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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 207/01)

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

OJ C 189, 29.6.2013

Past publications

OJ C 178, 22.6.2013

OJ C 171, 15.6.2013

OJ C 164, 8.6.2013

OJ C 156, 1.6.2013

OJ C 147, 25.5.2013

OJ C 141, 18.5.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 22 March 2013 by Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C. against the order of the General Court (Fourth Chamber) of 22 January 2013 in Case T-218/00 Cooperativa Mare Azzurro Socialpesca Soc. coop. arl, formerly Cooperative Mare Azzurro Soc. coop. rl, and Cooperativa vongolari Sottomarina Lido Soc. coop. rl v European Commission

(Case C-145/13 P)

(2013/C 207/02)

Language of the case: Italian

Parties

Appellant: Ghezzo Giovanni & C. Snc di Ghezzo Maurizio & C. (represented by: R. Volpe and C. Montagner, avvocati)

Other parties to the proceedings: Cooperativa Mare Azzurro Socialpesca Soc. coop. rl, formerly Cooperativa Mare Azzurro Soc. coop. rl, Cooperativa vongolari Sottomarina Lido Soc. coop. rl, European Commission

Form of order sought

— Uphold the present appeal,

— accordingly, set aside the order of the General Court (Fourth Chamber) of 23 January 2013, notified on 24 January 2013 in Case T-218/00, and, consequently, annul Commission Decision 2000/394/EC of 25 November 1999, or,

— in the alternative, annul Article 5 of that decision in so far as it imposes an obligation to recover the amount of relief granted from the social security contributions at issue and in so far as it provides that interest is to be added to that amount for the period in question;

— order the Commission to pay the costs both at first instance and on appeal.

Pleas in law and main arguments

By its order of 23 January 2013 ('the order under appeal'), the General Court declared that the action brought by Ghezzo Giovanni & C. Snc seeking the annulment of Commission Decision 2000/394/EC on relief from social security contributions was in part manifestly inadmissible and in part manifestly lacking any foundation in law.

The first ground of this appeal alleges that no reasons were given for deeming the action before the General Court inadmissible; therefore, paragraph 58 of the order under appeal breaches the general principle that there is a duty to state the reasons on which measures are based and, more specifically, infringes Article 81 of the Rules of Procedure of the General Court.

The second ground raised by the appellant alleges that there has not been a proper, exhaustive interpretation of Article 87(1) EC (now Article 107(1) TFEU).

It is also alleged that Article 87(1) EC has been infringed in that there has been a breach of the principle of equal treatment and non-discrimination, as 22 undertakings have been declared exempt from recovery of the aid granted to them on the grounds that they have provided comprehensive reasons for that grant, whereas the appellant has been deemed not to have provided comprehensive reasons for its grant.

The contested order also breaches the principle of non-discrimination, in that it confers legitimacy upon the Commission's decision by virtue of which recovery of aid under Article 87(1) EC was excluded for municipal undertakings (which the Commission, when implementing that decision, allowed to provide any additional information necessary in order to assess the lawfulness of the aid granted), whereas the appellant was never asked for any supplementary documentation before recovery of the aid was initiated.

In further support of its allegations of infringement of Article 87(1) EC, another part of the appeal also states that the order under appeal does not provide any reasons for finding that the aid granted to the appellant had an effect on intra-Community trade. First the Commission and then the General Court found that the relief in question was unlawful, citing the distortion of intra-Community trade as an element inherent in granting aid to undertakings in the fishing industry, without carrying out any kind of examination of the relevant market or providing any statement of reasons for that finding.

The order under appeal also infringes Article 87(3)(a) EC (now Article 107(3)(a) TFEU), since it has not assessed the conditions for applying the derogation in question to the appellant's situation. In particular, the standard of living in Chioggia is extremely low, with extraordinary levels of underemployment.

Similarly, the order under appeal infringes Article 87(3)(c) EC (now Article 107(3)(c) TFEU), in that it finds that the derogation does not apply to the appellant's situation, although it has provided no reasons in that regard, and Article 87(3)(d) EC (now Article 107(3)(d) TFEU), in that, in breach of the principle of non-discrimination, it finds that the derogation which was found applicable to other Venetian undertakings does not apply to the appellant's situation.

Lastly, it is alleged that the General Court erred in its interpretation regarding the absence of 'existing aid', thereby infringing Articles 1, 14 and 15 of Regulation 659/1999. [1] It cannot be denied that the succession of rules in force represents a continuous reduction in social security contributions over a period of several decades.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 April 2013 — Stanislav Gross v Hauptzollamt Braunschweig

(Case C-165/13)

(2013/C 207/03)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Stanislav Gross

Defendant: Hauptzollamt Braunschweig

Question referred

Does the second subparagraph of Article 9(1) of Council Directive 92/12/EEC [1] on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, notwithstanding its schematic connection with Article 7(3) of that directive, preclude legislation of a Member State under which a person who, for commercial purposes, holds products subject to excise duty which have been released for consumption in another Member State is not liable for duty in circumstances where he did not acquire those products from another person until after the entry process had been completed?

[1] OJ 1992 L 76, p. 1.

Action brought on 5 April 2013 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-172/13)

(2013/C 207/04)

Language of the case: English

Parties

Applicant: European Commission (represented by: W. Roels, R. Lyal, agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that by imposing conditions on cross-border group relief that make it virtually impossible in practice to obtain such relief and by restricting such relief to periods after 1 April 2006, the United Kingdom has failed to comply with its obligations under Article 49 of the Treaty on the Functioning of the European Union and Article 31 of the Agreement on the European Economic Areaorder United Kingdom of Great Britain and Northern Ireland to pay the costs.

— order the United Kingdom to pay the costs.

Pleas in law and main arguments

Following the judgment in Case C-446/03 *Marks & Spencer*, the United Kingdom amended its legislation governing the manner in which the losses suffered by companies which are members of a group may be transferred and used by another member of the group in order to reduce its tax liability (group relief rules). The provisions governing losses of non-resident companies are now contained in Part 5 of the Corporation Tax Act 2010.

Under the United Kingdom legislation now in force, a group company may obtain a tax credit for the losses of a non-resident group member only if the latter has no possibility of relief in its State of residence. In relation to the possibility of future relief the United Kingdom legislation makes it virtually impossible to demonstrate compliance with that condition, since that possibility falls to be determined 'as at the time immediately after the end' of the tax year in which the loss was suffered. That condition is for all practical purposes

impossible to meet. It follows that the legislation precludes any relief at all for the losses of a non-resident subsidiary, contrary to the freedom of establishment as interpreted in Case C-446/03 Marks & Spencer.

Secondly, the new rules on group relief for foreign losses apply only to losses suffered after 1 April 2006, the date of entry into force of those rules. That temporal limitation (that is to say, the exclusion of relief under the legislation for losses suffered before that date) is contrary to the freedom of establishment.

Appeal brought on 9 April 2013 by Axitea SpA, formerly La Vigile San Marco SpA, against the order of the General Court (Fourth Chamber) delivered on 22 January 2013 in Case T-262/00 La Vigile San Marco SpA v European Commission

(Case C-174/13 P)

(2013/C 207/05)

Language of the case: Italian

Parties

Appellant: Axitea SpA, formerly La Vigile San Marco SpA (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: Italian Republic, European Commission

Form of order sought

— Set aside and/or vary the order of the General Court (Fourth Chamber) delivered in Case T-262/00, and order the Commission to pay the costs

Pleas in law and main arguments

In support of its appeal, the appellant alleges errors of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others* v *Commission*, regarding (i) the duty to state the reasons for decisions of the Commission relating to State aid and (ii) the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU.

In the order that is the subject of the present appeal, the General Court did not comply with the judgment delivered by the Court of Justice on 9 June 2011 in *Comitato 'Venezia vuole vivere'*, in so far as that judgment states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court in its judgment in *Comitato 'Venezia vuole vivere'*, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification; consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraph 351 et seq.) — decided to reverse the burden of proof, in breach of Community case-law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That presumption is clearly contrary to the principles outlined by the Court in *Comitato 'Venezia vuole vivere'*.

Appeal brought on 9 April 2013 by Marek Marszałkowski against the judgment of the General Court (First Chamber) delivered on 4 February 2013 in Case T-159/11 Marszałkowski v Office for Harmonisation in the Internal Market (Trade Marks and Designs) — Mar-Ko Fleischwaren GmbH & Co. KG

(Case C-177/13 P)

(2013/C 207/06)

Language of the case: Polish

Parties

Appellant: Marek Marszałkowski (represented by: C. Sadkowski, radca prawny)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Mar-Ko Fleischwaren GmbH & Co. KG

Form of order sought

The appellant claims that the Court should:

— set aside in its entirety the judgment under appeal of the General Court, confirm the invalidity of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 11 January 2011 (Case R 760/2010-4), order OHIM to proceed with registration of the mark 'Marko Walichnowy' applied for on behalf of the appellant in so far as it concerns the goods mentioned in the appeal, and order the other party to the appeal proceedings to pay the costs of the present proceedings and the costs of the proceedings before the General Court;

— in the alternative, set aside in its entirety the judgment under appeal of the General Court and refer the case back to that Court for reconsideration, in accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice.

Pleas in law and main arguments

The appellant claims that the General Court breached Article 8(1)(b) of Regulation No 207/2009 and Article 48(2) of its own Rules of Procedure.

With regard to the breach of Article 8(1)(b) of Regulation No 207/2009, the appellant submits that the General Court:

— committed a beach of law in failing to examine correctly whether the goods covered by the application for registration of the marks in conflict were similar;

— committed a breach of law in misapplying Article 8(1)(b) by finding that the marks in conflict were similar;

— committed a breach of law in finding that the word MARKO was the dominant element of the sign 'Walichnowy Marko';

— committed a breach of law in failing to define the relevant public in respect of whom there was a likelihood of confusion, and in indicating that that likelihood existed in the mind of the average Polish consumer;

— committed a breach of law in failing to have regard for the reputation of the trade mark 'Walichnowy Marko' and in failing to take account of the fact that it has enjoyed priority within Polish territory since as early as 1995;

— committed a breach of law in failing to have regard for the level of attention which the average consumer has for the goods to which the marks in conflict are attached and in failing to consider whether that level of attention might reduce the likelihood of confusion.

With regard to the breach of Article 48(2) of the Rules of Procedure of the General Court, the appellant submits that, in paragraph 26 of the judgment under appeal, the General Court erred in holding that it was not until the stage of the hearing that the present appellant stated that the mark applied for had been registered in Poland since 1995.

Appeal brought on 12 April 2013 by Vetrai 28 srl, formerly Barovier & Toso Vetrerie Artistiche Riunite srl and Others against the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-272/00 Barbini and Others v European Commission

(Case C-180/13 P)

(2013/C 207/07)

Language of the case: Italian

Parties

Appellants: Vetrai 28 srl, formerly Barovier & Toso Vetrerie Artistiche Riunite srl and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: Alfredo Barbini srl and Others, Italian Republic, European Commission

Form of order sought

— Set aside and/or vary the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-272/00, and order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others* v *Commission*, regarding (i) the duty to state the reasons for decisions of the Commission relating to State aid and (ii) the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU.

In the order that is the subject of the present appeal, the General Court did not comply with the judgment delivered by the Court of Justice on 9 June 2011 in *Comitato 'Venezia vuole vivere'*, in so far as that judgment states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court in its judgment in *Comitato 'Venezia vuole vivere'*, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification; consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraph 351 et seq.) — decided to reverse the burden of proof, in breach of Community case-law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do

not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That presumption is clearly contrary to the principles outlined by the Court in *Comitato 'Venezia vuole vivere'*.

Request for a preliminary ruling from the Commissione tributaria provinciale di Latina (Italy) lodged on 12 April 2013 — Francesco Acanfora v Equitalia Sud SpA and Agenzia delle Entrate

(Case C-181/13)

(2013/C 207/08)

Language of the case: Italian

Referring court

Commissione tributaria provinciale di Latina

Parties to the main proceedings

Applicant: Francesco Acanfora

Defendants: Equitalia Sud SpA — Agente di Riscossione Latina, Agenzia delle Entrate — Ufficio di Latina

Question referred

Does the 9 % commission premium ('aggio') [established by Legislative Decree No 112/1999, prior to the amendments which have been introduced] constitute State aid which is incompatible with the single market as regards fees for collection and with Community law pursuant to Article 107 TFEU?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Anonima Petroli Italiana SpA (API) v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-184/13)

(2013/C 207/09)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Anonima Petroli Italiana SpA (API)

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — ANCC-Coop Associazione Nazionale Cooperative di Consumatori and Others v Ministero delle Infrastrutture e dei Trasporti and Others

(Case C-185/13)

(2013/C 207/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: ANCC-Coop Associazione Nazionale Cooperative di Consumatori, ANCD Associazione Nazionale Cooperative Dettaglianti, Sviluppo Discount SpA, Centrale Adriatica Soc coop, Coop Consorzio Nord Ovest Società Consortile arl, Coop Italia Consorzio Nazionale non Alimentari Società Cooperativa, Coop Centro Italia Società Cooperativa, Tirreno Logistica srl, Unicoop Firenze Società Cooperativa, CONAD — Consorzio Nazionale Dettaglianti — Soc. Coop., Conad Centro Nord Soc. Coop, Commercianti Indipendenti Associati Soc. Coop, Conad del Tirreno Soc. Coop, Pac2000A Soc. Coop, Conad Adriatico Soc. Coop, Conad Sicilia Soc. Coop, Sicilconad Mercurio Soc. Coop

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico, Consulta Generale per l'Autotrasporto e la Logistica, Osservatorio sulle Attività di Autotrasporto, Autorità Garante della Concorrenza e del Mercato — Antitrust

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Air Liquide Italia SpA and Others v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-186/13)

(2013/C 207/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Air Liquide Italia SpA and Others

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Confederazione Generale Italiana dei Trasporti e della Logistica (Confetra) and Others v Ministero delle Infrastrutture e dei Trasporti and Others

(Case C-187/13)

(2013/C 207/12)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Confederazione Generale Italiana dei Trasporti e della Logistica (Confetra) and Others

Defendants: Ministero delle Infrastrutture e dei Trasporti and Others

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Appeal brought on 15 April 2013 by Confindustria Venezia, formerly Unione degli Industriali della Provincia di Venezia (Unindustria) and Others against the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-273/00 Unindustria and Others v European Commission

(Case C-191/13 P)

(2013/C 207/13)

Language of the case: Italian

Parties

Appellants: Confindustria Venezia, formerly Unione degli Industriali della Provincia di Venezia (Unindustria) and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission, Siram SpA, Bortoli Ettore Srl, Arsenale Venezia SpA, Italian Republic

Form of order sought

— Set aside and/or vary the order of the General Court (Fourth Chamber) delivered in Case T-273/00, and order the Commission to pay the costs

Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others* v *Commission*, regarding (i) the duty to state the reasons for decisions of the Commission relating to State aid and (ii) the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU.

In the order that is the subject of the present appeal, the General Court did not comply with the judgment delivered by the Court of Justice on 9 June 2011 in *Comitato 'Venezia vuole vivere'*, in so far as that judgment states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court in its judgment in *Comitato 'Venezia vuole vivere'*, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification; consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraph 351 et seq.) — decided to reverse the burden of proof, in breach of Community case-law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That presumption is clearly contrary to the principles outlined by the Court in *Comitato 'Venezia vuole vivere'*.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 15 April 2013 — Esso Italiana srl v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-194/13)

(2013/C 207/14)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Esso Italiana srl

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by

bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 15 April 2013 — Confederazione generale dell'industria italiana (Confindustria) and Others v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-195/13)

(2013/C 207/15)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Confederazione generale dell'industria italiana (Confindustria) and Others

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Action brought on 16 April 2013 — European Commission v Italian Republic

(Case C-196/13)

(2013/C 207/16)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro and D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by having failed to take all the necessary measures to comply with the judgment of the Court of Justice of the European Communities of 26 April 2007 in Case C-135/05, in which it was declared that the Italian Republic had failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442/EEC, ([1]) as amended by Directive 91/156/EEC, ([2]) under Article 2(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, ([3]) and under Article 14(a) to (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, ([4]) the Italian Republic has failed to fulfil its obligations under Article 260(1) TFEU;

— Order the Italian Republic to pay to the Commission a daily penalty payment in an amount of EUR 256 819,2 for the delay in complying with the judgment in Case C-135/05, from the date of judgment in the present case until the date on which the judgment in Case C-135/05 is complied with;

— Order the Italian Republic to pay to the Commission a lump sum, the amount of which is calculated by multiplying a daily amount of EUR 28 089,6 by the number of days over which the failure to fulfil obligations continues, from the date of delivery of the judgment in Case C-135/05 until the date of judgment in the present case;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

With regard to the infringement of Articles 4, 8 and 9 of Directive 75/442/EEC, as amended by Directive 91/156/EEC, and of Article 2(1) of Directive 91/689/EEC on hazardous waste, according to the information provided by the Italian authorities, there are still at least 218 illegal landfills in Italy, located across all the Italian regions. Since they have not been authorised, the 218 illegal landfills do not comply with the abovementioned provisions.

