ISSN 1977-091X

Official Journal of the European Union

C 156

English edition

Volume 56

1 June 2013

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 156/01)

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

OJ C 147, 25.5.2013

Past publications

OJ C 141, 18.5.2013

OJ C 129, 4.5.2013

OJ C 123, 27.4.2013

OJ C 114, 20.4.2013

OJ C 108, 13.4.2013

OJ C 101, 6.4.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 19 March 2013 — Bouygues SA, Bouygues Télécom SA v European Commission and Others, European Commission, French Republic v Bouygues SA and Others

(Joined Cases C-399/10 P and C-401/10 P) [1]

(Appeals — State aid — Financial measures in favour of France Télécom — Shareholder loan proposal — Public declarations by a member of the French Government — Decision declaring the aid incompatible with the common market and not ordering its recovery — Concept of State aid — Concept of economic advantage — Concept of commitment of State resources)

(2013/C 156/02)

Language of the case: French

Parties

(Case C-399/10 P)

Appellants: Bouygues SA, Bouygues Télécom SA (represented by: C. Baldon, J. Blouet-Gaillard, J. Vogel, F. Sureau and D. Theophile, avocats)

Other parties to the proceedings: European Commission (represented by: C. Giolito, D. Grespan and S. Thomas, Agents), French Republic (represented by: G. de Bergues J. Gstalter, Agents), France Télécom SA, (represented: initially by S. Hautbourg, S. Quesson and L. Olza Moreno, avocats, and subsequently by S. Hautbourg and S. Quesson, avocats), Association française des opérateurs de réseaux et services de télécommunications (AFORS Télécom)

Intervener in support of the French Republic: Federal Republic of Germany, (represented by: T. Henze and J. Möller, Agents, and U. Soltész, Rechtsanwalt)

(Case C-401/10 P)

Appellant: European Commission (represented by: C. Giolito, D. Grespan and S. Thomas, Agents)

Other parties to the proceedings: French Republic (represented by: G. de Bergues and J. Gstalter, Agents), Bouygues SA, Bouygues Télécom SA (represented by: C. Baldon, J. Blouet-Gaillard, J. Vogel, F. Sureau and D. Theophile, avocats), France Télécom SA (represented: initially by S. Hautbourg, S. Quesson and L. Olza Moreno, avocats, and subsequently by S. Hautbourg and S. Quesson, avocats), Association française des opérateurs de réseaux et services de télécommunications (AFORS Télécom)

Intervener in support of the French Repubic: Federal Republic of Germany (represented by: T. Henze and J. Möller, Agents, and U. Soltész, Rechtsanwalt)

Re:

Appeal against the judgment of the General Court (Third Chamber) of 21 May 2010 (Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04), by which the General Court annulled Article 1 of Commission Decision 2006/621/EC of 2 August 2004 on the State Aid implemented by France for France Télécom (OJ 2006 L 257, p. 11) — Declarations made by a government member and shareholder loan categorised as 'aid'.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 21 May 2010 in Joined Cases T-425/04, T-444/04, T-450/04 and T-456/04 France and Others v Commission;*

2. *Refers Cases T-425/04, T-444/04 and T-450/04 back to the General Court of the European Union for judgment on the pleas raised and the claims made before it on which the Court of Justice has not given a ruling;*

3. *Reserves the costs.*

[1] OJ C 317, 20.11.2010.

Judgment of the Court (Grand Chamber) of 9 April 2013 — European Commission v Ireland

(Case C-85/11) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — Articles 9 and 11 — National legislation permitting the inclusion of non-taxable persons in a group of persons who may be regarded as a single taxable person for VAT purposes)

(2013/C 156/03)

Language of the case: English

Parties

Applicant: European Commission (represented by: R. Lyal, Agent)

Defendant: Ireland (represented by: D. O'Hagan, Agent, assisted by G. Clohessy, SC, and N. Travers, BL)

Interveners in support of the defendant: Czech Republic (represented by: M. Smolek and T. Müller, Agents), Kingdom of Denmark (represented: initially by C. Vang, and subsequently by V. Pasternak Jørgensen, Agents), Republic of Finland (represented by: H. Leppo and S. Hartikainen, Agents), United Kingdom of Great Britain and Northern Ireland (represented by: H. Walker, Agent, and by M. Hall, Barrister)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 9 and 11 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation permitting the inclusion of non-taxable persons in a VAT group

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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

([1]) OJ C 145, 14.5.2011.

Judgment of the Court (First Chamber) of 21 March 2013 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — RWE Vertrieb AG v Verbraucherzentrale Nordrhein-Westfalen eV

(Case C-92/11) ([1])

(Directive 2003/55/EC — Internal market in natural gas — Directive 93/13/EEC — Articles 1(2) and 3 to 5 — Contracts between suppliers and consumers — General conditions — Unfair terms — Unilateral alteration by the supplier of the price of the service — Reference to mandatory legislation designed for another category of consumers — Applicability of Directive 93/13/EEC — Obligation of use of plain and intelligible language and transparency)

(2013/C 156/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: RWE Vertrieb AG

Defendant: Verbraucherzentrale Nordrhein-Westfalen eV

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 1(2) and, in conjunction with point 1(j) and the second sentence of point 2(b) of the annex, of Articles 3 and 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p 29) — Interpretation of Article 3(3) of, in conjunction with points (b) and (c) of Annex A to, Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) — Term establishing the right of the seller or supplier to vary unilaterally the price of the service by reference to binding rules designed to apply to a separate category of consumers — Applicability of Directive 93/13/EEC — Requirements relating to the obligation to use plain and intelligible wording and to the obligation of transparency

Operative part of the judgment

1. *Article 1(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that that directive applies to provisions in general terms and conditions, incorporated into contracts concluded between a supplier and a consumer, which reproduce a rule of national law applicable to another category of contracts and are not subject to the national legislation concerned.*

2. *Articles 3 and 5 of Directive 93/13 in conjunction with Article 3(3) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC must be interpreted as meaning that, in order to assess whether a*

standard contractual term by which a supply undertaking reserves the right to vary the charge for the supply of gas complies with the requirements of good faith, balance and transparency laid down by those directives, it is of fundamental importance:

— *whether the contract sets out in transparent fashion the reason for and method of the variation of those charges, so that the consumer can foresee, on the basis of clear, intelligible criteria, the alterations that may be made to those charges. The lack of information on the point before the contract is concluded cannot, in principle, be compensated for by the mere fact that consumers will, during the performance of the contract, be informed in good time of a variation of the charges and of their right to terminate the contract if they do not wish to accept the variation; and*

— *whether the right of termination conferred on the consumer can actually be exercised in the specific circumstances.*

It is for the national court to carry out that assessment with regard to all the circumstances of the particular case, including all the general terms and conditions of the consumer contracts of which the term at issue forms part.

([1]) OJ C 211, 16.7.2011.

Judgment of the Court (Fourth Chamber) of 21 March 2013 (request for a preliminary ruling from the Magyar Köztársaság Legfelsőbb Bírósága — Hungary) — Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége v Oskar Shomodi

(Case C-254/11) ([1])

(Area of freedom, security and justice — 'Local border traffic' at the external land borders of the Member States — Regulation (EC) No 1931/2006 — Regulation (EC) No 562/2006 — Maximum duration of stay — Rules for calculation)

(2013/C 156/05)

Language of the case: Hungarian

Referring court

Magyar Köztársaság Legfelsőbb Bírósága

Parties to the main proceedings

Applicant: Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége

Defendant: Oskar Shomodi

Re:

Request for a preliminary ruling — Magyar Köztársaság Legfelsőbb Bírósága — Interpretation of Article 2(a)(3), points 3 and 5 of Council and Parliament Regulation (EC) No 1931/2006 of 20 December 2006 Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (OJ 2006 L 405, p. 1), and of the other relevant provisions of the Schengen *acquis* — Rejection of the application to enter the territory of a Member State made by a national of a third country in the context of the regime governing local border traffic, on the ground that the cumulative total of individual stays undertaken by the person concerned in the Member State at issue during the six-month period preceding the application for entry in question had exceeded the maximum permissible duration — Rules for calculation of the maximum duration of stay under the local border traffic regime

Operative part of the judgment

1. *Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention must be interpreted as meaning that the holder of a local border traffic permit granted under the special local border traffic regime established by that regulation must be able, within the limits laid down in that regulation and in the bilateral agreement concluded for its implementation between the third country of which he is a national and the neighbouring Member State, to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted.*

2. *Article 5 of Regulation No 1931/2006 must be interpreted as meaning that there is an interruption of stay, as referred to in that provision, upon the crossing of the border between the neighbouring Member State and the third country in which the holder of the local border traffic permit resides, in accordance with the conditions laid down in that permit, irrespective of the frequency of such crossings, even if they occur several times daily.*

([1]) OJ C 232, 6.8.2011.

Judgment of the Court (Third Chamber) of 11 April 2013 (request for a preliminary ruling from the Supreme Court — Ireland) — Peter Sweetman and Others v An Bord Pleanála

(Case C-258/11) ([1])

(Environment — Directive 92/43/EEC — Article 6 — Conservation of natural habitats — Special areas of conservation — Assessment of the implications for a protected site of a plan or project — Criteria to be applied when assessing the likelihood that such a plan or project will adversely affect the integrity of the site concerned — Lough Corrib site — N6 Galway City Outer Bypass road scheme)

(2013/C 156/06)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Appellants: Peter Sweetman, Ireland, Attorney General, Minister for the Environment, Heritage and Local Government

Respondent: An Bord Pleanála

Re:

Request for a preliminary ruling — Supreme Court, Ireland — Interpretation of Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Assessment of the implications for a protected site of a plan or project — Criteria to be applied when assessing the likelihood that such a plan or such a project will adversely affect the integrity of the site concerned — Consequences of application of the precautionary principle — Construction of a road whose route crosses an area proposed as a special area of conservation

Operative part of the judgment

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Fourth Chamber) of 11 April 2013 (request for a preliminary ruling from the Supreme Court of the United Kingdom — United Kingdom) — The Queen, on the application of David Edwards, Lilian Pallikaropoulos v Environment Agency, First Secretary of State, Secretary of State for Environment, Food and Rural Affairs

(Case C-260/11) ([1])

(Environment — Aarhus Convention — Directive 85/337/EEC — Directive 2003/35/EC — Article 10a — Directive 96/61/EC — Article 15a — Access to justice in environmental matters — Meaning of 'not prohibitively expensive' judicial proceedings)

(2013/C 156/07)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: David Edwards, Lilian Pallikaropoulos

Defendants: Environment Agency, First Secretary of State, Secretary of State for Environment, Food and Rural Affairs,

Re:

Request for a preliminary ruling — Supreme Court of the United Kingdom — Interpretation of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC — Statement by the Commission (OJ 2003 L 156, p. 17) — Interpretation of Article 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Directive 2003/35/EC — Interpretation of Article 9(4) of the (Aarhus) Convention on access to information, public participation in decision-making and access to justice in environmental matters concluded, on behalf of the European Community, by Decision of the Council of 17 February 2005 (OJ 2005 L 124, p. 1) — An order that the unsuccessful party pay the costs of the proceedings — Meaning of 'not prohibitively expensive' judicial proceedings

Operative part of the judgment

The requirement, under the fifth paragraph of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and the fifth paragraph of Article 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, that judicial proceedings should not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result. Where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required — as courts in the United Kingdom may be — to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, it must satisfy itself that that requirement has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment.

In the context of that assessment, the national court cannot act solely on the basis of that claimant's financial situation but must also carry out an objective analysis of the amount of the costs. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of

what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime.

By contrast, the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him.

Lastly, that assessment cannot be conducted according to different criteria depending on whether it is carried out at the conclusion of first-instance proceedings, an appeal or a second appeal.

([1]) OJ C 226, 30.7.2011.

Judgment of the Court (Second Chamber) of 11 April 2013 (request for a preliminary ruling from the Sø- og Handelsret, Denmark) — HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) v HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (C-337/11)

(Joined Cases C-335/11 and C-337/11) ([1])

(Social policy — United Nations Convention on the Rights of Persons with Disabilities — Directive 2000/78/CE — Equal treatment in employment and occupation — Articles 1, 2 and 5 — Difference in treatment on grounds of disability — Dismissal — Existence of a disability — Employee absent because of disability — Obligation to provide accommodation — Part-time work — Length of the period of notice)

(2013/C 156/08)

Language of the case: Danish

Referring court

Sø- og Handelsret

Parties to the main proceedings

Applicants: HK Danmark, acting on behalf of Jette Ring (C-335/11), HK Danmark, acting on behalf of Lone Skouboe Werge (C-337/11)

Defendant: Dansk almennyttigt Boligselskab DAB (C-335/11), Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation (C-337/11)

Re:

Requests for a preliminary ruling — Sø- og Handelsretten — Interpretation of Articles 1, 2 and 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment and occupation (OJ 2000 L 303, p. 16) and the judgment of the Court in Case C-13/05 *Chacón Navas* — Prohibition of discrimination on grounds of disability — National legislation under which an employer can dismiss an employee who has been absent because of illness, with his salary being paid, for 120 days during 12 consecutive months — Existence of a disability — Persons having a long-term reduction in their functions not requiring particular equipment and consisting only in an incapacity to work full time — Reasonable accommodation for persons with disabilities

Operative part of the judgment

1. *The concept of 'disability' in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as including a condition caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one. The nature of the measures to be taken by the employer is not decisive for considering that a person's state of health is covered by that concept.*

2. *Article 5 of Directive 2000/78 must be interpreted as meaning that a reduction in working hours may constitute one of the accommodation measures referred to in that article. It is for the national court to assess whether, in the circumstances of the main proceedings, a reduction in working hours, as an accommodation measure, represents a disproportionate burden on the employer.*

3. *Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, with his salary being paid, for 120 days during the previous 12 months, where those absences are the consequence of the employer's failure to take the appropriate measures in accordance with the obligation to provide reasonable accommodation laid down in Article 5 of that directive.*

4. *Directive 2000/78 must be interpreted as precluding national legislation under which an employer can terminate the employment contract with a reduced period of notice if the disabled worker concerned has been absent because of illness, with his salary being paid, for 120 days during the previous 12 months, where those absences are the consequence of his disability, unless that legislation, as well as pursuing a legitimate aim, does not go beyond what is necessary to achieve that aim, that being for the referring court to assess.*

([1]) OJ C 269, 10.9.2011.

Judgment of the Court (Fourth Chamber) of 21 March 2013 (request for a preliminary ruling from the Cour constitutionnelle — Belgium) — Belgacom SA, Mobistar SA, KPN Group Belgium SA v Belgian State

(Case C-375/11) ([1])

(Telecommunication services — Directive 2002/20/EC — Articles 3 and 12 to 14 — Rights to use radio frequencies — Fees for rights to use radio frequencies — One-off fees for grant and renewal of rights to use radio frequencies — Method of calculation — Alteration of existing rights)

(2013/C 156/09)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Belgacom SA, Mobistar SA, KPN Group Belgium SA

Defendant: Belgian State

Re:

Request for a preliminary ruling — Cour constitutionnelle (Belgium) — Interpretation of Articles 3, 12, 13 and 14(1) and (2) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21) — National rules requiring individual operators holding rights of use for mobile telephone frequencies to pay a one-off fee in the context of authorisations to install and operate on their territory mobile phone networks for a period of 15 years — Renewal of operators' individual rights — Obligation for applicants for new acquisition of rights to pay a one-off fee, fixed by auction, in addition to the annual fees — Whether permitted

Operative part of the judgment

1. *Articles 12 and 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), must be interpreted as not precluding a Member State from charging mobile telephone operators holding rights of use for radio frequencies a one-off fee payable for both a new acquisition of rights of use for radio frequencies and for renewals of those rights, in addition to an annual fee for making the frequencies available, intended to encourage optimal use of the resources while at the same time also covering the cost of managing the authorisation, provided that those fees genuinely are intended to ensure optimal use of the resource made up of those radio frequencies and are objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and take into account the objectives in Article 8 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), which it is for the national court to assess.*

   Subject to that same condition, the fixing of the amount of a one-off fee for rights of use for radio frequencies by reference either to the amount of the former one-off licence fee calculated on the basis of the number of frequencies and months to which the rights of use relate, or to the amounts raised through auction, may be an appropriate method for determining the value of the radio frequencies.

2. *Article 14(1) of Directive 2002/20 must be interpreted as not precluding a Member State from charging a mobile telephone operator a fee such as that at issue in the main proceedings, provided that that amendment is objectively justified and effected in a proportionate manner and notice has been given to all interested parties in order to enable them to express their views, which it is for the national court to assess in the light of the circumstances at issue in the main proceedings.*

3. *Article 14(2) of Directive 2002/20 must be interpreted as not precluding a Member State from charging a mobile telephone operator a fee such as that at issue in the main proceedings.*

([1]) OJ C 282, 24.9.2011.

Judgment of the Court (Third Chamber) of 11 April 2013 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Blanka Soukupová v Ministerstvo zemědělství

(Case C-401/11) ([1])

(Agriculture — EAGGF — Regulation (EC) No 1257/1999 — Support for rural development — Early retirement support — Transferor not less than 55 years old but not yet of normal retirement age at the time of transfer — Concept of 'normal retirement age' — National legislation determining a retirement age which varies depending on the sex of the applicant and, for women, on the number of children raised — General principles of equal treatment and non-discrimination)

(2013/C 156/10)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Blanka Soukupová

Defendant: Ministerstvo zemědělství

Re:

Request for a preliminary ruling — Nejvyšší správní soud — Interpretation of Article 11 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (OJ 1999 L 160, p. 80) and of the general principles of equal treatment and non-discrimination — Support for early retirement in agriculture payable to a transferor aged at least 55 but not having reached normal retirement age at the time of transfer — Concept of 'normal retirement age' — National legislation laying down a variable retirement age depending on sex and, for women, the number of children brought up

Operative part of the judgment

It is incompatible with European Union law and the general principles of equal treatment and non-discrimination for 'normal retirement age', for the purposes of the second indent of Article 11(1) of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations, to be determined differently depending on the gender of the applicant for support for early retirement from farming and, in the case of female applicants, on the number of children raised by the applicant, under the provisions of the national retirement scheme of the Member State concerned relating to the age required for entitlement to an old-age pension.

