ISSN 1977-091X

Official Journal of the European Union

C 226

English edition

Volume 56

3 August 2013

Information and Notices

Notice No | Contents | Page

EN

Price: EUR 3

(Continued overleaf)

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 226/01)

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

OJ C 215, 27.7.2013

Past publications

OJ C 207, 20.7.2013

OJ C 189, 29.6.2013

OJ C 178, 22.6.2013

OJ C 171, 15.6.2013

OJ C 164, 8.6.2013

OJ C 156, 1.6.2013

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for an opinion submitted by the European Commission pursuant to Article 218(11) TFEU

(Opinion 1/13)

(2013/C 226/02)

Language of the case: all the official languages

Applicant

European Commission (represented by: F. Castillo de la Torre, A.-M. Rouchaud-Joët, acting as Agents)

Question submitted to the Court

Does the acceptance of the accession of a third country to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction fall within the exclusive competence of the Union?

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 8 March 2013 — A v B and Others

(Case C-112/13)

(2013/C 226/03)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Defendant and appellant on a point of law: A

Applicants and respondents in the appeal on a point of law: B and Others

Questions referred

1. In the case of rules of procedural law under which the ordinary courts called upon to decide on the substance of cases are also required to examine whether legislation is unconstitutional but are not empowered to repeal legislation generally, this being reserved for a specially organised constitutional court, does the 'principle of equivalence' in the implementation of European Union law mean that, where legislation infringes Article 47 of the Charter of Fundamental Rights of the European Union ('the CFR'), the ordinary courts are also required, in the course of the proceedings, to request the constitutional court to set aside the legislation generally, and cannot simply refrain from applying that legislation in the particular case concerned?

2. Is Article 47 of the CFR to be interpreted as precluding a procedural rule under which a court which does not have international jurisdiction appoints a representative *in absentia* for a party whose place of domicile cannot be established and that representative can then, by 'entering an appearance', confer binding international jurisdiction on that court?

3. Is Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] to be interpreted as meaning that 'a defendant enters an appearance', within the meaning of that provision, only where that procedural act was carried out by the defendant himself or by a legal representative authorised by him, or does the foregoing obtain without restriction also in the case of a representative *in absentia* appointed under the law of the Member State in question?

---

[1] OJ 2001 L 12, p. 1.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 21 May 2013 — Elcogás, S.A. v Administración del Estado and Iberdrola, S.A.

(Case C-275/13)

(2013/C 226/04)

Language of the case: Spanish

Referring court

Tribunal Supremo, Spain

Parties to the main proceedings

Applicant: Elcogás, S.A.

Defendants: Administración del Estado, Iberdrola, S.A.

Question referred

Does the interpretation of Article 107(1) of the Treaty on the Functioning of the European Union, and of the case-law of the Court of Justice of the European Union concerning that article (in particular, the judgments in Cases C-379/98 [1] and C-206/06 [2]), mean that the annual sums allocated to Elcogás in its capacity as the owner of a particular electricity generating facility, as provided for in the extraordinary viability plans approved for Elcogás by the Council of Ministers, are to be regarded as 'aid granted by a Member State or through State resources', where those sums are collected under the general category of 'permanent costs of the electricity system', which are paid by all users and are transferred to undertakings in the electricity sector by means of subsequent settlements made by the Comisión Nacional de Energía (National Energy Commission) in accordance with predetermined statutory criteria, for which purpose that Commission has no margin of discretion?

[1] 2001, ECR I-2099.
[2] 2008, ECR I-5497.

Request for a preliminary ruling from the Juzgado de Primera Instancia de Palma de Mallorca (Spain) lodged on 22 May 2013 — Barclays Bank, S.A. v Sara Sánchez García and Alejandro Chacón Barrera

(Case C-280/13)

(2013/C 226/05)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia de Palma de Mallorca

Parties to the main proceedings

Applicant: Barclays Bank, S.A.

Defendants: Sara Sánchez García and Alejandro Chacón Barrera

Questions referred

1. Must Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that they preclude Spanish legislation on mortgages which, although it provides that the mortgagee may request an increase of the security where the valuation of a mortgaged property decreases by 20 %, does not provide, in the context of mortgage enforcement proceedings, that the consumer/debtor/party against whom enforcement is sought may request, following a valuation involving the parties concerned, revision of the sum at which the property was valued, at least for the purposes stipulated in Article 671 LEC, [2] where that valuation has increased by an equal or higher percentage during the period between the creation of the mortgage and the enforcement thereof?

2. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that they preclude the Spanish procedural rules on mortgage enforcement which provide that the creditor seeking enforcement may be awarded the mortgaged property at 50 % (now 60 %) of the sum at which the property was valued, which entails an unjustified penalty for the consumer/debtor/party against whom enforcement is sought equivalent to 50 % (now 40 %) of that valuation?

3. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that there is abuse of rights and unjust enrichment where, after being awarded the mortgaged property at 50 % (now 60 %) of the sum at which the property was valued, the creditor/party seeking enforcement applies for enforcement in respect of the outstanding amount in order to make up the total amount of the debt, despite the fact that the sum at which the property awarded was valued and/or the actual value of the property awarded is higher than the total amount owed, even though such action is permitted under national procedural law?

4. Must Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and the principles of Community law concerning consumer protection and a balance in the parties' contractual rights and obligations, be interpreted as meaning that, upon the award of the mortgaged property with a valuation and/or actual value which is higher than the total amount of the mortgage loan, Article 570 LEC is applicable and supplants Articles 579 and 671 LEC, and that, accordingly, the creditor seeking enforcement must be considered to have been repaid in full?

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

Appeal brought on 22 May 2013 by Lord Inglewood and Others against the judgment of the General Court (Fourth Chamber) delivered on 13 March 2013 in Joined Cases T-229/11 and T-276/11 Inglewood and Others v Parliament

(Case C-281/13 P)

(2013/C 226/06)

Language of the case: French

Parties

Appellants: Lord Inglewood and Others (represented by: S. Orlandi, J.-N. Louis, D. Abreu Caldas, lawyers)

Other party to the proceedings: European Parliament

Form of order sought

— order

— that the judgment of the General Court of the European Union (Fourth Chamber) of 13 March 2013 in Joined Cases T-229/11 and T-276/11 *Inglewood and Others* v *Parliament* is annulled;

— ruling again, order:

— that the Decision of the Bureau of the European Parliament increasing the retirement age from 60 to 63 and abolishing the special methods of obtaining a pension, either early or in the form of a lump sum;

— that the contested decisions are annulled;

— the Parliament to pay the costs of the two proceedings.

Pleas in law and main arguments

The appellants bring an appeal against the judgment of the General Court, by which the latter dismissed their action for annulment of the decisions of the European Parliament refusing to grant them their voluntary additional pension, early, at the age of 60 or in part in the form of a lump sum.

