested document because of an overriding public interest in making the document in question available, pursuant to Articles 4(2) and 4(3) of Regulation (EC) No 1049/2001.

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

Action brought on 24 December 2012 — Dalli v Commission

(Case T-562/12)

(2013/C 46/43)

Language of the case: English

Parties

Applicant: John Dalli (St. Julians, Malta) (represented by: L. Levi, A. Alamanou and S. Rodrigues, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the oral decision of 16 October 2012 of his termination of office with immediate effect, taken by the President of the European Commission;

— Order the defendant to pay compensation of both the moral and material prejudice; and

— Order the defendant to bear the entire costs.

Pleas in law and main arguments

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

1. First plea in law, alleging violation of Articles 245 and 247 TFEU, as the challenged decision has been adopted by an non competent author.

2. Second plea in law, alleging, on a subsidiary basis, violation of Article 17.6 TEU and of the general principle of legal certainty, as the challenged decision cannot be considered as entailing a valid resignation of the applicant.

3. Third plea in law, alleging manifests errors and breach of procedural rules, as the challenged decision does not rest on valid grounds and the OLAF findings, on which the challenged decision is based, result from an illegal procedure.

4. Fourth plea in law, alleging violation of the rights of defence, as the applicant was unable to make any appraisal and assessment of the facts to be held against him.

5. Fifth plea in law, alleging violation of the principle of proportionality, as the applicant was unable to know which are the objectives legitimately pursued by the challenged decision and if any possible other measure less punitive has been explored.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 23 October 2012 — Strack v Commission

(Case F-44/05 RENV)

(Civil Service — Officials — Referral to the Tribunal following annulment — Waiver of immunity of the servants of an institution in respect of words spoken and documents written in the course of legal proceedings — Appointment to a post of Head of Unit — Rejection of an application — Action for annulment — Unsuccessful candidate's interest in bringing proceedings — Authority of res judicata — Procedural defect — Balancing of the interests at stake — Action for damages — Non-material damage suffered by reason of an irregularity)

(2013/C 46/44)

Language of the case: German

Parties

Applicant: Guido Strack (Cologne, Germany) (represented by: N.A. Lödler and H. Tettenborn, lawyers)

Defendant: European Commission (represented by: H. Krämer and B. Eggers, Agents)

Re:

Referral following annulment — Civil Service — First, annulment of the Commission's decision to reject the applicant's application for the post of Head of the 'Tenders and contracts' Unit and to appoint another candidate to that post and, second, a claim for damages (formerly Case T-225/05).

Operative part of the judgment

The Tribunal:

1. *Rejects the request for a waiver of the immunity given to the servants of the Commission of the European Communities in Case F-44/05 Strack v Commission as being inadmissible;*

2. *Rejects the claim for compensation in respect of the excessive duration of the administrative procedure for filling the post and in respect of the excessive duration of the pre-litigation procedure as being unfounded;*

3. *Annuls the decision appointing Mr A and the decision of the Commission of the European Communities of 19 November 2004 rejecting Mr Strack's application to be appointed to the post of Head of the 'Tenders and contracts' Unit of the Office for Official Publications of the European Communities;*

4. *Dismisses the remainder of the action;*

5. *Orders the European Commission to bear its own costs in Cases F-44/05 Strack v Commission, T-526/08 P Commission v Strack and F-44/05 RENV Strack v Commission and to pay the costs incurred by Mr Strack in those cases.*

Judgment of the Civil Service Tribunal (Second Chamber) of 13 December 2012 — Donati v ECB

(Case F-63/09) [1]

(Civil service — ECB Staff — Complaint of psychological harassment — Administrative inquiry — Access to the file of the inquiry — Transmission of the case-file to persons impugned in the complaint — Duty of confidentiality — Respect for the rights of the defence)

(2013/C 46/45)

Language of the case: French

Parties

Applicant: Paola Donati (Frankfurt-am-Main, Germany) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank (represented by: F. Feyerbacher and N. Urban, Agents, and by B. Wägenbaur, lawyer)

Re:

Civil service — Annulment of the ECB's decision not to take further action on claims relating to alleged psychological harassment suffered by the applicant, and compensation for the non-material harm suffered

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Donati to bear her own costs and to pay the costs incurred by the European Central Bank.*

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[1] OJ C 205, 29.8.2009, p. 50.