(1) OJ C 311, 22.10.2011.

Judgment of the Court (Sixth Chamber) of 21 March 2013 — European Commission v Buczek Automotive sp. z o.o., Republic of Poland

(Case C-405/11 P) (1)

(Appeal — State aid — Restructuring of the Polish steel industry — Concept of State aid — Recovery of public debts — Classification as State aid of the failure to request the liquidation of the debtor undertaking — Private creditor test — Allocation of the burden of proof — Limits of judicial review)

(2013/C 156/11)

Language of the case: Polish

Parties

Appellant: European Commission (represented by: A. Stobiecka-Kuik and T. Maxian Rusche, acting as Agents)

Other parties to the proceedings: Buczek Automotive sp. z o.o. (represented by: J. Jurczyk, radca prawny), Republic of Poland (represented by: M. Krasnodębska-Tomkiel, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Second Chamber) of 17 May 2011 in Case T-1/08 *Buczek Automotive* v *Commission* by which the General Court partially annulled Commission Decision 2008/344/EC of 23 October 2007 on State Aid C-23/06 (ex NN 35/06) which Poland has implemented for steel producer Technologie Buczek Group (OJ 2008 L 116, p. 26) — Classification as State aid of the failure to request the liquidation of the debtor undertaking — Error of law in the assessment of the Commission's application of the hypothetical private creditor test and in the allocation of the burden of proof

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

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

3. *Orders the Republic of Poland to bear its own costs.*

(1) OJ C 311, 22.10.2011.

Judgment of the Court (Third Chamber) of 11 April 2013 (request for a preliminary ruling from the Rechtbank Amsterdam — Netherlands) — F.P. Jeltes, M.A. Peeters, J.G.J. Arnold v Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-443/11) (1)

(Social security for migrant workers — Article 45 TFEU — Regulation (EEC) No 1408/71 — Article 71 — Wholly unemployed atypical frontier workers who have maintained personal and business links in the Member State of last employment — Regulation (EC) No 883/2004 — Article 65 — Right to benefit in the Member State of residence — Refusal to pay by the Member State of last employment — Admissibility — Relevance of the judgment of the Court of 12 June 1986 in Case 1/85 Miethe — Transitional provisions — Article 87(8) — Concept of 'unchanged situation')

(2013/C 156/12)

Language of the case: Dutch

Referring court

Rechtbank Amsterdam

Parties to the main proceedings

Applicants: F.P. Jeltes, M.A. Peeters, J.G.J. Arnold

Defendant: Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Re:

Request for a preliminary ruling — Rechtbank Amsterdam — Interpretation of Article 45 TFUE, Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968, on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), Article 71 of Council Regulation (EEC) No 1408/71 of 14 June 1971, on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and Articles 65 and 87(8) of European Parliament and Council Regulation (EC) No 883/2004 of 29 April 2004, on the coordination of social security systems (OJ 2004 L 166, p. 1) — Wholly unemployed frontier worker — Right to benefit from the Member State of residence — Worker who has maintained personal and business links in the Member State of last employment and whose prospects of re-integration into working life are greatest there — Member State which refuses, on the basis of its national legislation and on the ground only of residence in the territory of another Member State, to grant unemployment benefit to that worker

Operative part of the judgment

1. *After the entry into force of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, the provisions of Article 65 of Regulation No 883/2004 are not to be interpreted in the light of the judgment of the Court of Justice of 12 June 1986 in Case 1/85 Miethe. With regard to a wholly unemployed frontier worker who has maintained close personal and business links with the Member State where he was last employed of such a kind that his prospects of reintegration into working life are greatest in that State, Article 65 of Regulation No 883/2004 must be understood as allowing such a worker to make himself available as a supplementary step to the employment services of that State, not with a view to obtaining unemployment benefit in that State but only in order to receive assistance there in finding new employment.*

2. *The rules on the freedom of movement for workers, contained in particular in Article 45 TFEU, must be interpreted as not precluding the Member State where the person was last employed from refusing, in accordance with its national law, to grant unemployment benefit to a wholly unemployed frontier worker whose prospects of reintegration into working life are best in that Member State, on the ground that he does not reside in its territory, since, in accordance with Article 65 of Regulation No 883/2004, as amended by Regulation No 988/2009, the applicable legislation is that of the Member State of residence.*

3. *The provisions of Article 87(8) of Regulation No 883/2004, as amended by Regulation No 988/2009, should be applied to wholly unemployed frontier workers who, taking into account the links they have maintained in the Member State where they were last employed, receive unemployment benefit from that Member State on the basis of its legislation, pursuant to Article 71 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008.*

The concept of 'unchanged situation' within the meaning of Article 87(8) of Regulation No 883/2004 as amended by Regulation No 988/2009 must be assessed in the light of national social security legislation. It is for the national court to establish whether workers such as Ms Peeters and Mr Arnold satisfy the conditions provided for in that legislation in order to be able to claim resumption of payment of the unemployment benefit which was paid to them under that legislation, in accordance with Article 71 of Regulation No 1408/71 as amended and updated by Regulation No 118/97, as amended by Regulation No 592/2008.

([1]) OJ C 355, 3.12.2011.

Judgment of the Court (Fourth Chamber) of 11 April 2013 (request for a preliminary ruling from the Landgericht Hamburg — Germany) — Novartis Pharma GmbH v Apozyt GmbH

(Case C-535/11) ([1])

(Request for a preliminary ruling — Regulation (EC) No 726/2004 — Medicinal products for human use — Procedure for authorisation — Requirement for authorisation — Concept of medicinal products 'developed' by means of certain biotechnological processes, as referred to in point 1 of the Annex to that regulation — Repackaging process — Injectable solution distributed in single-use vials containing a larger quantity of the therapeutic solution than that actually used for the purposes of medical treatment — Part of the content of such vials drawn off, on prescription by a doctor, into syringes pre-filled with the prescribed dose, without any modification of the medicinal product)

(2013/C 156/13)

Language of the case: German

Referring court

Landgericht Hamburg

Parties to the main proceedings

Applicant: Novartis Pharma GmbH

Defendant: Apozyt GmbH

Re:

Request for a preliminary ruling — Landgericht Hamburg — Interpretation of the Annex to Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1) — Meaning of 'hergestellt' ('developed' in the English version) in point 1 of that Annex — Whether that term covers the drawing off of liquid medicinal products from the original containers and the transfer into ready-to-use syringes

Operative part of the judgment

Activities such as those at issue in the main proceedings, provided that they do not result in a modification of the medicinal product concerned and are carried out solely on the basis of individual prescriptions calling for processes of such a kind — a matter which falls to be determined by the referring court —, do not require a marketing authorisation under Article 3(1) of Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency, but remain, in any event, subject to Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use, as amended by Directive 2010/84/EU of the European Parliament and of the Council of 15 December 2010.

([1]) OJ C 13, 14.1.2012.

Judgment of the Court (Ninth Chamber) of 21 March 2013 — European Commission v Italian Republic

(Case C-613/11) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid granted by the Italian Republic to the Sardinian shipping sector — Commission Decision 2008/92/EC declaring that aid incompatible with the common market and ordering its recovery from the beneficiaries — Failure to implement within the prescribed period)

(2013/C 156/14)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B. Stromsky and D. Grespan, agents)

Defendant: Italian Republic (represented by: G. Palmieri, agent, and S. Fiorentino, lawyer)

Re:

Failure of a Member State to fulfil obligations — State aid — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Articles 2 and 5 of Commission Decision 2008/92/EC of 10 July 2007 concerning an Italian State aid scheme to the Sardinian shipping (OJ 2008 L 29, p. 24) — Requirement for immediate and effective enforcement of Commission decisions — Inadequacy of the recovery procedure for the unlawful aid at issue

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, within the prescribed period, all the measures necessary to recover from the beneficiaries the State aid considered unlawful and incompatible with the internal market by Article 1 of Commission Decision 2008/92/EC of 10 July 2007 concerning an Italian State aid scheme to the Sardinian shipping, the Italian Republic has failed to fulfil its obligations under Articles 2 and 5 of that decision;*

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

([1]) OJ C 32, 4.2.2012.

Judgment of the Court (Fourth Chamber) of 11 April 2013 (request for a preliminary ruling from the Landgericht München I — Germany) — Karl Berger v Freistaat Bayern

(Case C-636/11) ([1])

(Regulation (EC) No 178/2002 — Consumer protection — Food safety — Public information — Placing on the market of food unfit for human consumption, but not constituting a health risk)

(2013/C 156/15)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Karl Berger

Defendant: Freistaat Bayern

Re:

Request for a preliminary ruling — Landgericht München I — Interpretation of Article 10 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) — Scope *ratione temporis* — Rules of national law under which the public may be informed in cases where a foodstuff which is unfit for consumption and nauseating in appearance, but which does not constitute a specific risk to health, is placed on the market

Operative part of the judgment

Article 10 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, must be interpreted as not precluding national legislation allowing information to be issued to the public mentioning the name of a food and the name or trade name of the food manufacturer, processor or distributor, in a case where that food, though not injurious to health, is unfit for human consumption. The second subparagraph of Article 17(2) of that regulation must be interpreted as allowing, in circumstances such as those of the case in the main proceedings, national authorities to issue such information to the public in accordance with the requirements of Article 7 of Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Third Chamber) of 11 April 2013 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Land Berlin v Ellen Mirjam Sapir, Michael J. Busse, Mirjam M. Birgansky, Gideon Rumney, Benjamin Ben-Zadok, Hedda Brown

(Case C-645/11) ([1])

(Regulation (EC) No 44/2001 — Articles 1(1) and 6(1) — Concept of 'civil and commercial matters' — Undue payment made by a State entity — Claim for recovery of that payment in legal proceedings — Determination of the court having jurisdiction in the case where claims are connected — Close connection between the claims — Defendant domiciled in a non-member State)

(2013/C 156/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Land Berlin

Defendant: Ellen Mirjam Sapir, Michael J. Busse, Mirjam M. Birgansky, Gideon Rumney, Benjamin Ben-Zadok, Hedda Brown

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 1(1) and 6(1) of Council Regulation (EC) No 44/2001 of 22 December 2000, concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Notion of 'civil and commercial matters' — Inclusion or not of an action for repayment of an amount unduly paid by a State body in an administrative procedure intended to compensate for damage caused by the Nazi regime

Operative part of the judgment

1. *Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that the concept of 'civil and commercial matters' includes an action for recovery of an amount unduly paid in the case where a public body is required, by an authority established by a law providing compensation in respect of acts of persecution carried out by a totalitarian regime, to pay to a victim, by way of compensation, part of the proceeds of the sale of land, has, as the result of an unintentional error, paid to that person the entire sale price, and subsequently brings legal proceedings seeking to recover the amount unduly paid.*

2. *Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that there is a close connection, within the meaning of that provision, between claims lodged against several defendants domiciled in other Member States in the case where the latter, in circumstances such as those at issue in the main proceedings, rely on rights to additional compensation which it is necessary to determine on a uniform basis.*

3. *Article 6(1) of Regulation No 44/2001 must be interpreted as meaning that it is not intended to apply to defendants who are not domiciled in another Member State, in the case where they are sued in proceedings brought against several defendants, some of who are also persons domiciled in the European Union.*

([1]) OJ C 80, 17.3.2012.

Judgment of the Court (Seventh Chamber) of 11 April 2013 — Mindo Srl v European Commission

(Case C-652/11 P) ([1])

(Appeals — Competition — Agreements, decisions and concerted practices — Italian market for the purchase and first processing of raw tobacco — Payment of the fine by the jointly and severally liable debtor — Interest in bringing proceedings — Burden of proof)

(2013/C 156/17)

Language of the case: English

Parties

Appellant: Mindo Srl (represented by: G. Mastrantonio, C. Osti and A. Prastaro, avvocati)

Other party to the proceedings: European Commission (represented by: N. Khan and L. Malferrari, Agents, assisted by F. Ruggeri Laderchi and R. Nazzini, avvocati)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 5 October 2011 in Case T-19/06 *Mindo* v *Commission*, whereby the General Court held that there was no need to adjudicate on an action for annulment in part of Decision C(2005) 4012 final of 20 October 2005 relating to a proceeding under Article 81(1) [EC] (Case COMP/C.38.281/B.2 — Raw tobacco — Italy) concerning a cartel designed to fix prices paid to producers and other intermediaries and to share suppliers in the Italian raw tobacco market, and annulment or reduction of the fine imposed on the appellant — Appellant involved in an insolvency procedure in the course of the proceedings — No longer any interest in bringing proceedings

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 5 October 2011 in Case T-19/06 Mindo v Commission;*

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

3. *Reserves the costs.*

([1]) OJ C 49, 18.2.2012.

Judgment of the Court (Third Chamber) of 21 March 2013 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Skatteverket v PFC Clinic AB

(Case C-91/12) ([1])

(VAT — Directive 2006/112/EC — Exemptions — Article 132(1)(b) and (c) — Hospital and medical care and closely related activities — Provision of medical care in the exercise of the medical and paramedical professions — Services consisting in the performance of plastic surgery and cosmetic treatments — Interventions of a purely cosmetic nature based solely on the patient's wishes)

(2013/C 156/18)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: PFC Clinic AB

Re:

Request for a preliminary ruling — Högsta förvaltningsdomstolen — Interpretation of Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemptions for medical treatment and care services — Deduction of input tax — Provision of cosmetic and reconstructive surgery services — Whether account to be taken of the purpose of the operation or treatment

Operative part of the judgment

Article 132(1)(b) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning:

— *supplies of services such as those at issue in the main proceedings, consisting in plastic surgery and other cosmetic treatments, fall within the concepts of 'medical care' and 'the provision of medical care' within the meaning of Article 132(1)(b) and (c) where those services are intended to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore human health;*

— *the subjective understanding that the person who undergoes plastic surgery or a cosmetic treatment has of it are not in themselves decisive in order to determine whether that intervention has a therapeutic purpose;*

— *the fact that services such as those at issue in the main proceedings are supplied or undertaken by a licensed member of the medical profession or that the purpose of such services is determined by such a professional may influence the assessment of whether interventions such as those at issue in the main proceedings fall within the concept of 'medical care' or 'the provision of medical care' within the meaning of Article 132(1)(b) and (c) of Directive 2006/112 respectively;*

— *in order to determine whether supplies of services such as those at issue in the main proceedings are exempt from VAT pursuant to Article 132(1)(b) or (c) of Directive 2006/112 all the requirements laid down in subparagraphs 1(b) or (c) thereof must be taken into account as well as the other relevant provisions in Title IX, Chapters 1 and 2, of that directive such as, as far as concerns Article 132(1)(b), Articles 131, 133 and 134 thereof.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Second Chamber) of 21 March 2013 (request for a preliminary ruling from the Finanzgericht des Landes Sachsen-Anhalt — Germany) — Magdeburger Mühlenwerke GmbH v Finanzamt Magdeburg

(Case C-129/12) ([1])

(Regional aid scheme — Investment in the processing and marketing of agricultural products — Commission decision — Incompatibility with the internal market — Abolition of incompatible aid — Time at which aid is granted — Principle of the protection of legitimate expectations)

(2013/C 156/19)

Language of the case: German

Referring court

Finanzgericht des Landes Sachsen-Anhalt

Parties to the main proceedings

Applicant: Magdeburger Mühlenwerke GmbH

Defendant: Finanzamt Magdeburg

Re:

Request for a preliminary ruling — Finanzgericht des Landes Sachsen-Anhalt — Interpretation of Commission Decision 1999/183/EC of 20 May 1998 concerning State aid for the processing and marketing of German agricultural products which might be granted on the basis of existing regional aid schemes (OJ 1999 L 60, p. 61) — Obligation on Germany to repeal the existing aid schemes which are inconsistent with the framework proposed by the Commission in its communication concerning such aid — Temporal scope of that obligation — Possibility for the Member State concerned to not repeal the aid in question for investments envisaged before the expiration of the period for the implementation of the decision and before the publication of the intention of the Member State to repeal the aid for such investments where the investment in question has been made after the implementation of the decision.

Operative part of the judgment

Article 2 of Commission Decision 1999/183/EC of 20 May 1998 concerning State aid for the processing and marketing of German agricultural products which might be granted on the basis of existing regional aid schemes must be interpreted as precluding the grant of investment aid concerning milling in relation to which the binding investment decision was made before the expiration of the period afforded to the Federal Republic of Germany to comply with that decision or before the publication in the Bundessteuerblatt *of the measures taken to that effect, when the delivery of the capital asset and the determination and disbursement of the subsidy took place only after the expiration of that period or that publication, if the time at which an investment subsidy is considered to be granted is only after the expiration of that period. It is for the referring court to determine when an investment subsidy, such as that at issue in the main proceedings, must be considered to be granted, by taking account of all the conditions laid down by national law for obtaining the aid in question and ensuring that the prohibition laid down in Article 2(1) of Decision 1999/183 is not circumvented.*

([1]) OJ C 174, 16.6.2012.