In the first place, the appellants allege an error of law by the General Court, to the effect that the contested decisions infringed their acquired rights or rights pending insolvency in the circumstances fixed and accepted at the time they took up office.

In the second place, the General Court erred in law by disregarding the plea alleging infringement of Article 27(2) of the Statute for Members, although that provision states that acquired rights and future entitlements are to be maintained. The decision of 1 April 2009 adversely affects the appellants' acquired rights, that is to say the rights to request an early pension or to receive it at the age of 60 or, as the case may be, in part in the form of a lump sum.

In the third place, the General Court also erred in law by ruling that the Statute for Members was not applicable since it entered into force after the decision of general application of 1 April 2009, whereas the individual decisions which are the subject-matter of the appeals were taken after that date.

In the fourth place, the General Court erred in law by rejecting the plea alleging infringement of the principle of equal treatment while the appellants could legitimately expect to receive their pension, according to the conditions fixed and applied during a substantial part of the payment of their contributions or on the day they ended their activities, more than those who enjoyed derogations, that is to say, those who were still carrying on activities and had reached the age of 60 prior to the entry into force, on 14 July 2009, of the decision of 1 April 2009.

In the last place, the General Court erred in law by rejecting the plea alleging infringement of the principle of proportionality after holding that only 10 % of the members bear the consequences of the financial crisis and the predictable effects of a temporary fund, which is destined to disappear.

Request for a preliminary ruling from the Landgericht Darmstadt (Germany) lodged on 28 May 2013 — Rechtsanwalt H. (Insolvenzverwalter über das Vermögen der G.T. GmbH) v H. K.

(Case C-295/13)

(2013/C 226/07)

Language of the case: German

Referring court

Landgericht Darmstadt

Parties to the main proceedings

Applicant: Rechtsanwalt H. (Insolvenzverwalter über das Vermögen der G.T. GmbH)

Defendant: H. K.

Questions referred

Interpretation of Article 1(2)(b), Article 5(1)(a), Article 5(1)(b) and Article 5(3) of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1] (Lugano II Convention) and Article 3(1) of Regulation (EC) No. 1346/2000 of the Council of the European Union of 29 May 2000 on insolvency proceedings [2] ('Regulation 1346/2000'):

1. Do the courts of the Member State in the territory of which insolvency proceedings regarding the debtor's assets have been opened have jurisdiction to decide an action brought by the liquidator in the insolvency proceedings against the managing director of the debtor for reimbursement of payments which were made after the company became insolvent or after determination of an excess of company liabilities over assets?

2. Do the courts of the Member State in the territory of which insolvency proceedings regarding the debtor's assets have been opened have jurisdiction to decide an action brought by the liquidator in the insolvency proceedings against the managing director of the debtor for reimbursement of payments which were made after the company became insolvent or after determination of an excess of company liabilities over assets, if the managing director is not domiciled in another Member State of the European Union but in a contracting party to the Lugano II Convention?

3. Does the action referred to in question 1 above fall under Article 3(1) of Regulation 1346/2009?

4. If the action referred to in question 1 above does not fall under Article 3(1) of Regulation 1346/2009 and/or the jurisdiction of the court in that regard does not extend to a managing director who is domiciled in a contracting party to the Lugano II Convention:

   Does the case concern bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions or analogous proceedings within the meaning of Article 1(2)(b) of the Lugano II Convention?

5. If question 4 is to be answered in the affirmative:

   (a) Does the court of the Member State in which the debtor has its registered office have jurisdiction, in accordance with Article 5(1)(a) of the Lugano II Convention, in relation to an action of the kind referred to in question 1 above?

      (i) With regard to that action, is the defendant being sued in a matter relating to a contract within the meaning of Article 5(1)(a) of the Lugano II Convention?

      (ii) With regard to that action, is the defendant being sued in a matter relating to a contract for services within the meaning of Article 5(1)(b) of the Lugano II Convention?

   (b) In relation to the action referred to in question 1 above, is the defendant being sued in a matter relating to tort, delict or quasi-delict within the meaning of Article 5(3) of the Lugano II Convention?

(1) OJ 2009 L 147, p.5.
(2) OJ 2000 L 160, p.1.

Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 30 May 2013 — Isabelle Gielen v Ministerraad

(Case C-299/13)

(2013/C 226/08)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicant: Isabelle Gielen

Defendant: Ministerraad

Question referred

Is Article 5(2) of Council Directive 2008/7/EC [1] of 12 February 2008 concerning indirect taxes on the raising of capital to be interpreted as precluding the taxation of the conversion — prescribed by law — of bearer securities into registered securities or dematerialised securities, and, if so, can such a tax be justified on the basis of Article 6 of that directive?

(1) OJ 2008 L 46, p. 11.

Request for a preliminary ruling from the Tribunal Superior de Justicia de la Comunidad Valenciana (Spain) lodged on 30 May 2013 — Ayuntamiento de Benferri v Conselleria de Infraestructuras y Transporte, Iberdrola Distribución Eléctrica SAU

(Case C-300/13)

(2013/C 226/09)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de la Comunidad Valenciana, Sala de lo Contencioso-Administrativo, Sección 1

Parties to the main proceedings

Applicant: Ayuntamiento de Benferri

Defendants: Conselleria de Infraestructuras y Transporte, Iberdrola Distribución Eléctrica SAU

Questions referred

1. Is the concept of 'construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km' in point 20 of Annex I to Directive 85/337, [1] as amended by Directive 97/11, [2] to be interpreted as meaning that the only electricity installations it covers are overhead power lines which reach both those thresholds?

2. Is the concept of '… transmission of electrical energy by overhead cables' in section 3(b) of Annex II to Directive 85/337, as amended by Directive 97/11, to be interpreted as meaning that the only electrical energy transmission installations it covers are overhead power lines?

   If not:

3. Is the concept of '… transmission of electrical energy by overhead cables' in section 3(b) of Annex II to Directive 85/337 to be interpreted as meaning that it covers transformer substations?

4. Is the concept of '… transmission of electrical energy by overhead cables' in section 3(b) of Annex II to Directive 85/337 to be interpreted as meaning that it covers transformer substations, although the construction or extension thereof is carried out by means of a project which does not include the construction of an overhead power line?

[1] Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

[2] Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5).

Request for a preliminary ruling from the Augstākās tiesas Senāts (Republic of Latvia) lodged on 3 June 2013 — AS flyLAL Lithuanian Airlines, in liquidation v VAS Starptautiskā lidosta Rīga, AS Air Baltic Corporation

(Case C-302/13)

(2013/C 226/10)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: AS flyLAL Lithuanian Airlines, in liquidation

Defendants: VAS Starptautiskā lidosta Rīga, AS Air Baltic Corporation

Questions referred

1. Is it appropriate to regard as a civil or commercial matter, within the meaning of [Regulation (EC) No 44/2001] [1] ('the Regulation'), a case in which the applicant seeks compensation for damage and a declaration of the unlawfulness of the defendants' conduct consisting in an unlawful agreement and abuse of a dominant position, and which is based on the application of legislative acts of general scope of another Member State, bearing in mind that unlawful agreements are void from the moment they are concluded, and that, on the other hand, the adoption of a rule of law is an act of the State in the sphere of public law (*acta iure imperii*), to which the rules of public international law relating to the immunity of a State from the jurisdiction of other States apply?

