ISSN 1977-091X

Official Journal of the European Union

C 79

English edition

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Volume 56

16 March 2013

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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 79/01)

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

OJ C 71, 9.3.2013

Past publications

OJ C 63, 2.3.2013

OJ C 55, 23.2.2013

OJ C 46, 16.2.2013

OJ C 38, 9.2.2013

OJ C 32, 2.2.2013

OJ C 26, 26.1.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Fourth Chamber) of 17 January 2013 (request for a preliminary ruling from the Vrhovno sodišče — Slovenia) — Jožef Grilc v Slovensko zavarovalno združenje GIZ

(Case C-541/11) [1]

(Article 104(3), second subparagraph, of the Rules of Procedure — Insurance against civil liability in respect of the use of motor vehicles — Directive 2000/26/EC — Compensation bodies — Claim for compensation brought before a national court)

(2013/C 79/02)

Language of the case: Slovenian

Referring court

Vrhovno sodišče

Parties to the main proceedings

Applicant: Jožef Grilc

Defendant: Slovensko zavarovalno združenje GIZ

Re:

Request for a preliminary ruling — Vrhovno sodišče — Interpretation of Article 6(1), first subparagraph, of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) (OJ 2000 L 181, p. 65) — Meaning of 'claim for compensation' and 'responsible for providing compensation' — Capacity of the compensation body to be a defendant in legal proceedings

Operative part of the order

Article 6(1) of Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive) must be interpreted as meaning that, on the one hand, the injured party may claim compensation for the harm suffered from the compensation body in accordance with the conditions set out in that article and, on the other, that claim must necessarily first have been submitted to the compensation body, without prejudice to the injured party's right, if necessary, subsequently to bring an action before the court having territorial jurisdiction if that claim has been rejected by that compensation body.

[1] OJ C 25, 28.1.2012.

Order of the Court (Third Chamber) of 17 January 2013 — Annunziata Del Prete v Giorgio Armani SpA, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-261/12 P) [1]

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Reputation — Figurative sign 'AJ AMICI JUNIOR' — Opposition by the holder of the earlier national figurative mark AJ ARMANI JEANS and of the earlier national word mark ARMANI JUNIOR)

(2013/C 79/03)

Language of the case: Italian

Parties

Appellant: Annunziata Del Prete (represented by: R. Bocchini, avvocato)

Other parties to the proceedings: Giorgio Armani SpA (represented by: M. Rapisardi, avvocato), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock and F. Mattina, acting as Agents)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 27 March 2012 in Case T-420/10 *Armani* v *OHIM*, by which the General Court annulled the decision of the Second Board of Appeal of OHIM of 8 July 2010 concerning opposition proceedings between Giorgio Armani SpA and Annunziata Del Prete (Case R 1360/2009-2) — Likelihood of confusion — Breach of Article 8(1)(b) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1)

Operative part of the order

1. *The appeal is dismissed;*

2. *Annunziata Del Prete shall pay the costs.*

([1]) OJ C 227, 28.7.2012.

Reference for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 31 October 2012 — Sándor Nagy v Hajdú-Bihar Megyei Kormányhivatal

(Case C-488/12)

(2013/C 79/04)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Sándor Nagy

Defendant: Hajdú-Bihar Megyei Kormányhivatal

Questions referred

1. Can Article 30 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that that provision is intended to guarantee the possibility of a legal remedy only for unlawful and unjustified dismissal?

2. Does that provision mean that an employer is bound to provide the employee with reasons in writing on dismissal and the dismissal will then not be unjustified?

3. Does failure to communicate reasons in itself make the measure unlawful or may the employer state reasons subsequently in the course of any employment litigation?

Reference for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 31 October 2012 — Lajos Tiborné Böszörményi (Debrecen, Hungary) v Mezőgazdasági és Vidékfejlesztési Hivatal (Budapest, Hungary)

(Case C-489/12)

(2013/C 79/05)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Lajos Tiborné Böszörményi (Debrecen, Hungary)

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal (Budapest, Hungary)

Questions referred

1. Can Article 30 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that that provision is intended to guarantee the possibility of a legal remedy only for unlawful and unjustified dismissal?

2. Does that provision mean that an employer is bound to provide the employee with reasons in writing on dismissal and the dismissal will then not be unjustified?

3. Does failure to communicate reasons in itself make the measure unlawful or may the employer state reasons subsequently in the course of any employment litigation?

Reference for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 31 October 2012 — Gálóczhi-Tömösváry Róbert v Mezőgazdasági és Vidékfejlesztési Hivatal

(Case C-490/12)

(2013/C 79/06)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Gálóczhi-Tömösváry Róbert

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal

Questions referred

1. Can Article 30 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that that provision is intended to guarantee the possibility of a legal remedy only for unlawful and unjustified dismissal?

2. Does that provision mean that an employer is bound to provide the employee with reasons in writing on dismissal and the dismissal will then not be unjustified?

3. Does failure to communicate reasons in itself make the measure unlawful or may the employer state reasons subsequently in the course of any employment litigation?

Reference for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 31 October 2012 — Magdolna Margit Szabadosné Bay v Mezőgazdasági és Vidékfejlesztési Hivatal

(Case C-491/12)

(2013/C 79/07)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Magdolna Margit Szabadosné Bay

Defendant: Mezőgazdasági és Vidékfejlesztési Hivatal

Questions referred

1. Can Article 30 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that that provision is intended to guarantee the possibility of a legal remedy only for unlawful and unjustified dismissal?

2. Does that provision mean that an employer is bound to provide the employee with reasons in writing on dismissal and the dismissal will then not be unjustified?

3. Does failure to communicate reasons in itself make the measure unlawful or may the employer state reasons subsequently in the course of any employment litigation?

Reference for a preliminary ruling from the Debreceni Munkaügyi Bíróság (Hungary) lodged on 20 November 2012 — Ványai Józsefné v Nagyrábé Község Polgármesteri Hivatal

(Case C-526/12)

(2013/C 79/08)

Language of the case: Hungarian

Referring court

Debreceni Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Józsefné Ványai

Defendant: Nagyrábé Község Polgármesteri Hivatal

Questions referred

1. Can Article 30 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that that provision is intended to guarantee the possibility of a legal remedy only for unlawful and unjustified dismissal?

2. Does that provision mean that an employer is bound to provide the employee with reasons in writing on dismissal and the dismissal will then not be unjustified?

3. Does failure to communicate reasons in itself make the measure unlawful or may the employer state reasons subsequently in the course of any employment litigation?

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 7 December 2012 — Centro Hospitalar de Setúbal, EPE, Serviço de Utilização Comum dos Hospitais (SUCH) v Eurest Portugal — Sociedade Europeia de Restaurantes Lda

(Case C-574/12)

(2013/C 79/09)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Applicants: Centro Hospitalar de Setúbal, EPE, Serviço de Utilização Comum dos Hospitais (SUCH)

Defendant: Eurest Portugal — Sociedade Europeia de Restaurantes Lda

Questions referred

1. Is it compatible with Community doctrine on in-house procurements that a public hospital, having dispensed with the procedure provided for by law for concluding the relevant contract, should award to a non-profit organisation, which it is in partnership with, and whose aim is to carry out a public service mission in the area of health with a view to enhancing the effectiveness and efficiency of its partners, a contract for the provision of hospital catering services within its area of competence, thereby transferring to that organisation responsibility for its functions in that area, if, under the provisions of its statutes, partners of that organisation may be, not only entities from the public sector, but also those from the social sector, given that on the date of the award, out of a total of 88 partners, there were 23 non-governmental organisations (IPSS) from the social sector, all of which were non-profit making and included charitable associations?

2. Can it be considered that the contractor is subordinate to the decisions of its public partners, in that the latter, on their own or as a whole, exercise a control which is similar to that which they exercise over their own departments, if, under the provisions of its statutes, the contractor must ensure that the majority of the voting rights are held by member partners and are subject to the management, supervision and guidance powers of the member of the Government responsible for health, given that the majority of the Management Board is also made up public partners?

3. In the light of Community doctrine on in-house procurements, can it be considered that the requirement of 'control which is similar' has been fulfilled, if, under the provisions of its statutes, the contractor is subject to the guidance powers of the member of the Government responsible for health who is in charge of appointing the President and Vice-President of the Management Board, approving the resolutions of the General Meeting on taking out loans involving a net debt equal to or greater than 75 % of the equity recorded in the previous financial year, approving resolutions on amendments to the statutes, approving resolutions of the General Meeting on the dissolution of the contractor and determining how the assets are to be distributed in the event of a dissolution?

4. Does the fact that the contractor is a large and complex organisation, which operates throughout Portuguese territory, is in partnership with most departments and institutions of the SNS, including the majority of the country's hospitals, has an estimated turnover in the order of EUR 90 000 000, has a business that includes varied and complex areas of activity, with very impressive activity indicators, and more than 3 300 workers, and participates in two additional enterprise groupings and in two commercial companies, mean that its relations with its public partners may be described as merely internal or in-house?

5. Does the fact that the contractor, under the provisions of its statutes, is able to provide services on a competitive basis to non-partner public entities or private entities, be they national or foreign (i) provided that there is no resulting loss or harm caused to the partners, and that it is beneficial to them and to the contractor, whether economically or in terms of enhancement or technical performance, and (ii) provided that the provision of those services does not represent a volume of invoicing that is greater than 20 % of its overall annual turnover recorded in the previous financial period, mean that the requirement for in-house procurements, in particular the requirement for the 'essential purpose of the activity' under Article 5(2)(b) of the CCP, has been fulfilled?

6. If the response to any of the above questions is not in itself sufficient to conclude whether or not the requirements under Article 5(2) of the CCP have been fulfilled having regard to Community doctrine on in-house procurements, does an overall assessment of these responses imply the existence of that type of procurement?

Request for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Wien (Austria), lodged on 10 December 2012 — Michaela Hopfgartner

(Case C-577/12)

(2013/C 79/10)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Wien

Parties to the main proceedings

Applicant: Michaela Hopfgartner

Defendant authority: Finanzamt Wien

Question referred

Does European Union law, in particular the provisions on the freedom to provide services (Article 56 et seq. TFEU), preclude a rule of national law under which an extension of the right to family allowance exists only if — along with other preconditions — the place in which voluntary practical help is provided is situated within national territory?