Judgment of the Court (Fifth Chamber) of 11 April 2013 (request for a preliminary ruling from the Administrativen sad Varna — Bulgaria) — Rusedespred OOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-138/12) ([1])

(Taxation — VAT — Directive 2006/112/EC — Article 203 — Principle of fiscal neutrality — Refund to the supplier of tax paid where the recipient under an exempt transaction is refused a right of deduction)

(2013/C 156/20)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicant: Rusedespred OOD

Defendant: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

Request for a preliminary ruling — Administrativen sad — Varna — Interpretation of Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Principles of fiscal neutrality, effectiveness and equal treatment — Right to deduct input tax — Right of a supplier of goods to claim a refund of tax unduly paid where the right of the recipient of the goods to deduct the tax has been refused because the supply was exempt from tax under national law

Operative part of the judgment

1. *The principle of the neutrality of value added tax, as given specific definition by the case-law relating to Article 203 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, must be interpreted as precluding a tax authority from refusing, on the basis of a provision of national law intended to transpose that article, the supplier of an exempt supply the refund of value added tax invoiced in error to a customer on the ground that the supplier had not corrected the erroneous invoice, in circumstances where*

that authority had definitively refused the customer the right to deduct that value added tax and such definitive refusal results in the system for correction provided for under national law no longer being applicable;

2. *The principle of the neutrality of value added tax, as given specific definition by the case-law relating to Article 203 of Directive 2006/112, may be relied on by a taxable person in order to contest a provision of national law that makes the refund of value added tax invoiced in error conditional on the correction of the incorrect invoice, in circumstances where the right to deduct that value added tax has definitively been refused and such definitive refusal results in the system for correction provided for under national law no longer being applicable.*

([1]) OJ C 151, 26.5.2012.

Judgment of the Court (Seventh Chamber) of 11 April 2013 — European Commission v Ireland

(Case C-158/12) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/1/EC — Article 5 — Integrated pollution prevention and control — Conditions governing the granting of permits for existing installations — Obligation to ensure that such installations operate in accordance with the requirements of that directive)

(2013/C 156/21)

Language of the case: English

Parties

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

Defendant: Ireland (represented by: E. Creedon, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8) — Conditions governing the granting of permits for existing installations — Obligation to ensure that such installations are operated in accordance with the requirements of the directive

Operative part of the judgment

The Court:

1. *Declares that, by not issuing permits in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control or, as appropriate, by not reconsidering and, where necessary, by not updating permit conditions, in respect of 13 existing pig-rearing and poultry-rearing installations, and by thereby failing to ensure that all existing installations operate in accordance with Articles 3, 7, 9, 10, 13, 14(a) and (b) and 15(2) of that directive by not later than 30 October 2007, Ireland has failed to fulfil its obligations under Article 5(1) of that directive;*

2. *Orders Ireland to pay the costs.*

([1]) OJ C 174, 16.6.2012.

Judgment of the Court (Tenth Chamber) of 21 March 2013 — European Commission v French Republic

(Case C-197/12) ([1])

(Failure of a Member State to fulfil obligations — Taxation — VAT — Directive 2006/112/EC — Article 148 — Exemption of certain transactions intended for vessels carrying passengers for reward or used for the purpose of commercial activities — Condition that the vessels must be used for navigation on the high seas)

(2013/C 156/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Dintilhac and C. Soulay, Agents)

Defendant: French Republic (represented by: G. de Bergues, J.-S. Pilczer and D. Colas, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 148(a), (c) and (d) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemption of certain transactions intended for vessels carrying passengers for reward or used for the purpose of commercial activities — Condition that the vessels must be used for navigation on the high seas — Compatibility of a national measure which impermissibly extends the exemptions provided for by the directive

Operative part of the judgment

The Court:

1. *Declares that, by not making the exemption from value added tax of transactions referred to in Article 262, Part II(2), (3), (6) and (7), of the Code général des impôts conditional on the requirement of use for navigation on the high seas, in respect of vessels carrying passengers for reward and those used for the purpose of commercial activities, the French Republic has failed to fulfil its obligations under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, in particular Article 148(a), (c) and (d) thereof;*

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

(1) OJ C 217, 21.7.2012.

Judgment of the Court (Fifth Chamber) of 21 March 2013 (reference for a preliminary ruling from the Verwaltungsgerichtshof — Austria) — Salzburger Flughafen GmbH v Umweltsenat

(Case C-244/12) (1)

(Assessment of the effects of certain projects on the environment — Directive 85/337/EEC — Articles 2(1) and 4(2) — Projects listed in Annex II — Extension works to the infrastructure of an airport — Examination on the basis of thresholds or criteria — Article 4(3) — Selection criteria — Annex III, point 2(g) — Densely populated areas)

(2013/C 156/23)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Salzburger Flughafen GmbH

Defendant: Umweltsenat

Intervener: Landesumweltanwaltschaft Salzburg, Bundesministerin für Verkehr, Innovation und Technologie

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof — Interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) — Projects liable to an assessment — Extension of an airport — Member State's legislation providing for an environmental impact assessment of a project only if the annual number of flights increases by no less than 20 000.

Operative part of the judgment

1. *Articles 2(1) and 4(2)(b) and (3) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997, preclude national legislation which makes projects which change the infrastructure of an airport and fall within the scope of Annex II to that directive subject to an environmental impact assessment only if those projects are likely to increase the number of aircraft movements by at least 20 000 per year;*

2. *When a Member State, pursuant to Article 4(2)(b) of Directive 85/337, as amended by Directive 97/11, with regard to projects falling within the scope of Annex II thereto, establishes a threshold which is incompatible with the obligations laid down in Articles 2(1) and 4(3) of that directive, the provisions of Articles 2(1) and 4(2)(a) and (3) of the directive have direct effect, which means that the competent national authorities must ensure that it is first examined whether the projects concerned are likely to have significant effects on the environment and, if so, that an assessment of those effects is then undertaken.*

(1) OJ C 235, 4.8.2012.

Judgment of the Court (Eighth Chamber) of 11 April 2013 (request for a preliminary ruling from the Tribunale di Napoli — Italy) — Oreste Della Rocca v Poste Italiane SpA

(Case C-290/12) (1)

(Social policy — Directive 1999/70/EC — Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 2 — Scope of application of the Framework Agreement — Temporary employment business — Supply of temporary workers to a user undertaking — Successive fixed-term employment contracts)

(2013/C 156/24)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Oreste Della Rocca

Defendant: Poste Italiane SpA

Re:

Request for a preliminary ruling — Tribunale di Napoli — Interpretation of Clauses 2 and 5 of the Framework Agreement set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Scope — Applicability of that directive to temporary employment agencies — Possibility for those agencies to draw up successive fixed-term contracts with temporary workers owing to circumstances justifying the temporary nature of the employment relationship between the temporary worker and the undertaking making use of that worker

Operative part of the judgment

Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and the Framework Agreement on fixed-term work, concluded on 18 March 1999, set out in the Annex to that directive, must be interpreted as not applying either to the fixed-term employment relationship between a temporary worker and a temporary employment business or to the employment relationship between such a worker and a user undertaking.

([1]) OJ C 243, 11.8.2012.

Order of the Court (Third Chamber Chamber) of 21 March 2013 — (request for a preliminary ruling from the Giudice di pace di Lecce — Italy) — Criminal proceedings against Abdoul Khadre Mbaye

(Case C-522/11) ([1])

(Article 99 of the Rules of Procedure — Area of freedom, security and justice — Directive 2008/115/EC — Common standards and procedures for returning illegally staying third-country nationals — National legislation penalising illegal residence by criminal sanctions)

(2013/C 156/25)

Language of the case: Italian

Referring court

Giudice di pace di Lecce

Criminal proceedings against

Abdoul Khadre Mbaye

Re:

Request for a preliminary ruling — Ufficio del Giudice di Pace Lecce — Interpretation of Articles 2(2)(b), 6, 7 and 8 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) — National legislation providing for a fine of between EUR 5 000 and EUR 10 000 for a foreign national who has illegally entered or illegally stayed on the national territory — Whether a criminal offence of illegal residence is permissible — Whether immediate expulsion for a period of at least five years, as an alternative to a fine, is permissible

Operative part of the order

1. *Third-country nationals prosecuted for or convicted of the offence of illegal residence provided for in the legislation of a Member State cannot, on account solely of that offence of illegal residence, be excluded from the scope of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, pursuant to Article 2(2)(b) of that directive.*

2. *Directive 2008/115 does not preclude legislation of a Member State, such as that at issue in the main proceedings, penalising the illegal residence of third-country nationals by a fine which may be replaced by expulsion. However, it is only possible to have recourse to that option to replace the fine where the situation of the person concerned corresponds to one of those referred to in Article 7(4) of that directive.*

([1]) OJ C 370, 17.12.2011.

Order of the Court (Eighth Chamber) of 21 March 2013 (request for a preliminary ruling from the Administrativen sad — Varna — Bulgaria) — Sani Treyd EOOD v Direktor na Direktsia 'Obzhalvane I upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Case C-153/12) ([1])

(Article 99 of the Rules of Procedure — VAT — Directive 2006/112/EC — Articles 62, 63, 65, 73 and 80 — Establishment of a building right by natural persons who are neither taxable persons nor persons liable for payment in favour of a company in exchange for the construction of immovable property by that company for those natural persons — Barter contract — VAT on supplies relating to the construction of the immovable property — Chargeable event — When chargeable — Payment on account of the entire consideration — Payment on account — Basis of assessment in the event of consideration in the form of goods or services)

(2013/C 156/26)

Language of the case: Bulgarian

Referring court

Administrativen sad

Parties to the main proceedings

Applicant: Sani Treyd EOOD

Defendant: Direktor na Direktsia 'Obzhalvane I upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

Request for a preliminary ruling — Administrativen sad — Varna — Interpretation of Articles 62(1), 63, 73 and 80 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — National legislation providing that any supply of goods or

services the consideration of which in whole or in part consists of goods or services is considered to represent two related supplies of goods or services — Legislation fixing the date of the chargeable event for VAT for related exchange transactions as being the date of the chargeable event in respect of the first supply effected even though the consideration for that supply has not yet been provided — Natural persons who acquired a building right in favour of a company with a view to construction of a residential building in consideration for the obligation on the part of the company to construct the building using its own resources and to hand over to those who had acquired the building right 25 % of the ownership of the total built area within 12 months of issue of the building permit — Determination of the basis of assessment — Applicability of the concept of chargeable event to exempted transactions even if they are carried out by a person who has the status neither of a taxable person nor of a person liable for payment

Operative part of the order

1. *Articles 63 and 65 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that, in circumstances such as those of the case in the main proceedings, where a building right is established in favour of a company with a view to the construction of a building of which it is to own 75 % of the total built area, in consideration for the construction of the remaining 25 %, which that company undertakes to deliver in a fully completed state to the persons who established that building right, they do not preclude the value added tax on the supply of the construction services from becoming chargeable from the moment the building right is established, that is to say before those services are supplied, in so far as, when that right was established, all the relevant elements of that future supply of services are already known and therefore, in particular, the services at issue are designated in detail, and the value of that right may be expressed in financial terms, which it is for the referring court to ascertain. The fact that the establishment of that building right is an exempted transaction carried out by persons who are not deemed taxable persons or persons liable for payment within the meaning of that directive has no effect in this respect.*

2. *In circumstances such as those of the case in the main proceedings, in which the transaction is not carried out by linked parties for the purposes of Article 80(1) of Directive 2006/112, which it is nevertheless for the referring court to ascertain, Articles 73 and 80 of that directive must be interpreted as meaning that they preclude a national provision, such as that at issue in the main proceedings, under which, where the consideration for a supply of goods or services is entirely in the form of goods or services, the basis of assessment for the supply is, in any event, to be the open market value of the goods or services supplied.*

(1) OJ C 165, 9.6.2012.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 21 January 2013 — Dél-Zempléni Nektár Leader Nonprofit kft. v Vidékfejlesztési Miniszter

(Case C-24/13)

(2013/C 156/27)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dél-Zempléni Nektár Leader Nonprofit kft.

Defendant: Vidékfejlesztési Miniszter

Questions referred

1. Can Council Regulation (EC) No 1698/2005 (1) and Commission Regulation No 1974/2006 (2) be interpreted as meaning that local action groups set up in the context of agricultural aid can operate only in a form of organisation determined by law in a given Member State?

2. Can a distinction be made on the basis of the above regulations in such a way that the legislature of the Member State gives recognition only to local action groups constituted as certain legal forms of organisation, laying down conditions which are different from or stricter than those in Article 62[1] of Regulation No 1698/2005?

3. Is it sufficient under the above regulations if local action groups in a Member State fulfil only the requirements laid down in Article 62[1] of Regulation No 1698/2005? May the Member State restrict that provision by imposing other formal or legal obligations on the bodies which meet the requirements laid down in Article 62[1] of Regulation No 1698/2005?

4. Can the above regulations be interpreted as meaning that the decision to abolish local action groups which meet the requirements imposed by Article 62(1) of Regulation No 1698/2005 and which complied with all the relevant national and Community legislation throughout the time they were operating falls within the margin of discretion of a Member State and as permitting only the operation of local action groups which have a new legal form?

5. Can the above regulations be interpreted as meaning that, as regards aid programmes which are already under way or during the programming period, a Member State may itself also alter the legal framework for the operation of local action groups?

6. How must the above regulations be interpreted in the event that local action groups which have hitherto conducted their activities efficiently and legally are abolished? What happens in such a case to the obligations undertaken and the rights acquired by local action groups, having particular regard to the whole group of bodies affected by the abolition?

7. Can Article 62(2) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) be interpreted as meaning that a provision is acceptable and complies with the law if, under it, a Member State requires Leader local action groups which take the form of non-profit companies to convert into associations within a year on the ground that only the association as a legal form of company organisation can properly guarantee the creation of a network between local members, given that, under the applicable Hungarian law, the fundamental aim of a company is the obtaining of profits and the involvement of economic interests prevents the attraction of the public and the recruitment of new members?

([1]) Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

([2]) Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 21 January 2013 — Kásler Árpád, Káslerné Rábai Hajnalka v OTP Jelzálogbank Zrt.

(Case C-26/13)

(2013/C 156/28)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicants: Kásler Árpád, Káslerné Rábai Hajnalka

Defendant: OTP Jelzálogbank Zrt.

Questions referred

1. Must Article 4(2) of Council Directive 93/13/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts ('the Directive') be interpreted as meaning that, in the case of a debt in respect of a loan which is denominated in a foreign currency but, in reality, is advanced in the national currency, and which is repayable by the consumer solely in national currency, the contractual clause concerning the rate of exchange of the currency, which was not individually negotiated, may form part of the 'definition of the main subject matter of the contract'?

   If that is not the case, on the basis of the second indent of Article 4(2) of the Directive, must it be considered that the difference between the buying rate of exchange and the selling rate of exchange constitutes remuneration whose equivalence with the service provided cannot be analysed from the viewpoint of unfairness? In this regard, does the question whether there has in fact been a foreign exchange operation between the financial entity and the consumer have any impact?

2. If it were necessary to interpret Article 4(2) of the Directive as meaning that the national court is also entitled to examine, regardless of the provisions of its national law, the unfairness of the contractual clauses referred to in that article, provided that such clauses are not drafted in a clear and intelligible manner, must it be considered, in the light of the latter requirement, that the contractual clauses must in themselves appear to be clear and intelligible to the consumer from the grammatical point of view or, in addition, must the economic reasons for using the contractual clause and its relationship with the other contractual clauses also be clear and intelligible?

3. Must Article 6(1) of the Directive and paragraph 73 of the judgment of the Court of Justice in Case C-618/10 *Banco Español de Crédito* be interpreted as meaning that the national court is not entitled to eliminate, for the benefit of the consumer, [the causes] of ineffectiveness of an unfair clause included in the general conditions of a loan contract concluded with a consumer, amending the contractual clause in question and completing the contract, not even where, otherwise, if such a clause is eliminated, the contract cannot be performed on the basis of the remaining contractual clauses? In that regard, is it relevant that national law contains a provision which, in the event of omission of the ineffective clause, governs [in its place] the legal question at issue?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 22 February 2013 — Luigi D'Aniello and Others v Poste Italiane SpA

(Case C-89/13)

(2013/C 156/29)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicants: Luigi D'Aniello and Others

Defendant: Poste Italiane SpA

Questions referred

1. Is it contrary to the principle of equivalence if, in implementing Directive 1999/70/EC, ([1]) national legislation makes provision, for cases where an employment contract is unlawfully suspended by operation of a clause which sets an expiry date, for economic consequences which are different from and considerably less favourable than the economic consequences which are to ensue in cases where an ordinary civil law contract is suspended by operation of a clause which sets an expiry date?

2. Is it compatible with the law of the European Union that the effectiveness, within the scope of its application, of a penalty benefits the employer who has acted wrongfully, to the detriment of the employee who has been wronged, in such a way that the temporal duration and the physical demands of the procedure directly damage the employee to the advantage of the employer, and the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?

3. Within the scope of European Union law under Article 51 of the Charter [of Fundamental Rights], is it compatible with Article 47 of [that] Charter … and Article 6 of the European Convention on Human Rights for the temporal duration and the physical demands of the procedure directly to damage the employee to the advantage of the employer and for the efficacy in remedial terms to be inversely proportional to the length of the procedure, so far as almost to be cancelled out?

4. In the light of the explanations given in Article 3(1)(c) of Directive 2000/78/EC ([2]) and Article 14(1)(c) of Directive 2006/54/EC, ([3]) does the notion of 'employment conditions' referred to in Clause 4 of Directive 1999/70/EC also cover the consequences ensuing from the unlawful interruption of an employment relationship?

5. In the event that [Question 4] is answered in the affirmative, is the difference between the consequences normally provided for under national law in relation to the unlawful interruption of a permanent employment relationship, on the one hand, and the consequences in the case of a fixed-term employment relationship, on the other, justifiable under Clause 4 [of Directive 1999/70/EC]?

6. On a proper construction of the general Community law principles of legal certainty, protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, and the right to an independent and impartial tribunal and, more generally, to a fair hearing, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1(8) of the Treaty of Lisbon and to which Article 46 of the Treaty on European Union refers), read in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000, as implemented by the Treaty of Lisbon, do those principles preclude the adoption by the Italian State, after a significant period of time, of a provision (such as Article 32(7) of Law No 83/10 as interpreted by Article 1(13) of Law No 92/12) which alters the consequences of ongoing proceedings directly to the detriment of the employee and to the advantage of the employer, the result being that the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?