2. In the event that the reply to Question 1 is in the affirmative (the case is a civil or commercial matter, within the meaning of the Regulation), are the compensation proceedings to be regarded as an action having as its object the validity of the decisions of the organs of companies, within the meaning of Article 22(2) of the Regulation, in which case the judgment need not be recognised, in accordance with Article 35(1) of the Regulation?

3. If the object of the action in the compensation proceedings falls within the scope of Article 22(2) of the Regulation (exclusive jurisdiction), is the court of the State in which recognition is sought required to verify the presence of the circumstances listed in Article 35(1) of the Regulation in relation to the recognition of a judgment adopting provisional protective measures?

4. May the public-policy clause contained in Article 34(1) of the Regulation be interpreted as meaning that recognition of a judgment adopting provisional protective measures is contrary to the public policy of a Member State if, first, the principal ground for the adoption of the provisional protective measures is the considerable size of the amount requested without a well-founded and substantiated calculation having been made and, second, if the recognition and enforcement of that judgment may cause the defendants damage for which the applicant, a company which is in liquidation, will not be able to compensate in the event that the claim for compensation is dismissed, which might affect the economic interests of the State in which recognition is sought, and thereby jeopardise the security of the State, in view of the fact that the Republic of Latvia holds 100 % of the shares in Lidosta Rīga and 52.6 % of the shares in AS Air Baltic Corporation?

[1] Council regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 21, p. 1).

Request for a preliminary ruling from the Curtea de Apel Alba Iulia (Romania) lodged on 7 June 2013 — Claudiu Roșu v Direcția Generală a Finanțelor Publice a Județului Sibiu — Activitatea de Inspecție Fiscală

(Case C-312/13)

(2013/C 226/11)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicant: Claudiu Roșu

Defendant: Direcția Generală a Finanțelor Publice a Județului Sibiu — Activitatea de Inspecție Fiscală

Question referred

If a vendor has been reclassified as a taxable person for VAT purposes and the consideration for (price of) the supply of the immovable property has been determined by the parties, without any reference to VAT, must Articles 73 and 78 of Council Directive 2006/112/EC [1] be interpreted as meaning that the taxable amount is:

(a) the consideration for (price of) the supply of the property determined by the parties, less the rate of VAT, or

(b) the consideration for (price of) the supply of the property agreed by the parties?

[1] Council Directive 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 Curtea de Apel Alba Iulia (Romania) lodged on 7 June 2013 — Direcția Generală a Finanțelor Publice a Județului Sibiu — Activitatea de Inspecție Fiscală v Cătălin Ienciu

(Case C-313/13)

(2013/C 226/12)

Language of the case: Romanian

Referring court

Curtea de Apel Alba Iulia

Parties to the main proceedings

Applicant: Direcția Generală a Finanțelor Publice a Județului Sibiu — Activitatea de Inspecție Fiscală

Defendant: Cătălin Ienciu

Question referred

If a vendor has been reclassified as a taxable person for VAT purposes and the consideration for (price of) the supply of the immovable property has been determined by the parties, without any reference to VAT, must Articles 73 and 78 of Council Directive 2006/112/EC [1] be interpreted as meaning that the taxable amount is:

(a) the consideration for (price of) the supply of the property determined by the parties, less the rate of VAT, or

(b) the consideration for (price of) the supply of the property agreed by the parties?

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

Action brought on 7 June 2013 — European Parliament v Council of the European Union

(Case C-317/13)

(2013/C 226/13)

Language of the case: French

Parties

Applicant: European Parliament (represented by: F. Drexler, A. Caiola and M. Pencheva, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— annul Council Decision 2013/129/EU of 7 March 2013 on subjecting 4-methylamphetamine to control measures; [1]

— maintain the effects of Council Decision 2013/129/EU until it is replaced by a new measure adopted in the prescribed manner;

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

Pleas in law and main arguments

First of all, the Parliament points out that the preamble to the contested decision refers to the following legal bases: Article 8(3) of Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ([2]) and the Treaty on the Functioning of the European Union. The Parliament infers therefrom that the Council implicitly refers to Article 34(2)(c) of the previous Treaty on European Union.

The Parliament relies on two pleas in law in support of its action for annulment.

In the first place, the Parliament claims that the Council based its decision on a legal basis, Article 34(2)(c) EU, which was repealed when the Treaty of Lisbon entered into force. Accordingly, the contested decision is no longer based solely on Decision 2005/387/JHA. The latter constitutes a secondary legal basis and is thus unlawful.

In the second place, and in the light of the foregoing, the Parliament considers that the legislative process is vitiated by infringements of essential procedural requirements. First, if Article 34(2)(c) EU had been applicable, the Parliament should have been consulted before the adoption of the contested decision in accordance with Article 39(1) EU. However, the Parliament claims that that was not the case. Secondly, if it is held that the applicable provisions are those derived from the Treaty of Lisbon, the Parliament should have been involved in the legislative procedure on the basis of Article 83(1) TFEU. In either case, since the Parliament was not involved in the adoption of the contested decision, the latter is vitiated by an infringement of essential procedural requirements.

Finally, if the Court decides to annul the contested decision, the Parliament considers that it would be necessary, in accordance with the second paragraph of Article 264 TFEU, to maintain the effects of the contested decision until it is replaced by a new measure adopted in the prescribed manner.

([1]) OJ 2013 L 72, p. 11.
([2]) OJ 2005 L 172, p. 32.

Action brought on 12 June 2013 — European Commission v Republic of Poland

(Case C-320/13)

(2013/C 226/14)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch and K. Herrmann, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure compliance with Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, ([1]) and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 27(1) of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/28/EC at the daily rate of EUR 133 228,80 from the day on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The period for transposing Directive 2009/28/EC expired on 5 December 2010.

([1]) OJ 2009 L 140, p. 16.

Action brought on 11 June 2013 — European Commission v Kingdom of Belgium

(Case C-321/13)

(2013/C 226/15)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Hottiaux and N. Yerrell, acting as agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Commission Directive 2010/61/EU of 2 September 2010 adapting for the first time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress ([1]) and, in any event, by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under Article 2(1) of that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The period for transposing Commission Directive 2010/61/EU of 2 September 2010 expired on 30 June 2011.

([1]) OJ 2010 L 233, p. 27.