Reference for a preliminary ruling from the Arbeidshof te Antwerpen (Belgium) lodged on 14 December 2012 — Lyreco Belgium NV v Sophie Rogiers

(Case C-588/12)

(2013/C 79/11)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Applicant: Lyreco Belgium NV

Defendant: Sophie Rogiers

Question referred

Do the provisions of Clause 1 and Clause 2, paragraph 4, of the framework agreement concluded on 14 December 1995 by the general cross-industry organisations, UNICE, CEEP and the ETUC, on parental leave, contained in the Annex to Council Directive 96/34/EC [1] of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, preclude the protective award which is payable to the worker who was bound to his employer by a full-time employment contract of indefinite duration, and whose employment contract is terminated unilaterally by that employer without urgent cause or sufficient ground during a period of reduction of working hours, on the grounds of the taking of parental leave, by 20 % or 50 %, from being calculated with reference to the salary payable during that period of reduction, where the same worker would be entitled to a protective award calculated by reference to the full-time salary if he had reduced his working hours by 100 %[?]

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[1] OJ 1996 L 145, p. 4.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain) lodged on 18 December 2012 — Compañía Europea de Viajeros España, S.A. v Tribunal Económico Administrativo Regional de Madrid (Ministerio de Economía y Hacienda)

(Case C-592/12)

(2013/C 79/12)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicant: Compañía Europea de Viajeros España, S.A.

Defendant: Tribunal Económico Administrativo Regional de Madrid (Ministerio de Economía y Hacienda)

Questions referred

1. Is it the case that Article 3(2) of Council Directive 92/12/EEC [1] of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and, in particular, the requirement of a 'specific purpose' for a particular levy

   (a) must be interpreted as requiring that the purpose pursued is not capable of being achieved by means of another harmonised levy?

(b) must be interpreted as meaning that there is a purely budgetary purpose when a particular levy has been established simultaneously with the transfer of certain competences to certain Autonomous Communities to which, in turn, are transferred the proceeds of the levy with the aim of covering, in part, the costs associated with the competences transferred, it being permissible to lay down rates of levy that vary as between Autonomous Communities?

(c) If the previous question is answered in the negative, must the term 'specific purpose' be interpreted as meaning that the purpose must be exclusive or, on the contrary, that it permits the attainment of various differentiated aims, among which is also included the merely budgetary aim of obtaining financing for certain competences?

(d) If the answer to the previous question is that the attainment of various aims is permitted, what degree of relevance must be displayed by a particular objective, for the purposes of Article 3(2) of Directive 92/12, in order to fulfil the requirement that the levy should meet a 'specific purpose' in the sense accepted by the case-law of the Court of Justice and what would be the criteria for defining the principal purpose as compared with the ancillary purpose?

2. Does Article 3(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and, in particular, the condition of complying with the tax rules applicable to excise duties or VAT for the determination of chargeability,

(a) preclude an indirect non-harmonised levy, such as the IVMDH, which becomes chargeable at the time of the retail sale of the fuel to the final consumer, in contrast to the harmonised levy (Impuesto sobre Hidrocarburos, which becomes chargeable when the products leave the last tax warehouse), or value added tax which, although also becoming chargeable at the time of the final retail sale, is payable at each stage of the production and distribution process, since it does not — to use the terms of the judgment in *EKW and Wein & Co* [2] (paragraph 47) — accord with the 'general scheme' of one or other of the abovementioned taxation techniques as structured by the Community legislation?

(b) In the event that the foregoing question is answered in the negative, must the interpretation be that the said compliance condition is fulfilled, without the need for any coinciding of the effects of the chargeability, on account of the mere circumstance that the non-harmonised indirect levy, in this case the IVMDH, does not disrupt — in the sense that it does not impede or render difficult — the normal functioning of the chargeability of excise duties or VAT?

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[1] OJ 1992 L 76, p. 1.
[2] Judgment of 9 March 2000 (Case C-437/97, ECR I-1157).

Request for a preliminary ruling from the Verfassungsgerichtshof (Austria) lodged on 19 December 2012 — Kärntner Landesregierung and Others

(Case C-594/12)

(2013/C 79/13)

Language of the case: German

Referring court

Verfassungsgerichtshof

Parties to the main proceedings

Applicants: Kärntner Landesregierung, Michael Seitlinger, Christof Tschohl, Andreas Krisch, Albert Steinhauser, Jana Herwig, Sigrid Maurer, Erich Schweighofer, Hannes Tretter, Scheucher Rechtsanwalt GmbH, Maria Wittmann-Tiwald, Philipp Schmuck, Stefan Prochaska

Other party to the proceedings: The Federal Government

Questions referred

1. **Concerning the validity of acts of institutions of the European Union:**

Are Articles 3 to 9 of Directive 2006/24/EC [1] compatible with Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union?

2. **Concerning the interpretation of the Treaties:**

2.1. In the light of the explanations relating to Article 8 of the Charter, which, according to Article 52(7) of the Charter, were drawn up as a way of providing guidance in the interpretation of the Charter and to which due regard must be given by the Verfassungsgerichtshof, must Directive 95/46/EC [2] and Regulation (EC) No 45/2001 [3] be taken into account, for the purposes of assessing the permissibility of interference, as being of equal standing to the conditions under Article 8(2) and Article 52(1) of the Charter?

2.2. What is the relationship between 'Union law', as referred to in the final sentence of Article 52(3) of the Charter, and the directives in the field of the law on data protection?

2.3. In view of the fact that Directive 95/46/EC and Regulation (EC) No 45/2001 contain conditions and restrictions with a view to safeguarding the fundamental right to data protection under the Charter, must amendments resulting from subsequent secondary law be taken into account for the purpose of interpreting Article 8 of the Charter?

2.4. Having regard to Article 52(4) of the Charter, does it follow from the principle of the preservation of higher levels of protection in Article 53 of the Charter that the limits applicable under the Charter in relation to permissible restrictions must be more narrowly circumscribed by secondary law?

2.5. Having regard to Article 52(3) of the Charter, the fifth paragraph in the preamble thereto and the explanations in relation to Article 7 of the Charter, according to which the rights guaranteed in that article correspond to those guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, can assistance be derived from the case-law of the European Court of Human Rights for the purpose of interpreting Article 8 of the Charter such as to influence the interpretation of that latter article?

(1) Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54).

(2) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31).

(3) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Action brought on 20 December 2012 — European Commission v Republic of Poland

(Case C-598/12)

(2013/C 79/14)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, O. Beynet and K. Herrmann, 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 Article 2(1), (22), (32) and (33), Article 3(7), (8) and (13), Article 6(1) and (3), Article 9 as well as Articles 13 to 14 and Articles 17 to 23, Articles 10 and 11, Article 16(1) and (2), Article 26(2)(b), (c) and (d), third and fourth sentences, Article 29, Article 38(1) to (4), Article 39(1) to (4) and Article 40(1) to (3) and (5) to (7) of, and points 1 and 2 of Annex I to, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, (1) and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 49(1) 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 2009/72/EC at the daily rate of EUR 84 378,24 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 2009/72/EC expired on 3 March 2011.

(1) OJ 2009 L 211, p. 55.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 24 December 2012 — Welmory Sp. z o.o. v Dyrektor Izby Skarbowej w Gdańsku

(Case C-605/12)

(2013/C 79/15)

Language of the case: Polish

Requesting court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Welmory Sp. z o.o.

Respondent: Dyrektor Izby Skarbowej w Gdańsku

Question referred

For the purposes of the taxation of services supplied by company A, which is established in Poland, to company B, which is established in another Member State of the European Union, in circumstances where company B carries out its economic activity by making use of company A's infrastructure, is the fixed establishment within the meaning of Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] situated in the place in which company A is established?

[1] OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Administrativen sad Sofia-grad (Bulgaria) lodged on 10 January 2013 — Gena Ivanova Cholakova v Osmo rayonno upravlenie pri Stolichna direktsiya na vatreshnite raboti

(Case C-14/13)

(2013/C 79/16)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Gena Ivanova Cholakova

Defendant: Osmo rayonno upravlenie pri Stolichna direktsiya na vatreshnite raboti

Questions referred

1. Must Article 21(1) of the Treaty on the Functioning of the European Union, in conjunction with Articles 67 and 72 of that Treaty and in the light of the limitations permitted under European Union law on the freedom of European Union citizens to move freely within the territory of the Member States, be interpreted as not precluding a provision of national law of a Member State, such as the one at issue in the case in the main proceedings, namely point 5 of Article 63(1) of the Zakon za ministerstvoto na vatreshnite raboti (Law on the Ministry for Home Affairs), pursuant to which the police authorities are authorised to order the detention, for a maximum of 24 hours, of a citizen of a Member State in order to establish his identity following a check which does not fall within one the cases laid down in the law of that Member State in which such checks are permitted to enable the police authorities to identify an individual, and which is not expressly linked to the finding or prevention of a criminal act or an administrative infringement, or the protection of public order or domestic security?

2. Does it result from Article 52(1) of the Charter of Fundamental Rights of the European Union, interpreted in conjunction with the limitation on the rights laid down in Articles 6 and 45(1) of that Charter and in accordance with the European Union law principle of protection from arbitrary or disproportionate interference with the freedom of action of natural persons, that a provision of national law such as the one at issue in the case in the main proceedings, namely point 5 of Article 63(1) of the Zakon za ministerstvoto na vatreshnite raboti in relation to police detention for a maximum of 24 hours, may be applied — provided that a national of a Member State cannot be identified in accordance with the procedures laid down by law — pursuant to which such detention is permissible under the following conditions:

   A. the police authorities have discretion to order such a measure where it is impossible to identify the individual on the basis of an identification document, through another person whose identify is already known or by any other permissible means;

   B. the provision neither governs how to assess whether it is necessary to identify the individual, nor provides for an assessment of the individual's conduct or whether, in the circumstances of the case, it has become necessary for the police authorities to make use of the authority made available to them under law;

   C. the identification of the individual is not based expressly on the cases in which the law authorises measures to be adopted to identify an individual; identification is also possible by merely consulting an information system or by another reliable means other than identification mesaures;

   D. the application of the provision is subject to review by the courts only in the circumstances set out therein, since the exercise of that authority is wholly discretionary?