7. In the event that the Court of Justice does not recognise the above principles as having the authority of fundamental principles of the European Union for the purposes of their horizontal application *erga omnes*, with the effect that a provision such as Article 32(5) to (7) of Law No 183/10 (as interpreted by Article 1(13) of Law No 92/12) is incompatible only with the obligations under Directive 1999/70/EC and the Charter [of Fundamental Rights], must a company such as the defendant company be regarded as a public body for the purposes of the direct, 'ascending' vertical application of European Union law and, in particular, of Clause 4 of Directive 1999/70/EC, and the Charter?

8. In the event that the Court of Justice … answers Questions 1, 2, 3 or 4 in the affirmative, does the duty to cooperate in good faith — a fundamental principle of the European Union — make it possible for an interpretative provision, such as Article 1(13) of Law No 92/12, which makes it impossible to observe the principles confirmed by the answers to Questions 1 to 4, not to be applied?

([1]) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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

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

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 28 February 2013 — U v Stadt Karlsruhe

(Case C-101/13)

(2013/C 156/30)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: U

Defendant: Stadt Karlsruhe

Questions referred

1. In accordance with the annex to Regulation (EC) No 2252/2004, ([1]) must the personal data page of machine readable passports issued by the Member States satisfy all the compulsory specifications of Part 1 (Machine Readable Passports) of Document No 9303 of the ICAO? ([2])

2. If, in accordance with the Law on names of a Member State, a person's name comprises his first name and surname, are the Member States also entitled, in accordance with the annex to Regulation (EC) No 2252/200, in conjunction with Point 8.6 of Section IV of Part 1 (Machine Readable Passports) of Document No 9303 of the ICAO, to enter the name at birth as a primary identifier in Field 6 of the machine readable personal data page of the passport?

3. If, in accordance with the Law on names of a Member State, a person's name comprises his first name and surname, are the Member States also entitled, in accordance with the annex to Regulation (EC) No 2252/2004, in conjunction with Point 8.6 of Section IV of Part 1 (Machine Readable Passports) of Document No 9303 of the ICAO, to enter the name at birth as a secondary identifier in Field 7 of the machine readable personal data page of the passport?

4. If either the second or third question is answered in the affirmative: is a Member State, in accordance with whose Law on names a person's name comprises his first name and surname, required, on the basis of the protection afforded to a person's name under Article 7 of the CFREU ([3]) and Article 8 ECHR, ([4]) to state, in the relevant caption of the machine readable personal data page of a passport, that the name at birth is also entered in that field?

5. If the fourth question is answered in the negative: by reason of the protection afforded to a person's name under Article 7 of the Charter of Fundamental Rights and Article 8 ECHR, is a Member State, in accordance with whose Law on names a person's name comprises his first name and surname and under whose Law on passports the fields on the machine readable personal data page of a passport are also to be given in English and French and in Field 6 of that page the name at birth is also to be provided on a single line, preceded by the abbreviation 'geb.' of the word 'geboren' (born), also required to provide a translation in English and French of the abbreviation 'geb.'?

6. If, in accordance with the Law on names of a Member State, a person's name comprises his first name and surname, are the Member States entitled, in accordance with the annex to Regulation (EC) No 2252/2004, in conjunction with Part 8.6 of Section IV of Part 1 (Machine Readable Passports) of Document No 9303 of the ICAO, to enter the name at birth as an optional item of personal data in Field 13 of the machine readable personal data page of the passport?

([1]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1).
([2]) International Civil Aviation Organisation.
([3]) Charter of Fundamental Rights of the European Union.
([4]) The European Convention on Human Rights.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 8 March 2013 — ASL n. 5 'Spezzino' and Others v San Lorenzo Società Cooperativa Sociale, Croce Verde Cogema Cooperativa Sociale Onlus

(Case C-113/13)

(2013/C 156/31)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: ASL n. 5 «Spezzino», A.N.P.A.S. Associazione Nazionale Pubblica Assistenza — Comitato Regionale Liguria, Regione Liguria

Respondents: San Lorenzo Società Cooperativa Sociale, Croce Verde Cogema Cooperativa Sociale Onlus

Questions referred

1. Do Articles 49 TFEU, 56 TFEU, 105 TFEU and 106 TFEU preclude a provision of national law under which ambulance services are awarded, on a preferential basis, to voluntary associations, the Italian Red Cross and other authorised public institutions or bodies, albeit pursuant to agreements which provide only for reimbursement of expenditure that is actually incurred?

2. Does European Union law on public tendering — in the case under examination concerning excluded contracts and the general principles of free competition, non-discrimination, transparency and proportionality — preclude national legislation which permits the direct awarding of ambulance services on the ground that a framework contract such as that contested in this case, which provides for the reimbursement also of fixed and ongoing costs, must be classified as having a pecuniary interest?

Action brought on 14 March 2013 — European Parliament v Council of the European Union

(Case C-124/13)

(2013/C 156/32)

Language of the case: English

Parties

Applicant: European Parliament (represented by: L.G. Knudsen, I. Liukkonen and R. Kaškina, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks ([1]); and

— order Council of the European Union to pay the costs.

Pleas in law and main arguments

The European Parliament raises a single plea of annulment of the contested Regulation on the grounds that Article 43(3) TFEU is not the appropriate legal basis for the contested Regulation and that it should have been adopted on the basis of Article 43(2) TFEU, as the latter provision gives the European Union legislature the necessary powers for adopting an act with the aim and content of the contested Regulation. The legal basis used excluded Parliament from taking part in the adoption of the act, whereas Article 43(2) TFEU provides for the ordinary legislative procedure to be followed. The erroneous legal basis must lead to the annulment of the contested Regulation.

Under the first limb of its plea Parliament asserts that each multiannual plan, such as that at stake in the present case, as a fish stocks conservation and management tool, forms a whole which only contains provisions in the pursuit of the sustainability and conservation objectives of the CFP and must therefore be adopted in its entirety under Article 43(2) TFEU.

The second limb of Parliament's plea consists of the assertion that the adoption of the contested Regulation separately from the remainder of the Commission proposal constitutes in any event an abuse of the procedure and empties the established case-law on the choice of legal basis according to the centre of gravity of the act, of its contents. Splitting the proposal enabled the Council to artificially choose a separate legal basis for certain elements of the proposed act, whereas these would have been absorbed by the single legal basis of Article 43(2) TFEU had the act been adopted in the form of the initially proposed whole.

([1]) OJ L 352, p. 10

Action brought on 14 March 2013 — European Commission v Council of the European Union

(Case C-125/13)

(2013/C 156/33)

Language of the case: English

Parties

Applicant: European Commission (represented by: K. Banks, A. Bouquet, A. Szmytkowska, Agents)

Defendant: Council of the European Union

The applicant claims that the Court should:

— annul Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries exploiting those stocks ([1]),

— to maintain the effects of the annulled Council Regulation for a reasonable time after the judgment, that is to say, for a maximum of one full calendar year starting on January 1 of the year after the judgment, and

— order the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

In the present action the Commission requests the Court to annul Council Regulation (EU) No 1243/2012 of 19 December 2012 amending Regulation (EC) No 1342/2008 establishing a long-term plan for cod stocks and the fisheries

exploiting those stocks, while maintaining the legal effects of that Regulation for a reasonable time after the judgment in the present case, that is to say a maximum of one full calendar year starting on January 1 after the judgment.

The Commission's application is based on the following three pleas:

(a) In its First Plea on the error in law concerning the legal basis of the contested Regulation (violation of Article 43(2) TFEU), the Commission submits that the Council committed an error in splitting the Commission's proposal and adopting a part of it on the basis of Article 43(3) TFEU as it should have been based in its entirety, as the Commission had proposed, on Article 43(2). The contested Regulation contains provisions which do not fall within the scope of Article 43(3), which can only provide a basis for measures on the fixing and allocation of fishing opportunities.

(b) In the Second Plea on the consequential error in law concerning the decision making procedure and the institutional prerogatives of the European Parliament to participate in the ordinary legislative procedure and of the European Economic and Social Committee to be duly consulted (violation of Articles 294 and 43(2) TFEU), the Commission submits that the part of the proposal concerned was adopted by the Council acting alone, while the European Parliament did not participate in its adoption as it would have done under the ordinary legislative procedure, and the European Economic and Social Committee was not adequately consulted.

(c) Finally, in the Third Plea on the adoption of the contested Regulation without a Commission proposal or the fundamental change in the nature of the Commission's proposal (fr. dénaturation) (violation of Article 17 TEU and Article 43(3) TFEU), the Commission demonstrates that the splitting of the proposal by the Council and the consequential change of legal basis of one part of it has resulted in a fundamental alteration in the nature of the Commission's proposal, in violation of the Commission's exclusive right of initiative.

([1]) OJ L 352, p. 10

Action brought on 19 March 2013 — European Commission v Kingdom of Belgium

(Case C-139/13)

(2013/C 156/34)

Language of the case: French

Parties

Applicant: European Commission (represented by: D. Maidani and G. Wils, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that as it did not apply, by 28 June 2009, the time-limit laid down by Article 6 of Regulation (EC) No 2252/2004 ([1]), the technical specifications for issuing biometric passports containing fingerprints, in accordance with the provisions contained in Commission Decision C(2006) 2909 of 28 June 2006, the Kingdom of Belgium failed to fulfil its obligations under that regulation,

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

In its application, the Commission claims that the Kingdom of Belgium has not adopted the measures necessary to ensure that biometric passports integrating fingerprints are issued within the time-limit laid down by Regulation (EC) No 2252/2004.

([1]) Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1)

Request for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) lodged on 20 March 2013 — Annett Altmann and Others v Bundesanstalt für Finanzdienstleistungsaufsicht

(Case C-140/13)

(2013/C 156/35)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Annett Altmann and Others

Defendant: Bundesanstalt für Finanzdienstleistungsaufsicht

Questions referred

1. Is it compatible with European Union law for mandatory obligations of secrecy which are incumbent on the national authorities responsible for supervising financial services undertakings and which are based on relevant acts of European Union law (in this case, Directive 2004/109/EC, [1] Directive 2006/48/EC [2] and Directive 2009/65/EC [3]) and have been transposed accordingly into national law, as in the Federal Republic of Germany by Paragraph 9 of the Kreditwesengesetz (Law on the Activities of Credit Institutions) and Paragraph 8 of the Wertpapierhandelsgesetz (Law on Securities Trading), to be capable of being breached by the application and interpretation of a provision of national procedural law such as Paragraph 99 of the VwGO?

2. Can a supervisory authority such as the German Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Office for the Supervision of Financial Services) rely, as against a person who has applied to it under the German national Law on Freedom of Information for access to information concerning a particular financial services provider, on obligations of secrecy incumbent upon it inter alia under European Union law, as laid down in Paragraph 9 of the Kreditwesengesetz and Paragraph 8 of the Wertpapierhandelsgesetz, even in circumstances where the essential business concept of the company which offered financial services but has since been dissolved on grounds of insolvency and is in liquidation consisted in large-scale investment fraud and the wilful harming of investors' interests and the responsible executives of the company have been sentenced by final judgment to terms of several years' imprisonment?

[1] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ 2004 L 390, p. 38).

[2] Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance) (OJ 2006 L 177, p. 1).

[3] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (Text with EEA relevance) (OJ 2009 L 302, p. 32).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 26 March 2013 — Nickel & Goeldner Spedition GmbH v Kintra UAB, in liquidation

(Case C-157/13)

(2013/C 156/36)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant on a point of law: Nickel & Goeldner Spedition GmbH

Respondent on a point of law: Kintra UAB, in liquidation

Questions referred

1. Where an action is brought by an insolvency administrator, acting in the interests of all the creditors of the undertaking and seeking to restore the undertaking's solvency and to increase the amount of the assets of the insolvent undertaking so that as many creditors' claims as possible may be satisfied — whilst it should be noted that the same effects are also sought, for instance, by an insolvency administrator's actions to set transactions aside (*actio Pauliana*), which have been recognised as closely connected with the insolvency proceedings — and given the fact that in the case at issue payment of a sum owed is claimed under the CMR Convention and the Lithuanian Civil Code (general provisions of civil law) for the international carriage of goods that was performed, is that action to be considered to be connected closely (by direct link) with the claimant's insolvency proceedings, must jurisdiction to hear it be determined in accordance with the rules of Regulation No 1346/2000 [1] and does it fall within the exception to application of Regulation No 44/2001? [2]

2. In the event that the first question is answered in the affirmative, the Lietuvos Aukščiausiasis Teismas requests the Court to explain whether, where the obligation at issue (the defendant's obligation, based on the improper performance of its contractual obligations, to pay the sum owed and default interest to the insolvent claimant for the international carriage of goods) has arisen prior to the opening of insolvency proceedings in respect of the claimant, Article 44(3)(a) of Regulation No 1346/2000 must be relied upon and this regulation is inapplicable because jurisdiction over the case is established in accordance with Article 31 of the CMR Convention, as provisions of a specialised convention.

3. In the event that the first question is answered in the negative and the dispute under consideration falls within the scope of Regulation No 44/2001, the Lietuvos Aukščiausiasis Teismas requests the Court to explain whether, in the present instance, inasmuch as Article 31(1) of the CMR Convention and Article 2(1) of Regulation No 44/2001 do not conflict with each other, it should be considered that, upon placing the relations at issue within the scope of the CMR Convention (the specialised convention), the legal rules in Article 31 of the CMR Convention are to be applied when establishing which State's courts have jurisdiction over the action under consideration, if the legal rules in Article 31(1) of the CMR Convention do

not run counter to the fundamental objectives of Regulation No 44/2001, do not lead to results which are less favourable for achieving sound operation of the internal market and are sufficiently clear and precise.

(1) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).
(2) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Vrhovno sodišče Republike Slovenije (Slovenia) lodged on 29 March 2013 — Damijan Vnuk v Zavarovalnica Triglav d. d.

(Case C-162/13)

(2013/C 156/37)

Language of the case: Slovenian

Referring court

Vrhovno sodišče Republike Slovenije

Parties to the main proceedings

Applicant: Damijan Vnuk

Defendant: Zavarovalnica Triglav d. d.

Question referred

Must the concept of 'the use of vehicles' within the meaning of Article 3(1) of Council Directive 72/166/EEC (1) of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, be interpreted as not extending to the circumstances of the present case, in which the person insured by the defendant struck the applicant's ladder with a tractor towing a trailer while hay was being stored in a hayloft, on the basis that the incident did not occur in the context of a road traffic accident?

(1) OJ 1972 L 103, p. 1.

Request for a preliminary ruling from the Conseil Constitutionnel (France) lodged on 4 April 2013 — Jeremy F. v Premier ministre

(Case C-168/13)

(2013/C 156/38)

Language of the case: French

Referring court

Conseil Constitutionnel

Parties to the main proceedings

Applicant: Jeremy F.

Defendant: Premier ministre

Question referred

Must Articles 27 and 28 of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (1) be interpreted as precluding the Member States from providing for an appeal suspending execution of the decision of the judicial authority which rules, within a period of 30 days from receipt of the request, in order either to consent to the prosecution, sentencing or detention of a person with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his surrender pursuant to a European arrest warrant, other than that for which he was surrendered, or to consent to the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his surrender?

(1) OJ 2002 L 190, p. 1.

Request for a preliminary ruling from the Riigikohus (Estonia) lodged on 28 March 2013 — MTÜ Liivimaa Lihaveis v Eesti-Läti programmi 2007-2013 Seirekomitee

(Case C-175/13)

(2013/C 156/39)

Language of the case: Estonian

Referring court

Riigikohus (Estonia)

Parties to the main proceedings

Applicant and appellant: MTÜ Liivimaa Lihaveis

Defendant and respondent: Eesti-Läti programmi 2007-2013 Seirekomitee

Intervener: Eesti Vabariigi Siseministeerium

Questions referred

2.1 Are the Member States taking part in the Estonia-Latvia Programme 2007-2013, when setting up the monitoring committee referred to in Articles 63(1) of Council Regulation (EC) No 1083/2006 of 11 July 2006 (1) and Article 14(3) of Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006, (2) required, in accordance with the third sentence of Article 19(1) of

the Treaty on European Union and Article 47(1) of the Charter of Fundamental Rights of the European Union, to agree which court has jurisdiction to hear actions brought against decisions of the monitoring committee and under which law the actions are heard?

2.2 If the answer Question 2.1. is in the affirmative, yet there is no such agreement, is it then consistent with Article 63(2) of Council Regulation (EC) No 1083/2006 of 11 July 2006 if an action brought against a decision of the monitoring committee is heard on the basis of national law by a court of the Member State of the person who has brought the action?

([1]) Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ 2006 L 210, p. 25).

([2]) Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999 (OJ 2006 L 210, p. 1).

Action brought on 11 April 2013 — European Commission v Republic of Finland

(Case C-178/13)

(2013/C 156/40)

Language of the case: Finnish

Parties

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

Defendant: Republic of Finland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities in respect of self-employed drivers or, in any event, by failing to inform the Commission thereof, the Republic of Finland has failed to fulfil its obligations under Articles 2(1), 3 to 7 and 11 of that directive;

— order Republic of Finland to pay the costs.

Pleas in law and main arguments

The period for transposing the directive expired on 23 March 2009.

Action brought on 12 April 2013 — European Commission v Republic of Slovenia

(Case C-188/13)

(2013/C 156/41)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: B. Rous and J. Hottiaux)

Defendant: Republic of Slovenia

Form of order sought

The Commission claims that the Court should:

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Commission Directive 2011/18/EU of 1 March 2011 ([1]) amending Annexes II, V and VI to Directive 2008/57/EC of the European Parliament and of the Council on the interoperability of the rail system within the Community, or in any event to communicate them to the Commission, the Republic of Slovenia has failed to fulfil its obligations under Article 2 of that directive;

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

The period for transposition of the directive expired on 31 December 2011.

([1]) OJ 2011 L 57, p. 21.