Request for a preliminary ruling from the Tribunale di Bolzano (Italy) lodged on 13 June 2013 — Ulrike Elfriede Grauel Rüffer v Katerina Pokorná

(Case C-322/13)

(2013/C 226/16)

Language of the case: German

Referring court

Tribunale di Bolzano

Parties to the main proceedings

Applicant: Ulrike Elfriede Grauel Rüffer

Defendant: Katerina Pokorná

Question referred

Whether the interpretation of Articles 18 and 21 TFEU precludes the application of provisions of national law, such as those in dispute here, which grant the right [to use] the German language in civil law proceedings pending before the courts in the province of Bolzano only to Italian citizens domiciled in the province of Bolzano, but not to nationals of other EU Member States, whether or not they are domiciled in the province of Bolzano.

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 17 June 2013 — Burgo Group SpA v Illochroma SA, in liquidation, Jérôme Theetten, acting as liquidator of Illochroma SA

(Case C-327/13)

(2013/C 226/17)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Appellant: Burgo Group SpA

Respondents: Illochroma SA, in liquidation, Jérôme Theetten, acting as liquidator of Illochroma SA

Questions referred

Must Council Regulation (EC) No 1346/2000 [of 29 May 2000] on insolvency proceedings ([1]) and, in particular, Articles 3, 16, 27, 28 and 29 thereof, be interpreted to the effect that:

(a) 'establishment', as referred to in Article 3(2), must be understood as referring to a branch of the debtor against which main insolvency proceedings have been opened and precludes, in the context of the concurrent winding-up of a number of companies belonging to a single group, secondary proceedings from being brought against those companies in the Member State in which their registered office is situated, on the ground that they possess legal personality?

(b) the person or authority empowered to request the opening of secondary proceedings must reside or have its registered office in the territory of the Member State of the court before which the action seeking the opening of secondary proceedings has been brought or must all European Union citizens have that right of action, provided that they can demonstrate a legal link to the establishment concerned?

(c) in so far as main insolvency proceedings are winding-up proceedings, the opening of secondary insolvency proceedings against an establishment is possible only if they meet the criteria as to appropriateness, which lie within the discretion of the court … before which the action seeking the opening of secondary proceedings has been brought?

([1]) OJ 2000 L 160, p. 1.

Request for a preliminary ruling from the Sozialgericht Leipzig (Germany) lodged on 19 June 2013 — Elisabeta Dano, Florin Dano v Jobcenter Leipzig

(Case C-333/13)

(2013/C 226/18)

Language of the case: German

Referring court

Sozialgericht Leipzig

Parties to the main proceedings

Applicants: Elisabeta Dano, Florin Dano

Defendant: Jobcenter Leipzig

Questions referred

1. Do persons who do not wish to claim payment of any benefits of social security law or family benefits under Article 3(1) of Regulation (EC) No 883/2004 ([1]) but rather special non-contributory benefits under Article 3(3) and Article 70 of the Regulation fall within the scope *ratione personae* of Article 4 of Regulation (EC) No 883/2004?

2. If Question 1 is answered in the affirmative: Are the Member States precluded by Article 4 of Regulation (EC) No 883/2004, in order to prevent an unreasonable recourse to non-contributory social security benefits under Article 70 of the Regulation which guarantee a level of subsistence, from excluding in full or in part European Union citizens in need from accessing those benefits which are provided to their own nationals who are in the same situation?

3. If Questions 1 or 2 are answered in the negative: Are the Member States precluded by a) Article 18 TFEU and/or b) Article 20(2)(a) TFEU in conjunction with the final sentence of Article 20(2) TFEU and Article 24(2) of Directive 2004/38/EC, ([2]) in order to prevent an unreasonable recourse to non-contributory social security benefits under Article 70 of Regulation (EC) No 883/2004 which guarantee a level of subsistence, from excluding in full or in part European Union citizens in need from accessing those benefits which are provided to their own nationals who are in the same situation?

4. If, according to the answers to the abovementioned questions, the partial exclusion of benefits which guarantee a level of subsistence complies with European Union law: May the provision of non-contributory benefits which guarantee a level of subsistence for European Union citizens, outside acute emergencies, be limited to the provision of the necessary funds to return to their home State or do Articles 1, 20 and 51 of the Charter of Fundamental rights require further payments which enable permanent residence?

([1]) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

([2]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

GENERAL COURT

Action brought on 15 May 2013 — Growth Energy and Renewable Fuels Association v Council

(Case T-276/13)

(2013/C 226/19)

Language of the case: English

Parties

Applicants: Growth Energy (Washington, United States), Renewable Fuels Association (Washington, United States) (represented by: P. Vander Schueren, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul Council Implementing Regulation (EU) No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America (OJ L 49 of 22.2.2013, p. 10), in so far as it affects the applicants and their members; and

— Order the Council to pay the costs of incurred by the applicants in relation to these proceedings.

Pleas in law and main arguments

In support of their action, the applicants rely on the following ten pleas in law.

1. First plea in law, alleging that the Commission acted contrary to the Basic Regulation, since it opted for a countrywide duty and refused to calculate an individual dumping duty, despite the fact that it had all the information it needed to do so. In this regard, the applicants note that the Commission committed a manifest error of assessment of the relevant facts, an error in law, failed to state reasons for its conclusions, breached its duty of care and violated the rights of defence as well as the principle of legal certainty and legitimate expectations of the applicants.

2. Second plea in law, alleging that the Commission's failure to adjust the export price when calculating the dumping margin, by not making an upward adjustment to export prices for blends of the blender concerned, constitutes a manifest error in the assessment of the relevant facts and an error in law.

3. Third plea in law, alleging that the Commission committed a manifest error of assessment of the relevant facts and infringed the Basic Regulation and the principle of non-discrimination by overestimating the volume of imports of bioethanol from the US and by not treating these imports in a similar way to third country imports of the same product.

4. Fourth plea in law, alleging that the Commission committed a manifest error of assessment and violated the Basic Regulation when performing injury margin calculations.

5. Fifth plea in law, alleging that the Commission committed manifest errors of assessment and infringed the Basic Regulation by basing its material injury determination on a Union industry that does not manufacture a like product and by defining the Union industry before defining the like product.

6. Sixth plea in law, alleging that the Contested Regulation is flawed as a result of manifest errors of assessment and errors of law since the material injury it provides for is determined on data pertaining to a non-representative sample of Union producers.

7. Seventh plea in law, alleging that the Commission committed a manifest error of assessment by concluding that other causes of material injury do not break the causal link between the targeted imports and alleged injury to the Union industry.

8. Eighth plea in law, alleging that the Council erred in law and violated the principle of proportionality by adopting a dumping measure which is not necessary.

9. Ninth plea in law, alleging that the Commission committed errors in law and breached the principles of sound administration and non-discrimination by considering that the investigation into US origin bioethanol was based on an adequate complaint, when the latter did not satisfy the requirements set by the Basic Regulation.