Request for a preliminary ruling from the Administrativen Sad Sofia-grad (Bulgaria) lodged on 14 January 2013 — 'Maks Pen' EOOD v Direktor na Direktsia 'Obzhalvane i izpalnenie na proizvodstvoto' pri Tsentralno Upravlenie na Natsionalnata Agentsia po Prihodite — gr. Sofia

(Case C-18/13)

(2013/C 79/17)

Language of the case: Bulgarian

Referring court

Administrativen Sad Sofia-grad

Parties to the main proceedings

Applicant: 'Maks Pen' EOOD

Defendant: Direktor na Direktsia „Obzhalvane i izpalnenie na proizvodstvoto"

Questions referred

1. Are circumstances of fact in which the service provider named on the invoice or its subcontractor do not have the personnel, equipment or assets that would be required to provide the service, the costs of actually providing the service are not documented and no such costs are entered in its accounts, and documents submitted as evidence of the reciprocal performance owed and of provision of the service in respect of which a VAT invoice was issued and the right to deduct input tax was exercised, in the form of a contract and a record of acceptance and delivery, were false in so far as concerns the status as issuer of the persons which signed them in the name of the service provider, to be treated as relating to 'tax evasion' for the purposes of the right of deduction under European Union law?

2. Does it follow from the obligation incumbent on a court under European Union law and the case-law of the Court of Justice of the European Union to refuse the right to deduct input tax in the case of tax evasion that a national court also has a duty to establish the existence of tax evasion of its own motion, on the basis of the facts of the main proceedings, to the extent that, taking into account its obligation under national law to give a ruling on the substance of the dispute, to comply with the prohibition on less favourable treatment of the claimant, to observe the principles of the right to an effective legal remedy and legal certainty and to apply the relevant legal provisions of its own motion, it must assess new arguments of fact put before it for the first time, as well as all evidence, including that relating to fictitious transactions, false documents and documents the contents of which are inaccurate?

3. In the context of the obligation of the court to refuse the right to deduct input tax in the event of tax evasion, does it follow from point (a) of the first paragraph of Article 178 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax that the service must actually have been provided by the service provider named on the invoice or its subcontractor in order for the right of deduction to be exercised?

4. Does the requirement under Article 242 of Directive 2006/112 to keep detailed accounts for the purposes of verification of the right to deduct input tax mean that the corresponding national accounting legislation of the Member State in question, which provides for consistency with the international accounting standards applicable under European Union law, must also be observed, or does it refer only to the requirement to keep the VAT accounting documents prescribed in that directive: invoices, VAT returns and recapitulative statements?

   In the event that the second alternative is correct, an answer to the following question will also be required:

   Does it follow from the requirement in point (6) of the first paragraph of Article 226(6) of Directive 2006/112 that invoices must state the 'extent and nature of the services rendered' that, in the case of services, invoices or a document issued in connection with them must contain details of the actual provision of the service, that is to say objective, verifiable facts that serve as proof both that the service was in fact provided and that it was rendered by the service provider named on the invoice?

5. Is Article 242 of Directive 2006/112, which lays down the requirement to keep detailed accounts for the purposes of verifying the right to deduct input tax, in conjunction with Article 63 and Article 273 of that directive, to be interpreted as meaning that it does not preclude a national provision under which a service is deemed to have been provided at the time when the conditions governing recognition of the revenue from that service are satisfied in accordance with the relevant accounting legislation, which provides for consistency with the international accounting standards applicable under European Union law and the principles of accounting evidence for business transactions, the precedence of substance over form and the comparability of revenue and costs?

[1] OJ 2006 L 347, p. 1.

Action brought on 17 January 2013 — European Commission v French Republic

(Case C-23/13)

(2013/C 79/18)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that, by failing to make provision for the collection and treatment of urban waste water in 8 agglomerations with a population equivalent of more than 15 000 in what are regarded as normal areas, the French Republic has failed to fulfil its obligations under Articles 3 and 4 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment; [1]

— order French Republic to pay the costs.

Pleas in law and main arguments

By its application, the Commission claims that France has failed to implement correctly, in 8 agglomerations, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment.

Article 3(1) and Article 4(1) of Directive 91/271 required agglomerations with a population equivalent (p.e.) of more than 15 000 to be provided with collecting systems and to subject waste water to secondary treatment or an equivalent treatment at the latest by 31 December 2000.

As regards urban waste water treatment obligations, Article 4(1) of the directive requires the Member States to ensure that waste water entering collecting systems is subject to secondary treatment or an equivalent treatment before being discharged.

Lastly, the control procedures laid down in Annex I D to the directive make it possible to ascertain whether discharges from urban waste water treatment plants comply with the requirements of the directive pertaining to the discharge of waste water.

[1] OJ 1991 L 135, p. 40.

Order of the President of the Court of 7 January 2013 (reference for a preliminary ruling from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany)) — M, N, O, p, Q v Bundesamt für Migration und Flüchtlinge

(Case C-666/11) [1]

(2013/C 79/19)

Language of the case: German

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

[1] OJ C 73, 10.3.2012.

GENERAL COURT

Judgment of the General Court of 5 February 2013 — Bank Saderat Iran v Council

(Case T-494/10) [1]

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Manifest error of assessment)

(2013/C 79/20)

Language of the case: English

Parties

Applicant: Bank Saderat Iran (Teheran, Iran) (represented: initially by S. Gadhia and S. Ashley, Solicitors, D. Anderson QC and R. Blakeley, Barrister, and subsequently by S. Gadhia, S. Ashley, R. Blakeley and D. Wyatt QC, and lastly by S. Ashley, R. Blakeley and D. Wyatt and by S. Jeffrey and A. Irvine, Solicitors)

Defendant: Council of the European Union (represented by: M. Bishop and R. Liudvinaviciute-Cordeiro, Agents)

Intervener in support of the defendant: European Commission (represented by: S. Boelaert and M. Konstantinidis, Agents)

Re:

Application for annulment of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1), Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413 (OJ 2011 L 319, p. 71), Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (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 No 961/2010 (OJ 2012 L 88, p. 1), in so far as those measures concern the applicant.

Operative part of the judgment

The Court:

1. *Annuls the following measures in so far as they concern Bank Saderat Iran:*

   — *Point 7 of Table B of Annex II to Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP;*

   — *Point 5 of Table B of the Annex to Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran;*

   — *Point 7 of Table I.B of the Annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413;*

   — *Point 7 of Table B of Annex VIII to Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007;*

   — *Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413;*

   — *Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010;*

   — *Point 7 of Table I.B of Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010.*

2. *Orders the effects of Decision 2010/413, as amended by Decision 2010/644 and Decision 2011/783, to be maintained as regards Bank Saderat Iran until the annulment of Regulation No 267/2012 takes effect.*

3. *Dismisses the action as to the remainder.*

4. *Orders the Council of the European Union to bear its own costs and to pay the costs of Bank Saderat Iran.*

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

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[1] OJ C 328, 4.12.2010.

Judgment of the General Court of 31 January 2013 — Spain v Commission

(Case T-540/10) [1]

(Cohesion Fund — Reduction of the financial assistance initially granted from the Cohesion Fund to four project stages concerning the construction of certain sections of the high-speed line linking Madrid and the French border — Time-limit for adopting a decision — Article H(2) of Annex II to Regulation (EC) No 1164/94 — Article 18(3) of Regulation (EC) No 1386/2002 — Additional works or services — Concept of 'unforeseen circumstances' — Article 20(2)(f) of Directive 93/38/EEC)

(2013/C 79/21)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: initially, M. Muñoz Pérez and, subsequently, A. Rubio González, lawyers)

Defendant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Re:

Application, principally, for annulment of Commission Decision C(2010) 6154 of 13 September 2010 reducing the assistance granted from the Cohesion Fund to the project stages 'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo IX-A' (CCI No 2001.ES.16.C.PT. 005), 'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo X-B (Avinyonet del Penedés-Sant Sadurní d'Anoia' (CCI No 2001.ES.16.C.PT. 008), 'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo XI-A and XI-B (Sant Sadurní d'Anoia-Gelida') (CCI No 2001.ES.16.C.PT.009), 'Línea de Alta Velocidad Madrid-Zaragoza-Barcelona-Frontera francesa. Tramo Lleida-Martorell (Plataforma). Subtramo IX-C' (CCI No 2001.ES.16.C.PT.0010) and, alternatively, application to have that decision annulled in part in so far as it refers to the corrections applied to the amendments arising from the exceeding of the noise thresholds (Subsection IX-A), the change of PGOU (General Urban Development Plan) of the Ayuntamiento de Santa Oliva (Spain) (Subsection IX-A) and the differences in the geotechnical conditions (Subsections X-B. XI-A, XI-B and IX-C), reducing the amount of the corrections decided by the Commission by EUR 2 348 201,96.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

[1] OJ C 30, 29.1.2011.

Judgment of the General Court of 31 January 2013 — Present-Service Ullrich v OHIM — Punt-Nou (babilu)

(Case T-66/11) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark babilu — Earlier Community word mark BABIDU — Relative ground for refusal — Likelihood of confusion — Similarity of the services — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 79/22)

Language of the case: English

Parties

Applicant: Present-Service Ullrich GmbH & Co. KG (Erlangen, Germany) (represented by: A. Graf von Kalckreuth and I. Stein, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Punt-Nou, SL (Valencia, Spain) (represented by: I. Sempere Massa, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 November 2010 (Case R 773/2010-2), concerning opposition proceedings between Punt-Nou, SL and Present Service Ullrich GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Present-Service Ullrich GmbH & Co. KG to pay the costs.*

[1] OJ C 89, 19.3.2011.

Judgment of the General Court of 1 February 2013 — Ferrari v OHIM (PERLE')

(Case T-104/11) ([1])

(Community trade mark — International registration designating the European Community — Figurative mark PERLE' — Absolute grounds for refusal — Descriptive character — Lack of distinctive character — Lack of distinctive character acquired through use — Article 7(1)(b) and (c) and Article 7(3) of Regulation (EC) No 207/2009)

(2013/C 79/23)

Language of the case: Italian

Parties

Applicant: Ferrari F.lli Lunelli SpA (Trento, Italy) (represented by: P. Perani and G. Ghisletti, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by G. Mannucci, and subsequently L. Rampini and F. Mattina, acting as Agents)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 8 December 2010 (Case R 1249/2010-2) concerning the international registration, designating the European Community, of the figurative mark PERLE'.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ferrari F.lli Lunelli SpA to pay the costs.*

([1]) OJ C 113, 9.4.2011.