Order of the President of the Court of 13 March 2013 — European Commission v Federal Republic of Germany, supported by: Republic of France, Romania, Kingdom of the Netherlands, Slovak Republic

(Case C-148/12) ([1])

(2013/C 156/42)

Language of the case: German

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

([1]) OJ C 138, 12.5.2012.

GENERAL COURT

Judgment of the General Court of 12 April 2013 — Du Pont de Nemours (France) and Others v Commission

(Case T-31/07) ([1])

(Plant protection products — Active substance flusilazole — Inclusion of flusilazole in Annex I to Directive 91/414/EEC — Actions for annulment — Partial annulment — Non-severability — Inadmissibility — Non-contractual liability — Limiting the inclusion for a period of 18 months and for four crops — Precautionary principle — Principle of proportionality — Right to be heard — Equal treatment — Statement of reasons — Misuse of powers — Sufficiently serious breach of a rule of law conferring rights on individuals)

(2013/C 156/43)

Language of the case: English

Parties

Applicants: Du Pont de Nemours (France) SAS (Puteaux, France); Du Pont Portugal — Serviços, Sociedade Unipessoal L[da] (Lisbon, Portugal); Du Pont Ibérica, SL (Barcelona, Spain); Du Pont de Nemours (Belgium) BVBA (Mechelen, Belgium); Du Pont de Nemours Italiana Srl (Milan, Italy); Du Pont De Nemours (Nederland) BV (Dordrecht, Netherlands); Du Pont de Nemours (Deutschland) GmbH (Bad Homburg vor der Höhe, Germany); DuPont CZ s.r.o. (Prague, Czech Republic); DuPont Magyarország Kereskedelmi kft (Budaors, Hungary); DuPont Poland sp. z o.o. (Warsaw, Poland); DuPont Romania Srl (Bucharest, Romania); DuPont (UK) Ltd (Stevenage, United Kingdom); Dy-Pont Agkro Ellas AE (Halandri, Greece); DuPont International Operations SARL (Le Grand Saconnex, Switzerland); DuPont Solutions (France) SAS (Puteaux) (represented: initially by D. Waelbroeck and N. Rampal, and subsequently by D. Waelbroeck, lawyers)

Defendant: European Commission (represented: initially by L. Parpala and B. Doherty, and subsequently by L. Parpala and G. von Rintelen, acting as Agents)

Intervener in support of the applicants: European Crop Protection Association (ECPA) (Brussels, Belgium) (represented: by U. Zinsmeister and E. Antypas, lawyers)

Re:

Action for (i) annulment of Commission Directive 2006/133/EC of 11 December 2006 amending Council Directive 91/414/EEC to include flusilazole as active substance (OJ 2006 L 349, p. 27) in so far as it includes flusilazole in Annex I to Directive 91/414 in respect of only four crops and for a period of 18 months and (ii) damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Du Pont de Nemours (France) SAS, Du Pont Portugal — Serviços, Sociedade Unipessoal L[da], Du Pont Ibérica, SL, Du Pont de Nemours (Belgium) BVBA, Du Pont de Nemours Italiana Srl, Du Pont De Nemours (Nederland) BV, Du Pont de Nemours (Deutschland) GmbH, DuPont CZ s.r.o., DuPont Magyarország Kereskedelmi kft, DuPont Poland sp. z o.o., DuPont Romania Srl, DuPont (UK) Ltd, Dy-Pont Agkro Ellas AE, DuPont International Operations SARL and DuPont Solutions (France) SAS, to bear their own costs and to pay those of the Commission in respect of the main proceedings and the interlocutory proceedings;*

3. *Orders the European Crop Protection Association (ECPA) to bear its own costs.*

([1]) OJ C 69, 24.3.2007.

Judgment of the General Court of 12 April 2013 — AEPI v Commission

(Case T-392/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/44)

Language of the case: Greek

Parties

Applicant: AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE (Athens, Greece) (represented initially by P. Xanthopoulos and T. Asprogerakas Grivas, then T. Asprogerakas Grivas, lawyers)

Defendant: European Commission (represented by: T. Christoforou and F. Castillo de la Torre, acting as Agents, assisted initially by M. Moustakali, then S. Dempegiotis, lawyers)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns AEPI Elliniki Etaireia pros Prostasian tis Pnevmatikis Idioktisias AE;*

2. *Annuls Article 4 of Commission Decision C(2008) 3435 final, to the extent that it refers to Article 3 of that decision, in so far as it concerns AEPI;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to bear its own costs and pay one half of AEPI's costs;*

5. *Orders AEPI to bear one half of its own costs;*

6. *Orders the Commission and AEPI to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 12 April 2013 — Stowarzyszenie Autorów ZAiKS v Commission

(Case T-398/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/45)

Language of the case: Polish

Parties

Applicant: Stowarzyszenie Autorów ZAiKS (Warsaw, Poland) (represented by: B. Borkowska and M. Błeszyński, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and K. Mojzesowicz, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Stowarzyszenie Autorów ZAiKS);*

2. *Annuls Article 4(2) and (3) of Commission Decision C(2008) 3435 final, to the extent that they refer to Article 3 of that decision, in so far as they concern Stowarzyszenie Autorów ZAiKS;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to pay the costs relating to the main proceedings.*

5. *Orders Autorów ZAiKS and the Commission to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 285, 8.11.2008.

Judgment of the General Court of 12 April 2013 — Säveltäjäin Tekijänoikeustoimisto Teosto v Commission

(Case T-401/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/46)

Language of the case: Finnish

Parties

Applicant: Säveltäjäin Tekijänoikeustoimisto Teosto ry (Helsinki, Finland) (represented by: H. Pokela, lawyer)

Defendant: European Commission (represented initially by E. Paasivirta, F. Castillo de la Torre and P. Aalto, and subsequently by E. Paasivirta and F. Castillo de la Torre, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Säveltäjäin Tekijänoikeustoimisto Teosto ry;*

2. *Annuls Article 4 of Commission Decision C(2008) 3435 final, to the extent that it refers to Article 3 of that decision, in so far as it concerns Säveltäjäin Tekijänoikeustoimisto Teosto;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to bear its own costs and pay one half of Säveltäjäin Tekijänoikeustoimisto Teosto's costs;*

5. *Orders Säveltäjäin Tekijänoikeustoimisto Teosto to bear one half of its own costs;*

6. *Orders Säveltäjäin Tekijänoikeustoimisto Teosto and the Commission to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — GEMA v Commission

(Case T-410/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/47)

Language of the case: German

Parties

Applicant: Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA) (Berlin, Germany) (represented by: R. Bechtold, I. Brinker, T. Holzmüller, lawyers and J. Schwarze, professeur)

Defendant: European Commission (represented by: F. Castillo de la Torre, acting as Agent, A. Antoniadis and O. Weber, acting as Agents)

Interveners in support of the defendant: RTL Group SA (Luxembourg, Luxembourg); CLT-UFA (Luxembourg); Music Choice Europe Ltd (London, United Kingdom); ProSiebenSat.1 Media AG (Unterföhring, Germany); Modern Times Group MTG AB (Stockholm, Sweden); Viasat Broadcasting UK Ltd (London); and Verband Privater Rundfunk und Telemedien eV (VPRT) (Berlin) (represented initially by M. Hansen, A. Weitbrecht and É. Barbier de La Serre, lawyers, then M. Hansen, A. Weitbrecht, J. Ruiz Calzado, lawyers, and J. Kallaugher, solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte (GEMA);*

2. *Annuls Article 4(2) and (3) of Commission Decision C(2008) 3435 final, to the extent that they refer to Article 3 of that decision, in so far as they concern GEMA;*

3. *Orders the European Commission to bear its own costs and to pay the costs incurred by GEMA, with the exception of the costs occasioned by the intervention;*

4. *Orders RTL Group SA, CLT-UFA, Music Choice Europe Ltd, ProSiebenSat.1 Media AG, Modern Times Group MTG AB, Viasat Broadcasting UK Ltd and Verband Privater Rundfunk und Telemedien eV (VPRT) to bear their own costs and to pay the costs incurred by GEMA relating to the intervention;*

5. *Orders GEMA, the Commission, RTL Group, CLT-UFA and Music Choice Europe to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — Artisjus v Commission

(Case T-411/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/48)

Language of the case: English

Parties

Applicant: Artisjus Magyar Szerzői Jogvédő Iroda Egyesület (Budapest, Hungary) (represented by: Z. Hegymegi-Barakonyi, P. Vörös and M. Horányi, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and V. Bottka, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Artisjus Magyar Szerzői Jogvédő Iroda Egyesület;*

2. *Annuls Article 4(2) and (3) of that decision, to the extent that they refer to Article 3 of that decision, in so far as they concern Artisjus;*

3. *Orders the European Commission to pay the costs relating to the main proceedings;*

4. *Orders Artisjus and the Commission to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 12 April 2013 — SOZA v Commission

(Case T-413/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/49)

Language of the case: English

Parties

Applicant: Slovenský ochranný Zväz Autorský pre práva k hudobným dielam (SOZA) (Bratislava, Slovakia) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Intervener in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by: J.-F. Bellis and K. Van Hove, lawyers)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Slovenský ochranný Zväz Autorský pre práva k hudobným dielam (SOZA);*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 12 April 2013 — Autortiesību un komunicēšanās konsultāciju aģentūra/ Latvijas Autoru apvienība v Commission

(Case T-414/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/50)

Language of the case: English

Parties

Applicant: Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība (Riga, Latvia) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Waelbroeck, lawyer, and D. Slater, Solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — Irish Music Rights Organisation v Commission

(Case T-415/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/51)

Language of the case: English

Parties

Applicant: Irish Music Rights Organisation Ltd (Dublin, Ireland) (represented by: D. Collins, Solicitor, and M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and J. Bourke, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Slater, Solicitor, and D. Waelbroeck, lawyer)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Irish Music Rights Organisation Ltd;*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — Eesti Autorite Ühing v Commission

(Case T-416/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/52)

Language of the case: English

Parties

Applicant: Eesti Autorite Ühing (Tallin, Estonia) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, (Switzerland) (represented by D. Waelbroeck, lawyer, and D. Slater, Solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Eesti Autorite Ühing;*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — Sociedade Portuguesa de Autores v Commission

(Case T-417/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/53)

Language of the case: English

Parties

Applicant: Sociedade Portuguesa de Autores CRL (Lisbon, Portugal) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU), (Grand-Saconnex, Switzerland) (represented by D. Slater, Solicitor, and D. Waelbroeck, lawyer)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Sociedade Portuguesa de Autores CR;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — OSA v Commission

(Case T-418/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/54)

Language of the case: English

Parties

Applicant: Ochranný svaz autorský pro práva k dílům hudebním o.s. (OSA) (Prague, Czech Republic) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Waelbroeck, lawyer, and D. Slater, Solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Ochranný svaz autorský pro práva k dílům hudebním o.s. (OSA);*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — LATGA-A v Commission

(Case T-419/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/55)

Language of the case: English

Parties

Applicant: Lietuvos autorių teisių gynimo asociacijos agentūra (LATGA-A) (Vilnius, Lithuania) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Slater, Solicitor, and D. Waelbroeck, lawyer)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Lietuvos autorių teisių gynimo asociacijos agentūra (LATGA-A);*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — SAZAS v Commission

(Case T-420/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/56)

Language of the case: English

Parties

Applicant: Združenje skladateljev, avtorjev in založnikov za zaščito avtorskih pravic Slovenije (SAZAS) (Trzin, Slovenia) (represented by: M. Favart, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Interveners in support of the applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by J.-F. Bellis and K. Van Hove, lawyers); and European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Slater, Solicitor, and D. Waelbroeck, lawyer)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Združenje skladateljev, avtorjev in založnikov za zaščito avtorskih pravic Slovenije (SAZAS);*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — Performing Right Society v Commission

(Case T-421/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/57)

Language of the case: English

Parties

Applicant: Performing Right Society Ltd (London, United Kingdom) (represented by: J. Rivas Andrés and M. Nissen, lawyers, and G.L. Eclair-Heath, Solicitor)

Defendant: European Commission (represented by: F. Castillo de la Torre and J. Bourke, acting as Agents)

Intervener in support of the applicant: Sociedad General de Autores y Editores (SGAE) (Madrid, Spain) (represented by: R. Allende-salazar Corcho and R. Vallina Hoset, lawyers)

Interveners in support of the defendant: International Federation of the Phonographic Industry (IFPI) (Zurich, Switzerland) (represented by L. Uusitalo and L. Rechardt, lawyers); RTL Group SA (Luxembourg, Luxembourg); CLT-UFA SA (Luxembourg); Music Choice Europe Ltd (London); ProSiebenSat.1 Media AG (Unterföhring, Germany); Modern Times Group MTG AB (Stockholm, Sweden); Viasat Broadcasting UK Ltd (London); and Verband Privater Rundfunk und Telemedien eV (VPRT) (Berlin, Germany) (represented initially by M. Hansen, É. Barbier de La Serre, lawyers, and O. Zafar, Solicitor, then by M. Hansen, A.W. Weitbrecht, J. Ruiz Calzado, lawyers, and J.J. Kallaugher, Solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Rejects the European Commission's request for measures of organisation of procedure;*

2. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Performing Right Society Ltd;*

3. *Annuls Article 4(2) of Commission Decision C(2008) 3435 final, in so far as it refers to Article 3 of that decision, as regards Performing Right Society;*

4. *Dismisses the remainder of the action;*

5. *Orders Performing Right Society to bear half of its own costs, with the exception of the costs occasioned by the interventions in support of the Commission;*

6. *Orders Sociedad General de Autores y Editores (SGAE) to bear half of its own costs;*

7. *Orders the Commission to bear its own costs, to pay half of those incurred by Performing Right Society, with the exception of the costs occasioned by the interventions in support of the Commission, and to pay half of those incurred by SGAE;*

8. *Orders the International Federation of the Phonographic Industry (IFPI) to bear its own costs and to pay the costs incurred by Performing Right Society in connection with IFPI's intervention;*

9. *Orders RTL Group SA, CLT-UFA, Music Choice Europe Ltd, ProSiebenSat.1 Media AG, Modern Times Group MTG AB, Viasat Broadcasting UK Ltd and Verband Privater Rundfunk und Telemedien eV to bear their own costs and to pay those incurred by Performing Right Society in connection with their interventions.*

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[1] OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — SACEM v Commission

(Case T-422/08) [1]

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/58)

Language of the case: French

Parties

Applicant: Société des auteurs, compositeurs et éditeurs de musique (SACEM) (Neuilly-sur-Seine, France) (represented by: H. Calvet, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and E. Gippini Fournier, acting as Agents)

Interveners in support of the applicant: The French Republic (represented initially by G. de Bergues, E. Belliard and A.-L. Vendrolini, then by G. de Bergues and J. Gstalter, acting as Agents); and Sociedad General de Autores y Editores (SGAE) (Madrid, Spain) (represented by: R. Allendesalazar Corcho, R. Vallina Hoset and P. Hernández Arroyo, lawyers)

Interveners in support of the defendant: International Federation of the Phonographic Industry (IFPI) (Zurich, Switzerland) (represented by: L. Uusitalo and L. Rechardt, lawyers); RTL Group SA (Luxembourg, Luxembourg); CLT-UFA (Luxembourg); Music Choice Europe Ltd (London, United Kingdom); ProSiebenSat.1 Media AG (Unterföhring, Germany); Modern Times Group MTG AB (Stockholm, Sweden); Viasat Broadcasting UK Ltd (London); and Verband Privater Rundfunk und Telemedien eV (VPRT) (Berlin, Germany) (represented initially by M. Hansen, É. Barbier de La Serre, lawyers, and O. Zafar, solicitor, then M. Hansen, J. Ruiz Calzado, A. Weitbrecht, lawyers, and J. Kallaugher, solicitor)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Rejects the European Commission's request for measures of organisation of procedure;*

2. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns SACEM;*

3. *Annuls Article 4(2) and (3) of Commission Decision C(2008) 3435 final, to the extent that they refer to Article 3 of that decision, in so far as they concern SACEM;*

4. *Dismisses the remainder of the action;*

5. *Orders SACEM to bear half of its own costs, with the exception of the costs occasioned by the interventions in support of the Commission;*

6. *Orders the French Republic to bear its own costs;*

7. *Orders Sociedad General de Autores y Editores (SGAE) to bear half of its own costs;*

8. *Orders the Commission to bear its own costs, to pay half of those incurred by SACEM, with the exception of the costs occasioned by the interventions in support of the Commission, and to pay half of those incurred by SGAE;*

9. *Orders the International Federation of the Phonographic Industry (IFPI) to bear its own costs and to pay the costs incurred by SACEM in connection with IFPI's intervention;*

10. *Orders RTL Group SA, CLT-UFA, Music Choice Europe Ltd, ProSiebenSat.1 Media AG, Modern Times Group MTG AB, Viasat Broadcasting UK Ltd and Verband Privater Rundfunk und Telemedien eV to bear their own costs and to pay those incurred by SACEM in connection with their interventions;*

11. *Orders SACEM, the Commission, RTL Group, CLT-UFA and Music Choice Europe to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 327, 20.12.2008.

Judgment of the General Court of 12 April 2013 — KODA v Commission

(Case T-425/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/59)

Language of the case: Danish

Parties

Applicant: Koda (Copenhagen, Denmark) (represented initially by K. Dyekjær and J. Borum, then by J. Borum and C. Karhula Lauridsen, and finally by J. Borum and G. Holtsø, lawyers)

Defendant: European Commission (represented initially by F. Castillo de la Torre and N. Rasmussen, then F. Castillo de la Torre and U. Nielsen, acting as Agents)

Intervener in support of the defendant: International Federation of the Phonographic Industry (IFPI) (Zurich, Switzerland) (represented by: L. Uusitalo and L. Rechardt, lawyers)

Re:

Application for annulment of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Koda;*

2. *Annuls Article 4(2) and (3) of Commission Decision C(2008) 3435 final, to the extent that they refer to Article 3 of that decision, in so far as they concern Koda;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to bear its own costs and to pay the costs incurred by Koda, with the exception of the costs occasioned by the intervention;*

5. *Orders the International Federation of the Phonographic Industry (IFPI) to bear its own costs and to pay the costs incurred by Koda in connection with IFPI's intervention;*

6. *Orders Koda and the Commission to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 327, 20.12.2008.