10. Tenth plea in law, alleging that the Commission committed multiple violations of the rights of defence of the applicants and failed to state reasons in the adoption of the Contested Regulation, given that the definitive disclosure on which it is based did not contain essential facts and considerations

for the adoption of the definitive measures. The Commission also changed the period of validity of the measures without stating reasons while it did not allow the applicants to access to the non-confidential file in a timely manner nor did it allow sufficient time for the applicants to submit comments on the definitive disclosure.

Action brought on 15 May 2013 — Marquis Energy v Council

(Case T-277/13)

(2013/C 226/20)

Language of the case: English

Parties

Applicant: Marquis Energy LLC (Hennepin, United States) (represented by: P. Vander Schueren, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 157/2013 of 18 February 2013 imposing a definitive anti-dumping duty on imports of bioethanol originating in the United States of America (OJ L 49 of 22.2.2013, p. 10), in so far as it affects the applicant; and

— Order the Council to pay the costs of incurred by the applicant in relation to these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission acted contrary to the Basic Regulation, since it opted for a countrywide duty and refused to calculate an individual dumping duty, despite the fact that it had all the information it needed to do so. In this regard, the applicants note that the Commission committed a manifest error of assessment of the relevant facts, an error in law, failed to state reasons for its conclusions, breached its duty of care and violated the rights of defence as well as the principle of legal certainty and legitimate expectations of the applicant.

2. Second plea in law, alleging that the Commission's failure to adjust the export price when calculating the dumping margin, by not making an upward adjustment to export prices for blends of the blender concerned, constitutes a manifest error in the assessment of the relevant facts and an error in law.

3. Third plea in law, alleging that the Commission committed a manifest error of assessment of the relevant facts and infringed the Basic Regulation and the principle of non-discrimination by overestimating the volume of imports of bioethanol from the US and by not treating these imports in a similar way to third country imports of the same product.

4. Fourth plea in law, alleging that the Commission committed a manifest error of assessment and violated the Basic Regulation when performing injury margin calculations.

5. Fifth plea in law, alleging that the Commission committed manifest errors of assessment and infringed the Basic Regulation by basing its material injury determination on a Union industry that does not manufacture a like product and by defining the Union industry before defining the like product.

6. Sixth plea in law, alleging that the Contested Regulation is flawed as a result of manifest errors of assessment and errors of law since the material injury it provides for is determined on data pertaining to a non-representative sample of Union producers.

7. Seventh plea in law, alleging that the Commission committed a manifest error of assessment by concluding that other causes of material injury do not break the causal link between the targeted imports and alleged injury to the Union industry.

8. Eighth plea in law, alleging that the Council erred in law and violated the principle of proportionality by adopting a dumping measure which is not necessary.

9. Ninth plea in law, alleging that the Commission committed errors in law and breached the principles of sound administration and non-discrimination by considering that the investigation into US origin bioethanol was based on an adequate complaint, when the latter did not satisfy the requirements set by the Basic Regulation.

10. Tenth plea in law, alleging that the Commission committed multiple violations of the rights of defence of the applicant and failed to state reasons in the adoption of the Contested Regulation, given that the definitive disclosure on which it is based did not contain essential facts and considerations for the adoption of the definitive measures. The Commission also changed the period of validity of the measures without stating reasons while it did not allow the applicant to access to the non-confidential file in a timely manner nor did it allow sufficient time for the applicant to submit comments on the definitive disclosure.

Action brought on 24 May 2013 — Ledra Advertising v Commission and ECB

(Case T-289/13)

(2013/C 226/21)

Language of the case: English

Parties

Applicant: Ledra Advertising Ltd (Nicosia, Cyprus) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicant claims that the Court should:

— Order compensation in the sum of EUR 958 920,00 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 11 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' ([1]) because:

   — The said rule of law is superior because it is a law contained the Charter and the ECHR;

   — By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

   — Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 11 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

   — At the time the applicant was deprived of its bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

   — The applicant was deprived of its deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

   — Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' ([2]);

   — The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

   — The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

— There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicant's deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicant to be deprived of its bank deposits because, but for the flagrant infringement, the applicant's bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicant's loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to the applicant on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicant's bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

([1]) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975

([2]) Article 52(1) of the Charter

Action brought on 24 May 2013 — CMBG v Commission and ECB

(Case T-290/13)

(2013/C 226/22)

Language of the case: English

Parties

Applicant: CMBG Ltd (Tortola, British Virgin Islands) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicant claims that the Court should:

— Order compensation in the sum of EUR 1 999 121,60 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' ([1]) because:

— The said rule of law is superior because it is a law contained the Charter and the ECHR;

— By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

— Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

   — At the time the applicant was deprived of its bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

   — The applicant was deprived of its deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

   — Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' ([2]);

   — The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

   — The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

   — There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicant's deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicant to be deprived of its bank deposits because, but for the flagrant infringement, the applicant's bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicant's loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to the applicant on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicant's bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

([1]) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975

([2]) Article 52(1) of the Charter

Action brought on 24 May 2013 — Eleftheriou and Papachristofi v Commission and ECB

(Case T-291/13)

(2013/C 226/23)

Language of the case: English

Parties

Applicants: Andreas Eleftheriou (Dherynia, Cyprus); Eleni Eleftheriou (Dherynia); and Lilia Papachristofi (Dherynia) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicants claim that the Court should:

— Order compensation in the sum of £ 347 520,68 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' ([1]) because:

   — The said rule of law is superior because it is a law contained the Charter and the ECHR;

   — By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

   — Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

   — At the time the applicants were deprived of their bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

   — The applicants were deprived of their deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

   — Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' ([2]);

   — The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

   — The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

   — There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicants' deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicants to be deprived of their bank deposits because, but for the flagrant infringement, the applicants' bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicants' loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to each of the applicants on the grounds that the relevant conditions and the manner of their implementation

infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicants bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

(1) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975
(2) Article 52(1) of the Charter

Action brought on 24 May 2013 — Evangelou v Commission and ECB

(Case T-292/13)

(2013/C 226/24)

Language of the case: English

Parties

Applicants: Christos Evangelou (Derynia, Cyprus); and Yvonne Evangelou (Derynia) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendant: European Central Bank and European Commission

Form of order sought

The applicants claim that the Court should:

— Order compensation in the sum of EUR 1 552 110,64 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' (1) because:

   — The said rule of law is superior because it is a law contained the Charter and the ECHR;

   — By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

   — Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

   — At the time the applicants were deprived of their bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

   — The applicants were deprived of their deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

   — Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' (2);

   — The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

— The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

— There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicants' deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicants to be deprived of their bank deposits because, but for the flagrant infringement, the applicants' bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicants' loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to each of the applicants on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicants' bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