Judgment of the General Court of 4 February 2013 — Marszałkowski v OHIM — Mar-Ko Fleischwaren (WALICHNOWY MARKO)

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

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

(2013/C 79/24)

Language of the case: Polish

Parties

Applicant: Marek Marszałkowski (Sokolniki, Poland) (represented by: C. Sadkowski, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Mar-Ko Fleischwaren GmbH & Co. KG (Blankenheim, Germany) (represented by: O. Ruhl, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 January 2011 (Case R 760/2010-4) relating to opposition proceedings between Mar-Ko Fleischwaren GmbH & Co. KG and Mr Marek Marszałkowski.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Marek Marszałkowski to pay the costs.*

([1]) OJ C 145, 14.5.2011.

Judgment of the General Court of of 31 January 2013 — Spain v Commission

(Case T-235/11) ([1])

(Cohesion Fund — Reduction of the financial assistance initially granted by the Fund to five projects concerning the implementation of certain lines of the high-speed railway network in Spain — Time-limit for the adoption of a decision — Article H(2) of Annex II to Regulation (EC) No 1164/94 — Article 18(3) of Regulation (EC) No 1386/2002 — Additional deliveries — Additional works or services — Concept of 'unforeseen circumstance' — Article 20(2)(e) and (f) of Directive 93/38/EEC)

(2013/C 79/25)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez and N. Díaz Abad initially, then by N. Díaz Abad and A. Rubio González, abogados del Estado)

Defendant: European Commission (represented by: E. Adserá Ribera and D. Recchia, Agents)

Re:

Primarily, application for annulment of Commission Decision C(2011) 1023 final of 18 February 2011 reducing assistance from the Cohesion Fund for the project phases entitled 'Supply and assembly of track materials for the Madrid-Zaragoza-Barcelona-French border High-Speed Line. Madrid-Lleida section' (CCI 1999.ES.16.C.PT.001), 'Madrid-Barcelona High-Speed Rail line. Lleida-Martorell section (Platform,

1st phase)' (CCI 2000.ES.16.C.PT.001), 'Madrid-Zaragoza-Barcelona-French border High-Speed Line. Approaches to Zaragoza' (CCI 2000.ES.16.C.PT.003), 'Madrid- Barcelona-French border High-Speed Line. Lleida-Martorell section. X-A sub-section (Olérdola — Avinyonet del Penedés)' (CCI 2001.ES.16.C.PT.007), 'New High-Speed rail access to Levante. La Gineta-Albacete sub-section (Platform)' (CCI 2004.ES.16.C.PT.014) and, in the alternative, application for partial annulment of the same decision so far as concerns the corrections made by the Commission.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 186, 25.6.2011.

Judgment of the General Court of 6 February 2013 — Bopp v OHIM (Representation of a green octagonal frame)

(Case T-263/11) ([1])

(Community trade mark — Application for a Community figurative mark representing a green octagonal frame — Absolute ground for refusal — Distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 — Offer of evidence submitted for the first time in the reply — Article 48(1) of the Rules of Procedure of the General Court — Document sent to OHIM by fax — Applicable rules)

(2013/C 79/26)

Language of the case: German

Parties

Applicant: Carsten Bopp (Glashütten, Germany) (represented by: C. Russ, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: K. Klüpfel and D. Walicka initially, then by K. Klüpfel and A. Pohlmann, Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 11 March 2011 (Case R 605/2010-4), concerning an application for registration as a Community trade mark of a figurative sign representing a green octagonal frame.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 March 2011 (Case R 605/2010-4);*

2. *Orders OHIM to pay the costs.*

([1]) OJ C 238, 13.8.2011.

Judgment of the General Court of 1 February 2013 — Coin v OHIM — Dynamiki Zoi (Fitcoin)

(Case T-272/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark Fitcoin — Earlier national, Community and international figurative marks coin — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 79/27)

Language of the case: English

Parties

Applicant: Coin SpA (Venice, Italy) (represented by: P. Perani and G. Ghisletti, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dynamiki Zoi AE (Athens, Greece)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 February 2011 (Case R 1836/2010-2), relating to opposition proceedings between Coin SpA and Dynamiki Zoi AE.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 21 February 2011 (Case R 1836/2010-2) in so far as it rejected the opposition as regards the 'Clothing, including footwear and slippers' in Class 25;*

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

3. *Orders OHIM to bear its own costs and to pay a third of the costs incurred by Coin SpA;*

4. *Orders Coin to bear two-thirds of its own costs.*

([1]) OJ C 226, 30.7.2011.

Judgment of the General Court of 1 February 2013 — Polyelectrolyte Producers Group and Others v Commission

(Case T-368/11) [1]

(REACH — Transitional measures concerning the restrictions on the placing on the market and use of acrylamide for grouting applications — Annex XVII to Regulation (EC) No 1907/2006 — Proportionality — Obligation to state reasons)

(2013/C 79/28)

Language of the case: English

Parties

Applicants: Polyelectrolyte Producers Group (Brussels, Belgium); SNF SAS (Andrézieux-Bouthéon, France); and Travetanche Injection SPRL (Brussels) (represented by: K. Van Maldegem and R. Cana, lawyers)

Defendant: European Commission (represented by: P. Oliver and E. Manhaeve, Agents, assisted by K. Sawyer, Barrister)

Intervener in support of the defendant: Kingdom of the Netherlands (represented by: C. Wissels, M. Noort and B. Koopman, Agents)

Re:

Application for annulment of Commission Regulation (EU) No 366/2011 of 14 April 2011 amending Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards Annex XVII (Acrylamide) (OJ 2011 L 101, p. 12).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Polyelectrolyte Producers Group, SNF SAS and Travetanche Injection SPRL to bear the costs they have incurred in the main proceedings and to pay those incurred by the European Commission;*

3. *Orders Travetanche Injection to pay the costs relating to the proceedings for interim measures;*

4. *Orders the Kingdom of the Netherlands to bear its own costs.*

[1] OJ C 282, 24.9.2011.

Judgment of the General Court of 6 February 2013 — Maharishi Foundation v OHIM (TRANSCENDENTAL MEDITATION)

(Case T-412/11) [1]

(Community trade mark — Application for Community word mark TRANSCENDENTAL MEDITATION — Absolute grounds for refusal — Decision of the Board of Appeal remitting the case to the Examination Division — Article 65(4) of Regulation (EC) No 207/2009 — Admissibility — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 — Relevant public)

(2013/C 79/29)

Language of the case: English

Parties

Applicant: Maharishi Foundation Ltd (Saint-Hélier, Jersey) (represented by: A. Meijboom, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 24 March 2011 (Case R 1293/2010-2), concerning an application for registration of the word sign TRANSCENDENTAL MEDITATION as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Maharishi Foundation Ltd to pay the costs.*

[1] OJ C 282, 24.9.2011.

Judgment of the General Court of 6 February 2013 — Maharishi Foundation v OHIM (MÉDITATION TRANSCENDANTALE)

(Case T-426/11) ([1])

(Community trade mark — Application for Community word mark MÉDITATION TRANSCENDANTALE — Absolute grounds for refusal — Decision of the Board of Appeal remitting the case to the Examination Division — Article 65(4) of Regulation (EC) No 207/2009 — Admissibility — Descriptive character — Article 7(1)(c) of Regulation No 207/2009 — Relevant public)

(2013/C 79/30)

Language of the case: English

Parties

Applicant: Maharishi Foundation Ltd (Saint-Hélier, Jersey) (represented by: A. Meijboom, lawyer)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 6 April 2011 (Case R 1294/2010-2), concerning an application for registration of the word sign MÉDITATION TRANSCENDANTALE as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Maharishi Foundation Ltd to pay the costs.*

([1]) OJ C 282, 24.9.2011.

Judgment of the General Court of 4 February 2013 — Hartmann v OHIM — Protecsom (DIGNITUDE)

(Case T-504/11) ([1])

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

(2013/C 79/31)

Language of the case: English

Parties

Applicant: Paul Hartmann AG (Heidenheim, Germany) (represented by: N. Aicher, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Protecsom SAS (Valognes, France)

Re:

Action brought against the decision of the Fourth Chamber of Appeal of OHIM of 28 July 2011 (Case R 1197/2010-4), relating to opposition proceedings between Paul Hartmann AG and Protecsom SAS.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Paul Hartmann AG to pay the costs.*

([1]) OJ C 340, 19.11.2011.

Judgment of the General Court of 31 January 2013 — K2 Sports Europe v OHIM — Karhu Sport Iberica (SPORT)

(Case T-54/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark SPORT — Earlier national and international word marks K2 SPORTS — Relative ground for refusal — No similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 79/32)

Language of the case: English

Parties

Applicant: K2 Sports Europe GmbH (Penzberg, Germany) (represented by: J. Güell Serra, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Karhu Sport Iberica, SL (Córdoba, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 November 2011 (Case R 986/2010-4), concerning opposition proceedings between K2 Sports Europe GmbH and Karhu Sport Iberica, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders K2 Sports Europe GmbH to pay the costs.*

([1]) OJ C 109, 14.4.2012.

Action brought on 17 December 2012 — Miejskie Przedsiębiorstwo Energetyki Cieplnej v European Chemicals Agency

(Case T-560/12)

(2013/C 79/33)

Language of the case: Polish

Parties

Applicant: Miejskie Przedsiębiorstwo Energetyki Cieplnej sp. z o.o. (Brzesko, Poland) (represented by: T. Dobrzyński, legal adviser)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— annul Decision SME(2012) 3538 of the European Chemicals Agency of 15 October 2012 imposing on the applicant an administrative charge of EUR 20 700;

— as a precautionary claim, annul Decision MB/D/29/2010 of ECHA's Management Board of 12 November 2010 on the classification of services for which charges are levied;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging failure to comply with Commission Regulation (EC) No 340/2008 and Regulation (EC) No 1907/2006 of the European Parliament and of the Council, and infringement of the principle of conferral

   — The contested decision is incompatible with the regulation on fees and charges because the defendant is entitled only to impose administrative charges, whereas the imposition of dissuasive fines is a matter for the Member States. Administrative charges must be appropriate in relation to the scope of the work carried out by ECHA. An administrative charge of EUR 20 700 for incorrect declaration of the undertaking's size has a punitive function and equates to a fine. The defendant thereby encroached upon the powers of the Member States, which is incompatible with the principle of conferral laid down in Article 5 TEU and constitutes action where there is a lack of competence within the meaning of Article 263 TFEU.