Judgment of the General Court of 12 April 2013 — STEF v Commission

(Case T-428/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/60)

Language of the case: English

Parties

Applicant: Samband tónskálda og eigenda flutningsréttar (STEF) (Reykjavík, Iceland) (represented by: H. Óttarsdóttir, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and J. Bourke, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Samband tónskálda og eigenda flutningsréttar (STEF);*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — AKM v Commission

(Case T-432/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to the public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practice excluding the possibility of granting multi-territorial, multi-repertoire licences — Evidence — Presumption of innocence)

(2013/C 156/61)

Language of the case: German

Parties

Applicant: Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger reg. Gen. mbH (AKM) (Vienna, Austria) (represented by: H. Wollmann and F. Urlesberger, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, A. Antoniadis and O. Weber, agents)

Intervener in support of the applicant: Republic of Austira (represented by: G. Hesse, C. Pesendorfer, E. Riedl, M. Fruhmann and A. Posch, agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC) in so far as it concerns Staatlich genehmigte Gesellschaft der Autoren, Komponisten und Musikverleger reg. Gen. mbH (AKM);*

2. *Annuls Article 4 of Decision C(2008) 3435 final, to the extent that it refers to Article 3 thereof, in so far as it concerns AKM;*

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

4. *Orders the Commission to bear its own costs and to pay one half of those incurred by AKM;*

5. *Orders AKM to bear one half of its own costs;*

6. *Orders the Republic of Austria to bear its own costs.*

([1]) OJ C 327, 20.12.2008.

Judgment of the General Court of 12 April 2013 — SIAE v Commission

(Case T-433/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/62)

Language of the case: Italian

Parties

Applicant: Società italiana degli autori ed editori (SIAE) (Rome, Italy) (represented by: M. Siragusa, L. Vullo and S. Valentino, lawyers)

Defendant: European Commission (represented by: V. Di Bucci and F. Castillo de la Torre, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Società italiana degli autori ed editori (SIAE);*

2. *Annuls Article 4(2) of Commission Decision C(2008) 3435 final as regards SIAE;*

3. *Dismisses the remainder of the action;*

4. *Orders the European Commission to pay the costs relating to the main proceedings;*

5. *Orders SIAE and the Commission to each bear their own costs relating to the interim relief proceedings.*

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 12 April 2013 — Tono v Commission

(Case T-434/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/63)

Language of the case: English

Parties

Applicant: Tono (Oslo, Norway) (represented by: S. Teigum and A. Ringnes, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and J. Bourke, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns Tono;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission to pay the costs in the main proceedings;*

4. *Orders Tono and the Commission to each bear their own costs relating to the proceedings for interim relief.*

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 12 April 2013 — CISAC v Commission

(Case T-442/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Proof — Presumption of innocence)

(2013/C 156/64)

Language of the case: English

Parties

Applicant: International Confederation of Societies of Authors and Composers (CISAC) (Neuilly-sur-Seine, France) (represented by: J.-F. Bellis and K. Van Hove, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Biolan, acting as Agents)

Intervener in support of the applicant: European Broadcasting Union (EBU) (Grand-Saconnex, Switzerland) (represented by D. Slater and D. Waelbroeck, lawyers)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Annuls Article 3 of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC), in so far as it concerns the International Confederation of Societies of Authors and Composers (CISAC);*

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

([1]) OJ C 82, 4.4.2009.

Judgment of the General Court of 12 April 2013 — Stim v Commission

(Case T-451/08) ([1])

(Competition — Agreements, decisions and concerted practices — Copyright relating to public performance of musical works via the internet, satellite and cable retransmission — Decision finding an infringement of Article 81 EC — Sharing of the geographic market — Bilateral agreements between national collecting societies — Concerted practices precluding the possibility of granting multi-territory and multi-repertoire licences — Article 151(4) EC — Cultural diversity)

(2013/C 156/65)

Language of the case: English

Parties

Applicant: Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim) (Stockholm, Sweden) (represented by: C. Thomas, Solicitor, and N. Pourbaix, lawyer)

Defendant: European Commission (represented by: F. Castillo de la Torre and V. Bottka, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Föreningen Svenska Tonsättares Internationella Musikbyrå u.p.a. (Stim) to pay the costs.*

([1]) OJ C 313, 6.12.2008.

Judgment of the General Court of 19 April 2013 — Italy v Commission

(Joined Cases T-99/09 and T-308/09) ([1])

(ERDF — Campania Regional Operational Programme (ROP) 2000-2006 — Regulation (EC) No 1260/1999 — Article 32(3)(f) — Decision not to make interim payments in connection with the ROP measure concerning waste management and disposal — Infringement procedure in respect of Italy)

(2013/C 156/66)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili and, additionally, in Case T-99/09, by G. Palmieri, avvocati dello Stato)

Defendant: European Commission (represented by: D. Recchia and A. Steiblytė, Agents)

Re:

Applications for annulment of the decisions contained in the Commission's letters of 22 December 2008, and of 2 and 6 February 2009 (Nos 012480, 000841 and 001059 — Case T-99/09) and of 20 May 2009 (No 004263 — Case T-308/09) declaring that the interim payment applications submitted by the Italian Authorities for the reimbursement of expenditure incurred after 29 June 2007 in connection with Measure 1.7 of the 'Campania' Operational Programme are 'unacceptable' under Article 32(3)(f) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

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

([1]) OJ C 102, 1.5.2009.

Judgment of the General Court of 19 April 2013 — Adelholzener Alpenquellen v OHIM (Shape of a bottle with an embossed pattern)

(Case T-347/10) ([1])

(Community trade mark — Application for a three-dimensional Community trade mark — Shape of a bottle with an embossed pattern — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009 — Lack of declaration as to the scope of the protection — Article 37(2) of Regulation No 207/2009 — Infringements of the rights of the defence — Second sentence of Article 75 of Regulation No 207/2009)

(2013/C 156/67)

Language of the case: German

Parties

Applicant: Adelholzener Alpenquellen GmbH (Siegsdorf, Germany) (represented by: O. Rauscher and C. Onken, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: S. Schäffner and subsequently by: A. Schifko, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 9 June 2010 (Case R 1516/2009-1) concerning an application for registration of a three-dimensional sign consisting of the shape of a bottle with an embossed pattern as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Adelholzener Alpenquellen GmbH to pay the costs..*

([1]) OJ C 288, 23.10.2010.

Judgment of the General Court of 17 April 2013 — Continental Bulldog Club Deutschland v OHIM (CONTINENTAL)

(Case T-383/10) ([1])

(Community trade mark — Application for Community word mark CONTINENTAL — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2013/C 156/68)

Language of the case: German

Parties

Applicant: Continental Bulldog Club Deutschland eV (Berlin, Germany) (represented: initially by S. Vollmer, and subsequently by U. Rühl, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by S. Schäffner, and subsequently by D. Walicka, Agents)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 June 2010 (R 300/2010-1), concerning an application for registration of the word mark CONTINENTAL as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Continental Bulldog Club Deutschland eV to pay the costs.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 19 April 2013 — Aecops v Commission

(Case T-51/11) ([1])

(ESF — Training operations — Reduction in financial assistance initially granted — Regulation (EC, Euratom) No 2988/95 — Time-bar — Legal certainty — Rights of the defence — Reasonable period — Duty to state reasons)

(2013/C 156/69)

Language of the case: Portuguese

Parties

Applicant: Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) (Lisbon, Portugal) (represented initially by: J. da Cruz Vilaça and L. Pinto Monteiro and subsequently by: L. Pinto Monteiro, P. Farinha Alves and N. Morais Sarmento, lawyers)

Defendant: European Commission (represented by: P. Guerra e Andrade and D. Recchia, acting as Agents)

Re:

Annulment of the Commission's decision of 27 October 2010 setting the final amount of the expenditure eligible for assistance from the European Social Fund (ESF), granted to the applicant for training operations by Decision C(88) 831 of 29 April 1988 for the funding of training operations (file 88 0369 P1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) to pay the costs.*

([1]) OJ C 139, 7.5.2011.

Judgment of the General Court of 19 April 2013 — Aecops v Commission

(Case T-52/11) ([1])

(ESF — Training operations — Reduction in financial assistance initially granted — Regulation (EC, Euratom) No 2988/95 — Time-bar — Legal certainty — Rights of the defence — Reasonable period — Duty to state reasons)

(2013/C 156/70)

Language of the case: Portuguese

Parties

Applicant: Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) (Lisbon, Portugal) (represented initially by: J. da Cruz Vilaça and L. Pinto Monteiro and subsequently by: L. Pinto Monteiro, P. Farinha Alves and N. Morais Sarmento, lawyers)

Defendant: European Commission (represented by: P. Guerra e Andrade and D. Recchia, acting as Agents)

Re:

Annulment of the Commission's decision of 27 October 2010 setting the final amount of the expenditure eligible for assistance from the European Social Fund (ESF), granted to the applicant for training operations by Commission Decision C(89) 570 of 22 March 1989 for the funding of training operations (file 89 0979 P3)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) to pay the costs.*

([1]) OJ C 139, 7.5.2011.

Judgment of the General Court of 19 April 2013 — Aecops v Commission

(Case T-53/11) ([1])

(ESF — Training operations — Reduction in financial assistance initially granted — Regulation (EC, Euratom) No 2988/95 — Time-bar — Legal certainty — Rights of the defence — Reasonable period — Duty to state reasons)

(2013/C 156/71)

Language of the case: Portuguese

Parties

Applicant: Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) (Lisbon, Portugal) (represented initially by: J. da Cruz Vilaça and L. Pinto Monteiro and subsequently by: L. Pinto Monteiro, P. Farinha Alves and N. Morais Sarmento, lawyers)

Defendant: European Commission (represented by: P. Guerra e Andrade and D. Recchia, acting as Agents)

Re:

Annulment of the Commission's decision of 27 October 2010 setting the final amount of the expenditure eligible for assistance from the European Social Fund (ESF), granted to the applicant for training operations by Commission Decision C(89) 570 of 22 March 1989 for the funding of training operations (file 89 0771 P1)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Associação de Empresas de Construção e Obras Públicas e Serviços (Aecops) to pay the costs.*

([1]) OJ C 139, 7.5.2011.

Judgment of the General Court of 23 April 2013 — Apollo Tyres v OHIM — Endurance Technologies (ENDURANCE)

(Case T-109/11) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark ENDURACE — Earlier Community figurative mark ENDURANCE — Relative grounds for refusal — Similarity of the goods and services — Similarity of the signs — Partial refusal of registration — Article 8(1)(b) of Regulation (EC) No 207/2009 — Likelihood of confusion)

(2013/C 156/72)

Language of the case: English

Parties

Applicant: Apollo Tyres AG (Baden, Switzerland) (represented by: S. Szilvasi, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Endurance Technologies Pvt Ltd (Aurangabad, India)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 25 November 2010 (Case R 625/2010-1), concerning opposition proceedings between Endurance Technologies Pvt Ltd and Apollo Tyres AG

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Apollo Tyres AG to pay the costs.*

[1] OJ C 130, 30.4.2011.

Judgment of the General Court of 17 April 2013 — TCMFG v Council

(Case T-404/11) [1]

(Common Foreign and Security Policy — Restrictive measures against Iran intended to prevent nuclear proliferation — Freezing of funds — Obligation to state reasons — Manifest error of assessment)

(2013/C 156/73)

Language of the case: German

Parties

Applicant: Turbo Compressor Manufacturer (TCMFG) (Teheran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union (represented by: M. Bishop and J-P. Hix, Agents)

Intervener in support of the defendant: European Commission (represented by: F. Erlbacher and T. Scharf, agents)

Re:

Action for annulment of Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2011 L 136, p. 65), to the extent that it affects the applicant.

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, to the extent that it affects Turbo Compressor Manufacturer (TCMFG);*

2. *Maintains the effects of Decision 2011/299, to the extent that it affects TCMFG, for a period which may not exceed two months and ten days as from the date of delivery of this judgment.*

3. *Orders the Council of the European Union to bear, in addition to its own costs, the costs incurred by TCMFG.*

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

[1] OJ C 290, 1.10.2011.

Judgment of the General Court of 19 April 2013 — Luna v OHIM — Asteris (Al bustan)

(Case T-454/11) [1]

(Community trade mark — Invalidity proceedings — Community figurative mark Al bustan — Earlier national figurative mark ALBUSTAN — Genuine use of the earlier mark — Article 57(2) and (3) of Regulation (EC) No 207/2009)

(2013/C 156/74)

Language of the case: English

Parties

Applicant: Luna International Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: Asteris Industrial and Commercial Company SA (Athens, Greece)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 20 May 2011 (Case R 1358/2008-2), concerning invalidity proceedings between Asteris Industrial and Commercial Company SA and Luna International Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Luna International Ltd to pay the costs.*

([1]) OJ C 319, 29.10.2011.

Judgment of the General Court of 18 April 2013 — Peek & Cloppenburg v OHIM — Peek & Cloppenburg (Peek & Cloppenburg)

(Case T-506/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark Peek & Cloppenburg — Earlier national commercial name Peek & Cloppenburg — Relative ground for refusal — Likelihood of confusion — Article 8(4) of Regulation (EC) No 207/2009)

(2013/C 156/75)

Language of the case: German

Parties

Applicant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: initially S. Abrar, then P. Lange, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Peek & Cloppenburg (Hamburg, Germany) (represented by: A. Renck, V. von Bomhard, T. Heitmann, M. Petersenn, lawyers, and I. Fowler, solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 February 2011 (Case R 262/2005-1), relating to opposition proceedings between Peek & Cloppenburg and Peek & Cloppenburg KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Peek & Cloppenburg KG to pay the costs.*

([1]) OJ C 362, 10.12.2011.

Judgment of the General Court of 18 April 2013 — Peek & Cloppenburg v OHIM — Peek & Cloppenburg (Peek & Cloppenburg)

(Case T-507/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark Peek & Cloppenburg — Earlier national commercial name Peek & Cloppenburg — Relative ground for refusal — Likelihood of confusion — Article 8(4) of Regulation (EC) No 207/2009)

(2013/C 156/76)

Language of the case: German

Parties

Applicant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: initially S. Abrar, then P. Lange, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Peek & Cloppenburg (Hamburg, Germany) (represented by: A. Renck, V. von Bomhard, T. Heitmann, M. Petersenn, lawyers, and I. Fowler, solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 February 2011 (Case R 262/2005-1), relating to opposition proceedings between Peek & Cloppenburg and Peek & Cloppenburg KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Peek & Cloppenburg KG to pay the costs.*

([1]) OJ C 362, 10.12.2011.

Judgment of the General Court of 19 April 2013 — Hultafors Group AB v OHIM — Società Italiana Calzature (Snickers)

(Case T-537/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark Snickers — Earlier national word mark KICKERS — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 156/77)

Language of the case: English

Parties

Applicant: Hultafors Group AB (Bollebygd, Sweden) (represented by: A. Rasmussen and T. Swanstrøm, 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: Società Italiana Calzature SpA (Milan, Italy) (represented by: G. Cantaluppi, A. Rapisardi and C. Ginevra, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 9 August 2011 (Case R 2519/2010-4) relating to opposition proceedings between Società Italiana Calzature SpA and Hultafors Group AB

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hultafors Group AB to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and by Società Italiana Calzature SpA in the proceedings before the General Court, and the costs incurred by Società Italiana Calzature SpA for the purposes of the proceedings before the Board of Appeal.*

([1]) OJ C 362, 10.12.2011.

Order of the General Court of 9 April 2013 — Zuckerfabrik Jülich v Commission

(Case T-66/10) ([1])

(Agriculture — Sugar — Production levies — Partial annulment and declaration of nullity of Regulation (EC) No 1193/2009 after the action was brought — No need to adjudicate)

(2013/C 156/78)

Language of the case: German

Parties

Applicant: Zuckerfabrik Jülich GmbH (formerly Zuckerfabrik Jülich AG) (Jülich, Germany) (represented by: H.-J. Prieß and B. Sachs, lawyers)

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

Interveners in support of the applicant: Kingdom of Spain (represented initially by: F. Diez Moreno and subsequently by: A. Rubio González, abogados del Estado), and Republic of Lithuania (represented initially by: R. Janeckaitè and R. Krasuckaitè, and subseqeuntly by: R. Krasuckaitè and R. Makevičienè, acting as Agents)

Re:

Annulment of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1)

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay those of Zuckerfabrik Jülich GmbH.*

3. *The Kingdom of Spain and the Republic of Lithuania shall bear their own costs.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 9 April 2013 — British Sugar v Commission

(Case T-86/10) ([1])

(Agriculture — Sugar — Production levies — Annulment and declaration of invalidity in part of Regulation (EC) No 1193/2009 after bringing of the action — No need to adjudicate)

(2013/C 156/79)

Language of the case: English

Parties

Applicants: British Sugar plc (London (United Kingdom)) (represented by: initially by K. Lasok QC, G. Facenna, Barrister, W. Robinson, P. Doris and D. Das, Solicitors, then by K. Lasok QC, G. Facenna, W. Robinson and D. Das)

Defendant: European Commission (represented by: K. Banks and P. Rossi, Agents)

Interveners in support of the applicants: Kingdom of Spain (represented: initially by F. Díez Moreno, then by A. Rubio González, abogados del Estado); and Republic of Lithuania (represented by: R. Janeckaitė and R. Krasuckaitė, Agents)

Interveners in support of the defendant: Republic of Latvia (represented by: K. Drēviņa and K. Krasovska, Agents); and United Kingdom of Great Britain and Northern Ireland (represented: initially by S. Behzadi-Spencer and S. Hathaway, and then by Behzadi-Spencer and A. Robinson, Agents)

Re:

Application for annulment of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1)

Operative part of the order

1. *There is no need to adjudicate on this action.*

2. *The European Commission shall bear its own costs and pay the costs of British Sugar plc.*

3. *The Kingdom of Spain, the Republic of Latvia, the Republic of Lithuania, and the United Kingdom of Great Britain and Northern Ireland shall bear their own costs.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 9 April 2013 — Südzucker and Others v Commission

(Case T-102/10) ([1])

(Agriculture — Sugar — Production levies — Partial annulment and declaration of nullity of Regulation (EC) No 1193/2009 after the action was brought — No need to adjudicate)

(2013/C 156/80)

Language of the case: German

Parties

Applicants: Südzucker AG Mannheim/Ochsenfurt (Mannheim, Germany); Agrana Zucker GmbH (Vienna, Austria); Südzucker Polska S.A. (Wroclaw, Poland); Raffinerie tirlemontoise (Brussels, Belgium) and Saint Louis Sucre SA (Paris, France) (represented by: H.-J. Prieß and B. Sachs, lawyers)

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

Interveners in support of the applicant: Kingdom of Spain (represented initially by: F. Diez Moreno and subsequently by: A. Rubio Gonzâlez, abogados del Estado), and Republic of Lithuania (represented initially by: R. Janeckaitè and R. Krasuckaitè, and subseqeuntly by: R. Krasuckaitè and R. Makevičienè, acting as Agents)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented initially by: S. Behzadi-Spencer and S. Hathaway and subsequently by S. Behzadi-Spencer and A. Robinson, acting as Agents)

Re:

Annulment of Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ 2009 L 321, p. 1)

Operative part of the order

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

2. *The European Commission shall bear its own costs and pay those of Südzucker AG Mannheim/Ochsenfurt, Agrana Zucker GmbH, Südzucker Polska S.A., Raffinerie tirlemontoise and Saint Louis Sucre SA.*

3. *The Kingdom of Spain, the United Kingdom of Great Britain and Northern Ireland and the Republic of Lithuania shall bear their own costs.*

([1]) OJ C 113, 1.5.2010.