With regard to the infringement of Article 14(a) to (c) of Directive 1999/31/EC on the landfill of waste, according to the information provided by the Italian authorities, there continue to be five landfills in respect of which the relevant conditioning plans have not been submitted or approved and which have nevertheless not been closed by the competent authorities, in breach of the abovementioned provisions.

The proposed penalty (daily penalty payment and lump sum) is proportionate to the gravity and duration of the infringement, taking account, inter alia, of the need to ensure that the penalty acts as an effective deterrent.

(1) Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39).
(2) Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32).
(3) Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20).
(4) Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1).

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia (Italy) lodged on 18 April 2013 — Cruciano Siragusa v Regione Sicilia — Soprintendenza Beni Culturali e Ambientali di Palermo

(Case C-206/13)

(2013/C 207/17)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Sicilia

Parties to the main proceedings

Applicant: Cruciano Siragusa

Defendant: Regione Sicilia — Soprintendenza Beni Culturali e Ambientali di Palermo

Questions referred

Do Article 17 of the Charter of Fundamental Rights of the European Union and the principle of proportionality, as a general principle of European Union law, preclude the application of a provision of national law such as Article 167(4)(a) of Legislative Decree No 42 of 2004, under which a 'landscape compatibility clearance' [(*autorizzazione paesaggistica*)] may not be issued by way of retrospective regularisation in any cases where human activity has resulted in an increase in floor area and volume, regardless of whether a specific appraisal has been undertaken as to whether the activity in question is compatible with the features of the landscape of the particular site which merit protection?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 15 April 2013 — Autorità Garante della Concorrenza e del Mercato v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-208/13)

(2013/C 207/18)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Autorità Garante della Concorrenza e del Mercato

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

Questions referred

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?

2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?

3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

Request for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 19 April 2013 — František Ryneš v Úřad pro ochranu osobních údajů

(Case C-212/13)

(2013/C 207/19)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: František Ryneš

Defendant: Úřad pro ochranu osobních údajů

Question referred

Can the operation of a camera system installed on a family home for the purposes of the protection of the property, health and life of the owners of the home be classified as the processing of personal data 'by a natural person in the course of a purely personal or household activity' within the meaning of Article 3(2) of Directive 95/46/EC, [1] even though such a system monitors also a public space?

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[1] OJ 1995 L 281, p. 31.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 23 April 2013 — Impresa Pizzarotti & C. SpA v Comune di Bari

(Case C-213/13)

(2013/C 207/20)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Impresa Pizzarotti & C. SpA

Defendant: Comune di Bari

Questions referred

1. Is a contract to be concluded for the lease of something in the future — even in the form, suggested most recently, of an undertaking to lease — equivalent to a public works contract, albeit with certain characteristics of a lease contract, with the result that such a contract cannot be included among the contracts which are excluded, under Article 16 of Directive 2004/18/EC, [1] from the scope of the rules on public procedures?

2. If the answer to Question 1 is in the affirmative, may a national court — specifically, this referring court — hold that the ruling made regarding the events under consideration … is ineffective in that it has enabled a situation which is contrary to Community law on public procurement to persist and, therefore, is it possible to enforce a final judgment which is contrary to Community law?

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[1] Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Request for a preliminary ruling from the Tribunale di Trento (Italy) lodged on 25 April 2013 — Teresa Mascellani v Ministero della Giustizia

(Case C-221/13)

(2013/C 207/21)

Language of the case: Italian

Referring court

Tribunale di Trento

Parties to the main proceedings

Applicant: Teresa Mascellani

Defendant: Ministero della Giustizia

Questions referred

1. In so far as it provides that '[t]he refusal by a worker to be transferred from full-time to part-time work or vice-versa should not in itself constitute a valid reason for termination of employment, without prejudice to the possibility, under national laws, collective agreements and practice, of termination for other reasons such as may arise from the

operational requirements of the establishment concerned', must Clause 5.2 of the Agreement implemented by Directive 97/81/EC [1] be construed as meaning that provision may not be made in the legislation of Member States for employers to be able to convert a part-time employment relationship into a full-time relationship even where the employee does not consent?

2. Does Directive 97/81/EC preclude a provision of national law (such as Article 16 of Italian Law No 183 of 4 November 2010) under which employers may convert a part-time employment relationship into a full-time employment relationship even where the employee does not consent?

[1] Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

Request for a preliminary ruling from the Teleklagenævnet (Denmark) lodged on 25 April 2013 — TDC A/S v Erhvervsstyrelsen

(Case C-222/13)

(2013/C 207/22)

Language of the case: Danish

Referring court

Teleklagenævnet

Parties to the main proceedings

Applicant: TDC A/S

Defendant: Erhvervsstyrelsen

Questions referred

1. Does Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), [1] including Article 32, preclude a Member State from laying down rules which do not allow an undertaking to lodge a claim against the Member State for separate recovery of the net costs of providing additional mandatory services not covered by Chapter II of that directive, where the undertaking's profits from other services which are covered by the undertaking's universal service obligations under Chapter II of that directive exceed the losses associated with the provision of the additional mandatory services?

2. Does the Universal Service Directive preclude a Member State from laying down rules allowing undertakings only to lodge a claim against the Member State for recovery of the net costs of providing additional mandatory services which are not covered by Chapter II of that directive, if the net costs amount to an unreasonable burden for the undertakings?

3. If question 2 is answered in the negative, may the Member State decide that there is no unreasonable burden associated with the provision of additional mandatory services not covered by Chapter II of that directive, if the undertaking as a whole has achieved profits from the provision of all those services where that undertaking has a universal service obligation, including the provision of services which the undertaking also would have provided without having the universal service obligation?

4. Does the Universal Service Directive preclude a Member State from laying down rules that a designated undertaking's net costs associated with the provision of universal service pursuant to Chapter II of that directive is to be calculated on the basis of all income and costs associated with the provision of the service in question, including that income and those costs which the undertaking also would have had without having the universal service obligation?

5. Does it affect the answers to questions 1-4 if an additional mandatory service is required to be provided in Greenland which, under Annex II to the TFEU, is an overseas country or territory, when the Danish authorities impose an obligation on an undertaking established in Denmark and the undertaking has no other activities in Greenland?

6. Of what significance are Article 107(1), Article 108(3) TFEU and Commission Decision of 20 December 2011 on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest for the answers to questions 1-5?

7. Of what significance is the principle of minimum distortion of competition in, inter alia, Article 1(2), Article 3(2) and recitals (4), (18), (23) and (26) in the preamble to and Part B of Annex IV to the Universal Service Directive for the answers to questions 1-5?

8. If the provisions of the Universal Service Directive preclude national schemes as referred to in questions 1, 2 and 4, do those provisions or preclusions have direct effect?

[1] OJ L 108, p. 51.

Request for a preliminary ruling from the Tribunale di Cagliari (Italy) lodged on 26 April 2013 — Criminal proceedings against Sergio Alfonso Lorrai

(Case C-224/13)

(2013/C 207/23)

Language of the case: Italian

Referring court

Tribunale di Cagliari

Parties to the main proceedings

Sergio Alfonso Lorrai

Questions referred

1. On a proper construction of Article 6 ECHR and of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, do those provisions preclude the application of Articles 70, 71 and 72 of the [Italian] Criminal Procedure Code in so far as they require criminal proceedings to be stayed indefinitely and, in addition, regular expert assessments to be carried out in respect of the defendant, once it has been ascertained that that defendant is incapable of taking part in the proceedings in a state of full awareness, by reason of a medical condition which is irreversible and unlikely to improve?

2. On a proper construction of Article 6 ECHR and of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, do those provisions preclude the application of point (3) of the first paragraph of Article 159 of the Criminal Code in so far as it requires the limitation period to be prolonged indefinitely (extended on a six-month basis under Article 72 of that Code) in the event that a defendant is incapable of taking part in the proceedings in a state of full awareness, by reason of a medical condition which is irreversible and unlikely to improve?

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 29 April 2013 — Ville d'Ottignies-Louvain-la-Neuve, Michel Tillieut, Willy Gregoire, Marc Lacroix v Région wallonne

(Case C-225/13)

(2013/C 207/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Ville d'Ottignies-Louvain-la-Neuve, Michel Tillieut, Willy Gregoire, Marc Lacroix

Defendant: Région wallonne

Questions referred

1. Is Article 7 of Directive 75/442/EEC [1] on waste to be interpreted as permitting the classification as a waste management plan of a legislative provision that states that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan, landfills authorised before that waste management plan entered into force may, after such entry into force, be the subject-matter of new authorisations in respect of the plots covered by the authorisation pre-dating the entry into force of the waste management plan?

2. Is Article 2(a) of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment [2] to be interpreted as including within the meaning of plan and programme a legislative provision which states that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by Article 7 of Directive 75/442/EEC on waste, landfills authorised before that waste management plan entered into force may, after such entry into force, be the subject-matter of new authorisations in respect of the plots covered by the authorisation pre-dating the entry into force of the waste management plan?

3. If the answer to the second question is in the affirmative, does the second paragraph of Article 70 of the Decree of 27 June 1996 on waste, as amended by the Decree of 16 October 2003, satisfy the requirements for the assessment of effects laid down in Directive 2001/42/EC?

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[1] Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39).

[2] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).

Appeal brought on 29 April 2013 by Albergo Quattro Fontane Snc against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-227/13 P)

(2013/C 207/25)

Language of the case: Italian

Parties

Appellant: Albergo Quattro Fontane Snc (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: Comitato 'Venezia vuole vivere', European Commission

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. [1]

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

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[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Hotel Gabrielli srl, formerly Hotel Gabrielli Sandwirth SpA, against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-228/13 P)

(2013/C 207/26)

Language of the case: Italian

Parties

Appellant: Hotel Gabrielli srl, formerly Hotel Gabrielli Sandwirth SpA (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds in law and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by GE.AL.VE. Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-229/13 P)

(2013/C 207/27)

Language of the case: Italian

Parties

Appellant: GE.AL.VE. Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

— annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Metropolitan SpA, formerly Metropolitan Srl, against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-230/13 P)

(2013/C 207/28)

Language of the case: Italian

Parties

Appellant: Metropolitan SpA, formerly Metropolitan Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. [1]

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

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[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Hotel Concordia Srl, formerly Hotel Concordia Snc, against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-231/13 P)

(2013/C 207/29)

Language of the case: Italian

Parties

Appellant: Hotel Concordia Srl, formerly Hotel Concordia Snc (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. [1]

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by SPLIA against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-232/13 P)

(2013/C 207/30)

Language of the case: Italian

Parties

Appellant: Società per l'industria alberghiera (SPLIA) (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. [1]

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Principessa (in liquidation) against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-233/13 P)

(2013/C 207/31)

Language of the case: Italian

Parties

Appellant: Principessa (in liquidation) (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. [1]

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

[1] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Albergo Saturnia Internazionale Spa against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-234/13 P)

(2013/C 207/32)

Language of the case: Italian

Parties

Appellant: Albergo Saturnia Internazionale Spa (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

— annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Savoia e Jolanda Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-235/13 P)

(2013/C 207/33)

Language of the case: Italian

Parties

Appellant: Savoia e Jolanda Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

— annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Biasutti Hotels srl, formerly Hotels Biasutti Snc, against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-236/13 P)

(2013/C 207/34)

Language of the case: Italian

Parties

Appellant: Biasutti Hotels srl, formerly Hotels Biasutti Snc (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

— annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Ge.A.P. Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-237/13 P)

(2013/C 207/35)

Language of the case: Italian

Parties

Appellant: Ge.A.P. Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Rialto Inn Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-238/13 P)

(2013/C 207/36)

Language of the case: Italian

Parties

Appellant: Rialto Inn Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: Comitato 'Venezia vuole vivere', European Commission

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

— annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

— in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Appeal brought on 29 April 2013 by Bonvecchiati Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-239/13 P)

(2013/C 207/37)

Language of the case: Italian

Parties

Appellant: Bonvecchiati Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: Comitato 'Venezia vuole vivere', European Commission

Form of order sought

— Set aside the order of the General Court under appeal

— Uphold the forms of order sought at first instance and, accordingly,

  — annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;

  — in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;

— order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999. ([1])

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 29 April 2013 — Commerz Nederland NV; other party: Havenbedrijf Rotterdam NV

(Case C-242/13)

(2013/C 207/38)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Commerz Nederland NV

Other party: Havenbedrijf Rotterdam NV

Questions referred

1. Is the imputability — required for purposes of classification as State aid within the meaning of Articles 107 TFEU and 108 TFEU — to the public authorities of a guarantee provided by a public undertaking necessarily precluded by the fact that that guarantee, as in the present case, was provided by the (sole) director of the public undertaking who, while he had the power to do so under civil law, acted on his own authority, deliberately kept the provision of the guarantee secret and ignored the requirements under the articles of association of the public undertaking by failing to seek the approval of the Raad van Commissarissen (Council of Commissioners), and where, furthermore, it must be assumed that the public body concerned (in this case, the Gemeente (Municipality)) did not want the guarantee to be provided?

2. If the circumstances described do not necessarily preclude imputability to the public authorities, are those circumstances then irrelevant for the purpose of answering the question as to whether the provision of the guarantee may be imputed to the public authorities, or should the court consider the matter in the light of the other indicators which argue for or against imputability to the public authorities?

Appeal brought on 2 May 2013 by Manutencoop Soc. coop., formerly Manutencoop Soc. coop. arl and Astrocoop Universale Pulizie, Manuntenzioni e Trasporti Soc. coop. rl against the order of the General Court (Fourth Chamber) delivered on 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 Albergo Quattro Fontane and Others v Commission

(Case C-246/13 P)

(2013/C 207/39)

Language of the case: Italian

Parties

Appellants: Manutencoop Soc. coop., formerly Manutencoop Soc. coop. r.l. and Astrocoop Universale Pulizie, Manuntenzioni e Trasporti Soc. coop. r.l. (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

— Set aside and/or vary the order of the General Court (Fourth Chamber) delivered on 20 February 2013 and notified on 25 February 2013 in Case T-280/00 and Case T-285/00;

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants put forward two pleas in law.

First, the order of the General Court is vitiated by an error of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others* v *Commission* regarding the duty to state the reasons for decisions of the Commission relating to State aid. In particular, the General Court did not comply with that judgment in so far as it states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

Second, the order is vitiated by an error of law in the application of the principles outlined by the Court of Justice in *Comitato 'Venezia vuole vivere'* regarding the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU. On the basis of the principles outlined by the Court in that judgment, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification. Consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic reversed the burden of proof, requiring the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States.

Action brought on 7 May 2013 — European Commission v Kingdom of the Netherlands

(Case C-252/13)

(2013/C 207/40)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: D. Martin and M. van Beek, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

The applicant claims that the Court should:

— declare that, by maintaining in force provisions of Netherlands legislation contrary to Article 1(2)(a) and (b), Article 15 and Article 28(2) of Directive 2006/54/EC [1] 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), the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

— order the Kingdom of the Netherlands to pay the costs of the proceedings.

Pleas in law and main arguments

The Commission takes the view that Netherlands employment law does not establish sufficiently clearly that, if female workers returning after the end of the period of maternity leave are confronted with less favourable employment conditions, this is contrary to the prohibition on discrimination on the grounds of pregnancy, childbirth and motherhood.

In its view, that prohibition is not established sufficiently clearly by the mere fact that an employer who unilaterally alters the duties and employment conditions agreed in the employment contract fails to fulfil his obligations.

The Commission regards as insufficient the argument that, when a legal right to leave is recognised, that automatically implies that that any less favourable treatment is unlawful. Equally, the possibility of bringing an action on the basis of the general prohibition of discrimination and the principle of sound employer practice, which are contained in the Burgerlijk Wetboek (Civil Code), does not amount to a sufficiently clear and precise transposition of those provisions of the Directive. Those general principles of Netherlands law do not constitute sufficiently clear transposition of the provisions of the Directive.

That state of affairs does not fulfil the requirements relating to transparency and legal certainty laid down by the Court of Justice for the transposition of a directive in the national legal order.

[1] OJ 2006 L 204, p. 23.

Request for a preliminary ruling from the Hof van beroep te Brussel (Belgium) lodged on 8 May 2013 — Orgacom BVBA v Vlaamse Landmaatschappij

(Case C-254/13)

(2013/C 207/41)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: Orgacom BVBA

Respondent: Vlaamse Landmaatschappij

Questions referred

1. Is the import levy described in Article 21(5) of the Decree [of the Flanders Region] of 23 January 1991 on protection of the environment against fertiliser pollution, which is imposed only on the importation from the other Member States of surpluses of manure derived both from livestock manure and from other manure, irrespective of whether these are further processed or marketed within the territory, and whereby the levy on those imported surpluses of manure is imposed on the importer, whereas in the case of surpluses of manure produced domestically the levy is imposed on the producer, to be regarded as a charge having equivalent effect to a customs duty on imports, within the terms of Article 30 TFEU, even though the Member State from which the surpluses of manure are exported itself provides for a reduction of the levy on the exportation of those surpluses of manure to other Member States?