2. Second plea in law, alleging infringement of the principle of equality

   — The principle of equality laid down in Article 5 of the European Code of Good Administrative Behaviour and Article 41 of the Charter of Fundamental Rights of the European Union is infringed where the amount of an administrative charge is made conditional upon the size of an undertaking. Since an administrative charge serves by definition to cover the costs of the administration's services, there can be no objective justification for the introduction of a distinction according to the size of the undertakings registered. The administrative burden in verifying the size of the undertakings is similar. Accordingly, large undertakings which have incorrectly declared themselves as SMEs pay a charge which covers the costs not only of the service connected with the procedure for verifying their size but also of verifying the size of other undertakings, or which even covers the costs of other ECHA services.

3. Third plea in law, alleging infringement of the principle of legal certainty

— In declaring that its undertaking was small, the applicant acted on the basis of the mistaken belief that that was the correct classification of the company's size, but without culpability. According to the information contained, under 'charges', on the website of the national REACH helpdesk, the size of an undertaking is defined by the national Law on freedom of business activity. Under that law, when determining the size of an undertaking the shareholding structure is not material; instead, account must be taken of the number of workers employed and the net annual turnover, which the applicant did. The obligation to take account of Commission Recommendation 2003/361/EC of 6 May 2003 when determining the size of an undertaking was not correctly communicated to the persons concerned. Nor did ECHA inform undertakings of the amount of the administrative charges which may be imposed for incorrect classification of an undertaking's size, thereby infringing the principle of legal certainty.

4. Fourth plea in law, alleging misuse of powers

— The defendant misused its powers in setting clearly excessive rates of charges in Decision MB/D/29/2010, and also in according itself very broad powers in the form of the ability to use all legal remedies to recover charges and the impossibility of avoiding those charges. Article 13(4) of Regulation No 340/2008 cannot justify those powers. The imposition of the administrative charge pursues in reality an objective other than that stated in recital 2 in the preamble to Regulation No 340/2008 (covering the cost of ECHA services) and the charge does not correspond to ECHA's work burden but constitutes an illegitimate fine imposed on the defendant.

Action brought on 21 December 2012 — Nissan Jidosha/OHIM (CVTC)

(Case T-572/12)

(2013/C 79/34)

Language of the case: English

Parties

Applicant: Nissan Jidosha KK (Yokohama-shi, Japan) (represented by: B. Brandreth, Barrister and D. Cañadas Arcas, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of appeal's Decision of 6 September 2012, (Case R 2469/2011-1);

— Order that the Respondent pays the Appellant its costs incurred before the Board of Appeal and the General Court.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark 'CVTC' for goods in classes 7, 9 and 12

Decision of the Examiner: Rejected partially the CTM renewal

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Art 50 of Council Regulation No 207/2009.

Action brought on 27 December 2012 — NIOC and Others v Council

(Case T-577/12)

(2013/C 79/35)

Language of the case: French

Parties

Applicants: National Iranian Oil Company PTE Ltd (NIOC) (Singapore, Singapore); National Iranian Oil Company International Affairs Ltd (NIOC International Affairs) (London, United Kingdom); Iran Fuel Conservation Organization (IFCO) (Teheran, Iran); Karoon Oil & Gas Production Co. (Ahwaz, Iran); Petroleum Engineering & Development Co. (PEDEC) (Teheran); Khazar Exploration and Production Co. (KEPCO) (Teheran); National Iranian Drilling Co. (NIDC) (Ahwaz); South Zagros Oil & Gas Production Co. (Shiraz, Iran); Maroun Oil & Gas Co. (Ahwaz); Masjed-Soleyman Oil & Gas Co. (MOGC) (Khouzestan, Iran); Gachsaran Oil & Gas Co. (Ahmad, Iran); Aghajari Oil & Gas Production Co. (AOGPC) (Omidieh, Iran); Arvandan Oil & Gas Co. (AOGC) (Khoramshar, Iran); West Oil & Gas Production Co. (Kermanshah, Iran); East Oil & Gas Production Co. (EOGPC) (Mashhad, Iran); Iranian Oil Terminals Co. (IOTC) (Teheran); Pars Special Economic Energy Zone (PSEEZ) (Boushehr, Iran); et Iran Liquefied Natural Gas Co. (Teheran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— annul Council Implementing Regulation (EU) No 945/2012 of 15 October 2012, in so far as it concerns the applicants;

— annul Council Decision 2012/635/CFSP of 15 October 2012, in so far as it concerns the applicants;

— delcare that Regulation (EU) No 267/2012 of 23 March 2012 is inapplicable with regard to them;

— declare that Decision 2012/635/CFSP is inapplicable with regard to them;

— order the Council to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging a failure to state reasons, in breach of Article 296 TFEU, in so far as the implementing regulation including the applicants in the list of the entities penalised does not expressly state the legal basis on which it was adopted.

2. Second plea in law, alleging a lack of legal basis, in so far as the legal basis for Implementing Regulation No 945/2012 ([1]) is Regulation No 267/2012, ([2]) which should be held to be applicable with regard to the applicants inasmuch as, first, Regulation No 267/2012 was adopted in breach of Article 296 TFEU and Article 215 TFEU and, second, Article 23(2)(d) of that regulation, which is the legal basis for including the applicants in the list in Annex XI to Regulation No 267/2012, infringes the Treaties and the Charter of Fundamental Rights of the European Union.

3. Third, fourth, fifth and sixth pleas in law, alleging that the inclusion of the applicants in the list in Annex IX to Regulation No 267/2012 and the annex to Decision 2012/635/CFSP ([3]) is invalid, on account, respectively, of (i) an error of law, (ii) an error of fact, (iii) the fact that that inclusion adversely affects the rights of the defence, the right to sound administration and the right to effective judicial protection and (iv) the fact that the inclusion in question is contrary to the principle of proportionality.

4. Seventh plea in law, alleging that Article 1(8) of Decision 2012/635/CFSP, which is the legal basis for the applicants' inclusion in the lists of entities the subject of restrictive measures, is inapplicable with regard to the applicants, on the ground that that provision is contrary to the Treaties, the Charter of Fundamental Rights and the principle of proportionality.

([1]) Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16).
([2]) 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).
([3]) Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58).

Action brought on 27 December 2012 — NIOC v Council

(Case T-578/12)

(2013/C 79/36)

Language of the case: French

Parties

Applicant: National Iran Oil Co. (NIOC) (Tehran, Iran) (represented by: J.-M. Thouvenin, lawyer)

Defendant: Council of the European Union

Form of order sought

— annul Council Implementing Regulation (EU) No 945/2012 of 15 October 2012, in so far as it concerns the applicant;

— annul Council Decision 2012/635/CFSP of 15 October 2012, in so far as it concerns the applicant;

— declare that Council Regulation (EU) No 267/2012 of 23 March 2012 is inapplicable with regard to it;

— declare that Decision 2012/635/CFSP is inapplicable with regard to it;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which in essence are identical or similar to those relied on in Case T-577/12 *NIOC and Others* v *Council*.

Action brought on 27 December 2012 — Yaqub/OHIM — Turkey (ATATURK)

(Case T-580/12)

(2013/C 79/37)

Language in which the application was lodged: English

Parties

Applicant: J. Yaqub (Nottingham, United Kingdom) (represented by: J. Jenkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Republic of Turkey

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the second board of appeal of the 17 September 2012.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'ATATURK' for goods in classes 3, 5, 25, 29, 30 and 32 (Community trade mark 4 633 434)

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Republic of Turkey

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

Decision of the Cancellation Division: Rejection of the application for a declaration of invalidity

Decision of the Board of Appeal: Upheld the appeal

Pleas in law: Infringement of the Council Regulation No 207/2009.

Action brought on 7 January 2013 — CFE-CGC France Télécom-Orange v Commission

(Case T-2/13)

(2013/C 79/38)

Language of the case: French

Parties

Applicant: CFE-CGC France Télécom-Orange (Paris, France) (represented by: A.-L. Lefort des Ylouses and A.-S. Gay, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action brought by CFE-CGC France Télécom-Orange admissible;

— rule that the decision is annulled;

— order the Commission to pay all the costs.

Pleas in law and main arguments

By its application, the applicant is seeking the annulment of Commission Decision C(2011) 9403 final of 20 December 2011, declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)). [1]

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

1. First plea in law alleging, primarily, infringement of Article 107(1) TFEU in so far as the contested decision characterises as State aid the reform of the method of financing the pensions of public-service employees working for France Télécom introduced by Law No 96-660 of 26 July 1996. The applicant submits that the Commission infringed Article 107(1) TFEU:

   — by holding that the 1996 Law could be characterised as an economic advantage;

   — by concluding that the reform was selective in nature, even though the absence of any external comparison prevents any selectivity;

   — by holding that the 1996 Law is liable to distort competition for the purposes of Article 107(1) TFEU, even though the payment of an exceptional contribution by France Télécom would have legitimately neutralised the disabling effects of the 1990 Law for France Télécom.

2. Second plea in law, alleging, in the alternative, errors of law and of assessment by making the compatibility of the 1996 Law with the internal market subject to the conditions set out in Article 2 of the contested decision.

3. Third plea in law, alleging infringement of several fundamental principles of European Union law, namely the principle of equality of arms, the right of interested parties to be heard, the principle of the protection of legitimate expectations and the right to be heard within a reasonable time period.

4. Fourth plea in law, alleging misuse of powers, the contested decision not being intended to recover State aid incompatible with the internal market, but to impose in the future on France Télécom supplementary burdens which would have the effect of impeding its development on the telecommunications markets.