(1) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975

(2) Article 52(1) of the Charter

Action brought on 24 May 2013 — Theophilou v Commission and ECB

(Case T-293/13)

(2013/C 226/25)

Language of the case: English

Parties

Applicants: Christos Theophilou (Nicosia, Cyprus); and Eleni Theophilou (Nicosia) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendants: European Central Bank and European Commission

Form of order sought

The applicants claim that the Court should:

— Order compensation in the sum of EUR 1 583 479,00 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' (1) because:

— The said rule of law is superior because it is a law contained the Charter and the ECHR;

— By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

— Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

— At the time the applicants were deprived of their bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

— The applicants were deprived of their deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

— Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' ([2]);

— The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

— The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

— There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicants' deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicants to be deprived of their bank deposits because, but for the flagrant infringement, the applicants' bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicants' loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to each of the applicants on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicants' bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

([1]) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975

([2]) Article 52(1) of the Charter

Action brought on 27 May 2013 — Fialtor v Commission and ECB

(Case T-294/13)

(2013/C 226/26)

Language of the case: English

Parties

Applicant: Fialtor Ltd (Belize, Belize) (represented by: C. Paschalides, Solicitor, and A. Paschalides, lawyer)

Defendant: European Central Bank, European Commission

Form of order sought

The applicant claims that the Court should:

— Order compensation in the sum of EUR 278 925,79 on the basis that the conditions required under the Memorandum of Understanding of 26 April 2013 between Cyprus and the Defendants at paragraphs 1.23 to 1.27 were pregnant with requirements in flagrant violation of a superior law for the protection of the individual, namely: article 17 of the Charter of Fundamental Rights of the European Union and article 1 of Protocol 1 of the European Convention of Human Rights;

— Declare the relevant conditions void and order an urgent review of the financial assistance instruments under article 14 to 18 of the Treaty establishing the European Stability Mechanism ('ESM Treaty') pursuant to Article 19 in light of the court's judgment with a view to changes in order to comply with the judgment of the court; and

— To the extent that compensation under the first head of claim does not cater for the fact that the relevant conditions would stand annulled, an order for compensation for breach of article 263 TFEU.

Pleas in law and main arguments

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

1. First plea in law, alleging that the relevant conditions in the Memorandum of Understanding were pregnant with requirements that were 'in flagrant violation of a superior rule of law for the protection of the individual' ([1]) because:

   — The said rule of law is superior because it is a law contained the Charter and the ECHR;

   — By Article 51(1) of the Charter and 6.2 TEU the defendants are obliged to respect and uphold fundamental rights guaranteed by the Charter and the ECHR; and

   — Bank deposits are property within the meaning of the said article 17 of the Charter and article 1 of Protocol 1 of the ECHR.

2. Second plea in law, alleging that the violations below taken together were so extensive as to amount to a flagrant violation of a superior law, as follows:

   — At the time the applicant was deprived of its bank deposits there were no 'conditions provided for by law' in place in the *acquis* dealing with deprivation of bank deposits contrary to the Charter and Protocol;

   — The applicant was deprived of their deposits without 'fair compensation being paid in good time' contrary to article 17 of the Charter and article 1 of the Protocol;

   — Deprivation of deposits is *prima facie* unlawful unless 'subject to the principle of proportionality… it is necessary and genuinely meets objectives of general interest recognised by the EU or the need to protect the rights and freedoms of others.' ([2]);

   — The competing public interest in preventing panic and a run on the banking system, short and medium term, was not considered in evaluating the public interest under Article 17 of the Charter and Article 1 of the Protocol;

   — The aim was not to damage or penalise Cyprus but to benefit it and the euro area by providing stability support and thereby alleviating not destabilising its financial institutions and economic viability; and

   — There was no relationship of proportionality of the interference to a legitimate aim since by Article 3 of the ESM Treaty 2012 the genuine objective was 'to mobilise funding and provide stability support under strict conditionality… to the benefit of ESM Members which are experiencing or are threatened by severe financial problems, if indispensable to safeguard the euro area as a whole and of its member state' without paralysing its economy.

3. Third plea in law, alleging that deprivation of the applicant's deposits was not necessary or proportionate.

4. Fourth plea in law, alleging that in the result the defendants caused the applicant to be deprived of its bank deposits because, but for the flagrant infringement, the applicant's bank deposits would have been protected by their rights under the Charter and Protocol with the result that the applicant's loss was sufficiently direct and foreseeable.

5. Fifth plea in law, alleging that if the above submissions are well founded the relevant conditions fall to be declared void notwithstanding the relevant conditions were addressed to Cyprus, since they are of direct and individual concern to the applicant on the grounds that the relevant conditions and the manner of their implementation infringe the Treaty and/or a rule of law relating to its application and/or, to the extent that it is held that depriving the applicant's bank deposit undermined the rule of law contrary to Article 6.1 of the TEU, were a misuse of powers.

([1]) See the judgment of 2 December 1971 in Case 5/71 Zuckerfabrik Schoeppenstedt v Council (1971) ECR 975

([2]) Article 52(1) of the Charter

Action brought on 30 May 2013 — Adler Modemärkte v OHIM — Blufin (MARINE BLEU)

(Case T-296/13)

(2013/C 226/27)

Language in which the application was lodged: German

Parties

Applicant: Adler Modemärkte AG (Haibach, Germany) (represented by: J. Plate and R. Kaase, lawyers)

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

Other party to the proceedings before the Board of Appeal: Blufin SpA (Carpi, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 April 2013 in Case R 386/2012-2 due to incompatibility with Article 8(1)(b) of Regulation No 40/94 on the Community trade mark;

— Order OHIM to pay the costs including those incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark including the word elements 'MARINE BLEU' for goods in Class 25 — Community trade mark application No 6 637 193

Proprietor of the mark or sign cited in the opposition proceedings: Blufin SpA

Mark or sign cited in opposition: the word mark 'BLUMARINE' for goods in Class 25

Decision of the Opposition Division: the opposition was rejected

Decision of the Board of Appeal: the appeal was upheld and the application was rejected

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 40/94

Action brought on 28 May 2013 — Nordex Holding/OHIM — Fontana Food (Taverna)

(Case T-302/13)

(2013/C 226/28)

Language in which the application was lodged: English

Parties

Applicant: Nordex Holding A/S (Dronninglund, Denmark) (represented by: M. Kleis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Fontana Food AB (Tyresö, Sweden)

Form of order sought

The applicant claims that the Court should:

— Annul the First Board of Appeal's decision of 21 March 2013 in Case R 2608/2011-1;

— Annul the Cancellation Division's decision of 21 October 2011 No 4891 C, which preceded the adoption of the contested decision;

— Order the Office to pay the costs, including those incurred in the appeal proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark containing the word element 'Taverna'– Community trade mark registration No 5 466 909

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 of the request for a declaration of invalidity were those laid down in Articles 53(1)(a) and 8(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Declared the contested Community trade mark partially invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 53(1)(a) in conjunction with 8(1)(b) of Council Regulation No 207/2009.