2. In so far as the import levy described in Article 21(5) of the Decree [of the Flanders Region] of 23 January 1991 on protection of the environment against fertiliser pollution, which is imposed only on the importation from the other Member States into the Flanders Region of surpluses of manure derived both from livestock manure and from other manure, cannot be regarded as a charge having equivalent effect to a customs duty on imports, is that import levy to be regarded as constituting discriminatory taxation of the products of other Member States, within the terms of Article 110 TFEU, since livestock manure produced domestically is subject to a basic levy provided for by national legislation, the rate of which differs according to the production process, whereas in the case of imported surpluses of manure, irrespective of the production process (inter alia, the animal origin or the P_2O_5N content), an import levy is imposed at a uniform rate which is higher than the lowest rate of the basic levy for livestock manure produced in the Flanders Region (EUR 0.00), even though the Member State from which the surpluses of manure are exported itself provides for a reduction of the levy on the exportation of those surpluses of manure to other Member States?

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 10 May 2013 — Provincie Antwerpen v Belgacom NV van publiek recht

(Case C-256/13)

(2013/C 207/42)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Provincie Antwerpen

Respondent: Belgacom NV van publiek recht

Question referred

Must Article 6 and/or Article 13 of Directive 2002/20/EC ([1]) of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding a public authority of a Member State from being allowed to tax, for budgetary or other reasons, the economic activity of telecommunications operators which arises in the territory or a part thereof through the presence on public or private property of GSM masts, pylons or antennae which are used for that activity?

([1]) OJ 2002 L 108, p. 21.

Request for a preliminary ruling from the Tribunal des affaires de sécurité sociale des Bouches-du-Rhône (France) lodged on 13 May 2013 — Anouthani Mlalali v CAF des Bouches-du-Rhône

(Case C-257/13)

(2013/C 207/43)

Language of the case: French

Referring court

Tribunal des affaires de sécurité sociale des Bouches-du-Rhône

Parties to the main proceedings

Applicant: Anouthani Mlalali

Defendant: CAF des Bouches-du-Rhône

Question referred

Must Article 11 of Directive 2003/109/EC ([1]) of 25 November 2003 be interpreted as precluding the requirements laid down by Articles L.512 and D.512-2 of the Code de la sécurité sociale français (French Social Security Code)?

([1]) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Appeal brought on 8 May 2013 by Peter Schönberger against the judgment of the General Court (Sixth Chamber) delivered on 7 March 2013 in Case T-186/11 Peter Schönberger v European Parliament

(Case C-261/13 P)

(2013/C 207/44)

Language of the case: German

Parties

Appellant: Peter Schönberger (represented by: O. Mader, Rechtsanwalt)

Other party to the proceedings: European Parliament

Form of order sought

— Set aside the judgment of the General Court of 7 March 2013 in Case T-186/11;

— Uphold the application made by the appellant at first instance. Annul the respondent's decision, communicated to the appellant by letter of 25 January 2011, by which the examination of his petition No 1188/2010 was terminated, without the Committee on Petitions examining the substance of the petition;

— Order the respondent to pay the costs.

Pleas in law and main arguments

In its presentation of the facts, the General Court suppressed the fact that the chairperson of the Committee on Petitions informed the appellant without giving further reasons that, although his petition was admissible, the Committee on Petitions could not examine its substance. Subsequently the General Court assumed — thereby distorting the facts — that the petition had been examined.

The General Court misrepresented the scope of protection of the fundamental right of petition by unlawfully presuming that it was limited to the examination of the admissibility of a petition. The scope of protection also however encompasses the right to a substantive examination of the petition and to a decision on the substance, if the petition is admissible (right to have case examined).

The General Court contradicted itself by holding that the Parliament's failure to examine an admissible petition, unlike the failure to examine an inadmissible petition, does not produce any legal effects.

The General Court ruled in a manner contrary to its own case-law in Case T-308/07 *Tegebauer*. ([1]) It held in that case that the effectiveness of the right of petition can be impaired where the substance of a petition has not been examined.

The General Court overlooked the legal infringement constituted by the deficient reasoning of the European Parliament's decision. It instead substituted its own reasoning for the deficient reasons given for the failure to deal with the petition.

The General Court failed to take due account of the fact that the appellant was denied the possibility of presenting his case to the Committee on Petitions in an undistorted way.

(1) Judgment of the General Court of 14 September 2011 (not yet published in the ECR).

Appeal brought on 14 May 2013 by the Kingdom of Spain against the judgment of the General Court (Second Chamber) delivered on 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 Spain v Commission

(Case C-263/13 P)

(2013/C 207/45)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, agent)

Other party to the proceedings: European Commission

Form of order sought

— Declare that the present appeal is well founded and set aside the judgment of the General Court of 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 *Spain* v *Commission*;

— Annul Commission Decisions C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009, and C(2010) 337 of 28 January 2010 reducing the aid from the European Regional Development Fund (ERDF) to Operational Programme 'Andalucía', falling within Objective 1 (1994-1999), under Commission Decision C(94) 3456 of 9 December 1994, Operational Programme 'País Vasco', falling within Objective 2 (1997-1999), under Commission Decision C(1998) 121 of 5 February 1998, and to Operational Programme 'Comunidad Valenciana', falling within Objective 1 (1994-1999), under Commission Decision C(1994) 3043/6 of 25 November 1994, respectively;

— Order the respondent to pay the costs.

Pleas in law and main arguments

— ***Error of law in holding Article 24(2) of Regulation 4253/88*** (1) ***to be the legal basis for applying financial corrections based on an extrapolation.*** This provision is not a legal basis for applying financial corrections by extrapolation in the event of systematic irregularities, since this power has not been conferred on the Commission.

— ***Error of law in the review of the reliability, consistency, relevance and appropriateness of the extrapolation applied by the Commission.*** The review by the General Court with respect to the representativeness of the sample used for the application of the financial correction by extrapolation was not carried out in accordance with the *Tetra Laval* (2) case-law.

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

(2) Judgment of 15 February 2005 in Case C-12/03 P *Commission* v *Tetra Laval* [2005] ECR I-987, paragraph 39

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 15 May 2013 — Provincie Antwerpen v Mobistar NV

(Case C-264/13)

(2013/C 207/46)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Provincie Antwerpen

Respondent: Mobistar NV

Question referred

Must Article 6 and/or Article 13 of Directive 2002/20/EC (1) of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding a public authority of a Member State from being allowed to tax, for budgetary or other reasons, the economic activity of telecommunications operators which arises in the territory or a part thereof through the presence on public or private property of GSM masts, pylons or antennae which are used for that activity?

(1) OJ 2002 L 108, p. 21.

Request for a preliminary ruling from the Juzgado de lo Social 2 de Terrassa (Barcelona) lodged on 15 May 2013 — Emiliano Torralbo Marcos v Korota S.A. and Fondo de Garantía Salarial

(Case C-265/13)

(2013/C 207/47)

Language of the case: Spanish

Referring court

Juzgado de lo Social 2 de Terrassa

Parties to the main proceedings

Applicant: Emiliano Torralbo Marcos

Defendants: Korota S.A. and Fondo de Garantía Salarial

Questions referred

1. Are Articles 1, 2(f), 3(1), 4(2)(a), 4(3), 5(3), 6, 7 and 8(1) and 8(2) of Law No 10/2012 of 20 November 2012 regulating certain fees relating to the administration of justice and to the National Institute of Toxicology and Forensic Science (Ley 10/201, de 20 de noviembre 2012, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses) contrary to Article 47 of the Charter of Fundamental Rights of the European Union [1] in that they do not permit a national court to: (a) adjust judicial fees or to assess reasons of proportionality (relating to the basis for charging the fees on the part of the State or to their amount as constituting an obstacle to obtaining an effective remedy) for the purposes of exemption; (b) have regard to the principle of effectiveness in the application of provisions of Union law; or (c) assess the importance of the proceedings to the parties in the light of the circumstances, when payment of judicial fees is a prerequisite to obtaining leave to proceed with the appeal lodged?

2. Are Articles 1, 2(f), 3(1), 4(2)(a), 4(3), 5(3), 6, 7 and 8(1) and 8(2) of Law No 10/2012 of 20 November 2012 regulating certain fees relating to the administration of justice and to the National Institute of Toxicology and Forensic Science (Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de justicia y del Instituto Nacional de Toxicología y Ciencias Forenses) contrary to Article 47 of the Charter of Fundamental Rights of the European Union in that the latter applies to special procedures, as in the case of an employment court or tribunal, in which Union law is commonly applied as a fundamental aspect of balanced economic and social development in the Community?

3. In connection with the foregoing questions, is it open to a court such as the referring court to refrain from applying legislation such as the legislation at issue which does not permit a national court to: (a) adjust judicial fees or to assess reasons of proportionality (relating to the basis for charging the fees on the part of the State or to their amount as constituting an obstacle to obtaining an effective remedy) for the purposes of exemption; (b) have regard to the principle of effectiveness in the application of provisions of Union law; or (c) assess the importance of the proceedings to the parties in the light of the circumstances, when payment of judicial fees is a prerequisite to obtaining leave to proceed with the appeal lodged?

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[1] OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 15 May 2013 — L. Kik, other party: Staatssecretaris van Financiën

(Case C-266/13)

(2013/C 207/48)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: L. Kik

Respondent: Staatssecretaris van Financiën

Questions referred

1. (a) Must the rules regarding the personal scope of application of Regulation (EEC) No 1408/71 [1] and the rules which determine the territorial scope of the designation rules in Title II of that regulation be interpreted as meaning that those designation rules apply in a case such as the present, which concerns (a) a worker residing in the Netherlands who (b) is a national of the Netherlands, (c) in any event, was previously compulsorily insured in the Netherlands, (d) is employed as a seafarer by an employer established in Switzerland, (e) carries out his work on board a pipelayer which flies the Panamanian flag, and (f) carries out those activities first outside the territory of the Union (approximately 3 weeks above the continental shelf of the United States and approximately 2 weeks in international waters) and then above the continental shelf of the Netherlands (periods of one month and approximately one week) and of the United Kingdom (a period of slightly more than one week), while (g) the income earned thereby is subject to income tax levied by the Netherlands?

   (b) If so, is Regulation (EEC) No 1408/71 then only applicable on the days when the person concerned works above the continental shelf of a Member State of the Union, or also during the preceding period in which he worked elsewhere outside the territory of the Union?

2. If Regulation (EEC) No 1408/71 applies to a worker as referred to in question 1(a), what legislation or sets of legislation does the Regulation then designate as applicable?

(1) Council Regulation 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).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 15 May 2013 — Nutricia NV; other party: Staatssecretaris van Financiën

(Case C-267/13)

(2013/C 207/49)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Nutricia NV

Other party: Staatssecretaris van Financiën

Questions referred

1. Must the concept of 'medicament' within the meaning of heading 3004 of the Combined Nomenclature be interpreted as also including food preparations such as the products at issue, which are intended exclusively to be administered enterally (by means of a stomach tube) under medical supervision to persons who are undergoing medical treatment for a disease or ailment and who have the product administered to them as part of the control of that disease or ailment in order to control or prevent malnutrition?

2. Must the concept of 'beverages' within the meaning of heading 2202 of the Combined Nomenclature be interpreted as including liquid foodstuffs such as the products at issue, which are not intended to be drunk but to be administered enterally (by means of a stomach tube)?

Request for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 16 May 2013 — Elena Petru v Casa Județeană de Asigurări de Sănătate Sibiu and Casa Națională de Asigurări de Sănătate

(Case C-268/13)

(2013/C 207/50)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Elena Petru

Defendants: Casa Județeană de Asigurări de Sănătate Sibiu, Casa Națională de Asigurări de Sănătate

Question referred

In the light of the second subparagraph of Article 22(2) of Regulation (EEC) No 1408/71, (1) is the requirement that the person concerned be unable to obtain treatment in the country of residence to be construed as categorical or as reasonable; that is to say, where, although the required surgery could, in technical terms, be carried out in good time in the country of residence — in that the necessary specialists are present there and have the same level of specialist skills as those abroad — does the lack of medicines and basic medical consumables mean that such a situation can, for the purposes of that provision, be equated with a situation in which the necessary medical treatment cannot be provided?

(1) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2, English special edition: Series I Volume 1971(II) P. 416 — 463).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 17 May 2013 — Iraklis Haralambidis v Calogero Casilli

(Case C-270/13)

(2013/C 207/51)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Iraklis Haralambidis

Defendant: Calogero Casilli

Questions referred

1. Given that the exclusion laid down in Article 45(4) TFEU does not appear to apply to the present case [which concerns the appointment of a national of another Member State of the European Union as President of a Port Authority, a legal entity which can be classed as a body governed by public law] in that it relates to. employment in the public service (which is not an issue. in the present case) and given also that the fiduciary role of President of a Port Authority may nevertheless be regarded as an 'employment activity' in the broad sense,. does the provision reserving that post exclusively to Italian nationals constitute discrimination on grounds of nationality prohibited by Article 45 TFEU?

2. Alternatively, may the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union be regarded as falling within the scope of the right of establishment laid down in Article 49 et seq. TFEU and, if so, does the prohibition laid down in national law on non-Italian nationals holding that office constitute discrimination on grounds of nationality, or would such a finding be precluded by Article 51 TFEU?

3. As a lesser alternative, in the event that the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union may be regarded as the provision of 'services' for the purposes of Directive 2006/123/EC, ([1]) is the exclusion of port services from the scope of that directive relevant in the present case and, if not, does the prohibition under national law in relation to the holding of that office constitute discrimination on grounds of nationality?

4. In the further alternative, … in the event that the holding of the office of President of an Italian Port Authority by a national of another Member State of the European Union does not fall within the scope of any of the above provisions, may it nevertheless be regarded, more generally, in accordance with Article 15 of the Charter of Fundamental Rights of the European Union, as a prerogative coming under the right of Community citizens to 'work, to exercise the right of establishment and to provide services in any Member State', irrespective of the specific 'sectoral' provisions laid down in Article 45 and Article 49 et seq. TFEU, and in Directive 2006/123/EC on services in the internal market, and is the prohibition under national law in relation the holding of that office accordingly inconsistent with the equally general prohibition on discrimination on grounds of nationality laid down in Article 21(2) of that Charter?'

([1]) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Appeal brought on 16 May 2013 by Rousse Industry AD against the judgment of the General Court (Fourth Chamber) delivered on 20 March 2013 in Case T-489/11 Rousse Industry AD v European Commission

(Case C-271/13 P)

(2013/C 207/52)

Language of the case: Bulgarian

Parties

Appellant: Rousse Industry AD (represented by: Al. Angelov and Sv. Panov, Advokati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court of 20 March 2013 in Case T-489/11;

— deliver final judgment and annul Articles 2, 3, 4 and 5 of the decision of the European Commission of 13 July 2011 on the State aid (C 12/10) (ex N 389/09) implemented by Bulgaria in favour of Rousse Industry;

— in the alternative, refer the case back to the General Court to be reheard;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

In support of its appeal, the appellant raises the following grounds of appeal:

1. **First ground of appeal: Infringement of procedural provisions which adversely affects the appellant's interests**

   (i) In the grounds for its judgment the General Court did not address the main questions put to the parties by means of measures of organisation of procedure regarding the facts or the views of the parties in that regard.

   (ii) The above constitutes a serious procedural error, which falls within the scope of Article 58 of the Statute of the Court of Justice, since the General Court was required to address all of the claims, complaints and arguments before it.

2. **Second ground of appeal: Infringement of European Union law by the General Court**

   (i) The General Court wrongly applied Article 107(1) TFEU, in conjunction with Article 1c of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, ([1]) in that it assumed that new aid had been granted to Rousse Industry AD.

   (ii) The General Court delivered its judgment in infringement of Article 107(1) TFEU, since it wrongly assumed that the aid was incompatible with the internal market and infringed competition, and that the fact that the debt was not recovered by the State amounted to an advantage for the company in question.

(iii) The General Court's judgment does not comply with Article 107(1) TFEU and Article 296 TFEU, since, in its assessment of the Commission's private creditor criteria, the General Court adopted an approach which was erroneous from a legal point of view. In its decision, the Commission failed to support its conclusions regarding the private creditor criteria with any analysis and economic grounds, which is why the General Court had no grounds for endorsing the Commission's arguments.

(iv) The General Court misinterpreted and misapplied Article 14 of Regulation (EC) 659/1999 and Article 296 TFEU since, in its decision, the European Commission was required to state the amount of aid to be recovered, plus interest, and to calculate the interest in that regard in accordance with an appropriate rate determined by the Commission, which it did not do. This means that grounds were not provided for the Commission's decision.

([1]) OJ 1999 L 83, p. 1.

Request for a preliminary ruling from the Commissione Tributaria Regionale per la Toscana (Italy) lodged on 21 May 2013 — Equoland Soc. coop. arl v Agenzia delle Dogane

(Case C-272/13)

(2013/C 207/53)

Language of the case: Italian

Referring court

Commissione Tributaria Regionale per la Toscana

Parties to the main proceedings

Applicant: Equoland Soc. coop. arl

Defendant: Agenzia delle Dogane — Ufficio delle Dogane di Livorno

Questions referred

1. In order to benefit, under Article 16 of the Sixth Council Directive 77/388/EEC ([1]) of 17 May 1977 and Articles 154 and 157 of Council Directive 2006/112/EC, ([2]) from the exemption from the payment of the VAT on importation resulting from the placement of the imported goods under warehousing arrangements other than customs warehousing, that is to say under VAT warehousing arrangements, is it sufficient that such placement occur only on paper and not physically?