Judgment of the Civil Service Tribunal (Second Chamber) of 18 September 2012 — Cuallado Martorell v Commission

(Case F-96/09) ([1])

(Civil service — Open competition — Non-admission to the oral test following results obtained in written tests — Requests for review — Specific right of candidates to have access to certain information concerning them — Purpose and scope — Right of access to corrected written tests — None)

(2013/C 46/46)

Language of the case: Spanish

Parties

Applicant: Eva Cuallado Martorell (Augsburg, Germany) (represented by: M. Díez Lorenzo, lawyer)

Defendant: European Commission (represented by: B. Eggers and J. Baquero Cruz, Agents)

Re:

Civil service — Action seeking, first, annulment of the decision not to admit the applicant to the oral test in Open Competition EPSO/AD/130/08 and to deny her access to the corrected written tests and, secondly, annulment with retroactive effect of the reserve list published following the competition tests.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the European Commission to bear its own costs and to pay the costs incurred by Ms Cuallado Martorell.*

([1]) OJ C 148, 5.6.2010, p. 54.

Judgment of the Civil Service Tribunal (Second Chamber) of 11 December 2012 — Mata Blanco v Commission

(Case F-65/10) ([1])

(Civil service — Internal competition COM/INT/OLAF/09/AD10 — Combating fraud — Respective competences of EPSO and the selection board — Admission tests supervised by the selection board — Oral test — Infringement of the notice of competition — Difference between marks — Evaluation criteria — Equal treatment of candidates — Manifest error of assessment — Principles of transparency and of sound administration — Obligation to state reasons)

(2013/C 46/47)

Language of the case: French

Parties

Applicant: Mata Blanco (Brussels, Belgium) (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission (represented by: initially B. Eggers and P. Pecho, acting as Agents, then B. Eggers, acting as Agent)

Re:

Civil service — Application for annulment of the EPSO decision not to include the applicant on the reserve list for internal competition 'COM/INT/OLAF.09/AD10 — Administrators specialised in anti-fraud' and the reserve list and all the decisions taken on the basis of that list

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 288, 23.10.2010, p. 73.

Judgment of the Civil Service Tribunal (Second Chamber) of 11 July 2012 — AI v Court of Justice

(Case F-85/10) ([1])

(Civil service — Members of the temporary staff — Internal competition — Elimination from the competition in consequence of the result obtained in the first written test — Reexamination — Equal treatment — Reclassification of a fixed-term employment contract as a contract for an indefinite period — Non-renewal of a fixed-term contract as a member of the temporary staff — Action for annulment — Action for damages)

(2013/C 46/48)

Language of the case: French

Parties

Applicant: AI (represented: initially by M. Erniquin, lawyer, and subsequently by M. Erniquin and L. N'Gapou, lawyers)

Defendant: Court of Justice of the European Union (represented by: A. V. Placco, Agent)

Re:

Civil service — First, application for the annulment of the deliberations of the Selection Board concerning the results of the French test in internal competition on the basis of tests No CJ 12/09 and, to the extent necessary, annulment of the contracts and appointments of the persons who passed that competition and, second, application for the annulment of the decision not to renew the applicant's temporary staff contract, and application for compensation for damage.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders AI to bear her own costs and to pay those incurred by the Court of Justice of the European Union.*

([1]) OJ C 13, 15.1.2011, p. 39.

Judgment of the Civil Service Tribunal (First Chamber) of 11 December 2012 — Cocchi and Falcione v Commission

(Case F-122/10) ([1])

(Civil service — Officials — Pension — Transfer of pension rights acquired under a national pension — Withdrawal of a transfer proposal — Measure not having conferred subjective rights or other similar benefits)

(2013/C 46/49)

Language of the case: French

Parties

Applicants: Giorgio Cocchi (Wezembeek-Oppem, Belgium) and Nicola Falcione (Brussels, Belgium) (represented by: S. Orlandi and J.-N. Louis, lawyers)

Defendant: European Commission (represented by: D. Martin and J. Baquero Cruz, acting as Agents)

Re:

Civil service — Annulment of the decision to withdraw a proposal relating to transfer of the applicants' pension rights when already accepted by them

Operative part of the judgment

The Tribunal:

1. *The European Commission's decisions of 12 and 23 February 2010 are annulled in so far as they withdraw the proposals put to Mr Cocchi and Mr Falcione indicating the result in additional pension annuities to be generated by a potential transfer of rights;*

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

3. *Order the European Commission to bear its own costs and to pay one-third of those incurred by Mr Cocchi and Mr Falcione;*

4. *Orders Mr Cocchi and Mr Falcione to bear two-thirds of their costs.*

([1]) OJ C 63, 26.2.11, p. 34.