(1) OJ 2012 L 279, p. 1.

Action brought on 7 January 2013 — Ronja v Commission

(Case T-3/13)

(2013/C 79/39)

Language of the case: German

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Hold a hearing;

— Annul the decision of the Commission in Gestdem 2012/3329 and grant full access to the documents;

— Declare that the Commission acted unlawfully by not initiating proceedings for failure to fulfil obligations against the Republic of Austria for infringement of Article 13 of Directive 2001/37/EC (1) and Article 34 TFEU on the basis of Paragraph 7a of the Austrian Tabakgesetz ('the Law on tobacco');

— Order the Commission to reimburse the costs of the proceedings and the costs of representation.

Pleas in law and main arguments

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

1. Infringement of the second indent of Article 4(2) of Regulation (EC) No 1049/2001 (2)

   Here the applicant submits in essence that the Commission refused full access to the requested documents (written correspondence between the Republic of Austria and the Commission in connection with complaint No 2008/4340 of alleged non-compliance of the Austrian Law on tobacco with Directive 2001/37) largely on the basis of the arguments of the Austrian authorities, without examining the content of those arguments. The applicant takes the view however that it was not access to the documents but the refusal of access which had negative effects on the action seeking to establish State liability which it brought before the Austrian Constitutional Court. It adds that the purpose of the exception in the second indent of Article 4(2) of Regulation No 1049/2001 was rather to require access to the documents at issue to be granted.

2. Failure to initiate proceedings for non-compliance with Treaty obligations against the Republic of Austria for infringement of Article 13 of Directive 2001/37 and Article 34 TFEU on the basis of Paragraph 7a of the Austrian Law on tobacco

   In this connection the applicant submits inter alia, that if proceedings for failure to fulfil obligations had been initiated, the Austrian Constitutional Court could not, in its decision on the applicant's claims in respect of State liability, have come to the conclusion that Directive 2001/37 does not confer rights on undertakings, but only on consumers.

(1) Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26).

(2) 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 7 January 2013 — ADEAS v Commission

(Case T-7/13)

(2013/C 79/40)

Language of the case: French

Parties

Applicant: Association pour la Défense de l'Épargne et de l'Actionnariat des Salariés de France Télécom-Orange (Paris, France) (represented by: A.-L. Lefort des Ylouses and A.-S. Gay, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare admissible the ADEAS's application;

— rule that the decision is annulled;

— order the Commission to pay all the costs.

Pleas in law and main arguments

By its application, the applicant is seeking the annulment of Commission Decision C(2011) 9403 final of 20 December 2011, declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)). [1]

In support of the action, the applicant puts forward four pleas in law which are essentially similar or identical to those put forward in Case T-2/13 *CFE-CGC France Télécom-Orange* v *Commission*.

[1] OJ 2012 L 279, p. 1.

Action brought on 8 January 2013 — National Iranian Gas Company v Council

(Case T-9/13)

(2013/C 79/41)

Language of the case: French

Parties

Applicant: The National Iranian Gas Company (Tehran, Iran) (represented by: E. Glaser and S. Perrotet, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Article 1(8) of Council Decision 2012/635/CFSP of 15 October 2012 in so far as it has amended Article 20(c) of Decision 2010/413/CFSP;

— Annul Council Decision 2012/635/CFSP of 15 October 2012 in so far as it includes NIGC in the list of entities to which the measures freezing funds referred to in Annex II to Decision 2010/413/CFSP are to apply;

— Annul also Council Implementing Regulation No 945/2012 of 15 October 2012 in so far as it includes NIGC in the list of entities to which the measures freezing funds in Annex IX to Regulation No 267/2012 are to apply;

— Declare that Regulation No 267/2012, Decision 2010/413/CFSP, as amended by Decisions 2012/35/CFSP and 2012/635/CFSP in their provisions inserting then amending Article 20(c) of Decision 2010/413/CFSP and adding the applicant to the list in Annex II does not apply to NIGC;

— And, in the alternative, should Article 1(8) of Council Decision 2012/635/CFSP of 15 October 2012, in so far as it has amended Article 20(c) of Decision 2010/413/CFSP, not be annulled, declare that it does not apply to the National Iranian Gas Company;

— Order the Council to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the inapplicability of Article 20(1)(c) of Decision 2010/413/CFSP [1] as inserted and amended by Decisions 2012/35/CFSP [2] and 2012/635/CFSP, [3] and the unlawfulness of Article 1(8) of Decision 2012/635/CFSP amending Article 20(1)(c) of Decision 2010/413/CFSP, those decisions being based on imprecise and indeterminate notions, contrary to the right to property and to the principle of proportionality.

2. Second plea in law, alleging an irregularity in procedure and the Council's lack of powers to act alone under Article 215 TFEU.

3. Third plea in law, alleging infringement of the duty to state reasons, since the Council took as its basis vague and imprecise factors which cannot be verified.

4. Fourth plea in law, alleging infringement of the applicant's fundamental rights, since the applicant is deprived of its right to effective judicial protection and of its right to property, since the contested decision is vitiated by insufficient reasoning which does not enable the applicant effectively to defend itself or the Court to carry out a review. The applicant submits that it has not had access to documents in its file before the Council.

5. Fifth plea in law, alleging a lack of evidence against the applicant, since the Council has taken as its basis mere allegations.

6. Sixth plea in law, alleging an error of law, since the Council deduced from the fact that the applicant was a public undertaking that it gave financial support to the Iranian Government.

7. Seventh plea in law, alleging material inaccuracies in the facts, since the applicant is not a company held and managed by the State and the applicant has not given financial support to the Iranian Government.

8. Eighth plea in law, alleging a manifest error of assessment and infringement of the principle of proportionality, since the restrictions on the applicant's right to property and its right to exercise an economic activity are disproportionate having regard to the objective pursued. The applicant submits that the freezing of its funds does not meet the objective pursued since it is not involved in the implementation of the nuclear programme of which the Iranian Government is accused.

9. Ninth plea in law, alleging a lack of legal basis for Implementing Regulation No 945/2012. ([4])

10. Tenth plea in law, alleging that Implementing Regulation No 945/2012 is vitiated by lack of powers and a lack of reasoning.

([1]) Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), as corrected.
([2]) Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 19, p. 22), as corrected.
([3]) Council Decision 2012/635/CFSP of 15 October 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 282, p. 58).
([4]) Council Implementing Regulation (EU) No 945/2012 of 15 October 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 282, p. 16).

Action brought on 9 January 2013 — Bank of Industry and Mine v Council

(Case T-10/13)

(2013/C 79/42)

Language of the case: French

Parties

Applicant: Bank of Industry and Mine (Tehran, Iran) (represented by: E. Glaser and S. Perrotet, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Article 1(8) of Council Decision 2012/635/CFSP of 15 October 2012 in so far as it has amended Article 20(c) of Decision 2010/413/CFSP;

— Annul Council Decision 2012/635/CFSP of 15 October 2012 in so far as it includes BIM in the list of entities to which the measures freezing funds referred to in Annex II to Decision 2010/413/CFSP are to apply;

— Annul also Council Implementing Regulation No 945/2012 of 15 October 2012 in so far as it includes BIM in the list of entities to which the measures freezing funds in Annex IX to Regulation No 267/2012 are to apply;

— Declare that Regulation No 267/2012, Decision 2010/413/CFSP, as amended by Decisions 2012/35/CFSP and 2012/635/CFSP in their provisions inserting then amending Article 20(c) of Decision 2010/413/CFSP and adding the applicant to the list in Annex II, does not apply to BIM;

— And, in the alternative, should Article 1(8) of Council Decision 2012/635/CFSP of 15 October 2012, in so far as it has amended Article 20(c) of Decision 2010/413/CFSP, not be annulled, declare that it does not apply to BIM;

— Order the Council to pay all the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on ten pleas in law which are in essence identical or similar to those raised in Case T-9/13 *National Iranian Gas Company* v *Council*.

Action brought on 11 January 2013 — ANKO v Commission

(Case T-17/13)

(2013/C 79/43)

Language of the case: Greek

Parties

Applicant: ANKO AE Antiprosopion, Emporiou kai Viomikhanias (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare that the applicant is under no obligation to repay as unduly paid the sum which the Commission paid to it in respect of the POCEMON project;

— declare that the applicant is under no obligation to pay to the Commission liquidated damages in respect of the POCEMON project;

— declare that the Commission is not entitled to offset the amount which it is obliged to pay to ANKO, and

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

This action relates to the liability of the Commission under grant agreement No 216088 for the carrying out of the project 'Point Of CarE MONitoring and Diagnostics for Autoimmune Diseases' (POCEMON), pursuant to Article 272 TFEU. In particular, the applicant maintains that although it performed its contractual obligations the Commission, contrary to the terms of the abovementioned agreement, the principle of good faith, the prohibition of abuse of rights and proportionality, sought the repayment of sums paid to ANKO. Further, the Commission carried out an offsetting of claims which were not certain, of a fixed amount and due.

— For those reasons, the applicant maintains: first, that it is under no obligation to repay as unduly paid the whole of the sum which the Commission paid to it in respect of the POCEMON project; secondly, it is under no obligation to pay to the Commission liquidated damages in respect of the POCEMON project, and thirdly that the Commission is not entitled to offset against sums which it is obliged to pay to the applicant sums which are not certain, of a fixed amount and due.

Action brought on 11 January 2013 — Ekologický právní servis v Commission

(Case T-19/13)

(2013/C 79/44)

Language of the case: English

Parties

Applicant: Ekologický právní servis (Brno, Czech Republic) (represented by: P. Černý, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission C(2012) 8382, of 12 November 2012, by which a request for internal review of the applicant of the Commission decision C(2012) 4576, of 6 July 2012, concerning the application pursuant to Article 10(c) (5) of Directive 2003/87/EC of the European Parliament and of the Council [1] to give transitional free allocation for the modernisation of electricity generation notified by the Czech Republic has been declared inadmissible;

— Annul the Commission decision C(2012) 4576, of 6 July 2012, concerning the application pursuant to Article 10(c) (5) of Directive 2003/87/EC of the European Parliament and of the Council to give transitional free allocation for the modernisation of electricity generation notified by the Czech Republic; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Decision of the European Commission C(2012) 8382, of 12 November 2012, is unlawful, as it is contrary to Article 17 of the Treaty on European Union; Article 263 of the Treaty on the functioning of the European Union; and Article 2(1)(g) and Article 10 of Regulation (EC) No. 1367/2006 [2].