2. Do the Sixth Council Directive 77/388/EEC and Council Directive 2006/112/EC preclude a practice whereby a Member State collects VAT on importation despite the fact that that VAT — by error or irregularity — has been settled already under the reverse charge mechanism through self-invoicing and simultaneous entry in the sales and purchases register?

3. Is the principle of VAT neutrality breached when the Member State seeks to collect VAT which has already been settled under the reverse charge mechanism through self-invoicing and simultaneous entry in the sales and purchases register?

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

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

Request for a preliminary ruling from the Juzgado de lo Mercantil de Pontevedra (Spain) lodged on 21 May 2013 — Pablo Acosta Padín v Hijos de J. Barreras, S.A.

(Case C-276/13)

(2013/C 207/54)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil de Pontevedra

Parties to the main proceedings

Applicant: Pablo Acosta Padín

Defendant: Hijos de J. Barreras, S.A.

Questions referred

1. Are Article 101 TFEU (formerly Article 81 of the EC Treaty, read in conjunction with Article 10 thereof) and Article 4(3) TEU compatible with rules such as those laid down in the regulation on the tariff for *Procuradores de los Tribunales* (Real Decreto 1373/2003 of 7 November 2003), under which *procuradores* are remunerated in accordance with a minimum tariff or scale, which can be varied, upwards or downwards, only by 12 % — in light of the fact that it is not really possible for the authorities of the Member State, including the courts, to depart from the minimum levels laid down in the statutory scale if exceptional circumstances arise?

2. For the purposes of applying the tariff without applying the minimum levels laid down therein: may the fact that the fees payable under the scale or tariff are markedly disproportionate to the work actually carried out be regarded as exceptional circumstances?

3. Is Article 56 TFEU (formerly Article 49 [of the EC Treaty]) compatible with Real Decreto 1373/2003 of 7 November 2003, the regulation on the tariff applying to *procuradores?*

4. Do those rules meet the requirements of necessity and proportionality referred to in Article 15(3) of Directive 2006/123/EC? [1]

5. Does Article 6 of the European Convention on Human Rights, entrenching the right to a fair trial, encompass the right to be able to mount a proper defence in a situation where the figure at which the fees of a *procurador* are set is disproportionately high and does not reflect the work actually carried out?

6. If so, is the Spanish *Ley de Enjuiciamiento Civil* compatible with Article 6 of the European Convention on Human Rights in so far as it prevents the party ordered to pay costs from challenging the fees claimed by the *procurador* on the grounds that they are excessively high and do not reflect the work actually carried out?

[1] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 22 May 2013 — C More Entertainment AB v Linus Sandberg

(Case C-279/13)

(2013/C 207/55)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: C More Entertainment AB

Defendant: Linus Sandberg

Questions referred

1. Does the expression communication to the public, within the meaning of Article 3(1) [1] of the Information Society Directive, include measures to make available on a website open to the public a clickable link to a work which is broadcast by the holder of the copyright in that work?

2. Is the manner in which the linking is done relevant to the answer to question 1?

3. Is it relevant if the access to the work to which the linking is done is in any way restricted?

4. May the Member States give wider protection to the exclusive right of rightholders by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(1) of the Information Society Directive?

5. May the Member States give wider protection to the exclusive right of authors by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(1) of the Information Society Directive?

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

Request for a preliminary ruling from the Eparkhiako Dikastirio Lefkosias (Cyprus) lodged on 27 May 2013 — Sotiris Papasavvas v O Philelefteros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis

(Case C-291/13)

(2013/C 207/56)

Language of the case: Greek

Referring court

Eparkhiako Dikastirio Lefkosias

Parties to the main proceedings

Claimant: Sotiris Papasavvas

Defendants: O Philelefteros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis

Questions referred

1. Bearing in mind that the laws of the Member States on defamation affect the capacity to provide information services by electronic means both at national level and within the European Union, might those laws be regarded as restrictions on the provision of information services for the purposes of applying Directive 2000/31/EC?

2. If the answer to Question 1 is in the affirmative, do the provisions of Articles 12, 13 and 14 of Directive 2000/31/EC, on the question of liability, apply to private civil matters, such as civil liability for defamation, or are they limited to civil liability in matters concerning business to consumer transactions?

3. Bearing in mind the purpose of Articles 12, 13 and 14 of Directive 2000/31/EC relating to the liability of information society service providers and the fact that, in many Member States, an action must exist in order for a prohibitory injunction to be granted which will remain in force pending full completion of the proceedings, do those articles create individual rights which may be pleaded as defences in law in a civil action for defamation, or must they operate as an obstacle in law to the bringing of such actions?

4. Do the definitions of 'information society service' and 'service provider' in Article 2 of Directive 2000/31/EC and Article 1(2) of Directive 98/34/EC, as amended by Directive 98/48/EC, cover online information services the remuneration for which is provided not directly by the recipient, but indirectly by means of commercial advertisements posted on the website?

5. Bearing in mind the definition of 'information service provider', laid down in Article 2 of Directive 2000/31/EC and Article 1(2) of Directive 98/34/EC, as amended by Directive 98/48/EC, could the following, or any of them, be regarded as a 'mere conduit' or 'caching' or 'hosting' for the purposes of Articles 12, 13 and 14 of Directive 2000/31/EC:

   (a) a newspaper that operates a free website on which the online version of the printed newspaper, with all its articles and advertisements, is posted in pdf format or another similar electronic format;

   (b) an online newspaper which is freely accessible but the provider obtains money from commercial advertisements posted on the website, where the information contained in the online newspaper comes from the newspaper's staff and/or freelance journalists;

   (c) a website which provides (a) or (b) above for a subscription?

Appeal brought on 30 May 2013 by El Corte Inglés, S.A. against the judgment of the General Court (Fourth Chamber) delivered on 20 March 2013 in Case T-571/11 El Corte Inglés v OHIM — Chez Gerard (CLUB GOURMET)

(Case C-301/13 P)

(2013/C 207/57)

Language of the case: Spanish

Parties

Appellant: El Corte Inglés, S.A. (represented by: J.L. Rivas Zurdo and E. Seijo Veiguela, abogados)

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

Form of order sought

— Set aside the judgment of the General Court of 20 March 2013 in Case T-571/11 in its entirety

— Order the party or parties which oppose this action to pay the costs

Pleas in law and main arguments

1. Breach of the principle of legal certainty and legitimate expectations

The principle of legal certainty requires 'an unequivocal wording which gives the persons concerned a clear and precise understanding of their rights and obligations'. This principle is related to the principle of legitimate expectations, emphasising the need for administrative decisions to set out the reasons on which they are based when they diverge from earlier decisions that may give rise to legitimate expectations on the part of their addressees.

The way in which Spanish 'slogan marks' (registered during the period of validity of the 1997 Guidelines) have been applied by Spanish courts is in clear conflict with the Community administrative measures in opposition proceedings B 877 714 and with the judgment of the General Court of 20 March 2013 in Case T-571/11: as the Opposition Division had doubts about the wording relating to the earlier mark, it should have remedied this by asking the Spanish Patent and Trade Mark Office for clarification on this point or indeed required the appellant to provide submissions in its defence.

2. Manifest error of assessment of the background to the dispute

The appellant claims that the judgment regards it as being established that the opposing mark is registered in respect of Class 35, protecting services of an advertising sentence used as a slogan for the marketing, use or exploitation of products in Classes 29, 30, 31, 32, 33 and 42; and that OHIM was aware of its own decision of 17 July 2006, in which it took into account the Guidelines for examination of slogan marks of the Spanish Patent and Trade Mark Office of 11 November 1997 (Annex 4), and the judgments of the Spanish Supreme Court of 25 February 2004 and 30 May 2008.

The appellant claims that requiring a party to plead and prove that the protection of its earlier mark extended to the same goods as those covered by the application constitutes a manifest error of assessment since it amounts to requiring identity in application. As a result, the incorrect assessment of the evidence and facts has left the main question unresolved: Article 8(1)(b) of Regulation 207/2009. [1]

3. Failure to state reasons in the judgment under appeal

Having recognised (paragraph 3[9]) the importance of the judgment in Case T-318/03 *Atomic Austria* v *OHIM — Fábricas Agrupadas de Muñecas de Onil (ATOMIC BLITZ)*, [2] the judgment under appeal states (paragraph 41) that that judgment is applicable where OHIM already has information relating to national law, which, in the appellant's submission, is a contradiction because it would then not be applicable of OHIM's own motion.

It is stated in paragraph 45 that arguments raised in other proceedings before OHIM cannot be argued before OHIM; the appellant submits that no reasoning is given as to why this should be the case.

The failure to carry out any comparative analysis of the marks, the true cause of action (paragraph 55 of the judgment), is unfair as it deprives the appellant of the possibility of defending itself.

4. Likelihood of confusion

The General Court infringed the appellant's rights of defence by failing to rule on the likelihood of confusion as provided for in Article 8(1)(b) of Regulation (EC) No 207/2009. Amongst the pleas set out in the application, paragraphs 19 to 22, the main plea is the incorrect assessment of the likelihood of confusion. By virtue of the case-law, the likelihood of confusion on the part of the public must be assessed globally, taking into account all factors relevant to the circumstances.

[1] Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community Trade Mark (OJ 2009 L 78, p. 1).

[2] [2005] ECR II-1319.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 4 June 2013 — Haeger & Schmidt GmbH v Mutuelles du Mans assurances Iard SA (MMA Iard), Jacques Lorio, Dominique Miquel, in his capacity as liquidator of Safram intercontinental SARL, Ace Insurance SA NV, Va Tech JST SA, Axa Corporate Solutions SA

(Case C-305/13)

(2013/C 207/58)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Haeger & Schmidt GmbH

Defendants: Mutuelles du Mans assurances Iard SA (MMA Iard), Jacques Lorio, Dominique Miquel, in his capacity as liquidator of Safram intercontinental SARL, Ace Insurance SA NV, Va Tech JST SA, Axa Corporate Solutions SA

Questions referred

1. May a commission contract for the carriage of goods by which a principal entrusts an agent, acting in his own name and under his own responsibility, with the organisation of the carriage of goods, which the agent will arrange to have carried out by one or more carriers on behalf of the principal, have as its main purpose the carriage of goods within the meaning of the last sentence of Article 4(4) of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations and [1] and, if so, under what conditions?

2. If a commission contract for the carriage of goods may be regarded as a contract for the carriage of goods for the purpose of Article 4(4) of the Rome Convention but the special presumption for the determination of the relevant law laid down by that provision is not applicable — since the requirement in the provision that the country in which the carrier has his principal place of business must also be the country in which the place of loading or the place of discharge or the principal place of business of the consignor is situated is not fulfilled — is the first sentence of that provision, to the effect that a contract for the carriage of goods is not subject to the general presumption laid down in Article 4(2), to be interpreted as meaning that the court is invited in such circumstances to ascertain the law applicable, not on the basis of that presumption, which has been definitively ruled out, but in accordance with the general principle of determination laid down in Article 4(1), namely by identifying the country with which the contract is most closely connected, without specific regard for the country in which the party which effected the performance which is characteristic of the contract is established?

3. On the assumption that a commission contract for the carriage of goods is subject to the general presumption in Article 4(2), is it possible, where the initial contractor concluded an agreement with the first agent, who subsequently arranged for his replacement by a second agent, to allow the law applicable to the contractual relationship between the contractor and that second agent to be determined on the basis of the place of establishment of the first agent, the law of the country thus designated being deemed generally applicable to the carriage of goods transaction as a whole?

[1] Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1).

GENERAL COURT

Action brought on 18 March 2013 — EPAW v Commission

(Case T-168/13)

(2013/C 207/59)

Language of the case: English

Parties

Applicant: European Platform Against Windfarms (EPAW) (Kingscourt, Republic of Ireland) (represented by: C. Kiss, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the communication from the Commission to the European Parliament, Council, the European Economic and Social Committee and the Committee of the Regions 'Renewable Energy: a major player in the European energy market' COM(2012) 271;

— Annul the answer of the European Commission to the Request for Internal Review of EPAW No AG/ss ener.c.l(2012)1664829 by way of DG Energy dated 21 January 2013

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 Commission Communication COM(2012)271 is unlawful.

   — Commission Communication COM(2012)271 failed to provide for public participation on the Renewable Energy Strategy in compliance with the Aarhus Convention.

2. Second plea in law, alleging that Commission Communication COM(2012)271 is unlawful.

   — Commission Communication(2012)271 failed to comply with the Aarhus Regulation (EU Regulation 1367/2006).

3. Third plea in law, alleging that the letter of the Commission No AG/ss ener.c.l(2012)1664829 is unlawful.

   — The letter of the Commission unlawfully states that an administrative act in order to be reviewable via a request for Internal Review pursuant to the EU Regulation 1367/2006 has to be an act of individual scope and to be an act adopted by an EU institution having legally binding effects.

Action brought on 8 April 2013 — Square v OHIM — Caisse régionale de crédit agricole mutuel Pyrénées Gascogne (SQUARE)

(Case T-213/13)

(2013/C 207/60)

Language in which the application was lodged: French

Parties

Applicant: Square, Inc. (San Francisco, United States) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: Caisse régionale de crédit agricole mutuel Pyrénées Gascogne (Serres-Castet, France)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 January 2013 in Case R 775/2012-1;

— order the defendant to pay the costs of the procedure.

Pleas in law and main arguments

Applicant for a Community trade mark: Square, Inc.

Community trade mark concerned: The international registration designating the European Union of the word mark SQUARE for goods and services in Classes 9, 35 and 38 — international trade mark designating the European Union No W 1 032 395

Proprietor of the mark or sign cited in the opposition proceedings: Caisse régionale de crédit agricole mutuel Pyrénées Gascogne

Mark or sign cited in opposition: National word mark SQUARE-énergie for goods and services in Classes 31, 35, 36, 38, 41, 42 and 44

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 23 April 2013 — Atmeh v OHIM — Fretier (MONTALE MTL MONTALE Dezign)

(Case T-239/13)

(2013/C 207/61)

Language in which the application was lodged: French

Parties

Applicant: Ammar Atmeh (Diera-Duba, United Arab Emirates) (represented by: A. Berthet, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sylvie Fretier (Paris, France)

Form of order sought

The applicant claims that the Court should:

— declare the present action to be admissible;

— Alter the decision of the Fourth Board of Appeal of OHIM of 14 February 2013 in Joined Cases R 1482/2011-4 and R 1571/2011-4 and suspend the annulment proceedings against the Community trade mark MONTALE MTL MONTALE Dezign No 003 874 807 submitted on 16 June 2004 by Mr Ammar Atmeh pending a definitive ruling on the application for a declaration of invalidity and for revocation of the trade marks of Ms Fretier pending before the Tribunal de Grande Instance de Paris;

— order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark including the word elements 'MONTALE MTL MONTALE Dezign' for goods and services in Class 3 — Community trade mark No 3 874 807

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Sylvie Fretier

Grounds for the application for a declaration of invalidity: National figurative mark including the word elements 'PIERRE MONTALE MONTALE M' and national figurative mark and international registration including the word elements 'MTL MONTALE' for goods in Class 3

Decision of the Cancellation Division: The application for invalidity is granted

Decision of the Board of Appeal: The action brought by the applicant is dismissed and the action brought by Sylvie Fretier is declared inadmissible

Pleas in law: Infringement of Rule 20 of Regulation No 2868/95 and of the principle of sound administration of justice

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Action brought on 25 April 2013 — Aldi Einkauf v OHIM — Alifoods (Alifoods)

(Case T-240/13)

(2013/C 207/62)

Language in which the application was lodged: German

Parties

Applicant: Aldi Einkauf GmbH & Co. OHG (Essen, Germany) (represented by: N. Lützenrath, U. Rademacher, L. Kolks and C. Fürsen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Alifoods, SA (Alicante, Spain)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 February 2013 in Case R 407/2012-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Alifoods, SA

Community trade mark concerned: the figurative mark including the word element 'Alifoods' for goods and services in Classes 29, 32 and 35 — Community trade mark application No B 1 825 002

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

Mark or sign cited in opposition: the international and Community word mark 'ALDI' for goods and services in Classes 3, 4, 9, 16, 24, 25, 29, 30, 31, 32, 33, 34, 35, 36, 38, 40, 41, 42

Decision of the Opposition Division: the opposition was rejected

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 25 April 2013 — Hellenic Republic v Commission

(Case T-241/13)

(2013/C 207/63)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias, S. Papaiannou and A. Vasilopoulou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— uphold the action;

— annul the Commission implementing decision of 26 February 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2013) 981 and published at OJ 2013 L 67, as regards the part relating to the Hellenic Republic;

— order the Commission to pay the costs.

Pleas in law and main arguments

In relation to the financial corrections imposed by the contested Commission implementing decision of 26 February 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2013) 981 and published at OJ 2013 L 67, in so far as that decision imposes financial corrections on the Hellenic Republic, in relation to aid referred to in Article 69 of Regulation No 1782/2003, in the bovine, sheep and goat and tobacco sectors in the claim years 2006 and 2007, the Hellenic Republic puts forward the following pleas for annulment:

By the first plea for annulment, the Hellenic Republic submits that the correction imposed for the weaknesses found as regards implementation of Article 69 of Regulation No 1782/2003 [1] is unlawful and should be annulled because: (a) it infringes Article 69 of Regulation No 1782/2003, which is implemented optionally by the Member States and confers a very broad discretion as regards definition of the persons entitled to the additional payment, of the eligibility criteria and of the more specific terms and conditions for making the additional payment; and (b) ineffectual implementation of Article 69 of Regulation No 1782/2003 does not have the effect of causing damage to the Fund, as required by Article 31 of Regulation No 1290/2005 [2] in order for a financial correction to be lawfully imposed.

By the second plea for annulment, the Hellenic Republic contends that the correction imposed for shortcomings in key checks in the tobacco sector is unlawful and should be annulled because: (a) the Commission's finding that the on-the-spot checks did not comply with Regulation No 796/2004 [3] is based on an incorrect interpretation and application of Article 23 of that regulation and on a deficient appraisal of the facts, and contains deficient and contradictory reasoning; and (b) the Commission's finding that the key checks in processing undertakings were not carried out is based on an error as to the facts.

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[1] Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

[2] Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

[3] Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 29 April 2013 — Castell Macía v OHIM — PJ Hungary (PEPE CASTELL)

(Case T-242/13)

(2013/C 207/64)

Language in which the application was lodged: Spanish

Parties

Applicant: José Castell Macía (Elche, Spain) (represented by: G. Marín Raigal, P. López Ronda, H. Mosback and G. Macias Bonilla, lawyers)

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

Other party to the proceedings before the Board of Appeal: PJ Hungary Szolgáltató kft (PJ Hungary kft) (Budapest, Hungary)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 7 February 2013 in Case R 1401/2012-1 so as to dismiss the opposition filed and grant the Community trade mark application No 6 798 862 'PEPE CASTELL', and order the opponent to pay the costs of both sets of proceedings;

— order OHIM, as defendant, to bear its own costs and to pay those incurred by the applicant in the present action;

— if necessary, order the intervener to bear its own costs and to pay those incurred by the applicant in these proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: José Castell Macía

Community trade mark concerned: Word mark 'PEPE CASTELL' for goods and services in Classes 16, 25 and 39 — Community trade mark application No 6 798 862

Proprietor of the mark or sign cited in the opposition proceedings: PJ Hungary Szolgáltató kft

Mark or sign cited in opposition: Figurative mark with word elements 'Pepe Jeans FOOTWEAR' for goods in Class 25

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 2 May 2013 — MHCS/OHIM — Ambra (DORATO)

(Case T-249/13)

(2013/C 207/65)

Language in which the application was lodged: English

Parties

Applicant: MHCS (Epernay, France) (represented by: P. Boutron, N. Moya Fernández and L-E. Balleydier, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ambra S.A. (Warsaw, Poland)

Form of order sought

The applicant claims that the Court should:

— Declare admissible the here concerned appeal and enclosures;

— Annul the Second Board of Appeal's decision;

— Condemn the OHIM and the intervener to bear the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing a device of a bottle neck label and the word element 'DORATO' for goods in class 33 — Community trade mark application No 9 131 228

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

Mark or sign cited in opposition: Figurative marks containing a device of a bottle neck label for goods in class 33

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 2 May 2013 — Naazneen Investments/OHIM — Energy Brands (SMART WATER)

(Case T-250/13)

(2013/C 207/66)

Language in which the application was lodged: English

Parties

Applicant: Naazneen Investments Ltd (Limassol, Cyprus) (represented by: P. Goldenbaum, I. Rohr and T. Melchert, lawyers)

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

Other party to the proceedings before the Board of Appeal: Energy Brands, Inc. (New York, United States)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal in Case R 1101/2011-2;

— Order the defendant to pay its own costs and those of the applicant.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'SMART WATER', Community trade mark registration No 781 153

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.

Action brought on 6 May 2013 — Orthogen v OHIM — Arthrex Medizinische Instrumente (IRAP)

(Case T-253/13)

(2013/C 207/67)

Language in which the application was lodged: German

Parties

Applicant: Orthogen AG (Düsseldorf, Germany) (represented by: M. Finger and S. Krüger, lawyers)

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

Other party to the proceedings before the Board of Appeal: Arthrex Medizinische Instrumente GmbH (Karlsfeld, Germany)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 February 2013 in Case R 382/2012-1;

— order OHIM to pay the costs of the proceedings, including those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'IRAP' for goods and services in Classes 1, 5, 10, 42 and 44 — Community trade mark No 3 609 121

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: Arthrex Medizinische Instrumente GmbH

Grounds for the application for a declaration of invalidity: Absolute ground for invalidity; 'IRAP' is a commonly used abbreviation for a certain protein which plays a significant role in certain medical and veterinary treatments.

Decision of the Cancellation Division: Application for a declaration of invalidity granted

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 52(1)(a) of Regulation No 207/2009 and of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 6 May 2013 — Stayer Ibérica/OHIM — Korporaciya 'Masternet' (STAYER)

(Case T-254/13)

(2013/C 207/68)

Language in which the application was lodged: English

Parties

Applicant: Stayer Ibérica, SA (Pinto, Spain) (represented by: S. Rizzo, lawyer)

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

Other party to the proceedings before the Board of Appeal: ZAO Korporaciya 'Masternet' (Moscow, Russia)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision in so far as it upholds the appeal in part and declares the CTM registration No 4675881 invalid for the following goods:

  — Class 7: *Equipment and tools; parts of cutting and polishing diamond machines; bits and cutting wheels for the following industries; marble, granite, stone, clay, slabs, tiles and brick, and, in general terms, cutting tools as parts of equipment included in Class 7.*

  — Class 8: *Hand held abrasive items (wheels and grinding wheels).*

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark 'STAYER' — Community trade mark registration No 4 675 881

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The grounds for the request for a declaration of invalidity were those of Article 53(1)(a) in conjunction with Article 8(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Rejected the request for invalidity in its entirety

Decision of the Board of Appeal: Partially upheld the appeal.

Pleas in law: Infringement of Articles 76(2), 15 and 8(1)(b) of Council Regulation No 207/2009.

Action brought on 8 May 2013 — Republic of Poland v Commission

(Case T-257/13)

(2013/C 207/69)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, Agent)

Defendant: European Commission

Form of order sought

— annul Commission Implementing Decision 2013/123/EU of 26 February 2013 (notified under document C(2013) 981) on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 67, p. 20) in so far as it excludes from financing the amounts of EUR 28 763 238,60 and EUR 5 688 440,96 incurred by the paying agency accredited by the Republic of Poland;

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

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the first subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 ([1]) and of Article 31(1) of Regulation (EC) No 1290/2005 ([2]) by reason of the application of a financial correction which was based on a mistaken determination of the facts and on an incorrect legal interpretation

   — The Commission applied a financial correction which was based on a mistaken determination of the facts and on an incorrect legal interpretation, even though the expenditure was effected by the Polish authorities in accordance with European Union provisions. The Republic of Poland takes issue with the Commission's legal interpretation and findings of fact with regard to the alleged deficiencies in the management system for the action sector 'Early retirement' concerning, firstly, the obligation to carry out a commercial activity during the period prior to cessation of operation for purposes of early retirement, secondly, the inadequacy of the evidence of professional aptitude accepted, in the form of a declaration, by the Polish authorities, and, third, the lack of sanctions in the event of non-compliance, by farmers resuming operation of a holding, with the obligation to carry on an agricultural activity for five years.

2. Second plea in law, alleging breach of the fourth subparagraph of Article 7(4) of Regulation (EC) No 1258/1999 and of Article 31(2) of Regulation (EC) No 1290/2005, and also infringement of the principle of proportionality, by reason of the application of a flat-rate correction which was flagrantly excessive in relation to the risk of potential loss to the European Union budget

   — None of the alleged deficiencies caused, or was capable of causing, financial losses for the European Union, and in any event the risk of such losses was entirely marginal.

3. Third plea in law, alleging breach of the second paragraph of Article 296 TFEU by virtue of the inadequate reasoning of the contested decision

   — The Commission failed to produce any evidence or findings of fact or of law in support of its conclusions following the visit to three agricultural holdings.

4. Fourth plea in law, alleging infringement of the principle of subsidiarity

   — The Commission flagrantly infringed the principle of subsidiarity, which is inscribed in the policy of support for rural development. The Commission interpreted the programming documents relating to support for rural development and, essentially, drew up requirements relating to the implementation of the programme, thereby interfering with the decision-making freedom of the Member States relating to the means by which to attain the objectives referred to in the programming documents.

([1]) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

([2]) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 3 May 2013 — Matratzen Concord v OHIM — KBT (ARKTIS)

(Case T-258/13)

(2013/C 207/70)

Language in which the application was lodged: German

Parties

Applicant: Matratzen Concord GmbH (Cologne, Germany) (represented by: I. Selting, lawyer)

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

Other party to the proceedings before the Board of Appeal: KBT & Co. Ernst Kruchen agenzia commerciale sociétá in accomandita (Locarno, Switzerland)

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 March 2013 in Case R 2133/2011-4;

— Order the defendant to pay the costs including those incurred in the course of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: the word mark 'ARKTIS' for goods in Classes 20 and 24 — Community trade mark No 2 818 680

Proprietor of the Community trade mark: KBT & Co. Ernst Kruchen agenzia commercial sociétá in accomandita

Party applying for revocation of the Community trade mark: the applicant

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 51(1)(a) of Regulation No 207/2009

Action brought on 7 May 2013 — France v Commission

(Case T-259/13)

(2013/C 207/71)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, D. Colas and C. Candat, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— partially annul Commission Decision No 2013/123/EU of 26 February 2013, excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Fund for Rural Development (EAFRD), to the extent that it excludes expenditure incurred by the French Republic in the context of the aid Indemnités compensatoires des handicaps naturels (ICHN) (compensatory allowances for natural handicaps) (CANH) of the Plan de Développement Rural Hexagonal 2007-2013 for the financial years 2008 and 2009;

— in the alternative, partially annul Decision 2013/123/EU, first, to the extent that it excludes from European Union financing the part of the expenditure incurred by the French Republic in the context of the CANH aid for sheep which is not declared as aid for sheep and, secondly, to the extent that it excludes from European Union financing the part of the expenditure incurred by the French Republic in the context of the CANH aid for beef which have been inspected on the spot for the animal identification inspection or the inspection of beef premiums;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging an infringement of Article 10(2) and (4) and Article 14(2) of Regulation No 1975, [1] as the Commission held that the French Government had failed to fulfil its obligations concerning controls on the ground that it had failed to carry out, with respect to bovine animals and sheep for which a ewe premium had been requested, a count of those animals during on-the-spot controls in respect of the Compensatory Allowances for Natural Handicaps ('CANH aid'). That plea in law is divided into two parts in the context of which the applicant claims:

   — that the obligation to count animals during on-the-spot controls in respect of the CANH aid is contrary to the continuity of the criterion of load factors and the principle of equal treatment and

   — that the Commission wrongly interpreted Article 10(2) and (4) and Article 14(2) of Regulation No 1975/2006 by holding that the French control system was inadequate to determine compliance with the loading criterion.

2. Second plea in law, alleging infringement of Article 2(2) of Regulation No 1082/2003 ([2]) and of Article 26(2)(b) of Regulation No 796/2004 ([3]) concerning controls in the context of the identification of bovine animals and bovine animal premiums, as the Commission held that Articles 10(2) and (4) and 14(2) of Regulation No 1975/2006 impose the obligation to carry out a count of animals during an on-the-spot control in order to determine the criterion of load factors.

3. Third plea in law, alleging, in the alternative, an unlawful extension by the Commission of the application of the flat rate correction to sheep farms which are not eligible for the ewe premium and to beef farming inspected in the context of the identification of bovine animals or beef premiums.

([1]) Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2006 L 368, p. 74).

([2]) Commission Regulation (EC) No 1082/2003 of 23 June 2003 laying down detailed rules for the implementation of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the minimum level of controls to be carried out in the framework of the system for the identification and registration of bovine animals (OJ 2003 L 156, p. 9).

([3]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in of Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Action brought on 15 May 2013 — Skysoft Computersysteme/OHIM — British Sky Broadcasting and Sky IP International (SKYSOFT)

(Case T-262/13)

(2013/C 207/72)

Language in which the application was lodged: English

Parties

Applicant: Skysoft Computersysteme GmbH (Kleinmachnow, Germany) (represented by: P. Ehrlinger and T. Hagen, lawyers)

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

Other parties to the proceedings before the Board of Appeal: British Sky Broadcasting Group plc and Sky IP International Ltd (Isleworth, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Set aside the contested decision of the Fourth Board of Appeal of OHIM of 20 March 2013, as it dismissed the appeal of the plaintiff against the decision of the OHIM Opposition Division of 30 September 2011 and did not reject the opposition of the intervening party;

— Order the intervening party to pay the costs of the proceedings including the costs incurred during the course of the appeal proceedings.

— Request the defendant to produce the annexes submitted by the intervening party and the plaintiff within the framework of the opposition proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SKYSOFT' — Community trade mark application No 4 782 645 for products and services in classes 9, 35, 37, 38 and 42

Proprietor of the mark or sign cited in the opposition proceedings: The other parties to the proceedings before the Board of Appeal

Mark or sign cited in opposition: The word mark 'SKY' for goods and services in classes 9, 16, 18, 25, 28, 35, 38, 41 and 42

Decision of the Opposition Division: Upheld the opposition for all the contested goods and services

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 8 May 2013 — Lausitzer Früchteverarbeitung v OHIM — Rivella International (holzmichel)

(Case T-263/13)

(2013/C 207/73)

Language in which the application was lodged: German

Parties

Applicant: Lausitzer Früchteverarbeitung GmbH (Sohland, Germany) (represented by: A. Weiß, lawyer)

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

Other party to the proceedings before the Board of Appeal: Rivella International AG (Rothrist, Switzerland)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 February 2013 in Case R 1968/2011-1;

— vary the contested decision in such a way as to reject the opponent's opposition;

— order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs of the proceedings, including the costs incurred in the course of the appeal procedure, or order the intervener to pay the costs of the proceedings, including the costs incurred in the course of the appeal procedure.

Pleas in law and main arguments

Applicant for a Community trade mark: Lausitzer Früchteverarbeitung GmbH

Community trade mark concerned: Figurative mark containing the word element 'holzmichel' for goods and services in Classes 21, 24, 32, 33 and 38 — Community trade mark application No 8 904 278

Proprietor of the mark or sign cited in the opposition proceedings: Rivella International AG

Mark or sign cited in opposition: International registration of figurative marks containing the word elements 'Michel' and 'Michel POWER' for goods in Classes 29, 30, 32 and 33

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal upheld and registration refused

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

Action brought on 20 May 2013 — Polo/Lauren/OHIM — FreshSide (Representation of a boy on a bike holding a mallet)

(Case T-265/13)

(2013/C 207/74)

Language in which the application was lodged: English

Parties

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

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

Other party to the proceedings before the Board of Appeal: FreshSide Ltd (London, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the Second Board of Appeal's decision of 1 March 2013 in Case R 15/2012-2;

— Order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing a representation of a boy on a bike holding a mallet for goods in classes 18, 25 and 28 — Community trade mark application No 8 766 917

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

Mark or sign cited in opposition: Figurative mark containing a representation of a polo player on a horse for goods in classes 9, 18, 20, 21, 24 and 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) and (5) of Council Regulation No 207/2009.

Action brought on 21 May 2013 — Italy v Commission

(Case T-268/13)

(2013/C 207/75)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, lawyer, G. Palmieri, Agent)

Defendant: European Commission

Forms of order sought

The applicant claims that the Court should:

— Annul Commission Decision C(2013) 1264 final of 7 March 2013, notified on 11 March 2013, for the reasons set out in the three pleas in law.

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its present action, the Italian government challenges Commission Decision C(2013) 1264 final of 7 March 2013, notified on 11 March 2013, in which, executing the judgment of the Court of Justice of 17 November 2011 in Case C-496/09, the Commission instructed the Italian Republic to pay the amount of EUR 16 533 000 as a penalty payment.

By that judgment, the Court had, inter alia, ordered the Italian Republic to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of an amount calculated by multiplying the basic amount of EUR 30 million by the percentage of the unlawful aid compared to the total amount not yet recovered on the date of delivery of the judgment, for every six months of delay in implementing the necessary measures to comply with the judgment of 1 April 2004 in Case C-99/02 *Commission* v *Italy*.

In support of its application, the applicant puts forward three pleas in law.

1. First plea, alleging infringement of Article 260(1) and the second subparagraph of Article 260(3) TFEU: infringement of the judgment being executed (judgment of 17 November 2011 in Case C-496/09 *Commission* v *Italy*) resulting from an erroneous interpretation of the paragraph of that judgment which, for the purposes of calculating the penalty payment, took as a reference the 'amount not yet recovered on the date of delivery of the judgment'.

   — The Italian government submits that that executory paragraph of the judgment must be interpreted as referring not to the delivery date of the judgment but the date in which, in the proceedings, the period for adducing evidence in the proceedings terminated, that is to say the moment in which the factual situation on the basis of which the Court gave final judgment crystallised procedurally. The Italian Government submits that account must be taken of the recovery activity that it carried out in the course of the proceedings, but after the end of the investigative phase, in order to reduce the six-monthly penalty payment.

2. Second plea, alleging infringement of Article 260(1) and the second subparagraph of Article 260(3) TFEU: infringement of the judgment being executed, resulting from an erroneous interpretation of the paragraph of that judgment in which it is provided, for the purposes of calculating the penalty payment due for each six-month period, that account is not to be taken of the amount of aid 'that has not yet been recovered, or not shown to have been recovered, at the end of the period concerned'.

   — The Italian government submits that that executory paragraph of the judgment must be interpreted as meaning that, for the purposes of that assessment, it is the production of the supporting evidence for the six-month reference period that is important and not the fact that it had been brought to the Commission's attention before the end of that six-month period. The Italian government considers that the Commission's interpretation to the contrary, according to which the Italian government is obliged to submit any evidence for the calculation of the six-monthly penalty payment by the last day of the relevant six-month period at the latest, thus excluding from the calculation any amount which was recovered during that period but which was only communicated afterwards to the Commission, is contrary to the principle of loyal cooperation and is not justified by the requirement imposed by the Court, which results in shortening in an impermissible manner the time at the Italian authorities' disposal to comply with that requirement and thereby reduce that six-monthly penalty amount.

3. Third plea, alleging infringement of Article 260(1) and the second subparagraph of Article 260(3) TFEU: infringement of the judgment being executed, in relation to the debt owed by undertakings which have 'have entered into an arrangement with creditors' or are in 'supervised administration'.

   — The decision does not deduct the debt owed by such undertakings which has resulted from related insolvency proceedings from the aid remaining due at the end of the six-month reference period, even though, according to the Italian government, the Member State took all the necessary care to recover that debt and, therefore, that debt should be excluded from the amount of aid owed under that judgment.

Appeal brought on 19 May 2013 by Markus Brune against the judgment of the Civil Service Tribunal of 21 March 2013 in Case F-94/11 Brune v Commission

(Case T-269/13 P)

(2013/C 207/76)

Language of the case: German

Parties

Appellant: Markus Brune (Brussels, Belgium) (represented by H. Mannes, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

In addition to maintaining the form of order sought at first instance, the appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 21 March 2013 in Case F-94/11;

  in the alternative, refer the case back to the Civil Service Tribunal for determination;

— order the respondent/defendant to pay the costs of the appeal proceedings and of the proceedings at first instance.

Pleas in law and main arguments

In support of the appeal, the appellant relies in particular on the following pleas in law:

1. Defects in the assessment of the obligation to repeat the test

   — The judgment under appeal fails to recognise that the repetition of the oral test pursuant to the judgment of the Civil Service Tribunal of 29 September 2010 in Case F-5/08 *Brune* v *Commission* ('the judgment in *Brune*') breaches the principles of equal treatment and of objectivity in marking as well as Article 266 TFEU;

   — the grounds of the judgment include incorrect findings of law and an erroneous, in part contradictory, assessment of the facts, particularly in the light of the requirements of Article 266 TFEU, the principle of non-discrimination and the requirement of uniform assessment criteria.

2. Failure to consider alternative solutions

   — The judgment under appeal rejects alternative solutions put forward pursuant to the judgment in *Brune* which, according to settled case-law, are required in the present case, and does so on grounds that are wrong in law;

   — in assessing alternative solutions, the judgment under appeal, in particular, misinterprets the principles of equal treatment and of objectivity in marking, Article 27 of the Staff Regulations and the notice of competition.

3. In the alternative: erroneous assessment of the procedural defects in the preparation of the new test

   — The statements in the judgment under appeal regarding the correct timing of the invitation [to the test] and the requisite information concerning the composition of the selection board and the relevant law reveal substantial errors in the assessment of the facts and of the respondent's organisational duties;

   — the judgment under appeal fails to assess whether there has been unequal treatment of the appellant, in view of the additional information provided to another candidate in a parallel procedure;

   — as regards the complaint of bias in the selection board, the judgment under appeal confines itself to examining the lack of proof of discrimination against the appellant in the original procedure, without addressing the concern as to bias in the selection board in the context of the new test.

4. Erroneous dismissal of the appellant's third, fourth and fifth heads of claim as inadmissible

   — The judgment under appeal disregards the possibility of making general findings that are not in the nature of a specific obligation of the institutions of the European Union;

   — the judgment under appeal interprets the appellant's claims for the damage suffered to be made good as meaning that no compensation is sought, although that was explicitly clarified at the hearing;

   — the judgment under appeal disregards the obligation arising from Article 266 TFEU to make good — including of [the institution's] own motion, without an express application — the damage suffered.

5. Discriminatory costs decision

The judgment under appeal discriminates against the appellant in comparison with the applicant in Case F-42/11 *Honnefelder* v *Commission*, in so far as the Tribunal failed to assess what was deemed in that case to be a relevant circumstance for the purposes of Article 87(2) of the Rules of Procedure in a manner favourable to the appellant.

Action brought on 21 May 2013 — SACBO v Commission and TEN-T EA

(Case T-270/13)

(2013/C 207/77)

Language of the case: Italian

Parties

Applicant: Società per l'aeroporto civile di Bergamo-Orio al Serio SpA (SACBO SpA) (Grassobbio (BG), Italy) (represented by: M. Muscardini, lawyer, G. Greco, lawyer)

Defendants: Trans-European Transport Network Executive Agency, European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision in so far as it held that certain external costs were ineligible — thereby reducing the co-financing to which the applicant was entitled and seeking the recovery of EUR 158 517,54 — with all the legal consequences thus arising.

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

Pleas in law and main arguments

The present appeal is brought against the decision of 18 March 2013 adopted by the Trans-European Transport Network Executive Agency (TEN-T EA), concerning the 'Closure of Action n° 2009-IT-91407-S- "STUDY FOR BERGAMO-ORIO AL SERIO AIRPORT DEVELOPMENT INTERMODALITY" — Commission Decision C(2010) 4456', in so far as it found that the costs related to activities 1, 2.1, 4, 5, 6 and 7, which had already been carried out, were not admissible, as a result, requesting that the amount of EUR 158 517,54 be paid back.

In support of its application, the applicant puts forward five pleas in law.

1. First plea, alleging infringement of Article 13(1) of Regulation (EC) No 680/2007 of the European Parliament and of the Council of 20 June 2007, together with Articles III.4.2.2 and III.4.2.3 of Commission Decision (2010) 4456 of 24 June 2010

   — It is submitted in this connection that there was a failure to start a 'complaints' procedure, under Article III.4.2.3 of the decision to grant the funding.

2. Second plea, alleging infringement of Article 17(2) and (6) of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004, of the second paragraph of Article 296 TFEU and of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, together with infringement of Article II.2.3 of Commission Decision (2010) 4456 of 24 June 2010

   The applicant claims in that regard that:

   — the decision contained contradictory reasoning because, on the one hand, it is claimed there had been an unjustified 'fragmentation of the contracts', while on the other hand, it is claimed that the 'subject-matter of the contracts' was 'connected to such an extent' that those contracts must have formed part of a single awards procedure;

   — there was an erroneous finding as concerns the improper fragmentation of a single contract because it is contradicted by the contents of Commission Decision (2010) 4456 of 24 June 2010;

   — there was an absence of any 'splitting up' of the contracts or of any 'subdivision of the projects';

   — Directive 2004/17/EC was inapplicable to the contracts as they did meet the thresholds therein due to the absence of any cross-border interest.

3. Third plea, alleging infringement of Article I.3.1 of Commission Decision (2010) 4456 of 24 June 2010, of Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, of Article 296 of the Treaty on the Functioning of the European Union, and of the principle of protection of legitimate expectations

   The applicant claims, in that regard, that:

   — the decision contained contradictory reasoning as it conflicted with the recognition and approval already granted by TEN-T EA concerning the SAP (Strategic Action Plan) and the ASR (Action Status Report);

   — the activities undertaken by SACBO were in conformity with those activities which were the subject of co-financing.

4. Fourth plea, alleging infringement of Article 40(2)(b),(c) and (d) of Directive 2004/17/EC

   The applicant claims in that regard:

   — that Directive 2004/17/EC is inapplicable to contracts which are the subject of co-financing for the purposes of 'study' and 'research';

   — that it was impossible to carry out an open tendering procedure due to the time limits imposed by the co-financing decision.

5. Fifth plea, alleging infringement of principle of proportionality

   The applicant alleges that the defendant has disregarded the principle of proportionality by having subjected that alleged breach to a much stricter regime than the regime provided for in cases where co-financing is cancelled.

Action brought on 21 May 2013 — Max Mara Fashion Group/OHIM — Mackays Stores (M&Co.)

(Case T-272/13)

(2013/C 207/78)

Language in which the application was lodged: English

Parties

Applicant: Max Mara Fashion Group Srl (Torino, Italy) (represented by: F. Terrano, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mackays Stores Ltd (Renfrew, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision of the Second Board of Appeal of 7 March 2013 in Case R 1199/2012-2;

— Order OHIM to pay the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark containing the word element 'M&Co.' for goods and services in classes 25 and 35 — Community trade mark application No 9 128 679

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

Mark or sign cited in opposition: Figurative marks containing the word element 'MAX&Co.' for goods and services in classes 18, 24, 25, 35, 42

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 17 May 2013 — Sarafraz v Council

(Case T-273/13)

(2013/C 207/79)

Language of the case: German

Parties

Applicant: Mohammad Sarafraz (Tehran, Iran) (represented by: T. Walter, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 206/2013 of 11 March 2013 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran in so far as it concerns Mr Mohammad Sarafraz;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: infringement of the applicant's rights of the defence

   — The Council infringed the applicant's right to effective legal protection and, in particular, the requirement to state reasons by not providing a sufficient statement of reasons for the applicant's inclusion in the Annex to the contested implementing regulation;

   — The Council infringed the applicant's right to a fair hearing by not giving the applicant the opportunity, provided for in Article 12(2) of Regulation (EU) No 359/2011 [1], to present observations on his inclusion in the list of persons subject to sanctions and thereby to initiate a review by the Council.

2. Second plea in law: there is no basis for the applicant's inclusion in the list of persons subject to sanctions

   — The reasons which the Council gave for the applicant's inclusion in the list of persons subject to sanctions do not show precisely which legal basis the Council is relying on in this connection;

   — The Council obviously assessed the facts incorrectly by including the applicant in the list in the Annex to the contested implementing regulation;

   — In particular, the only actual reason given by the Council in the list of persons subject to sanctions cannot justify the applicant's inclusion in that list.

3. Third plea in law: infringement of the *ne bis in idem* principle

   — The only actual reason given by the Council for the applicant's inclusion in the list of persons subject to sanctions has already been the subject-matter of a sanction by the British media supervisory body;

   — The Council does not submit that further infringements of the law took place in spite of or after that sanction which would justify the applicant's inclusion in the list of persons subject to sanctions.

4. Fourth plea in law: infringement of the applicant's fundamental rights to freedom of broadcasting or to hold opinions, freedom of movement and freedom of ownership

   — The applicant's inclusion in the list of persons subject to sanctions constitutes an unjustified and disproportionate infringement of his media freedom and freedom to hold opinions, which is aimed in particular, at hindering the applicant or the broadcasting organisation of which he is in charge in reporting to and from Europe;

   — The applicant's inclusion in the list of persons subject to sanctions constitutes an unjustified and disproportionate infringement of other protected fundamental rights (freedom of ownership, freedom of occupation, freedom of movement).

[1] Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2011 L 100, p. 1).

Action brought on 17 May 2013 — Emadi v Council

(Case T-274/13)

(2013/C 207/80)

Language of the case: German

Parties

Applicant: Hamid Reza Emadi (Teheran, Iran) (represented by: T. Walter, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 206/2013 of 11 March 2013 implementing Article 12(1) of Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran, in so far as it affects Mr Hamid Reza Emadi;

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the applicant's rights of defence

   — The Council infringed the applicant's right to effective legal protection and in particular the obligation to state reasons because it failed to provide sufficient reasons for including the applicant in the annex to the contested implementing regulation;

   — The Council infringed the applicant's right to a hearing by denying him the possibility which is provided for in Article 12(2) of Regulation (EU) No 359/2011 [1] to present observations regarding inclusion in the sanctions list and thereby to have the Council review its decision.

2. Second plea in law, alleging the lack of any basis for the applicant's inclusion in the sanctions list

   — The reasons given by the Council for the applicant's inclusion in the sanctions list do not reveal upon what legal basis the Council actually relied in that respect;

   — The Council clearly misinterpreted the facts by including the applicant in the list in the annex to the implementing regulation in question;

   — In particular, the one specific reason given by the Council in the sanctions list cannot justify including the applicant in that list.

3. Third plea in law, alleging infringement of the prohibition on double jeopardy (*ne bis in idem*)

   — The one specific reason given by the Council for the applicant's inclusion in the sanctions list has already been the subject of a sanction by the UK media supervisory authority;

   — The Council does not claim that notwithstanding that sanction or following its imposition other infringements occurred which would justify inclusion in the sanctions list.

4. Fourth plea in law, alleging infringement of the applicant's fundamental rights to freedom of reporting by broadcasts or freedom of opinion, freedom of movement and property

   — The applicant's inclusion in the sanctions list represents an unjustified and disproportionate infringement of his right to freedom of reporting by media and freedom of opinion and aims in particular to create obstacles for him or the broadcaster for which he works in reporting from and to Europe;

   — The applicant's inclusion in the sanctions list is an unjustified and disproportionate infringement of further protected fundamental rights (right to property, right to exercise a profession, right to freedom of movement).

[1] Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran (OJ 2011 L 100, p. 1).

Action brought on 23 May 2013 — Italy v Commission

(Case T-275/13)

(2013/C 207/81)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, lawyer, G. Palmieri, agent)

Defendant: European Commission

Form of order sought

— Annul notice of open competition EPSO/AD/249/13 to draw up two reserve lists of 37 and 27 posts respectively to fill vacant posts for administrators (AD 7) in the fields of macroeconomics and financial economics.

— Order the Commission to pay the costs.

Pleas in law and main arguments

This action has been brought against notice of open competition EPSO/AD/249/13 to draw up two reserve lists of 37 and 27 posts respectively to fill vacant posts for administrators (AD 7) in the fields of macroeconomics and financial economics

In support of the action, the applicant relies on seven plea(s) in law.

1. First plea in law, alleging breach of Articles 263, 264 and 266 TFEU.

   — The Commission has disregarded the authority of the judgment of the Court of Justice in Case C-566/10 P, which declares competition notices which limit to English, French and German only the languages which candidates may offer as a second language to be unlawful.

2. Second plea in law, alleging breach of Article 342 TFEU and Articles 1 and 6 of Regulation No 1/58.

   — It is argued in this regard that, by limiting to three the languages which can be chosen as a second language by candidates in open competitions of the European Union, the Commission has in practice created new rules on the use of languages, thus encroaching on the exclusive competence of the Council in this area.

3. Third plea in law, alleging breach of Article 12 EC, now Article 18 TFEU; Article 22 of the Charter of Fundamental rights of the European Union; Article 6(3) EU; Article 1(2) and (3) of Annex III to the Staff Regulations of Officials; Articles 1 and 6 of Regulation No 1/58; Article 1d(1) and (6), Article 27, second paragraph, and Article 28(f) of the Staff Regulations of Officials.

   — It is argued in this regard that the language restriction introduced by the Commission is discriminatory because the rules cited prohibit the imposition on European citizens and on officials of the institutions language restrictions which are not provided for in a general and objective manner by the internal rules of the institutions contemplated by Article 6 of Regulation No 1/58, and not yet adopted, and prohibit the introduction of such limitations in the absence of a specific interest of the service, backed up by reasons.

4. Fourth plea in law, concerning the breach of Article 6(3) EU in so far as it lays down the principle of the protection of legitimate interests as a fundamental right derived from the constitutional traditions common to the Member States.

   — It is argued in this regard that the Commission has breached the expectation of citizens that they will be able to choose any language of the European Union as a second language, as they always were until 2007 and as was authoritatively confirmed by the judgment of the court of Justice in Case C-566/10 P.

5. Fifth plea in law, concerning the misuse of powers and the breach of essential rules inherent in the nature and purpose of competition notices.

   — It is argued in this regard that, by restricting to three in advance and in general the languages which may be chosen as a second language to three, the Commission has in fact anticipated at the stage of the notice and the admission criteria the verification of the linguistic competences of the candidates, which should be carried out during the competition. In that way, linguistic knowledge becomes the decisive factor with regard to professional knowledge.

6. Sixth plea in law, concerning breach of Articles 18 and 24(4) TFEU; Article 22 of the Charter of Fundamental Rights of the European Union; Article 2 of Regulation No 1/58; and Article 1d(1) and (6) of the Staff Regulations of Officials.

   — It is argued in this regard that, through the provision that applications had to be sent in in English, French or German and that EPSO would send candidates communications relating to the progress of the competition in the same language, the right of European citizens to dialogue with the European institutions in their own language has been breached and further discrimination has been introduced against those who do not have a thorough knowledge of those three languages.

7. Seventh plea in law, concerning the breach of Articles 1 and 6 of Regulation No 1/58; Article 1d(1) and (6) and Article 28(f) of the Staff Regulations, Article 1(1)(f) of Annex III to the Staff Regulations; and Article 296(2) TFEU (failure to state reasons) and breach of the principle of proportionality. Distortion of the facts.