Judgment of the Civil Service Tribunal (First Chamber) of 20 November 2012 — Soukup v Commission

(Case F-1/11) ([1])

(Civil service — Open competition — Non-inclusion on the reserve list — Evaluation of the oral test)

(2013/C 46/50)

Language of the case: French

Parties

Applicant: Zdenek Soukup (Luxembourg, Luxembourg) (represented: initially by É. Boigelot and S. Woog, lawyers, and subsequently by É. Boigelot, lawyer)

Defendant: European Commission (represented: initially by B. Eggers and P. Pecho, acting as Agents, and subsequently by B. Eggers, acting as Agent)

Re:

Civil service — Application for annulment of the decision of the selection board of Open Competition EPSO/AD/144/09 not to enter the applicant on the reserve list and the decision to enter another candidate on that list, and compensation for the material and non-material damage thereby suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 72, 5.3.2011, p. 36.

Judgment of the Civil Service Tribunal (Second Chamber) of 13 December 2012 — AX v ECB

(Joined Cases F-7/11 and F-60/11) ([1])

(Civil service — ECB Staff — Disciplinary proceedings — Suspension of a staff member without reduction of his basic salary — Withdrawal of a decision — Rights of the defence — Access to the file — Statement of reasons — Reasons for a decision — Allegation of breach of professional duties — Serious misconduct)

(2013/C 46/51)

Language of the case: English

Parties

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

Defendant: European Central Bank (ECB) (represented by: in Case F-7/11 by P. Embley and E. Carlini, Agents, assisted by B. Wägenbaur, lawyer and in Case F-60/11, by P. Embley and M. López Torres, Agents, assisted by B. Wägenbaur, lawyer)

Re:

Civil service — Application for annulment of the defendant's decision suspending the applicant with effect from 5 August 2010 and compensation for non-material damage suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the actions in Cases F-7/11 and F-60/11;*

2. *Declares that AX must bear his own costs and orders him to pay the costs incurred by the European Central Bank.*

([1]) OJ C 152, 21.5.2011, p. 33 and OJ C 211, 16.7.2011, p. 35.

Judgment of the Civil Service Tribunal (First Chamber) of 20 November 2012 — Ghiba v Commission

(Case F-10/11) ([1])

(Civil service — Internal competition — Non-admission to participate in a competition — Eligibility conditions — Concept of services attached to the Commission)

(2013/C 46/52)

Language of the case: French

Parties

Applicant: Dorina Maria Ghiba (Brussels, Belgium) (represented by: C. Mourato, lawyer)

Defendant: European Commission (represented by: initially B. Eggers and P. Pecho, acting as Agents, then B. Eggers, acting as Agent)

Intervener in support of the defendant: Council of the European Union (represented by: M. Bauer and J. Herrmann, acting as Agents)

Re:

Civil service — Annulment of the decision of the selection board for competition COM/INT/EU2/AST3 to reject the applicant's candidature on the ground that it did not meet the eligibility requirements stipulated in the notice of competition.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mrs Ghiba to bear her own costs and to pay the costs incurred by the European Commission;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 95, 26.3.2011, p. 14.

Judgment of the Civil Service Tribunal (First Chamber) of 5 December 2012 — BA v Commission

(Case F-29/11) ([1])

(Civil service — Open competition — Competition notice EPSO/AD/147/09 — Creation of a reserve list for the recruitment of administrators having Romanian citizenship — In-depth knowledge of the official language of Romania — Hungarian language minority in Romania — Not admitted to the oral test — Principles of equal treatment and non-discrimination — Scope)

(2013/C 46/53)

Language of the case: French

Parties

Applicant: BA (Wezembeek-Oppem, Belgium) (represented: initially by S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers and subsequently by S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Commission (represented: initially by B. Eggers and P. Pecho, acting as Agents, and subsequently by B. Eggers, acting as Agent)

Re:

Civil service — Action for annulment of the selection board's decision in competition EPSO/AD/147/09-RO not to admit the applicant to the oral test in that competition.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders BA to bear her own costs and to pay the costs incurred by the European Commission.*

([1]) OJ C 173, 11.6.2011, p. 16.

Judgment of the Civil Service Tribunal (Second Chamber) of 13 December 2012 — Honnefelder v Commission

(Case F-42/11) ([1])

(Civil service — Open competition — Annulment of the decision of a selection board — Implementation of a judgment — Principle of legality — Plea of illegality against a decision to reopen the procedure for an open competition)

(2013/C 46/54)

Language of the case: German

Parties

Applicant: Stephanie Honnefelder (Brussels, Belgium) (represented by: C. Bode, lawyer)

Defendant: European Commission (represented initially by B. Eggers and P. Pecho, Agents, and subsequently by B. Eggers, lawyer)

Re:

Civil service — Application for annulment of the decision not to include the applicant on the reserve list for competition EPSO/AD/26/05

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Honnefelder to bear two-thirds of her own costs.*

3. *Orders the European Commission to bear its own costs and to pay one third of Ms Honnefelder's costs.*

([1]) OJ C 183, 25.6.2011, p. 34.

Judgment of the Civil Service Tribunal (Second Chamber) of 17 July 2012 — BG v European Ombudsman

(Case F-54/11) ([1])

(Civil service — Disciplinary measure — Disciplinary sanction — Removal from post — Existence of a preliminary investigation before the national criminal courts at the time of adoption of the decision to remove the applicant from her post — Equal treatment for men and women — Prohibition of the dismissal of a pregnant worker during the period from the beginning of pregnancy to the end of maternity leave)

(2013/C 46/55)

Language of the case: French

Parties

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

Defendant: European Ombudsman (represented by: J. Sant'Anna, Agent, D. Waelbroeck and A. Duron, lawyers)

Re:

Civil service — Application for annulment of the decision to apply to the applicant the disciplinary measure of dismissal without loss of pension rights. Consequently, a claim, primarily, to restore the applicant to her post and, in the alternative, to grant her a sum corresponding to the remuneration which she would have received between the date of effect of the dismissal and the date at which she will reach retirement age. In any event, the grant of a sum to the applicant in respect of the non-material damage suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action brought by BG;*

2. *Orders BG to bear her own costs and to pay the costs incurred by the European Ombudsman.*

([1]) OJ C 204, 9.7.2011, p. 30.

Judgment of the Civil Service Tribunal (Second Chamber) of 23 October 2012 — Eklund v Commission

(Case F-57/11) ([1])

(Civil service — Recruitment — Open competition — Inclusion on the reserve list — Offer of employment made to a person on a reserve list — Conditions of admission — Professional experience acquired after graduation — Respective powers of the selection board and the Appointing Authority — Acceptance of the offer of employment — Withdrawal of the offer of employment)

(2013/C 46/56)

Language of the case: Italian

Parties

Applicant: Gustav Eklund (Taino, Italy) (represented by: B. Cortese and C. Cortese, lawyers)

Defendant: European Commission (represented by: B. Eggers. A. Aresu and P. Pecho, acting as Agents, then B. Eggers and G. Gattinara, acting as Agents and A. Dal Ferro, lawyer)

Re:

Civil service — Application for annulment of the Commission's decision not to give effect to the applicant's acceptance of the post of probationary official (assistant) with the Joint Research Centre as technical assistant and to withdraw that offer, and also a claim for compensation for material and non-material damage.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 211, 16.7.2011, p. 33.

Judgment of the Civil Service Tribunal (Second Chamber) of 20 June 2012 — Menidiatis v Commission

(Case F-79/11) ([1])

(Civil Service — Officials — Recruitment — Rejection of application — Implementation of the judgment annulling the decision — Reasonable time — Individual implementing measures — Loss of opportunity)

(2013/C 46/57)

Language of the case: French

Parties

Applicant: Andreas Menidiatis (Rhode-Saint-Genèse, Belgium) (represented by: S. Pappas, lawyer)

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

Re:

Civil Service — Application for the payment of an amount of compensation to the applicant for material and non-material damage allegedly suffered because of the failure to take measures to implement the judgment in Case F-128/07

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 311, 22.10.2011, p. 47.

Judgment of the Civil Service Tribunal (First Chamber) of 11 December 2012 — Vienne v Parliament

(Case F-97/11) ([1])

(Civil service — Financial rules — Family allowances — Household allowance — End of entitlement to household allowance — Dissolution of marriage)

(2013/C 46/58)

Language of the case: French

Parties

Applicant: Philippe Vienne (Moutfort, Luxembourg) (represented by: P. Nelissen Grade and G. Leblanc, lawyers)

Defendant: European Parliament (represented by: M. Ecker and S. Alves, acting as Agents)

Re:

Civil service — Application for annulment of the decision of the Parliament as to the date on which change of marital status took effect to be taken into consideration for the purposes of withdrawing the household allowance following the civil judgment declaring the applicant's divorce

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Vienne to bear his own costs and to pay those incurred by the European Parliament.*

([1]) OJ C 347, 26.11.11, p. 47.

Judgment of the Civil Service Tribunal (Second Chamber) of 13 December 2012 — Mileva v Commission

(Case F-101/11) ([1])

(Civil service — Open competition — Notice of competition EPSO/AD/188/10 — Non-inclusion on the reserve list — Composition of the selection board — Permanent and non-permanent members)

(2013/C 46/59)

Language of the case: French

Parties

Applicant: Tzena Mileva (Paris, France) (represented: initially by E. Boigelot, lawyer, and subsequently by G. Generet, lawyer)

Defendant: European Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Civil service — Application for the annulment of the decision of the selection board in Open Competition EPSO/AD/188/10 — INTERPRETERS for BULGARIAN (BG) not to include the applicant on the reserve list for that competition and application for damages for material and non-material damage.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Mileva to bear her own costs and to pay those incurred by the European Commission.*

([1]) OJ C 6, 7.1.2012, p. 25.

Judgment of the Civil Service Tribunal (Second Chamber) of 11 December 2012 — Ntouvas v ECDC

(Case F-107/11) [1]

(Civil service — Contract staff — 2010 appraisal procedure — Application for annulment of the appraisal report)

(2013/C 46/60)

Language of the case: English

Parties

Applicant: Ioannis Ntouvas (Sundbyberg, Sweden) (represented by: E. Mylonas, lawyer)

Defendant: European Center for Disease Prevention and Control (ECDC) (represented by: R. Trott, Agent, and D. Waelbroeck, lawyer)

Re:

Civil service — Application for annulment of the applicant's appraisal report for the period of 1 January to 31 December 2010

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;;*

2. *Orders Mr Ntouvas to bear his own costs and to pay the costs incurred by the European Center for Disease Prevention and Control.*

[1] OJ C 25, 28.1.2012, p. 69.

Order of the Civil Service Tribunal (Second Chamber) of 23 October 2012 — Possanzini v Frontex

(Case F-61/11) [1]

(Civil service — Temporary staff — Procedure relating to the renewal of a temporary staff contract — Communication to the staff member of the negative opinion of the reporting officer as regards renewal — Act adversely affecting an official — None — Application for annulment of unfavourable comments on performance in annual appraisal reports — Action manifestly inadmissible)

(2013/C 46/61)

Language of the case: French

Parties

Applicant: Daniele Possanzini (Warsaw, Poland)) (represented by: S. Pappas, lawyer)

Defendant: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) (represented by: S. Vuorensola and H. Caniard, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

Civil Service — Application for annulment of the decision to revoke the decision to renew the applicant's contract of employment as a member of the temporary staff and for annulment of some parts of his assessment reports for the period from August 2006 to December 2009

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Possanzini shall bear his own costs and pay the costs incurred by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.*

[1] OJ C 226, 30.7.2011, p. 32.

Order of the Civil Service Tribunal (Second Chamber) of 23 November 2012 — Vacarescu v Commission

(Case F-122/11)

(Civil service — Lateness — Manifest inadmissibility)

(2013/C 46/62)

Language of the case: English

Parties

Applicant: Dragos-Lucian Vacarescu (Brussels, Belgium) (represented by: R.-C. Radu, lawyer)

Defendant: European Commission

Re:

Civil service — Application for annulment of the decision of the European Commission of 18 April 2011 by which he was refused the payment of the daily allowance provided for in Article 10 of Annex VII to the Staff Regulations of Officials of the European Union