2. Second plea in law, alleging that the Commission decision C(2012) 4576, of 6 July 2012, is unlawful, as it is contrary to Article 263 TFEU; Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community as amended by Directive 2009/29/EC [3]; Communication from the Commission — Guidance document on the optional application of Article 10 (c) of Directive 2003/87/EC (2011/C 99/03); and Directive 2001/42/EC [4] on the assessment of the effects of certain plans and programmes on the environment.

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[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

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

[3] Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community

[4] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

Action brought on 23 January 2013 — ECC Couture v OHIM — Ball Wholesale (Culture)

(Case T-28/13)

(2013/C 79/45)

Language in which the application was lodged: Dutch

Parties

Applicant: ECC Couture BV (Oldenzaal, Netherlands) (represented by: M.A.S.M. van Leent and I. de Jonge, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ball Wholesale ApS (Billund, Denmark)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 October 2012 in Case R 290/2012-1 in so far as the applicant has been unsuccessful under that decision and in so far as the applicant is ordered to pay the costs;

— declare that Community Trade Mark No 993 511 in respect of the figurative mark 'Culture' is valid for all goods and services that were the subject of the procedure before the Board of Appeal;

— order OHIM to pay all the costs of the proceedings in accordance with Article 87(2) of the Rules of Procedure.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: International registration designating the European Union of figurative mark 'Culture' for goods in Classes 14, 18 and 25 — Community trade mark No 993 511

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Ball Wholesale ApS

Grounds for the application for a declaration of invalidity: National word mark 'CULTURE' for goods in Classes 14, 25 and 26

Decision of the Cancellation Division: Application refused

Decision of the Board of Appeal: Appeal allowed in part

Pleas in law: Infringement of Article 8(1)(b) and Article 8(2)(c) of Regulation No 207/2009

Action brought on 17 January 2013 — AbbVie e.a. v EMA

(Case T-29/13)

(2013/C 79/46)

Language of the case: English

Parties

Applicants: AbbVie, Inc. (Wilmington, United States); and AbbVie Ltd (Maidenhead, United Kingdom) (represented by: P. Bogaert, G. Berrisch, lawyers, and B. Kelly, Solicitor)

Defendant: European Medicines Agency

Form of order sought

The applicants claim that the Court should:

— Annul the Decision of the European Medicines Agency EMA/685471/2012, of 5 November 2012, granting access to documents from the marketing authorisation dossier of a medical product; and

— Order the European Medicines Agency to pay all costs in these proceedings, including the applicants' costs.

Pleas in law and main arguments

The present action concerns a request for annulment under Article 263(4) TFEU of the Decision of the European Medicines Agency EMA/685471/2012, of 5 November 2012, granting access to documents from the marketing authorisation dossier of a medicinal product, pursuant to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

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

1. First, the Decision violates Article 4(2) of the Transparency Regulation and the Applicants' fundamental right to the protection of confidential commercial information.

2. Second, the Decision violates the obligation to state reasons as regards the application of Article 4(2) of the Transparency Regulation.

3. Third, the Decision violates the principle of legitimate expectations.

4. Fourth, the Decision violates Directive No 2001/29/EC [1] on the harmonisation of certain aspects of copyright and related rights in the information society, of fundamental rights protecting property rights, including copyright and of the principles of proportionality and of good administration, insofar as access is granted by providing a copy of the documents.

[1] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

Action brought on 22 January 2013 — GRE v OHIM — Villiger Söhne (LIBERTE american blend)

(Case T-30/13)

(2013/C 79/47)

Language in which the application was lodged: German

Parties

Applicant: GRE Grand River Enterprises Deutschland GmbH (Kloster Lehnin, Germany) (represented by: I. Memmler and S. Schulz, lawyers)

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

Other party to the proceedings before the Board of Appeal: Villiger Söhne GmbH (Waldshut-Tiengen, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 November 2012 in Case R 731/2012-1;

— 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 including the word elements 'LIBERTE american blend' for goods in Class 34 — Community trade mark application No 7 481 252

Proprietor of the mark or sign cited in the opposition proceedings: Villiger Söhne GmbH

Mark or sign cited in opposition: The word mark 'La LIBERTAD' and the figurative mark including the word elements 'La LIBERTAD' for goods in Classes 14 and 34

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was rejected

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

Action brought on 23 January 2013 — Meta Group v European Commission

(Case T-34/13)

(2013/C 79/48)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Note No 1687862 from the Directorate-General for Enterprise and Industry of 11 December 2012;

— annul Financial Audit Report No S12.16817;

and, in so far as necessary, annul the following notes from the European Commission's Directorate-General for Budget Execution (Directorate for General Budget and EDF):

— the note of 12 November 2012 concerning 'Payment by offsetting of debts payable to the Commission', in which the Commission informed the applicant that the debt of EUR 69 061,80 which META Group claimed to be owed to it by the Commission in relation to the Take-it-Up contract (No 245637) had been offset against the corresponding debt owed by META Group as shown by Debit Note No 32412078833;

— Note No 1380282 of 21 November 2012 concerning offsetting of the debt of EUR 16 772,36 which META Group claimed to be owed to it by the Commission in relation to the BCreative contract (No 245599) against the corresponding debt owed by META Group as shown by Debit Note No 32412078833;

— Note No 1380323 of 21 November 2012 concerning offsetting of the debt of EUR 16 772,36 which META Group claimed to be owed to it by the Commission in relation to the BCreative contract against the corresponding equivalent debt owed by META Group;

— Note No 1387638 of 22 November 2012 concerning offsetting of the debt of EUR 220 518,25 which META Group claimed to be owed to it by the Commission in relation to the Take-it-Up contract (No 245637) and the Ecolink+ contract (No 256224) against the debt of EUR 209 108,92 owed by META Group as shown by Debit Note No 32412078833;

and, accordingly, order the Commission to:

— pay to the applicant the sum of EUR 424 787,90, plus default interest;

— pay compensation in respect of the consequential loss suffered by the applicant;

and order the Commission to pay the costs.

Pleas in law and main arguments

The present action concerns the grant agreements concluded between the applicant and the Commission under the 'Competitiveness and Innovation Framework Programme (CIP) (2007-2013)'.

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

1. First plea in law, alleging a manifest error in the assessment of the facts, breach of Amendment No 1 to the ECOLINK+ contract of 14 October 2011, infringement of the principle of legitimate expectations, and infringement of the principles of protection of acquired rights, legal certainty and duty of care.

   — On this point, it is maintained that the Commission's conduct involved a breach of the commitments contractually entered into by it with respect to META, with particular reference to acceptance of the method of calculation proposed by the applicant.

2. Second plea in law, alleging a breach of Article 11 of the grant agreements relating to the CIF Programme (BCreative, Take-IT-Up, Ecolink+), infringement of the principle of reasonableness, and a manifest error in the assessment of the facts.

   — On this point, it is maintained that the applicant company has provided evidence that the remuneration of its own associate members is fully in line with market values and with the remuneration received by self-employed parasubordinate workers ('*in-house consultants*') and employees pursuing similar activities. Under national law those minima may be increased by 100 % if the required service is '*particularly important, complex or difficult*' (see Article 6(1) of Ministerial Decree No 169 of 2 September 2010). The employment by META Group of international experts engaged in activities connected with the projects in question on the basis of 'continuous and coordinated contractual relationships' is also perfectly legitimate.

3. Third plea in law, alleging infringement of the principle of proportionality of administrative action and infringement of the principles of sound administration and transparency and the principle that criteria must be determined in advance.

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

4. Fourth plea in law, alleging a manifest error in the assessment of the facts, breach of Amendment No 1 to the ECOLINK+ contract of 14 October 2011 and infringement of the principles of legitimate expectations, good faith, protection of acquired rights, legal certainty and duty of care.

   — It is submitted in this regard that the set-off decisions are unlawful, since the sums indicated as META's outstanding claims concerning the contracts mentioned above are significantly lower than those actually owed. In particular, the Commission, as established by the *final audit report* at present under challenge, when determining the eligible costs relating to associate members, arbitrarily applied a substantially lower hourly rate than the rate proposed by META.

5. Fifth plea in law, alleging infringement of the principle of sound administration and an inadequate statement of reasons.

   — On this point, it is maintained that the set-off decisions lack any statement of reasons regarding either the criteria or the parameters used for calculation. Therefore, given that the final results of the *audit report* were not yet available to META at the time when it was notified of the set-off decisions in question, the Commission ought to have provided clarification in respect of the assessments made on the basis of the decision to use a different method for calculating the eligible costs from the method determined in the contracts.

6. Sixth plea in law, alleging a manifest error in making the calculations to determine the sums owed to the applicant.

— In this regard, it is maintained that the calculations carried out by the Commission for the purposes of the set-off arrangement also appear to be wrong: if the *flat rates* relating to the '*Marie Curie*' Programme are applied, the accounts are inconsistent.

Action brought on 23 January 2013 — Meta Group v European Commission

(Case T-35/13)

(2013/C 79/49)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should annul the following notes from the European Commission's Directorate-General for Budget Execution (Directorate for General Budget and EDF):

— Note No 1328694 of 12 November 2012 concerning 'Payment by offsetting of debts payable to or by the Commission', in which the Commission informed the applicant that the debt of EUR 69 061,89 which META Group claimed to be owed to it by the Commission in relation to the Take-it-Up contract (No 245637) had been offset against the corresponding debt owed by META Group as shown by Debit Note No 32412078833;

— Note No 1380282 of 21 November 2012 concerning offsetting of the debt of EUR 16 772,36 which META Group claimed to be owed to it by the Commission in relation to the BCreative contract (No 245599) against the corresponding debt owed by META Group as shown by Debit Note No 32412078833;

— Note No 1380323 of 21 November 2012 concerning offsetting of the debt of EUR 16 772,36 which META Group claimed to be owed to it by the Commission in relation to the BCreative contract against the corresponding equivalent debt owed by META Group;

— Note No 1387638 of 22 November 2012 concerning offsetting of the debt of EUR 220 518,25 which META Group claimed to be owed to it by the Commission in relation to the Take-it-Up contract (No 245637) and the Ecolink+ contract (No 256224) against the debt of EUR 209 108,92 owed by META Group as shown by Debit Note No 32412078833;

and, accordingly, order the Commission to:

— pay the applicant the sum of EUR 424 787, plus default interest;

— pay compensation in respect of the consequential loss suffered by the applicant.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those in Case T-34/13.