Action brought on 5 June 2013 — Silicium España Laboratorios/OHIM — LLR-G5 (LLRG5)

(Case T-306/13)

(2013/C 226/29)

Language in which the application was lodged: English

Parties

Applicant: Silicium España Laboratorios, SL (Vila-Seca, Spain) (represented by: C. Sueiras Villalobos, lawyer)

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

Other party to the proceedings before the Board of Appeal: LLR-G5 Ltd (Castlebar, Ireland)

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 March 7, 2013 (Case R 383/2012-1), to the extent it declares Community trade mark No 3384625, 'LLRG5', invalid on the grounds that it was applied for in bad faith;

— Confirm the decision of the Cancellation Division of 20 December, 2011 in Case 4174 C;

— Order the OHIM to bear its own costs and Silicium's costs incurred in connection with these proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'LLRG5' — Community trade mark registration No 3 384 625

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 of the request for a declaration of invalidity were those laid down in Article 52(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Rejected the request for a declaration of invalidity

Decision of the Board of Appeal: Annulled the contested decision and declared the invalidity of the contested CTM

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

Action brought on 7 June 2013 — Repsol v OHIM — Argiles (ELECTROLINERA)

(Case T-308/13)

(2013/C 226/30)

Language in which the application was lodged: Spanish

Parties

Applicant: Repsol, SA (Madrid, Spain) (represented by: J. Devaureix and L. Montoya Terán, lawyers)

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

Other party to the proceedings before the Board of Appeal: Josep María Adell Argiles (Madrid, Spain)

Form of order sought

The applicant claims that the General Court should:

— annul and declare inapplicable the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 March 2013 in Case R 1565/2012-1 and, consequently, allow the registration of Community trade mark No 9 548 884 'ELECTROLINERA' for the goods in Classes 4, 37 and 39 in respect of which registration was refused in the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Applicant

Community trade mark concerned: Word mark 'ELECTROLINERA' for goods and services in Classes 4, 35, 37 and 39 — Community trade mark application No 9 548 884

Proprietor of the mark or sign cited in the opposition proceedings: Josep María Adell Argiles

Mark or sign cited in opposition: National word mark 'ELECTROLINERA' for goods in Classes 6, 9 and 12

Decision of the Opposition Division: Opposition rejected in part

Decision of the Board of Appeal: Appeal upheld in part, decision of the Opposition Division annulled in part and, therefore, more extensive refusal of the Community trade mark application

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

Action brought on 7 June 2013 — Enosi Mastichoparagogon/OHIM — Gaba International (ELMA)

(Case T-309/13)

(2013/C 226/31)

Language in which the application was lodged: English

Parties

Applicant: Enosi Mastichoparagogon Chiou (Chios, Greece) (represented by: A. Malamis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gaba International Holding AG (Hamburg, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of 26 March 2013, in Case R 1539/2012-4;

— Order the Office and other party (opponent before the Opposition Division and appellee before the OHIM's Board of Appeal) to bear their own costs and pay those of the CTM applicant (applicant for annulment).

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'ELMA' for goods in class 5 — International registration designating the European Community 900 845

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

Mark or sign cited in opposition: Community trade mark registration of the word mark 'ELMEX' for goods in classes 3, 5 and 21

Decision of the Opposition Division: Upheld 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 12 June 2013 — Portugal v Commission

(Case T-314/13)

(2013/C 226/32)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, M. Gorgão-Henriques and J. da Silva Sampaio, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Articles 1 and 2 of Commission Decision C(2013) 1870 final;

— declare that Regulation (EC) No 16/2003 [1] is not applicable in the present case, in particular Article 7 thereof, since it infringes essential procedural requirements and Regulation (EC) No 1164/94 [2] or, in any event, general principles of European Union law;

— declare that the European Commission is required to pay the outstanding balance;

— in the alternative:

(a) declare that the limitation period has expired in respect of the procedure for recovering sums already paid and the right to retain the outstanding balance;

(b) declare that the Commission is required to reduce the correction it made in relation to irregularities which could determine non-payment of the full outstanding balance and the recovery in full of payments made after 3 June 2003 but invoiced between June 2002 and February 2003;

— in any event, order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that Regulation (EC) No 16/2003 is unlawful, since it infringes essential procedural requirements and a higher-ranking legal norm

Regulation (EC) No 16/2003 is unlawful since it was not adopted by the College of Commissioners in accordance with the authorisation procedure or the written procedure, or any other simplified procedure in accordance with the Rules of Procedure of the Commission, ([3]) as in force at the time of adoption of Regulation (EC) No 16/2003, and did not comply with Article 18 of the Rules of Procedure of the Commission as in force on the date of adoption of that regulation, and in so far as the Commission failed to interpret Article 7 of that regulation in conformity with Regulation (EC) No 1164/94.

2. Second plea in law, alleging infringement of European norms on the eligibility of expenditure

The contested decision infringes legal norms implementing the Treaty, in particular in so far as concerns the question whether payments made after and during the beginning of the eligibility period, though invoiced prior to that period, constitute expenditure which is eligible for European financing.

3. Third ground of appeal, alleging infringement of the principles of legitimate expectations and legal certainty and the obligation on administrative bodies to observe their own acts

The European Commission has consistently interpreted the legislative norm in question in the way defended by the Portuguese Republic.

That interpretation came from authorised Commission sources, which was communicated to the Portuguese Republic as well as other Member States; the context thereof was clearly such that the Portuguese Republic could legitimately expect that the invoices received prior to, and paid after, receipt by the European Commission of the request for full payment were eligible.

The interpretation which the Commission now defends manifestly infringes the principle of legal certainty in that it imposes a substantial financial burden on the Portuguese Republic, even though that interpretation was neither certain nor foreseeable.

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

Although it is true that, in accordance with Article H of Annex II to Regulation (EC) No 1164/94, the European Commission is empowered to make financial corrections as its deems necessary, and which may imply full or partial annulment of the aid granted for the project, it must observe the principle of proportionality, taking account of the circumstances of the individual case, such as the type of irregularity and the possible financial impact of potential deficiencies in the management or monitoring systems. In that regard, it is incomprehensible why it was regarded necessary to cancel all of the aid granted, since corrections at a rate of 100 % apply only when the deficiencies in the management and monitoring systems are so significant, or the irregularity found is so serious, as to constitute a complete disregard of European Union law rendering all of the payments improper.

Difficulties in interpretation are a decisive attenuating circumstance which should always be taken into account by the European Commission. In the light of the circumstances described, less restrictive means exist — such as the application of a reduced rate or even no correction at all — to achieve the desired objective.