Operative part of the order

1. *The action is dismissed.*

2. *Mr Vacarescu shall bear his own costs.*

Order of the Civil Service Tribunal (First Chamber) of 3 December 2012 — BT v Commission

(Case F-45/12) [1]

(Civil service — Contract staff — Non-renewal of the contract — Insufficient grounds stated for the action — Action manifestly inadmissible)

(2013/C 46/63)

Language of the case: English

Parties

Applicant: BT (Bucharest, Romania)) (represented by: N. Visan, lawyer)

Defendant: European Commission (represented by: J. Currall and D. Martin, Agents)

Re:

Civil service — Application for annulment of the decision of the Commission not to renew the applicant's contract as a member of the contract staff

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *BT must bear her own costs and is ordered pay the costs incurred by the European Commission.*

[1] OJ C 200, 7.7.2012, p. 21.

Order of the Civil Service Tribunal (Second Chamber) of 16 November 2012 — Ciora v Commission

(Case F-50/12)

(Civil Service — Notice of competition EPSO/AD/198/10 — Non-admission to the competition — Action — Failure to comply with the pre-litigation procedure — Manifest inadmissibility)

(2013/C 46/64)

Language of the case: Romanian

Parties

Applicant: Cătălin Ion Ciora (Bucharest, Romania) (represented by: M. Bondoc, lawyer)

Defendant: European Commission

Re:

Civil Service — Action for annulment of the decision of the selection board for competition EPSO/AD/198/10 Heads of unit with Romanian citizenship (AD9) not to accept the applicant's application.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible;*

2. *Mr Ciora is to bear his own costs.*

Order of the Civil Service Tribunal (Second Chamber) of 5 December 2012 — Scheidemann v Parliament

(Case F-109/12)

(Civil service — Officials — Interinstitutional transfer during the promotion exercise during which the civil servant was eligible for promotion in her institution of origin — Application to benefit from a retroactive promotion — Specific rejection decision which took effect after the implicit decision — Time-limit for lodging a complaint — Out of time — Out of time)

(2013/C 46/65)

Language of the case: French

Parties

Applicant: Sabine Scheidemann (Berlin, Germany) (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Parliament

Re:

Civil service — Application to annul the decision of the Parliament to reject the applicant's application to be promoted retroactively from 1 January 2010.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible;*

2. *Mrs Scheidemann shall bear her own costs.*

Order of the Civil Service Tribunal (First Chamber) of 12 December 2012 — AD v Commission

(Case F-117/12)

(Civil service — Lateness — Manifest inadmissibility)

(2013/C 46/66)

Language of the case: French

Parties

Applicant: AD (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Commission

Re:

Civil service — Application for annulment of the decision not to grant diplomatic status to the applicant's partner and the decision not to pay certain travel costs for that partner, and a claim for damages

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*
2. *AD shall bear his own costs.*

Order of the Civil Service Tribunal of 5 September 2012 — Skovbjerg v Commission

(Case F-37/11) [1]

(2013/C 46/67)

Language of the case: French

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

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[1] OJ C 173, 11.6.2011, p. 16.

Order of the Civil Service Tribunal of 8 March 2012 — BE v Commission

(Case F-49/11) [1]

(2013/C 46/68)

Language of the case: English

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

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[1] OJ C 186, 25.6.2011, p. 36.

Order of the Civil Service Tribunal of 12 December 2012 — Chatzidoukakis v Commission

(Case F-55/11) [1]

(2013/C 46/69)

Language of the case: Greek

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

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[1] OJ C 252, 27.8.11, p. 56.

Order of the European Union Civil Service Tribunal of 20 June 2012 — Westeren v Commission

(Case F-64/11) [1]

(2013/C 46/70)

Language of the case: English

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

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[1] OJ C 252, 27.08.2011, p. 57

Order of the Civil Service Tribunal of 26 June 2012 — Ciora v Commission

(Case F-11/12)

(2013/C 46/71)

Language of the case: Romanian

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

Order of the Civil Service Tribunal of 3 December 2012 — de Bruin v EIT

(Case F-80/12) [1]

(2013/C 46/72)

Language of the case: English

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

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[1] OJ C 319, 20.10.12, p. 18.

Order of the Civil Service Tribunal of 12 December 2012 — Goddijn v Europol

(Case F-106/12)

(2013/C 46/73)

Language of the case: Dutch

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

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