Action brought on 21 January 2013 — Erreà Sport v OHIM — Facchinelli (ANTONIO BACIONE)

(Case T-36/13)

(2013/C 79/50)

Language in which the application was lodged: Italian

Parties

Applicant: Erreà Sport SpA (Torrile, Italy) (represented by: D. Caneva and G. Fucci, lawyers)

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

Other party to the proceedings before the Board of Appeal: Antonio Facchinelli (Dalang, China)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 24 October 2012 in Case R 1561/2011-1 and, consequently, reject the application for registration published in *Community Trade Marks Bulletin* No 117/2010, lodged by Antonio Facchinelli, in respect of all the goods;

— order that the costs incurred by Erreà Sport S.p.A in the present proceedings be reimbursed.

Pleas in law and main arguments

Applicant for a Community trade mark: Antonio Facchinelli

Community trade mark concerned: Figurative mark containing the word elements 'ANTONIO BACIONE', for goods in Classes 3, 14, 18 and 25 — Community trade mark application No 9 056 037

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

Mark or sign cited in opposition: Figurative mark containing the word element 'erreà' and figurative mark containing two intersecting rhombuses, for goods in Classes 3, 9, 14, 16, 18, 25, 28, 35 and 41

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

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

— Infringement of Article 8(5) of Regulation No 207/2009

Action brought on 28 January 2013 — 1. garantovaná v Commission

(Case T-42/13)

(2013/C 79/51)

Language of the case: English

Parties

Applicant: 1. garantovaná a.s. (Bratislava, Slovakia) (represented by: M. Powell, Solicitor, G. Forwood, Barrister, M. Staroň and P. Hodál, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the Commission's letter of 21 December 2012, in Case COMP/39.396 — Calcium Carbide, in so far as it:

  — Applies an interest rate of 4.5% to the periods during which the Court had i) suspended the operation of Article 2 of the Commission Decision C(2009) 5791 final of 22 July 2009 in Case COMP/39.396 — Calcium carbide and magnesium based reagents for the steel and gas industries, as regards the applicant, and ii) suspended the obligation on the applicant to provide a bank guarantee in order to avoid the immediate recovery of the fine imposed by Article 2 of that decision;

  — Sets the balance outstanding at 25 January 2013, covering the fine and late payment interest, at EUR 20 293 586,60;

  — Gives formal notice that the applicant should, at the latest by 25 January 2013, either make a provisional payment of EUR 20 293 586,60 or deposit an acceptable financial guarantee covering this amount.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission lacked any legal basis to impose interest in respect of the period covered by the Ex Parte Interim Measures Order, as the Ex Parte Interim Measures Order of 20 October 2009 suspended the operation of Article 2 of Decision C(2009) 5791 in so far as it concerned the applicant. As such, the fine did not become 'due' within the meaning of Article 79(c) of the Implementing Rules [1]. In accordance with the principle of *accessorium sequitur principale,* interest relating to the fine can only begin to accrue from the date on which the fine is due.

2. Second plea in law, alleging that, as regards the period covered by the Interim Measures Order, the application of the penalty interest rate of 4.5% breached the applicant's legitimate expectations, as the Interim Measures Order of 2 March 2011 suspended the obligation on the applicant to provide a bank guarantee in order to avoid the immediate recovery of the fine imposed on it by Article 2 of Decision C(2009) 5791. This put the applicant in the same position it would have been in, had it provided the bank guarantee. The applicant was therefore entitled to rely on a legitimate expectation, created by the Commission's letter of 24 July 2009 notifying Decision C(2009) 5791, that interest on the fine would be payable at the rate set down in Article 86(5) of the Implementing Rules.

3. Third plea in law, alleging that the application of the penalty interest rate of 4.5% to the periods covered by the interim measures orders deprives the interim measures orders of their practical effect, as the rationale for the two interest rates contained in Articles 86(2)(b) and 86(5) of the Implementing Rules is to incentivise undertakings to provide a bank guarantee, and, conversely, to penalise those that refuse to pay the fine when it becomes due, or to provide an appropriate bank guarantee. The applicant should not be penalised by the imposition of a punitive rate of interest for not providing a bank guarantee, in circumstances when i) the Court has suspended the operation of the fine, and ii) has held that it was objectively impossible for the applicant to provide a bank guarantee.

4. Fourth plea in law, alleging that that the application of the penalty interest rate of 4.5 % to the periods covered by the interim measures orders violates the principle of proportionality. It would be disproportionate to penalise the applicant through the application of interest at the rate provided for in Article 86(2)(b) of the Implementing Rules, in circumstances where i) the fine is not enforceable, and ii) the EU judicature has established that it cannot pay the fine or provide a suitable bank guarantee.

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

Action brought on 29 January 2013 — Donnici v Parliament

(Case T-43/13)

(2013/C 79/52)

Language of the case: Italian

Parties

Applicant: Beniamino Donnici (Castrolibero, Italy) (represented by: V. Vallefuoco and J. Van Gyseghem, lawyers)

Defendant: European Parliament

Form of order sought

The applicant claims that the General Court should find serious fault on the part of the European Parliament in relation to its decision adopted on 24 May 2007 to the applicant's disadvantage, subsequently annulled by the judgment of the Court of Justice of 30 April 2009 and, thus, order the European Parliament to make good the material and non-material damage suffered or to be suffered by him as a result of that unlawful measure, even on an equitable basis which amounts to EUR 1 720 470, or in such lesser amount as the Court considers appropriate. The applicant claims that the European Parliament should pay the costs.

Pleas in law and main arguments

The applicant in the present proceedings — who is also the applicant in Cases T-215/07 and C-9/08 *Donnici* v *Parliament* — seeks compensation for the damage suffered as a result of the defendant's refusal to recognise the validity of his mandate as a member of the European Parliament. That decision was subsequently annulled by the Court of Justice of the European Union.

In support of his action, the applicant submits that in the present case all the conditions established by the case-law for a declaration that the institutions of the European Union are non-contractually liable are satisfied; this applies in particular to:

— the unlawfulness of the conduct alleged;

— the requirement for the damage to be real;

— the existence of a causal link, and

— fault on the part of the European Union, or the degree of infringement by it. In that regard, the applicant states that, through the decision giving rise to the present proceedings, the defendant has disregarded in a sufficiently serious manner a rule intended to confer rights on individuals.

Action brought on 29 January 2013 — AbbVie v EMA

(Case T-44/13)

(2013/C 79/53)

Language of the case: English

Parties

Applicants: AbbVie, Inc. (Wilmington, United States); and AbbVie Ltd (Maidenhead, United Kingdom) (represented by: P. Bogaert, G. Berrisch, lawyers, and B. Kelly, Solicitor)

Defendant: European Medicines Agency

Form of order sought

The applicant claims that the Court should:

— Annul the Decision of the European Medicines Agency EMA/748792/2012 of 14 January 2013 granting access to documents from the marketing authorisation dossier of a medicinal product; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Decision violates Article 4(2) of the Transparency Regulation (1) and the applicants' fundamental rights to the protection of confidential commercial information.

2. Second plea in law, alleging that the Decision violates Article 4(4) of the Transparency Regulation and the principle of good administration.

3. Third plea in law, alleging that the Decision violates the obligation to state reasons as regards the application of Article 4(2) of the Transparency Regulation.

4. Fourth plea in law, alleging that the Decision violates the principle of legitimate expectations

5. Fifth plea in law, alleging that the Decision violates Directive 2001/29/EC ([2]), the fundamental rights protecting property rights, including copyright and the principle of proportionality and good administration, insofar as the access is granted by providing a copy of the documents.

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

([2]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10)

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 15 January 2013 — BO v Commission

(Case F-27/11) [1]

(Staff case — Social security — Payment of transport costs connected to medical care — Transport costs incurred for linguistic reasons)

(2013/C 79/54)

Language of the case: French

Parties

Applicant: BO (Amman, Jordan) (represented by: L. Levi, M. Vandenbussche and C. Bernard-Glanz, lawyers)

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

Re:

Staff case — Application for annulment of the defendant's decisions refusing to authorise medical benefits requested by the applicant for his son, his wife and himself.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of the European Commission of 1 June 2010 refusing to pay the costs for the transport and accompaniment of BO's son;*

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

[1] OJ C 186, 25.6.11, p. 33.

Judgment of the Civil Service Tribunal (First Chamber) of 5 February 2013 — Presset v Commission

(Case F-25/12) [1]

(Civil Service — Remuneration — Daily subsistence allowance — Condition for granting)

(2013/C 79/55)

Language of the case: French

Parties

Applicant: Paul-Henri Presset (Brussels, Belgium) (represented by: P. Pradal, lawyer)

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

Re:

Civil service — Application for annulment of the decision refusing the applicant entitlement to the daily subsistence allowance.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

[1] OJ C 138, 12.5.12, p. 36.

Action brought on 3 January 2013 — ZZ v Europol

(Case F-1/13)

(2013/C 79/56)

Language of the case: French

Parties

Applicant: ZZ (represented by: J.-J. Ghosez, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Annulment of Europol's decision not to renew the applicant's contract for an unlimited period and an order that Europol pay the difference between the remuneration which she could have continued to receive from Europol and any other allowance which she actually received.

Form of order sought

— Annul the decision adopted by the defendant on 29 February 2012 by which the defendant informed the applicant that it would not be renewing her fixed-term contract which expired on 31 May 2012;

— Order the defendant to pay the applicant the difference between the amount of the remuneration which she would have been able to claim had she remained in her post with the defendant and the amount of the remuneration, fees, unemployment benefits or any other substituted payment which she has actually received since 1 June 2012 to replace the remuneration which she received as a temporary staff member;

— Order Europol to pay all the costs.

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