Order of the General Court of 11 April 2013 — Tridium v OHIM — q-bus Mediatektur (SEDONA FRAMEWORK)

(Case T-467/12) ([1])

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2013/C 156/81)

Language of the case: English

Parties

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

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

Other party to the proceedings before the Board of Appeal of OHIM: q-bus Mediatektur GmbH (Berlin, Germany) (represented by: M.-T. Schott, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 2 August 2012 (Case R 1943/2011-2) concerning opposition proceedings between q-bus Mediatektur GmbH and Tridium, Inc.

Operative part of the order

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

2. *The applicant and the other party to the proceedings before the Board of Appeal shall bear their own costs and shall each pay half of the costs incurred by the defendant.*

([1]) OJ C 9, 12.1.2013.

Appeal brought on 21 March 2013 by BG against the judgment of the Civil Service Tribunal of 17 July 2012 in Case F-54/11, BG v Ombudsman

(Case T-406/12 P)

(2013/C 156/82)

Language of the case: French

Parties

Appellant: BG (Strasbourg, France) (represented by L. Levi and A. Blot, lawyers)

Other party to the proceedings: European Ombudsman

Form of order sought by the appellant

— Set aside the judgment of the European Union Civil Service Tribunal of 17 July 2012 in Case F-54/11;

— In consequence, grant the form of order sought by the applicant at first instance and, accordingly,

  — Principally, order that, with retroactive effect to the effective date of the dismissal decision, the applicant be restored to her post of administrator at grade A5, step 2 and order payment of the amounts due to her for that entire period, together with late-payment interest at the ECB rate increased by two points;

  — In the alternative, award the sum corresponding to the remuneration which she would have received since the effective date of her dismissal in August 2010 until the month in which she reaches retirement age, in July 2040, and put into order accordingly the applicant's pension rights;

  — In any event, award the sum of EUR 65 000 in respect of the non-pecuniary harm suffered;

  — Order the defendant to pay all the costs;

— Order the defendant to pay all the costs at both instances.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging a distortion of the file at the time of the checks made by the CST of compliance with the disciplinary procedure and in particular an infringement of Article 25 of Annex IX to the Staff Regulations of Officials of the European Union, since the CST made an incorrect interpretation of the notion of 'criminal proceedings' (concerns paragraph 68 et seq. of the judgment under appeal).

2. Second plea in law, alleging a failure to check compliance with the duty to state reasons and a distortion of the file, since the CST concluded that the Ombudsman did not breach the duty to state reasons, whereas he departed from the opinion of the Disciplinary Board (concerns paragraphs 102 and 103 of the judgment under appeal).

3. Third plea in law, alleging a failure to check any manifest error of assessment, infringement of the principle of proportionality and a distortion of the file, since the CST concluded that the Ombudsman did not infringe the principle of proportionality by imposing the most severe penalty provided for in the Staff Regulations on the applicant (concerns paragraphs 115 to 130 of the judgment under appeal).

4. Fourth plea in law, alleging a failure to check compliance with the principle of equal treatment as between men and women and a breach by the CST of the duty to state reasons, since the CST failed to examine whether the fact of the applicant's pregnancy, a factor with which her conduct was connected, involved or constituted indirect discrimination of the applicant (concerns paragraphs 139 et seq. of the judgment under appeal).

Action brought on 20 March 2013 — Talanton v Commission

(Case T-165/13)

(2013/C 156/83)

Language of the case: Greek

Parties

Applicant: Talanton AE — Simvouleftiki-Ekpaideftiki Etairia Dianomon, Parochis Ipiresion Marketigk kai Dioikisis Epicheiriseon (Talanton SA Business Consulting and Marketing Services) (Athens, Greece) (represented by M. Angelopoulos and K Damis, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— Declare that the rejection by the European Commission of the applicant's costs amounting to Five hundred and seventy eight thousand, nine hundred and thirty seven euros (EUR 578 937), in respect of the contract for the project 'A sophisticated multi-parametric system for the continuous — effective assessment and monitoring of motor status in Parkinson's disease and other neurodegenerative diseases (PERFORM)' on the basis of the audit report 11 BA135-006 constitutes a breach of its contractual obligations; and that the applicant should repay to the European Commission the sum of Twenty one thousand one hundred and seventy one euros (EUR 21 171 EUR) and not the sum of Four hundred and eighty seven thousand one hundred and one euros (EUR 487 101) and the sum of liquidated damages which will be determined by the European Commission and

— Declare that the rejection by the European Commission of the applicant's costs amounting to One hundred and fifty three thousand, one hundred and seventeen euros (EUR 153 117 EUR), in respect of the contract for the project 'Point-of-Care MONitoring and Diagnostics for Autoimmune Diseases (POCEMON)' on the basis of the audit report 11-BA135-006 constitutes a breach of its contractual obligations and that the applicant should repay to the European Commission the sum of One hundred and forty three thousand, six hundred and seventy one euros (EUR 143 671) and not the sum of Two hundred and seventy three thousand, five hundred and fifty nine euros and 63 cents (EUR 273 559,63) and the sum of liquidated damages which will be determined by the European Commission.

Pleas in law and main arguments

By this action, the applicant combines two actions.

First, an action in respect of the Commission's liability under contract No FP7-215952 for the implementation of the project 'A sophisticated multi-parametric system for the continuous — effective assessment and monitoring of motor status in Parkinson's disease and other neurodegenerative diseases (PERFORM)' and under audit report 11-BA135-006, in accordance with Article 272 TFEU. In particular, the applicant maintains that the European Commission is liable because of breach of its contractual obligations and because of infringement of the principles of legitimate expectations and proportionality.

Second, an action in respect of the Commission's liability under contract No FP7-216088 for the implementation of the project 'Point-of-Care MONitoring and Diagnostics for Autoimmune Diseases (POCEMON)' and under audit report 11-BA135-006, in accordance with Article 272 TFEU. In particular, the applicant maintains that the European Commission is liable because of breach of its contractual obligations and because of infringement of the principles of legitimate expectations and proportionality.

Action brought on 20 March 2013 — Ben Ali v Council

(Case T-166/13)

(2013/C 156/84)

Language of the case: French

Parties

Applicant: Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen Ben Ali (Saint-Étienne-du-Rouvray, France) (represented by: A. de Saint Remy, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— adopt a measure for the organisation of procedure under Article 64 of its Rules of Procedure, in order to ensure that Commission disclose '*all the documents relating to the adoption*' of the contested regulation;

— annul Decision No 2012/50/CFSP of 27 January 2012 extending the effects of Decision No 2011/72/CFSP of 31 January 2011 and Implementing Decision No 2011/79/CFSP of 4 February 2011 which caused Mr Mehdi Ben Tijani Ben Haj Hamda Ben Haj Hassen BEN ALI to be adversely affected by a series of restrictive measures consisting of the freezing of all his funds, assets and other economic resources;

— order the Council of the European Union to pay the applicant an overall sum of EUR 50 000 in compensation for all forms of damage suffered by him;

— order the Council of the European Union to pay the applicant a sum of EUR 10 500 for legal expenses in support of this application in addition to those legal expenses under Article 91 of the Rules of Procedure which are recoverable costs;

— order the Council of the European Union to pay the entire costs.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are, in essence, identical or similar to those relied on in Case T-301/11 *Ben Ali* v *Council*. [1]

[1] OJ 2011 C 226, p. 29.

Action brought on 22 March 2013 — DTL Corporación v OHIM — Vallejo Rosell (Generia)

(Case T-176/13)

(2013/C 156/85)

Language in which the application was lodged: Spanish

Parties

Applicant: DTL Corporación, SL (Madrid, Spain) (represented by: A. Zuazo Araluze, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mar Vallejo Rosell (Pinto, Spain)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Fourth Board of Appeal of 24 January 2013 in Case R 661/2012-4, dismissing the appeal brought against the rejection of the application for Community trade mark No 8 830 821 'Generia' in respect of all of the goods and services in Classes 9, 37, 40, 41 and 42 and in respect of some of the services in Class 35;

— in accordance with Article 87 of the Rules of Procedure of the General Court, order the costs of this action to be paid by OHIM and the other parties to the proceedings who oppose this action.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'Generia' for goods and services in Classes 9, 11, 35, 37, 40, 41 and 42 — Community trade mark application No 8 830 821

Proprietor of the mark or sign cited in the opposition proceedings: Mar Vallejo Rosell

Mark or sign cited in opposition: Figurative mark in grey and white with the word elements 'Generalia generación renovable' for goods and services in Classes 7, 35 and 40

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b), Article 63(2) and Article 75 of Regulation No 207/2009

Action brought on 15 March 2013 — Jaczewski v Commission

(Case T-178/13)

(2013/C 156/86)

Language of the case: Polish

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul the European Commission implementing decision of 24 July 2012 (notified under document No C(2012) 5049) approving the grant of complementary national direct payments in Poland for 2012 pursuant to Article 132 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003, which decision has introduced the application of modulation to complementary national direct payments exceeding EUR 5 000.

Pleas in law and main arguments

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

1. The first plea in law alleges that the Commission infringed the principle of the hierarchy of legal rules by adopting measures contrary to Article 132 of Regulation No 73/2009, in light of the application of Article 7(1), in conjunction with Article 10, of that regulation, in that it applied modulation to complementary national direct payments although the modulation mechanism is not applicable in new Member States in respect of 2012.

2. The second plea in law alleges infringement of the principle of equal treatment and of Article 39 TFEU in conjunction with the second subparagraph of Article 40(2) thereof, given that the application of modulation in relation to complementary national direct payments leads to the amounts paid to farmers in the new Member States being reduced to a level lower than the amounts paid to their counterparts in Member States other than new Member States and that account was not taken, when the contested decision was adopted, of the diversity of the situations in individual regions of the European Union.

Action brought on 29 March 2013 — Sharif University of Technology v Council

(Case T-181/13)

(2013/C 156/87)

Language of the case: English

Parties

Applicant: Sharif University of Technology (Tehran, Iran) (represented by: M. Happold, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul the Annex to Council Decision 2012/829/CFSP of 21 December 2012 ([1]), Annex II to Council Decision 2010/413/CFSP of 26 July 2010 ([2]), the Annex to Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 ([3]) and Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 ([4]), insofar as they concern the applicant; and

— Order the defendant to pay the applicant's costs of the application.

Pleas in law and main arguments

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

1. First plea in law, alleging that Council Decision 2012/829/CFSP and Council Implementing Regulation (EU) No 1264/2012 were adopted in violation of the applicant's rights of the defence and its right to effective judicial protection. The Council has breached its obligation to give reasons since the reasons given by the Council are insufficient for the applicant to understand the basis on which it has been subjected to restrictive measures. The Council has violated the applicant's rights of defence by reason of its failure to provide the applicant with access to the Council's file on it and because that failure has had as a consequence that the applicant been unable to make known its views on the evidence adduced to justify the measures imposed on it. The failures of the Council to give reasons for its decision and provide the applicant with access to its file have also infringed the applicant's right to effective judicial protection.

2. Second plea in law, alleging that the Council has made manifest errors of assessment as regards its adoption of restrictive measures against the applicant. The applicant denies the allegations made against it and puts the Council to strict proof of the facts alleged.

3. Third plea in law, alleging that the restrictive measures imposed on it violate its right to property and are disproportionate. The designation of the applicant did not take place under the conditions provided by law. Moreover, the Council failed entirely to take into account the fact that the applicant is not a commercial enterprise, but an institute of higher learning, and the consequent effects of its designation not only for itself but also for its students, faculty and collaborators.

([1]) Council Decision 2012/829/CFSP of 21 December 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2012 L 356, p. 71)

([2]) 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)

([3]) Council Implementing Regulation (EU) No 1264/2012 of 21 December 2012 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2012 L 356, p. 55)

([4]) 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)

Action brought on 26 March 2013 — CWP v OHIM — Continental Reifen Deutschland (CONTINENTAL WIND PARTNERS)

(Case T-185/13)

(2013/C 156/88)

Language in which the application was lodged: German

Parties

Applicant: CWP LLC (Wilmington, United States of America) (represented by: O. Bischof, lawyer)

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

Other party to the proceedings before the Board of Appeal: Continental Reifen Deutschland GmbH (Hanover, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 January 2013 in Case R 2204/2011-2;

— 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 'CONTINENTAL WIND PARTNERS' for goods and services in Classes 7, 9, 11, 35, 36, 37, 39 and 40 — Community trade mark application No 8 445 561

Proprietor of the mark or sign cited in the opposition proceedings: Continental Reifen Deutschland GmbH

Mark or sign cited in opposition: the international registration designating the European Union of the figurative mark including the word element 'Continental'

Decision of the Opposition Division: the opposition was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 2 April 2013 — Netherlands v Commission

(Case T-186/13)

(2013/C 156/89)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman, B. Koopman and J. Langer, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul the Decision; and

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

Pleas in law and main arguments

The applicant challenges Commission Decision C(2013) 87 of 23 January 2013 on State aid SA.24123 (2012/C) (ex 2011/NN) implemented by the Netherlands — Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg.

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

1. First plea in law, alleging infringement of Article 107(1) TFEU

   This is not a case of State aid within the meaning of Article 107(1) TFEU. According to the Netherlands Government, the present case does not concern a benefit, or at least not a benefit that a market participant would not have obtained under ordinary market conditions. On the basis of false assumptions the Commission drew the mistaken conclusion that the Municipality had other options as regards the construction of the Damplein project. Adherence to existing agreements would not have led to the desired outcome, nor would a renegotiation of the contract have offered a solution. Further, the Commission manifestly erred in its assessment of the question whether trade between Member States was affected. The Leidschendam Centrum project and particularly the Damplein sub-project are so limited in scope that there can be no question of any effect on trade between Member States. The decision is therefore contrary to Article 107 TFEU.

2. Second plea in law, alleging infringement of Article 107(3)(c) TFEU

   The Commission manifestly erred in its assessment of the facts and on that basis regarded the reduction in the price of the land as being incompatible with the internal market. The reduction in the price of the land satisfies every requirement and the Commission has failed, in particular in the light of earlier Commission decisions, sufficiently to explain why the reduction in the price of the land is incompatible. Further, the Commission erred in using market failure as a criterion for the applicability of Article 107(3)(c) TFEU. The Commission thus misapplied Article 107(3)(c) TFEU.

3. Third plea in law, alleging erroneous determination of the amount of aid on the basis of several calculation errors

   In calculating the amount of the aid, the Commission made three serious errors. First, the Commission failed to take into account the fact that only 50 % of the reduction in the price of the land and of the waiver of fees was to be financed from public funds. Secondly, the Commission failed to take into account the earlier price reductions of 2006 and 2008 when calculating the reduction in the price of the land. Thirdly, the Commission calculated the fees on the basis of the Leidschendam Centrum project area, instead of that of the Damplein sub-project. Interest paid from 2004 to 2010 was also disregarded. The Commission thus proceeded on the basis of incorrect facts when calculating the amount of the aid, as a result of which the aid figure of EUR 6 922 121 is incorrect.

4. Fourth plea in law, alleging breach of general principles and of Article 41 of the Charter of Fundamental Rights. Owing to the excessive duration of the procedure for the adoption of the decision, the Commission was not entitled to recovery.

   From the point at which the full facts were known to the Commission, it allowed an unreasonable period of time to elapse before adopting the decision. In the particular circumstances, the Commission ought to have refrained from seeking recovery. The Commission thus breached the principles of due care, legal certainty and the protection of legitimate expectations.

Action brought on 4 April 2013 — Murnauer Markenvertrieb v OHIM — Healing Herbs (NOTFALL)

(Case T-188/13)

(2013/C 156/90)

Language in which the application was lodged: German

Parties

Applicant: Murnauer Markenvertrieb GmbH (Trebur, Germany) (represented by: F. Traub and H. Daniel, lawyers)

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

Other party to the proceedings before the Board of Appeal: Healing Herbs Ltd (Walkerstone, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 February 2013 in Case R 132/2012-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'NOTFALL' for goods in Classes 3, 5 and 30 — Community trade mark No 9 089 681

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Healing Herbs Ltd

Grounds for the application for a declaration of invalidity: Article 52(1)(a) of Regulation No 207/2009 in conjunction with Article 7(1)(b) and (c) and Article 7(2) of Regulation No 207/2009

Decision of the Cancellation Division: the application was upheld in part

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law:

— Infringement of Article 83 of Regulation No 207/2009 in conjunction with the general principle of equal treatment

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

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

Action brought on 2 April 2013 — Gemeente Leidschendam-Voorburg v Commission

(Case T-190/13)

(2013/C 156/91)

Language of the case: Dutch

Parties

Applicant: Gemeente Leidschendam-Voorburg (Leidschendam-Voorburg, Netherlands) (represented by: A. de Groot and J.J.M. Sluijs, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested decision; and

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

Pleas in law and main arguments

The applicant challenges Commission Decision C(2013) 87 of 23 January 2013 on State aid SA.24123 (2012/C) (ex 2011/NN) implemented by the Netherlands — Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg.

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

1. First plea in law, alleging breach of essential procedural requirements and/or of the obligation to state reasons.

   — In the first place the Commission allowed an unreasonably long period of time to elapse before initiating the procedure under Article 108(2) TFEU, as a result of which the parties were entitled to assume that the agreement at issue was not incompatible with Article 107(1) TFEU.

   — In the second place there were errors and omissions in the Commission's assessment of the facts.

   — In the third place, the Commission erred in its determination of the facts with regard to financing through State resources.

2. Second plea in law, alleging misapplication of Article 107(1) TFEU.

   — In the first place the Municipality acted as a private undertaking would have done in the same circumstances.

   — In the second place Schouten & De Jong Projectontwikkeling BV together with Bouwfonds Ontwikkeling BV did not obtain any benefit that they would not also have obtained via the market in the ordinary course of business.

3. Third plea in law, concerning Article 107(3) TFEU. Should the Municipality be found to have granted aid, this should be regarded as being compatible with Article 107(3) TFEU.

Action brought on 2 April 2013 — Bouwfonds Ontwikkeling and Schouten & De Jong Projectontwikkeling v Commission

(Case T-193/13)

(2013/C 156/92)

Language of the case: Dutch

Parties

Applicants: Bouwfonds Ontwikkeling BV (Hoevelaken, Netherlands) and Schouten & De Jong Projectontwikkeling BV (Leidschendam, Netherlands) (represented by: E. Pijnacker Hordijk and X. Reintjes, lawyers)

Defendant: European Commission

Form of order sought

— Annul the contested decision; and

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

Pleas in law and main arguments

The applicants challenge Commission Decision C(2013) 87 of 23 January 2013 on State aid SA.24123 (2012/C) (ex 2011/NN) implemented by the Netherlands — Alleged sale of land below market price by the Municipality of Leidschendam-Voorburg.

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

1. First plea in law, alleging breach of the fundamental requirement that the Commission exercise its powers within a reasonable period of time, and thus breach of the principle of legal certainty and of the rights of the defence and of Article 41 of the Charter of Fundamental Rights of the European Union.

   By allowing around 38 months to elapse between its becoming aware of the measures at issue and adoption of the contested decision, the Commission wrongfully acted in a dilatory manner and one that was thus contrary to the fundamental requirement that it should act within a reasonable period of time. In addition, as a result of the excessively long investigation period, it was more difficult for the applicants to counter the Commission's arguments, the Commission having, by its conduct, thereby also breached the rights of the defence.

2. Second plea in law, alleging serious deficiencies in the determination and assessment of the relevant facts and/or breach of the obligation to state reasons and/or infringement of Article 107(1) TFEU by the Commission's incorrect application of the private investor principle

   Overall, the applicants did not obtain a financial benefit, let alone any financial benefit that might be regarded as unlawful State aid.

   The Commission miscalculated the amount of the alleged benefit in that it, inter alia, attributed 100 % of the agreed price reductions to the Municipality, whereas the price reduction was borne by a public private partnership in which the Municipality bore 50 % of the risk. The Commission also disregarded earlier price reductions agreed within that partnership, without giving reasons for doing so.

   Furthermore, the Commission incorrectly applied the private investor principle in the contested decision by assessing the Municipality's conduct by reference to the — legally not practicable and in any event financially exceedingly unfavourable — hypothetical conduct of a notional private investor.

3. Third plea in law, alleging incorrect application of Article 107(3) TFEU

   If it is determined that there is State aid, such aid is in any case fully compatible with the internal market. The Commission wrongly took the view that the Municipality was unable to demonstrate that the measures at issue had any common interest objective. In so doing it wrongly assessed the 2009/2010 measures at issue against the background of the (more favourable) market situation prevailing in 2004.

   The Commission thereby failed to appreciate that the measures at issue were necessary for, and appropriate and proportionate to the revitalisation of the run-down town centre of Leidschendam, an objective which chimes with the clearly described and recognised EU objective of economic and social cohesion within the meaning of Article 3 TEU and Article 174 TFEU. There can be no question of any undue distortion of competition.

Action brought on 1 April 2013 — M.E.M. v OHIM (MONACO)

(Case T-197/13)

(2013/C 156/93)

Language of the case: French

Parties

Applicant: MARQUES DE L'ÉTAT DE MONACO (M.E.M.) (Monaco, Monaco) (represented by: S. Arnaud, lawyer)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 January 2013 in Case R 113/2012-4;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: International registration designating the European Union of the word mark 'MONACO' for goods and services in Classes 9, 12, 14, 16, 18, 25, 28, 35, 38, 39, 41 and 43 — International registration designating the European Union No 1 069 254

Decision of the Examiner: Partial refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

— First plea, alleging infringement of Articles 5, 7(1)(b) and (c) and 7(2) of Regulation No 207/2009

— Second plea, alleging infringement of the law in the interpretation of distinctiveness

— Third plea, alleging a manifest error in the assessment of distinctiveness

— Fourth plea, alleging a failure to state reasons, insufficient reasoning or contradictory reasons for the refusal of registration for the goods in Class 9

— Fifth plea, alleging the infringement of Article 75 of Regulation No 207/2009 and of Article 296 of the Treaty on the Functioning of the European Union and of Article 6 of the European Convention on Human Rights on the ground of insufficient reasoning

Action brought on 8 April 2013 — DTM Ricambi v OHIM — Star (STAR)

(Case T-199/13)

(2013/C 156/94)

Language in which the application was lodged: Italian

Parties

Applicant: DTM Ricambi Srl (Bologna, Italy) (represented by: V. Catelli, lawyer)

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

Other party to the proceedings before the Board of Appeal: Star SpA (Lodi, Italy)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 24 January 2013 in Case R 124/2012-1 and grant registration of the Community mark 'STAR', filed with No 5878038, in Classes 7, 9 and 12;

— order Star to bear its own costs and to pay those of the applicant, including those relating to the proceedings before the Opposition Division and the Board of Appeal of OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Figurative mark containing the word element 'STAR' for goods in Classes 7, 9 and 12

Proprietor of the mark or sign cited in the opposition proceedings: Star

Mark or sign cited in opposition: Community figurative mark containing the word element 'STAR' for goods in Class 39, national and international figurative marks containing the word elements 'STAR LODI' for goods and services in Classes 12, 38, 39 and 42

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— No likelihood of confusion

— Dilution of the earlier mark

Appeal brought on 8 April 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 28 January 2013 in Case F-92/12, Marcuccio v Commission

(Case T-203/13 P)

(2013/C 156/95)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— Annul in its entirety, without any exception, the order under appeal;

— Refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal of 28 January 2013 in Case F-92/12 *Marcuccio* v *Commission* rejecting as manifestly inadmissible an action for annulment of the decision of the European Commission to withhold certain amounts from the appellant's invalidity allowance for the months of October, November and December 2011 and for reimbursement of the sums withheld.

In the order under appeal, the Tribunal stated that the firm of the appellant's representative which appears at the end of the document sent by fax on 5 September 2012 was not the same as the firm which appears on the application received by post on 13 September 2012.

In support of his appeal, the appellant alleges absolute failure to state reasons, by reason inter alia of failure to make preliminary inquiries, self-evident, tautologous and arbitrary reasoning, distortion and misrepresentation of the facts and an error of law, by reason inter alia of manifest failure properly to appraise the facts.

Appeal brought on 8 April 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 28 January 2013 in Case F-95/12, Marcuccio v Commission

(Case T-204/13 P)

(2013/C 156/96)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commision

Form of order sought by the appellant

The appellant claims that the Court should:

— Annul in its entirety and without exception the order under appeal;

— Refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those set out in Case T-203/13 P *Marcuccio* v *Commission*.

Appeal brought on 8 April 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 28 January 2013 in Case F-100/12, Marcuccio v Commission

(Case T-205/13 P)

(2013/C 156/97)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— Annul in its entirety and without exception the order under appeal;

— Refer the case back to the Civil Service Tribunal.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those set out in Case T-203/13 P *Marcuccio* v *Commission*.

Action brought on 12 April 2013 — Versalis v Commission

(Case T-210/13)

(2013/C 156/98)

Language of the case: Italian

Parties

Applicant: Versalis SpA (San Donato Milanese, Italy) (represented by: M. Siragusa, F. Moretti and L. Nascimbene, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested measures and order the Commission to pay the costs.

Pleas in law and main arguments

The present dispute concerns a request for the annulment of the European Commission's decision of 26 February 2013 [C(2013) 1200 final], together with the statement of objections [C(2013) 1199 final] by which the Commission had formally initiated the procedure in *AT.40032 — BR/ESBR — Recidivism*, with the intention of amending Decision C(2006) 5700 final of 29 November 2006, adopted in Case COMP/F/38.638 — *Butadiene Rubber and Emulsion Styrene Butadiene Rubber*, partially annulled and varied by the General Court of the European Union by judgments of 13 July 2011 in Case T-39/07 *Eni* v *Commission* and Case T-59/07 *Polimeri Europa* v *Commission*.

By its sole plea, the applicant alleges that the Commission lacked competence to reopen the proceedings against it with a view to the adoption of a new infringement decision. In particular, the applicant maintains that the Commission's power to impose penalties on the applicant in connection with the matters covered by the procedure in Case COMP/F/38.638 — *Butadiene Rubber and Emulsion Styrene Butadiene Rubber* was exhausted following the adoption of the decision of 29 November 2006 (C(2006) 5700 final), partially annulled and varied by the General Court of the European Union by judgments of 13 July 2011 in Case T-39/07 *Eni* v *Commission* and Case T-59/07 *Polimeri Europa* v *Commission*, currently under appeal before the Court of Justice. By reopening the procedure, the Commission intends to revise the substance of the grounds of the decision of 29 November 2006, that is to say, to undertake a new appraisal of the evidence against the applicant, which had already been established and on which the General Court had already expressed its views in the exercise of its full jurisdiction to review legality. Accordingly, the reopening of the infringement procedure, in terms of purpose and effects, is manifestly contrary to the principles of *ne bis in idem*, of legal certainty, of the protection of legitimate expectations and of effective judicial protection.

Action brought on 15 April 2013 — Eni v Commission

(Case T-211/13)

(2013/C 156/99)

Language of the case: Italian

Parties

Applicant: Eni SpA (Rome, Italy) (represented by: G.M. Roberti and I. Perego, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action admissible;

— annul the contested measures;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action contests the Commission's decision of 26 February 2013 to reopen the procedure (C(2013) 1200 final) and the statement of objections of 26 February 2013 (C(2013) 1199) relating to a proceeding pursuant to Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement, adopted in Case AT.40032-BR/ESBR.

In support of the application, Eni alleges lack of competence, arguing that the Commission cannot reopen the procedure in order to amend the decision adopted in Case BR-ESBR in 2006 and, at the same time, to adopt a decision re-imposing the increase in the fine for repeated infringements.

Eni submits that in the judgment of 13 July 2011 (Case T-39/07), in addition to annulling in part the 2006 BR-ESBR decision on the basis that the Commission had failed to make a correct assessment of the aggravating circumstance of repeated infringement, the General Court exercised its jurisdiction in relation to the merits — under Article 261 TFEU and Article 31 of Regulation No 1/2003 — by re-determining the amount of the fine and substituting its own assessment for that made by the Commission. In addition to being in breach of those findings, the contested measures are also contrary to Article 266 TFEU, to the principle governing the attribution of powers and ensuring institutional balance, referred to in Article 13 TFEU, as well as to the fundamental right to fair legal process laid down in Article 6 ECHR and Article 47 of the Charter of Fundamental Rights and to the *ne bis in idem* principle laid down in Article 7 ECHR.

Eni also claims that, contrary to the assertions made by the Commission, the General Court did not merely find that there had been a procedural defect in the Commission's application of the concept of repeated infringement in the 2006 BR-ESBR decision; the Commission's action is therefore based on a wholly erroneous legal and factual premiss and, from that point of view, too, is contrary to Article 7 ECHR.

Action brought on 9 April 2013 — Telefónica v Commission

(Case T-216/13)

(2013/C 156/100)

Language of the case: Spanish

Parties

Applicant: Telefónica, SA (Madrid, Spain) (represented by: J. Folguera Crespo, P. Vidal Martínez and E. Peinado Iríbar, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Articles 1 and 2 of the decision of the Commission of 23 January 2013 in so far as they concern the applicant, or, in the alternative

— declare Article 2 of the contested decision partially null and void and reduce the amount of the fine imposed, and

— order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision in the present proceedings is the same as that in Case T-208/13 *Portugal Telecom* v *Commission*.

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

1. First plea in law, alleging infringement of Article 101 TFEU

   — It is claimed in this regard that the contested decision incorrectly applies the case-law relating to restrictions by object and infringes the principles of the presumption of innocence, burden of proof and '*in dubio pro reo*' as regards the content of clause nine of the purchase agreement. It is claimed, in particular on this point, that the clause was linked to the transaction and cannot be construed or applied outside of that context and of a difficult negotiation process characterised by on-going interference by the Portuguese Government.

2. Second plea in law, alleging infringement of Article 101 TFEU

   — It is claimed in this regard that the Commission committed a manifest error of assessment of the facts and infringed the principle of overall assessment of the evidence as regards the context within which the clause was agreed, the conduct of the parties concerned and the purpose of the clause.

3. Third plea in law, alleging infringement of the rules concerning the burden of proof and sound administration, of the rights of the defence and of the presumption of innocence as regards the evidence of the intervention by the Portuguese Government in the negotiations and in the conception and maintenance of the clause at issue.

4. Fourth plea in law, alleging infringement of Article 101 TFEU

   — It is claimed in this regard that the Commission failed to provide adequate reasons for finding that, and incorrectly assessed whether, the clause was capable of restricting competition; a necessary condition to there being an infringement, at least by object, of Article 101 TFEU.

5. Fifth plea in law, alleging infringement of Article 101 TFEU

   — It is claimed in this regard that the clause at issue is not a restriction by effect contrary to Article 101 TFEU, either.

   In the alternative, the applicant also claims that the Commission infringed the principle of proportionality and the duty to state reasons, and committed a manifest error by rejecting mitigating circumstances and by inadequately assessing those circumstances.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 8 March 2013 — ZZ v Commission

(Case F-21/13)

(2013/C 156/101)

Language of the case: French

Parties

Applicant: ZZ (represented by: T. Bontinck and S. Greco, lawyers)

Defendant: Commission

Subject-matter and description of the proceedings

The annulment of the decision relating to the transfer of the applicant's pension rights to the European Union pension scheme on the basis of the proposed calculation applying the new GIP relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Declare Article 9 of the general implementing provisions of Article 11(2) of Annex VIII to the Staff Regulations of Officials unlawful;

— In consequence, annul the decision of the Secretariat General of the Council of 23 May 2012 establishing a proposal for the transfer of pension rights under Article 11(2) of Annex VIII of the Staff Regulations on the basis of the GIP of 11.10.2011 to the applicant as signed by her on 19 July 2012;

— Order the defendant to pay all the costs, in accordance with Article 87(1) of the Rules of Procedure of the Civil Service Tribunal.

Action brought on 20 March 2013 — ZZ and Others v Commission

(Case F-23/13)

(2013/C 156/102)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the decision transmitting the definitive calculation of the annuities for the transfer of the applicants' pension rights to the European Union pension scheme under the new GIP relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Annul the decisions transferring their pension rights acquired before their entry into service at the Commission;

— In so far as necessary, annul the decisions rejecting the claims relating to the application of the GIP and the actuarial rates in force at the time of their application for transfer of their pension rights;

— Order the Commission to pay the costs.

Action brought on 21 March 2013 — ZZ v Commission

(Case F-25/13)

(2013/C 156/103)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Vogel, lawyer)

Defendant: Commission

Subject-matter and description of the proceedings

The annulment of the decisions transferring pensions acquired before entry into service at the Commission on the basis of the Paymaster Office (PMO).

Form of order sought

— Annul the decision adopted by the Appointing Authority on 11 December 2012, rejecting the claims made by the applicant on 16 August 2012 and 28 August 2012 against the decisions of the PMO.4 on 21 May 2012, 31 May 2012 and 2 July 2012;

— In so far as necessary, annul in addition those decisions of 21 May 2012, 31 May 2012 and 2 July 2012 adopted by the PMO.4, against which the applicant's claims were brought;

— Declare the general implementing provisions of Articles I1 and 12 of Annex VII to the Staff Regulations, pursuant to Article 277 of the EC Treaty of 25 March 1957, as adopted on 3 March 2011, unlawful and inapplicable to the present case, particularly Article 9 thereof;

— Order the defendant to pay the costs of the proceedings in accordance with Article 87 of the Rules of Procedure and the expenses necessarily incurred for the purpose of the proceedings, in particular the cost of having an address for service, travel and subsistence expenses and lawyers' fees in accordance with Article 91(b) of those Rules.

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