   — It is argued in this regard that the Commission justified the restriction to three languages by the requirement that the new recruits should be able to communicate within the institutions. That justification distorts the facts because it is not the case that the three languages in question are the ones most used for communication between the various language groups within the institutions; and it is disproportionate with regard to the restriction of a fundamental right such as the right not to suffer discrimination on grounds of language.

Action brought on 15 May 2013 — Now Wireless/OHIM — Starbucks (HK) (now)

(Case T-278/13)

(2013/C 207/82)

Language in which the application was lodged: English

Parties

Applicant: Now Wireless Ltd (Guildford, United Kingdom) (represented by: T. Alkin, Barrister)

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

Other party to the proceedings before the Board of Appeal: Starbucks (HK) Ltd (Hong Kong, China)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision; and

— Order Community Trade Mark Registration No 1421700 to be revoked on grounds of non-use;

— Order the registered proprietor to pay the costs incurred by the applicant.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The figurative mark containing the word element 'now' for services in classes 35, 41 and 42 — Community trade mark No 1 421 700

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

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Partially revoked the Community trade mark registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) and (2) of Council Regulation No 207/2009.

Action brought on 24 May 2013 — Ezz and Others/ Council

(Case T-279/13)

(2013/C 207/83)

Language of the case: English

Parties

Applicants: Ahmed Abdelaziz Ezz (Giza, Egypt), Abla Mohammed Fawzi Ali Ahmed Salama (Cairo, Egypt), Khadiga Ahmed Ahmed Kamel Yassin (London, United Kingdom), Shahinaz Abdel Azizabdel Wahab Al Naggar (Giza, Egypt) (represented by: J. Lewis, Queen's Counsel, B. Kennelly, Barrister, and J. Binns, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Council Decision 2013/144/CFSP of 21 March 2013 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt amending Council Decision 2011/172/CFSP (OJ 2013 L 82, p. 54) and Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2011 L 76, p. 4) as continued by decision of the Council dated 21 March 2013, insofar as they apply to the applicants; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action under Article 263 TFEU, the applicants rely on six pleas in law.

1. First plea in law, alleging that (a) Council Decision 2013/144/CFSP lacked a proper legal base since it did not satisfy the requirement of Article 29 TEU; and (b) Council Regulation (EU) No 270/2011 could not be continued since it did not satisfy the requirements of its purported legal base: Article 215(2) TFEU.

2. Second plea in law, alleging that the criterion for adopting restrictive measures as set out in Article 1 of Council Decision 2011/172/CFSP and in Article 2 of Council Regulation (EU) No 270/2011, is not fulfilled. In addition, it is being alleged that the defendant's justification for the adoption of restrictive measures against the applicants is entirely vague, non-specific, unsubstantiated, unjustified, and insufficient to justify the application of such measures.

3. Third plea in law, alleging that the defendant has violated the applicants' rights of defence and the right to effective judicial protection as (a) the restrictive measures provide no procedure for communicating to the applicants the evidence on which the decision to freeze their assets was based, or for enabling them to comment meaningfully on that evidence; (b) the reasons given contain a general, unsupported, vague allegation of judicial proceedings; and (c) the defendant has not given sufficient information to enable the applicants effectively to make known their views in response, which does not permit a Court to assess whether the Council's decision and assessment was well founded and based on compelling evidence.

4. Fourth plea in law, alleging that the defendant has failed to give the applicants sufficient reasons for their inclusion in the contested measures, in violation of its obligation to give a clear statement of the actual and specific reasons justifying its decision, including the specific individual reasons that led it to consider that the applicants were responsible for misappropriating Egyptian State funds.

5. Fifth plea in law, alleging that the defendant has infringed, without justification or proportion, the applicants' right to property and to reputation.

6. Sixth plea in law, alleging that defendant's inclusion of the applicants in the list of persons against whom restrictive measures will apply is based on a manifest error of assessment.

Action brought on 22 May 2013 — Iglotex/OHIM — Iglo Foods Group (IGLOTEX)

(Case T-282/13)

(2013/C 207/84)

Language in which the application was lodged: English

Parties

Applicant: Iglotex S.A. (Skórcz, Poland) (represented by: I. Helbig, P. Hansmersmann and S. Rengshausen, lawyers)

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

Other party to the proceedings before the Board of Appeal: Iglo Foods Group Ltd (Feltham, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision;

— Annul the decision of the Opposition Division;

— Order OHIM 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 containing the word element 'IGLOTEX' — Community trade mark application No 9 283 367 for goods in classes 29 and 30

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: The word mark 'IGLO' for goods in classes 29 and 30 — Community trade mark application No 5 740 238

Decision of the Opposition Division: Upheld the opposition for all the contested goods

Decision of the Board of Appeal: Dismissed the appeal

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

Appeal brought on 22 May 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 11 March 2013 in Case F-131/12 Marcuccio v Commission

(Case T-283/13 P)

(2013/C 207/85)

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

— Set aside 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 same as those relied on in Case T-203/13 P *Marcuccio* v *Commission*.

Appeal brought on 22 May 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 11 March 2013 in Case F-17/12 Marcuccio v Commission

(Case T-284/13 P)

(2013/C 207/86)

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

— Set aside 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 relied on in Case T-203/13 P *Marcuccio* v *Commission*.

Action brought on 24 May 2013 — Husky CZ/OHIM — Husky of Tostock (HUSKY)

(Case T-287/13)

(2013/C 207/87)

Language in which the application was lodged: English

Parties

Applicant: Husky CZ s.r.o. (Prague, Czech Republic) (represented by: L. Lorenc, lawyer)

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

Other party to the proceedings before the Board of Appeal: Husky of Tostock Ltd (Woodbridge, United Kingdom)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision of OHIM's First Board of Appeal of 14 March 2013;

— Order OHIM and Husky of Tostock Limited to pay all costs and expenses.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'HUSKY' for goods in classes 3, 9, 14, 16, 18 and 25 — Community trade mark No 152 546

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

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: Partially revoked the Community trade mark registration

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 51(1)(a) of Council Regulation No 207/2009.

Action brought on 30 May 2013 — Italy v Commission

(Case T-295/13)

(2013/C 207/88)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, lawyer, G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

— Annul the corrigendum to notice of open competition EPSO/AD/177/10, corrigendum to notice of open competition EPSO/AD/178/10 and corrigendum to notice of open competition EPSO/AD/179/10, published in the Official Journal of the European Union C 82 A, of 21 March 2013.

— As a consequence, annul the corrected notices.

— Order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and principal arguments are similar to those relied on in Case T-275/13, Italian Republic v Commission.

Action brought on 3 June 2013 — SACE and SACE BT v Commission

(Case T-305/13)

(2013/C 207/89)

Language of the case: Italian

Parties

Applicants: SACE SpA (Rome, Italy) and SACE BT SpA (Rome, Italy) (represented by: M. Siragusa and G. Rizza, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul the decision in its entirety or, in the alternative, in part;

— Order the Commission to pay the costs;

— Order any other measure which it deems appropriate, including any measure of enquiry.

Pleas in law and main arguments

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

The present action is brought against Commission Decision C(2013) 1501 final of 20 March 2013 ordering partial recovery of aid granted to the short-term export-credit insurance company SACE BT. The case is concerned in particular with the capital injections made in 2009 by the State-owned parent company (SACE S.p.A.) and with the reinsurance coverage of which SACE BT was the beneficiary.

According to the Commission, in neither case did SACE take account of the risk profile of the investments and thus did not behave as a market economy investor.

1. First plea in law, alleging that the measures at issue could not be attributed to the Italian State

   — It is submitted in this regard that the measures at issue were adopted by the Board of SACE S.p.A., not upon a direction given by the public authorities or in order to comply with State-imposed requirements, but rather in the exercise of its own full commercial and strategic autonomy, in a way consistent with purely market logic and no differently from in the majority of its business decisions, and not within the framework of any relationship entailing control, supervision, authorisation or direction on the part of the single shareholder at that time — the Ministry of Economy and Finance.

2. Second plea in law, concerning the fact that the second measure allegedly conferred an advantage on SACE BT

   — The applicants maintain in this regard that the decision of SACE S.p.A. to offer reinsurance capacity, taking advantage of opportunities afforded by a phase in the economic cycle in which insurance premiums were high, was adopted without any intention of providing SACE BT with assistance or support. Moreover, only the parent company gained any economic advantage from the reinsurance relationship. Furthermore, the Commission's observations concerning the positive correlation between the volume of risk assumed and the rate requested are not confirmed either by the reference literature or market practice, not even so far as SACE BT in particular is concerned. Lastly, the applicants do not consider persuasive the Commission's attempt to 'export' to different contexts and measures the alleged rule of thumb applied by it, without a detailed statement of reasons, in the case of the Portuguese rules on short-term export credit insurance, in order to establish that the amount of the commission paid to SACE S.p.A. should have been at least 10 % higher than that of the commission applied by private reinsurers in relation to the smaller portion of reinsurance and risk assumed by them.

3. Third plea in law, alleging that the third and fourth measures did not confer an advantage on SACE BT

   — In undertaking the two recapitalisations of 2009, despite the lack of any forecasts relating to SACE BT's future cash flow which might give grounds for expecting adequate profitability of it at least in the long term, SACE S.p.A. preserved the value of the very considerable investment that it had made at the time of the company's formation barely five years earlier. Furthermore, SACE S.p.A. took the view that the liquidation of its subsidiary would also have exposed the entire SACE group to the risk of potential damage, in the form of massive loss in value and/or deterioration in its creditworthiness, the amount of which would have been far higher than that of the capital estimated outstanding for the end of 2009. The Commission failed to have regard to the broad margin of discretion of the public investor, substituting its own assessment for that of SACE S.p.A. solely on the basis of an incorrect theoretical reconstruction of the choice which the hypothetical prudent and well-informed private investor would have made in that set of circumstances.

Action brought on 4 June 2013 — Capella v OHIM — Oribay Mirror Buttons (ORIBAY)

(Case T-307/13)

(2013/C 207/90)

Language of the case: German

Parties

Applicant: Capella EOOD (Sofia, Bulgaria) (represented by: M. Holtorf, lawyer)

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

Other party to the proceedings before the Board of Appeal: Oribay Mirror Buttons, SL (San Sebastián, Spain)

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 22 March 2013 in Case R 164/2012-4;

— Declare revoked the registration of Community trade mark 003611282 'ORIBAY ORIginal Buttons for Automotive Yndustry' for the following goods and services:

   — Class 12: Vehicles and parts for vehicles not included in other classes, with the exception of parts for vehicle windows and windscreens; and

   — Class 37: Repair; repair and maintenance

— Order the defendant to bear the costs of the proceedings including the costs incurred in the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: figurative mark, which contains the word elements 'ORIBAY ORIginal Buttons for Automotive Yndustry, for goods and services in Classes 12, 37 and 40 — Community trade mark No 3 611 282

Proprietor of the Community trade mark: Oribay Mirror Buttons, SL

Party applying for revocation of the Community trade mark: The applicant

Decision of the Cancellation Division: The application for revocation was partially upheld

Decision of the Board of Appeal: The appeal was upheld and the application for revocation completely rejected

Pleas in law: Infringement of Article 51(1)(a) of Regulation No 207/2009, infringement of Article 56 of Regulation No 207/2009 in conjunction with Rule 37(a)(iii) of Regulation No 2868/95 and infringement of Article 57(2) of Regulation No 207/2009

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 21 March 2013 — ZZ v Commission

(Case F-24/13)

(2013/C 207/91)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annul the rejection of the applicant's claim for damages for the errors committed by the Commission during a recruitment procedure which was not completed.

Form of order sought

— Annul the decisions of the appointing authority of 5 June 2012 and 7 December 2012 rejecting the applicant's claim for compensation;

— order the Commission to re-establish the applicant's career;

— order the Commission to pay EUR 14 911,07 in addition to payment of contributions to the pension scheme from October 2011, and to pay EUR 2 500 in respect of the material and non-material damage caused, subject to increase or reduction during the proceedings, those sums to be increased by late-payment interest calculated from the date on which the sums were due at the rate applied by the ECB to its main refinancing operations plus two points;

— order the Commission to pay the costs.

Action brought on 27 March 2013 — ZZ v OHIM

(Case F-26/13)

(2013/C 207/92)

Language of the case: English

Parties

Applicant: ZZ (represented by: H. Tettenborn, lawyer)

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

Subject-matter and description of the proceedings

Annulment of the applicant's appraisal report for the period from 1 October 2010 to 30 September 2011 and claim for damages.

Form of order sought

— Annul the appraisal report issued to the applicant in respect of the period from 1 October 2010 to 30 September 2011;

— order OHIM to pay an adequate compensation in the discretion of the Court — not below an amount 500 Euro — to the applicant for the moral and immaterial damages suffered by the applicant as a result of the contested appraisal report;

— Order OHIM to pay the costs.

Action brought on 27 March 2013 — ZZ v Commission

(Case F-27/13)

(2013/C 207/93)

Language of the case: French

Parties

Applicant: ZZ (represented by: É. Boigelot, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions to downgrade the applicant to grade AD8 under Article 9(1)(f) of Annex IX to the Staff Regulations and a claim for damages for the material and non-material harm allegedly suffered.

Form of order sought

— annul the decision adopted on 5 June 2012, taken by the tripartite Appointing Authority in the file CMS 08/058 pursuant to which 'the sanction of downgrading to grade AD8 provided for in Article 9(1)(f) of Annex IX to the Staff Regulations is imposed (on the applicant)', and with 'effect one month following the date of signature';

— annul the decision of 17 December 2012, notified on 18 December 2012, by which the Appointing Authority rejects the applicant's complaint submitted on 10 October 2012 under the reference R/566/12;

— order the defendant to pay, by way of compensation for material and non-material harm and the adverse effect on the applicant's career, notionally evaluated at EUR 1, the amount of EUR 20 000, subject to increase or decrease in the course of the proceedings;

— in any event, order the defendant to pay the entire costs, in accordance with Article 87 of the Rules of Procedure of the Civil Service Tribunal.

Action brought on 27 March 2013 — ZZ v Commission

(Case F-28/13)

(2013/C 207/94)

Language of the case: French

Parties

Applicant: ZZ (represented by: E. Boigelot, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decisions making several deductions from the applicant's salary for June, July, August, September and October 2012.

Form of order sought

— annul the note of 6 July 2012 by which the PMO informs the applicant of its decision to follow the recommendation of the European Anti-fraud Office (OLAF) of 30 March 2012 and states that: (i) it has recovered EUR 5 530 from the applicant's salary for June 2012 (unduly paid allowances), (ii) it will deduct EUR 3 822,80 from the applicant's salary for July 2012 (interest on late payments in respect of the unduly paid amounts), and (iii) it will deduct EUR 2 372 (repayment of medical expenses) and EUR 699,20 (interest on late payments) from the applicant's salary for August 2012;

— annul the deductions from the applicant's salary made in June, August, September and October 2012 and, where necessary, in any other month in response to the implementation of the contested decision;

— annul the note of 10 July 2012 requesting the deduction of a total sum of EUR 3 071,20 from the applicant's salary for August 2012 by means of a single transaction, or if the amount is too high to be deducted in a single instalment, in accordance with a schedule of repayment over several months;

— annul the note of 20 July 2012 notifying the applicant that his unit was not able to encode, in respect of his salary for July, the recovery of the sum of EUR 3 822,80 corresponding to interest on late payments, and that that amount will be recovered in its entirety from his salary for October 2012, following repayments made in August and September 2012;

— annul in part the decision adopted on 17 December 2012, notified on the same date, in so far as it rejects the applicant's complaint relating to the disputed daily subsistence allowances and penalties for delay;

— order the Commission to pay default interest from June 2012, on EUR 5 530, August 2012 on an initial amount of EUR 1 535,60, September 2012 on an additional amount of EUR 1 535,60 and October 2012 on EUR 3 822,80, and until the time when those amounts have been repaid, taking into account the sum of EUR 3 071,20 repaid with the salary for January 2013, as the default interest is no longer payable as from that repayment;

— order the Commission to pay the costs.

Action brought on 28 March 2013 — ZZ v European Medicines Agency

(Case F-29/13)

(2013/C 207/95)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, J.-N. Louis, D. Abreu Caldas, lawyers)

Defendant: European Medicines Agency

Subject-matter and description of the proceedings

Annulment of the decision not to renew the applicant's temporary staff contract and a claim for damages.

Form of order sought

— Annul the decision of 30 August 2012 not to renew the applicant's contract, to end his employment relationship on 30 April 2013 and to require him to take leave;

— Annul the decision of 26 February 2013 rejecting his request for a renewal of his contract;

— Order the defendant to pay the costs and to pay the applicant EUR 25 000 as compensation for his non-pecuniary harm.

Action brought on 8 April 2013 — ZZ v Commission

(Case F-32/13)

(2013/C 207/96)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Moyse, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the rejection of the application for reimbursement of the unpaid sum which the Commission ought to pay to the applicant as the severance grant.

Form of order sought

— Annul the Commission's decision of 9 January 2013 by which it refused to grant the applicant's application and rejected his complaint seeking to obtain reimbursement of the unpaid sum which the Commission ought to pay him because he resigned. To the extent necessary, the action also seeks annulment of the Commission's letter of 13 April 2012 by which the Commission adopts a view for the first time relating to the applicant's application to recalculate the amount which the Commission must pay to him;

— order the Commission to pay the costs.

Action brought on 16 April 2013 — ZZ v Commission

(Case F-34/13)

(2013/C 207/97)

Language of the case: French

Parties

Applicant: ZZ (represented by: R. Duta, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the selection board in Competition EPSO/AD/231/12 not to admit the applicant to the assessment centre stage of that competition.

Form of order sought

— Annul the decision of 31 January 2013 on the applicant's claim of 25 September 2012;

— Annul the decisions of 28 June 2012 and 16 July 2012 under which the applicant is notified of the refusal of admittance to the pre-selection stage ('assessment centre') of Competition EPSO/AD/230-231/12 in which he participated;

— Order the Commission to pay the costs.

Action brought on 16 April 2013 — ZZ v Commission

(Case F-35/13)

(2013/C 207/98)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, J.-N. Louis and D. Abreu Caldas, lawyers)

Defendant: Commission

Subject-matter and description of the proceedings

Annulment of the decision to calculate accredited pension rights acquired by the applicant before his entry into service with the Commission on the basis of the new General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011.

Form of order sought

— declare unlawful Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations;

— annul the decisions of 28 September and 4 October 2012 to calculate accredited pension rights acquired by the applicant before he took up his post, in connection with the transfer of those rights into the pension scheme of the institutions of the European Union, on the basis of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— order the Commission to pay the costs.

Action brought on 18 April 2013 — ZZ v Education, Audiovisual and Culture Executive Agency

(Case F-36/13)

(2013/C 207/99)

Language of the case: French

Parties

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

Defendant: Education, Audiovisual and Culture Executive Agency

Subject-matter and description of the proceedings

Annulment of the decision to terminate the applicant's contract of employment on the basis of Article 47(c)(i) of the Conditions of Employment of Other Servants (CEOS).

Form of order sought

— Annul the decision of 24 July 2012 of the Agency;

— In consequence:

  — restore the applicant to his post with effect from 25 October 2012 and order the Agency to pay his remuneration with retroactive effect;

  — withdraw the contested decision from the applicant's personnel file and all documents connected with the present proceedings;

— Order the Agency to pay him the sum of EUR 10 000 as compensation for the non-pecuniary harm suffered;

— Order the Agency to pay the costs.

Action brought on 26 April 2013 — ZZ v Commission

(Case F-37/13)

(2013/C 207/100)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of OLAF (the European Anti-fraud Office) rejecting the request for renewal of the applicant's contract, following the annulment of that decision by a judgment of the Civil Service Tribunal and a claim for damages in respect of the material and non-material harm allegedly suffered.

Form of order sought

The applicant claims that the Tribunal should:

— annul the appointing authority's decision of 8 August 2012 rejecting the request for renewal of the applicant's contract;

— so far as necessary, annul the implied rejection, on 12 August 2010, of the request for renewal of the applicant's contract, in the event that its annulment is called into question in an appeal before the General Court of the European Union;

— and, so far as necessary, annul the appointing authority's decision of 17 January 2013 rejecting the complaint brought by the applicant on 21 September 2012;

— grant the applicant, in respect of the material harm suffered, a sum corresponding to the difference between the remuneration which he would have received had he been able to obtain the renewal of his contract as a member of the temporary staff at OLAF for another four years and the remuneration which he has received since May 2011 (taking account of his pension rights and his normal career progression);

— compensate the applicant for the material harm suffered by him on account of the loss of a chance of obtaining a contract for an indefinite term, fixed on equitable principles and provisionally at EUR 250 000;

— grant the sum fixed on equitable principles and provisionally at EUR 10 000 in respect of the non-material harm suffered;

— order the Commission to pay all the costs.

Action brought on 26 April 2013 — ZZ v Commission

(Case F-38/13)

(2013/C 207/101)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, J.-N. Louis and D. Abreu Caldas, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to calculate the applicant's accredited pension rights, acquired before he took up his post, on the basis of the new General Implementing Provisions.

Form of order sought

— declare unlawful Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations;

— annul the decision of 18 June 2012 to calculate accredited pension rights acquired by the applicant before he took up his post, in connection with the transfer of those rights into the pension scheme of the institutions of the European Union, on the basis of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— order the Commission to pay the costs.

Action brought on 29 April 2013 — ZZ v Commission

(Case F-39/13)

(2013/C 207/102)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis, É. Marchal and S. Orlandi, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision fixing the applicant's accredited pension rights acquired before entry into service at the Commission on the basis of the new General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011 ('the GIP') and the decision rejecting the complaint.

Form of order sought

— Annul the decision rejections her complaint of 24 January 2013 relating to the application of the GIP and the actuarial rates in force at the time of her application for transfer of her pension rights;

— annul the decision of the Office for the Administration and Settlement of Individual Entitlements of 11 July 2012, applying the actuarial values resulting from the new GIP;

— order the Commission to pay the costs.

Action brought on 7 May 2013 — ZZ v Commission

(Case F-40/13)

(2013/C 207/103)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal and D. Abreu Caldas, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision on the transfer of the applicant's pension rights into the pension scheme of the institutions of the European Union which applies the new General Implementing Provisions concerning Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

— declare unlawful Article 9 of the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations;

— annul the decision of 11 October 2012 upholding the application of the parameters set out in the General Implementing Provisions of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011 in respect of the transfer of the applicant's pension rights;

— order the Commission to pay the costs.

Action brought on 8 May 2013 — ZZ and Others v EIB

(Case F-41/13)

(2013/C 207/104)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

First, claim for annulment of the decisions in the wage slips of February 2013, determining the annual adjustment of salaries for 2013 to be limited to 1.8 %, of the defendant's information notes sent to the applicants on 5 February 2013 and 15 February 2013 and annulment of subsequent wage slips. Secondly, claim that the institution be ordered to pay damages in respect of the material and non-material harm allegedly suffered.

Form of order sought

— Annul the decision contained in the applicants' wage slips for February 2013, a decision determining the annual adjustment of salaries for 2013 to be limited to 1.8 % and, consequently, annul the similar decisions contained in the subsequent wage slips and, so far as necessary, annul two information notes sent to the applicants on 5 February 2013 and 15 February 2013;

— order the defendant to pay to each applicant, as compensation for material harm (i) the balance of salary corresponding to application of the annual adjustment for 2013, that is an increase of 1.8 %, for the period from 1 January 2013 to 31 December 2013; (ii) the balance of salary corresponding to the results of application of the annual adjustment of 1.8 % for 2013 on the amount of salaries to be paid from January 2014; (iii) default interest on the balance of salaries payable until full payment of the sums payable, the applicable default interest rates to be calculated on the basis of the rate set by the European Central Bank for its principal refinancing operations applicable over the period concerned, increased by three

points and (iv) damages due to the loss of purchasing power, that entire material harm being estimated, provisionally, in respect of each applicant, at EUR 30 000;

— order the defendant to pay to each applicant the sum of EUR 1 000 as compensation for non-material harm;

— order the EIB to pay the costs.

Action brought on 8 May 2013 — ZZ v EESC

(Case F-42/13)

(2013/C 207/105)

Language of the case: French

Parties

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

Defendant: European Economic and Social Committee

Subject-matter and description of the proceedings

Annulment of the decision to terminate the applicant's employment contract and the application to compensate her for the material and non-material damage allegedly suffered.

Form of order sought

— Annul the decision of 16 October 2012 adopted by the Secretary-General of the EESC, as the Authority empowered to conclude contracts, to terminate the applicant's contract;

— if necessary, annul the decision of the authority empowered to conclude contracts of 31 January 2013 confirming the termination of the applicant's contract and the decision of the authority empowered to conclude contracts of 24 April 2013 specifically rejecting the applicant's complaint;

— pay compensation in respect of the material damage suffered by the applicant;

— grant the applicant the sum fixed on equitable grounds and provisionally at EUR 150 000 for non-material damage suffered;

— order the EESC to pay the costs.

Action brought on 8 May 2013 — ZZ and Others v EIB

(Case F-43/13)

(2013/C 207/106)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment of the decisions contained in the pay slips for the month of February 2013, limiting the annual salary adjustment to 1.8 % for 2013 and the annulment of later salary slips. Secondly, application for an order that the institution pay compensation for material and non-material damage allegedly suffered.

Form of order sought

— Annul the decision contained in the applicants' pay slips for the month of February 2013, limiting the annual salary adjustment to 1.8 % for 2013 and, therefore, annul the similar decisions contained in later pay slips and, where necessary, annul two information memos that the defendant sent to the applicants on 5 February 2013 and 15 February 2013;

— Order the European Investment Bank ('the EIB') to pay to each applicant, in compensation for the material damage (i) the balance of salary corresponding to the application of the annual adjustment for 2013, that is, an increase of 1.8 %, for the period from 1 January 2013 to 31 December 2013; (ii) the balance of salary corresponding to the consequences of the application of the annual adjustment of 1.8 % for 2013 on the amount of the salaries which will be paid from January 2014; (iii) default interest on the balances of salaries due until full payment of the amounts due, with the default interest rate to be applied calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable for the relevant period, increased by three points and (iv) damages on account of the loss of purchasing power; the overall material damage being assessed, provisionally, for each applicant at EUR 30 000;

— Order the EIB to pay to each applicant EUR 1 000 in compensation for non-material damage;

— Order the EIB to pay the costs.

Action brought on 8 May 2013 — ZZ v Commission

(Case F-44/13)

(2013/C 207/107)

Language of the case: French

Parties

Applicant: ZZ (represented by: C. Mourato, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission decisions concerning the grant of compensation for material damage suffered by the applicant because of the incorrect calculation of the allowance for living conditions.

Form of order sought

— Annul the Commission decision of 25 January 2013 received by the applicant on 28 January 2013 on the partial annulment of the PMO.1 decision of 30 March 2012 in so far as it limits to 1 March 2007 the applicant's claim to be granted compensation for the material damage suffered because of the incorrect calculation of the allowance for living conditions to which the applicant has been entitled since 22 September 2002 and in so far as it takes account of the orphan's pension of the applicant's daughter between 1 March 2007 and 31 August 2008 for the purposes of calculating that compensation;

— annul the Commission decision of 4 February 2013 received by the applicant on 5 February 2013 and her wage statement for February 2013 as regards the RRV correction code relating to compensation for the abovementioned damage imposed on 1 March 2007, while maintaining the effects of that statement until the adoption of a new bulletin correctly applying Article 10 of Annex 10 to the Staff Regulations from 31 December 2011 until 22 September 2002;

— order the Commission to pay a provisional additional sum of EUR 11 000,00, for the loss in respect of the allowance for living conditions suffered by the applicant between 22 September 2002 and 31 August 2008 and to pay interest calculated on the full damage suffered in that connection between 22 September 2002 and 31 December 2011, payable as from the dates when such payments are respectively due until the actual day of payment and calculated on the basis of the rates applied by the ECB to its principal refinancing operations over the period concerned, plus two points;

— order the Commission to pay the costs.

Action brought on 15 May 2013 — ZZ and Others v EIB

(Case F-45/13)

(2013/C 207/108)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment of the decisions contained in salary slips to apply the general decision of the European Investment Bank setting a salary progression capped at 2.3 % for all staff and the decision establishing a merit grid entailing the loss of 1 to 3 % of salary and the subsequent application for an order that the institution pay the difference in remuneration together with damages.

Form of order sought

— Annul the decisions to apply to the applicants the decision of the EIB's Board of Directors of 18 December 2012 setting a salary progression capped at 2.3 % and the decision of the EIB's Management Committee of 29 January 2013 establishing a merit grid entailing the loss of 1 to 3 % of salary, according to the applicants, decisions that are contained in the salary slips of April 2013, and the annulment to the same extent of all the decisions contained in subsequent salary slips and, so far as necessary, the annulment of the information letter sent by the defendant to the applicants on 5 February 2013;

— order the defendant to pay the difference in remuneration resulting from the aforementioned decisions of the EIB's Board of Directors of 18 December 2012 and of the EIB's Management Committee of 29 January 2013 in relation to the application of the merit grid '4-3-2-1-0' and the 'young' grid '5-4-3-1-0' or, in the alternative, in respect of applicants awarded a grade A, in relation to the application of the merit grid 3-2-1-0-0 and, in respect of applicants covered by the 'young' grid, in relation to a young grid '4-3-2-0-0'; with interest on arrears to be added to that difference in remuneration with effect from 12 April 2013 and then on the 12th day of every month until full payment, the rate of interest being the ECB rate, increased by three percentage points;

— order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, such loss being assessed equitably, and on a provisional basis, at 1.5 % of the monthly remuneration of each applicant;

— order the EIB to pay the costs.

Action brought on 16 May 2013 — ZZ v European Commission

(Case F-46/13)

(2013/C 207/109)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Rodrigues and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision rejecting the application for the employment of the applicant as a contract agent in function group II submitted by DG DEVCO and compensation for the material damage suffered.

Form of order sought

— Annul the decision of the Commission, as AECE, of 4 October 2012 not to recruiter the applicant as an auxiliary contract agent in function group II;

— so far as necessary, annul the AECE decision of 7 February 2013 rejecting the complaint brought by the applicant on 19 October 2012;

— award compensation for his material damage;

— award the sum fixed *ex aequo et bono* and provisionally at EUR 50 000 in respect of non-material damage suffered;

— order the Commission to pay the costs.

Action brought on 17 May 2013 — ZZ v Council

(Case F-47/13)

(2013/C 207/110)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision not to include the applicant in the list of officials in function group AD proposed for promotion in 2012.

Form of order sought

— Annul the decision of 20 July 2012 No 63/12 of the General Secretariat of the Council concerning the list of officials proposed for promotion during the 2012 session in which the applicant's name did not appear and annul the decision of the Appointing Authority of 11 February 2011;

— Order the defendant to pay damages, with default and compensatory interest at 6.75 % for the material and non-material damage suffered;

— Order the Council to pay the costs.

Action brought on 21 May 2013 — ZZ v Parliament

(Case F-48/13)

(2013/C 207/111)

Language of the case: English

Parties

Applicant: ZZ (represented by: C. Bernard-Glanz, lawyer)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the 2011 staff report of the applicant.

Form of order sought

— Annul the 2011 staff report of the applicant, as finalised and amended by decisions of the Appointing Authority of 18 July 2012 and 29 January 2013;

— annul the decision of the Appointing Authority of 29 January 2013, rejecting the complaint lodged pursuant to Article 90(2) SR;

— order the defendant to pay the costs.

Action brought on 22 May 2013 — ZZ v Commission

(Case F-50/13)

(2013/C 207/112)

Language of the case: French

Parties

Applicant: ZZ (represented by: B. Cambier and A. Paternostre, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision on the claim for further compensation, made by the applicant on the basis of Article 90(1) of the Staff Regulations, in order to obtain full compensation for the material and non-material damage that he suffered as a result of his occupational disease and the multiple irregularities in the processing of his claim under Article 73 of the Staff Regulations.

Form of order sought

— Annul the Commission's decision of 7 August 2012 on the claim for further compensation under ordinary law and the relevant articles of the Staff Regulations, made by the applicant on 18 April 2012 on the basis of Article 90(1) of the Staff Regulations;

— Annul the Commission's decision of 14 February 2013 rejecting the applicant's complaint made on 25 October 2012 on the basis of Article 90(2) of the Staff Regulations;

— Grant the applicant the sum of EUR 1 798 650 by way of compensation for the material and non-material damage suffered as a result of the occupational disease and payable under the ordinary law principle of full compensation, after deduction of the compensation granted under Article 73 of the Staff Regulations, possibly revised by the Tribunal in the context of the ongoing Case F-142/12;

— Grant the applicant the sum of EUR 145 850 in respect of the non-material damage resulting from misconduct of the Commission with regard to the applicant;

— Grant the applicant reimbursement of the legal costs and other expenses incurred, and interest on late payments and all other interest payments that the Court deems just and proper, running from December 2004, when the damage suffered by the applicant could have been calculated and made good;

— Order the Commission to pay the costs.

Action brought on 31 May 2013 — ZZ v EESC

(Case F-54/13)

(2013/C 207/113)

Language of the case: French

Parties

Applicant: ZZ (represented by: T. Bontinck and A. Guillerme, lawyers)

Defendant: European Economic and Social Committee

Subject-matter and description of the proceedings

The annulment of the EESC's decision rejecting a request, brought by the applicant on the basis of Article 90(1) of the Staff Regulations, in order to obtain compensation for the harm allegedly suffered as a result of dogged persistence, or even harassment, on the part of the administration.

Form of order sought

— annul the decision of the Secretary General of the EESC of 3 October 2012 in so far as it rejects the applicant's request of 5 June 2012 seeking to obtain appropriate and reasonable compensation for the non-material harm suffered by him, adverse effect on his reputation and on his health and adverse effect on his career, confirmed, following the applicant's complaint of 24 October 2012, by the decision of 22 February 2013;

— grant the applicant compensation for the non-material harm suffered by him and adverse effect on his reputation and his health assessed, subject to being increased or decreased during the proceedings, at EUR 12 000;

— grant the applicant compensation for the adverse effect on his career as a result of the delay in his promotion on account of the investigations and proceedings then being performed, by reconstitution of his career at grade AST 5, subject to change during the proceedings, and, in the alternative, by appropriate compensation assessed, subject to being increased during the proceedings, at EUR 41 403,09;

— order the EESC to pay the costs.

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