5. Fifth plea in law, in the alternative, alleging that the limitation period has expired

In any event, the limitation period in relation to expenditure predating 3 June 2003 has already expired, given that the last invoice was dated 28 February 2008, namely three months and two days earlier than the date at issue.

In accordance with Regulation (EC) No 2988/95 ([4]) of 18 December 1995, the limitation period for proceedings is four years as from the time when the irregularity was committed.

([1]) Commission Regulation (EC) No 16/2003 of 6 January 2003 laying down special detailed rules for implementing Council Regulation (EC) No 1164/94 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund (OJ 2003 L 2, p. 7).

([2]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).

([3]) OJ 2000 L 308, p. 26.

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

Action brought on 11 June 2013 — Pappalardo and Others v Commission

(Case T-316/13)

(2013/C 226/33)

Language of the case: Italian

Parties

Applicants: Salvatore Aniello Pappalardo (Cetara, Italy), Pescatori La Tonnara Soc. coop. (Cetara); Fedemar Srl (Cetara); Testa Giuseppe E C. Snc (Catania, Italy); Pescatori San Pietro Apostolo Srl (Cetara); Camplone Arnaldo & C. Snc di Camplone Arnaldo EC (Pescara, Italy); and Valentino Pesca Sas di Camplone Arnaldo & C. (Pescara) (represented by: V. Cannizzarro and L. Caroli, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the Commission is non-contractually liable for the damage caused by the adoption of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 W, and in the Mediterranean Sea, which was declared invalid by the Court of Justice in its judgment of 17 March 2011 in Case C-221/09; and

— as a result, order the European Commission to provide compensation in respect of the damage caused;

— order the European Commission to pay the costs.

Pleas in law and main arguments

The applicants in the present case claim that the non-contractual liability in question results from the fact that, by Regulation No 530/2008, the Commission had unlawfully prohibited vessels flying the flag of or registered in Greece, France, Italy, Cyprus and Malta from the fishing for bluefin tuna starting from 16 June 2008, even though a similar prohibition was imposed on vessels flying the flag of or registered in Spain only from 23 June 2008.

According to the applicants, in the present case, all the necessary requirements are met for the European institutions to be found liable as a result of their legislative activity: there is a serious breach of a rule protecting individuals; there is actual harm and there is a causal link between that conduct and the alleged damage.

They note, in that regard, that Regulation No 530/2008 has been declared wholly invalid by the Court of Justice for breaching the principle of non-discrimination and that, according to settled case-law, the breach of that principle is considered as one of the serious breaches of a superior rule of law which is designed to protect individuals.

Action brought on 13 June 2013 — Vita Phone v OHIM (LIFEDATA)

(Case T-318/13)

(2013/C 226/34)

Language of the case: German

Parties

Applicant: Vita Phone GmbH (Mannheim, Germany) (represented by P. Ruess and A. Doepner-Thiele, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 March 2013 in Case R 1072/2012-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'LIFEDATA' for goods and services in Classes 10 and 44 — Community trade mark application No 10 525 053

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law:

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

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 25 May 2013 — ZZ and Others v EIF

(Case F-51/13)

(2013/C 226/35)

Language of the case: French

Parties

Applicants: ZZ and Others (represented by: L. Levi, lawyer)

Defendant: European Investment Fund

Subject-matter and description of the proceedings

First, annulment of the decisions included in the salary slips for the month of February 2013, setting the annual adjustment of salaries at only 1.8 % for the year 2013 and annulment of subsequent salary slips. Second, the subsequent application to order the institution to pay damages for the material and non-material harm allegedly suffered.

Form of order sought

— Annul the decision contained in the applicants' salary slips for the month of February 2013, a decision setting the annual adjustment of salaries at only 1.8 % for the year 2013, and, therefore, annul the similar decisions contained in subsequent salary slips;

— order the defendant to pay compensation for the material damage (i) for the amount 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) for the amount of salary corresponding to the results of the application of the annual adjustment of 1.8 % for 2013 on the amount of salaries which will be paid as from January 2014; (iii) for default interest on the amount of salary due until complete payment of the amounts due, the applicable default interest rate to be calculated on the basis of the rate fixed by the European Central Bank for the principal refinancing transactions, applicable during the period concerned, plus three points; and (iv) for damages for the loss of purchasing power;

— order the defendant to pay each applicant EUR 1 000 by way of compensation for non-material harm;

— order the defendant to pay the costs.

Action brought on 2 June 2013 — ZZ v EIB

(Case F-55/13)

(2013/C 226/36)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: L. Isola, lawyer)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Application for annulment of the applicant's staff report for 2011 in so far as it does not classify his performance as 'exceptional' or 'very good' and does not propose that he be promoted to Function D and in so far as it sets his objectives for 2012, annulment of the guidelines for that staff report, and, lastly, an order that the EIB pay compensation for the material and non-material damage that the applicant claims he has sustained.

Form of order sought

— Annul: (a) the decision of 18 December 2012 in so far as the Appeals Committee, under Article 22 of the Staff Regulations and Note to Staff No 715 HR/P&O/2012-0103 of 29 March 2012, dismissed the appeal against the applicant's staff report for 2011; (b) the part of that staff report containing the appraisal, in so far as the applicant's performance is not summarised as 'Exceptional' or 'Very good' and in so far as no proposal is made to promote him to Function D, together with the part which sets his objectives for 2012; (c) all connected, consequent and prior measures, including the promotions referred to in the note from the Director of Human Resources '2011 staff appraisal exercise, award of promotions and titles' of May 2012, given that, in view of the appraisal made by the applicant's line managers and challenged in this action, the EIB failed to take him into consideration in the point 'Promotions from Function E to D';

— annul or refrain from applying the guidelines established by the Human Resources division in note No 709 RH/P&O/2011-0242 of 13 December 2011 and the

corresponding 'Guidelines to the 2011 annual staff appraisal exercise' of 14 December 2011, including the section in which they provide that the final evaluation must be expressed by means of a summary description but do not establish the criteria which must be used by the appraiser in order for performance to be regarded as 'exceptional — exceeding expectations', 'very good', or 'meeting all expectations';

— order the defendant to pay the costs and to pay compensation for the material and non-material damage.

Action brought on 21 June 2013 — ZZ v Commission

(Case F-57/13)

(2013/C 226/37)

Language of the case: French

Parties

Applicant: ZZ (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision fixing the bonus on the applicant's pension rights acquired before his entry into service at the Commission under the new GIP and of the decision rejecting his claim.

Form of order sought

— Annul the decision of 8 January 2013 calculating the bonus on the applicant's pension rights acquired before his entry into service at the Commission;

— In so far as it is necessary, annul the decision rejecting his claim of 12 March 2013 seeking the application of the GIP and actuarial rates in force at the time when he made his application to transfer his pension rights;

— Order the Commission to pay the costs.

EN

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN