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COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 245/01)

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OJ C 233, 10.8.2013

Past publications

OJ C 226, 3.8.2013

OJ C 215, 27.7.2013

OJ C 207, 20.7.2013

OJ C 189, 29.6.2013

OJ C 178, 22.6.2013

OJ C 171, 15.6.2013

These texts are available on:
EUR-Lex: <http://eur-lex.europa.eu>

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 4 July 2013 — European Commission v Aalberts Industries NV, Comap SA, formerly Aquatis France SAS, Simplex Armaturen + Fittings GmbH & Co. KG

(Case C-287/11 P) ⁽¹⁾

(Appeals — Agreements, decisions and concerted practices — European market — Copper and copper alloy fittings sector — Commission decision — Finding of an infringement of Article 101 TFEU — Fines — Single, complex and continuous infringement — Cessation of the infringement — Continuation of the infringement by certain participants — Repeated infringement)

(2013/C 245/02)

Language of the case: English

Parties

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

Other parties to the proceedings: Aalberts Industries NV, Comap SA, formerly Aquatis France SAS, Simplex Armaturen + Fittings GmbH & Co. KG (represented by: R. Wesseling, advocaat)

Re:

Appeal brought against the judgment delivered by the General Court (Eighth Chamber) on 24 March 2011 in Case T-385/06 *Aalberts Industries NV and Others v European Commission* by which the Court annulled, in part, Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings) in respect of a cartel involving price-fixing and agreement on discounts and rebates, the creation of mechanisms for coordinating price increases, allocation of customers and exchange of commercial information in the European market for copper and copper alloy fittings, and also, in the alternative, a reduction in the fine imposed on the applicants

Operative part of the judgment*The Court:*

1. Dismisses the appeal;
2. Declares that there is no need to examine the cross-appeal;

3. Orders the European Commission to pay the costs.

⁽¹⁾ OJ C 238, 13.8.2011.

Judgment of the Court (Fourth Chamber) of 4 July 2013 — European Commission v Italian Republic

(Case C-312/11) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Directive 2000/78/EC — Article 5 — Establishing a general framework for equal treatment in employment and occupation — Persons with disabilities — Insufficient implementing measures)

(2013/C 245/03)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: J. Enegren and C. Cattabriga, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, assisted by C. Gerardis, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to take, within the prescribed period, all the provisions necessary to comply with Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National legislation providing for the application of that article through various measures, the application of which is itself dependent on the currently purely theoretical adoption of further measures — Insufficient guarantees and adjustments

Operative part of the judgment*The Court:*

1. Declares that, by not introducing a requirement for all employers to make reasonable adjustments, where needed in a particular case, for all persons with disabilities, the Italian Republic has failed to fulfil its obligation to ensure the correct and full implementation of Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

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

(¹) OJ C 226, 30.7.2011.

Judgment of the Court (First Chamber) of 4 July 2013
(request for a preliminary ruling from the *Rechtbank van eerste aanleg te Antwerpen — Belgium*) — *Argenta Spaarbank NV v Belgische Staat*

(Case C-350/11) (¹)

(Tax legislation — Corporation tax — Deduction for risk capital — Notional interest — Reduction of the amount deductible by companies with establishments abroad the income from which is exempt under double taxation conventions)

(2013/C 245/04)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Argenta Spaarbank NV

Defendant: Belgische Staat

Re:

Request for a preliminary ruling — *Rechtbank van eerste aanleg te Antwerpen* — Interpretation of Article 49 TFEU — Tax legislation — Corporation tax — Deduction for risk capital ('notional interest') — Reduction of the amount deductible, for companies with establishments abroad the income from which is exempt under agreements to prevent double taxation conventions

Operative part of the judgment

Article 49 TFEU must be interpreted as precluding national legislation under which, for calculation of a deduction granted to a company subject to full tax liability in a Member State, the net value of the assets of a permanent establishment situated in another Member State is not taken into account when the profits of that permanent establishment are not taxable in the first Member State by virtue of a double taxation convention, whereas the assets attributed to a permanent establishment situated in the territory of the first Member State are taken into account for that purpose.

(¹) OJ C 282, 24.9.2011.

Judgment of the Court (Tenth Chamber) of 4 July 2013
(request for a preliminary ruling from the *Tribunale Amministrativo Regionale per il Piemonte — Italy*) — *Fastweb SpA v Azienda Sanitaria Locale di Alessandria*

(Case C-100/12) (¹)

(Public procurement — Directive 89/665/EEC — Public procurement review — Action brought by an unsuccessful tenderer for review of a decision awarding a contract — Action for review based on the ground that the bid selected did not meet the technical specifications for the contract — Counterclaim made by the successful tenderer alleging that certain technical specifications for the contract were not respected in the bid submitted by the tenderer seeking review — Neither of those bids in compliance with the technical specifications for the contract — National case-law requiring that the counterclaim be examined first and, where such a counterclaim proves well founded, that the main action be declared inadmissible without any consideration of its merits — Whether compatible with European Union law)

(2013/C 245/05)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: Fastweb SpA

Defendant: Azienda Sanitaria Locale di Alessandria

Intervening parties: Telecom Italia SpA, Path-Net SpA

Re:

Request for a preliminary ruling — *Tribunale Amministrativo Regionale per il Piemonte* — Interpretation of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Directive 2007/66/EC (OJ 2007 L 335, p. 31) — Principles of equal treatment, non-discrimination and protection of competition — Rule laid down in the national case-law under which the national court before which an action is brought for annulment of the act awarding a public procurement contract, as well as a counterclaim seeking to challenge the legitimacy of the participation in the tendering procedure of the unsuccessful tenderer (which is also the applicant in the main action), may rule on the merits of the main action only if the counterclaim proves to be unfounded — A restricted call for tenders, with only two tenderers, neither of which submitted a bid which was admissible

Operative part of the judgment

Article 1(3) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, must be interpreted to the effect that, if, in review proceedings, the successful tenderer — having won the contract and filed a counterclaim — raises a preliminary plea of inadmissibility on the grounds that the tenderer seeking review lacks standing to challenge the award because its bid should have been rejected by the contracting authority by reason of its non-conformity with the technical requirements under the tender specifications, that provision precludes that action for review from being declared inadmissible as a consequence of the examination of that preliminary plea in the absence of a finding as to whether those technical requirements are met both by the bid submitted by the successful tenderer, which won the contract, and by the bid submitted by the tenderer which brought the main action for review.

⁽¹⁾ OJ C 151, 26.5.2012.

Judgment of the Court (Fifth Chamber) of 4 July 2013 (request for a preliminary ruling from the Tribunale di La Spezia — Italy) — Simone Gardella v Istituto nazionale della previdenza sociale (INPS)

(Case C-233/12) ⁽¹⁾

(Transfer of pension rights acquired in a Member State — Articles 45 TFEU and 48 TFEU — National rules not allowing for the right to transfer to an international organisation having its head office in another Member State the capital value representing the retirement contributions paid to a national social security body — Aggregation rule)

(2013/C 245/06)

Language of the case: Italian

Referring court

Tribunale di La Spezia

Parties to the main proceedings

Applicant: Simone Gardella

Defendant: Istituto nazionale della previdenza sociale (INPS)

Re:

Request for a preliminary ruling — Tribunale di La Spezia — Interpretation of Articles 20, 45, 48 and 145 to 147 TFEU and of Article 15 of the Charter of Fundamental Rights of the European Union — Right to transfer a pension to another Member State — Employee of an international organisation

having its head office in another Member State — National rules not allowing for the right to transfer to the international organisation in question the retirement contributions paid to a national social security body — Refusal of the social security body in question to conclude an agreement allowing for such a transfer

Operative part of the judgment

Articles 45 TFEU and 48 TFEU must be interpreted as not precluding rules of a Member State which do not allow its nationals employed in an international organisation such as the European Patent Office, established in the territory of another Member State, to transfer to the social security scheme of that organisation the capital value representing the pension rights they have acquired previously in the territory of their Member State of origin, where there is no arrangement between that Member State and the international organisation providing for the possibility of such a transfer.

Where a mechanism for transferring the capital value representing the pension rights acquired previously in a Member State to the pension scheme of a new employer in another Member State cannot apply, Article 45 TFEU must be interpreted as precluding rules of a Member State which do not allow account to be taken of employment periods which a European Union national completed with an international organisation such as the European Patent Office, established in the territory of another Member State, for the purposes of conferring entitlement to an old-age pension.

⁽¹⁾ OJ C 217, 21.7.2012.

Appeal brought on 17 June 2013 by Peek & Cloppenburg KG against the judgment of the General Court (Fifth Chamber) delivered on 18 April 2013 in Case T-506/11 Peek & Cloppenburg KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-325/13 P)

(2013/C 245/07)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: P. Lange, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Peek & Cloppenburg KG (Hamburg, Germany)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 18 April 2013 in Case T-506/11;

— annul the decision of the First Board of Appeal of OHIM of 28 February 2011 in Case R 53/2005-1;

— order OHIM and Peek & Cloppenburg KG (Hamburg) to pay the costs.

Pleas in law and main arguments

The appellant pleads an infringement of Article 8(4) of Regulation No 207/2009 ⁽¹⁾ through misinterpretation of the criterion ‘confers ... the right to prohibit the use of a subsequent trade mark’.

Contrary to what the General Court held, it is not possible to proceed on the basis that the provision requires solely that the right asserted be of more than local significance. The criterion at issue is to be interpreted as limiting further the category of signs of more than local significance that can be relied upon in opposition. This interpretation is that the national right at issue must confer upon its proprietor the right to prohibit the use of a subsequent trade mark in the entire territory of the Member State in which the right originates.

This view is supported by the significance of the opposition procedure in respect of a Community trade mark application, by the provisions of Articles 110 and 111 of Regulation No 207/2009 and by the way in which the criterion in Article 4(4)(b) of Directive 2008/95/EC, ⁽²⁾ which is identical to that in Article 8(4) of Regulation No 207/2009, is understood.

The German legislature, interpreting Article 4(4)(b) of Directive 2008/95/EC correctly, transposed that provision into national law so as to mean that the right at issue must confer upon its proprietor the power to prohibit the use of a subsequent trade mark in the entire territory of the Federal Republic of Germany. The interpretation of the criterion ‘confers ... the right to prohibit the use of a subsequent trade mark’ is relevant to the dispute.

In the alternative, the appellant pleads an infringement of Article 8(4) of Regulation No 207/2009 through misinterpretation of the concept ‘of more than mere local significance’ by the General Court. It relies in this regard on the significance of the opposition procedure, on the purpose of limiting the category of national signs that can be relied upon in opposition, on the connection with the provisions of Articles 110 and 111 of Regulation No 207/2009, and on Article 4(4)(b) of Directive 2008/95/EC.

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

⁽²⁾ Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Appeal brought on 17 June 2013 by Peek & Cloppenburg KG against the judgment of the General Court (Fifth Chamber) delivered on 18 April 2013 in Case T-507/11 Peek & Cloppenburg v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-326/13 P)

(2013/C 245/08)

Language of the case: German

Parties

Appellant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: P. Lange, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Peek & Cloppenburg KG (Hamburg, Germany)

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 18 April 2013 in Case T-507/11;

— annul the decision of the First Board of Appeal of OHIM of 28 February 2011 in Case R 262/2005-1;

— order OHIM and Peek & Cloppenburg KG (Hamburg) to pay the costs.

Pleas in law and main arguments

The appellant pleads an infringement of Article 8(4) of Regulation No 207/2009 ⁽¹⁾ through misinterpretation of the criterion ‘confers ... the right to prohibit the use of a subsequent trade mark’.

Contrary to what the General Court held, it is not possible to proceed on the basis that the provision requires solely that the right asserted be of more than local significance. The criterion at issue is to be interpreted as limiting further the category of signs of more than local significance that can be relied upon in opposition. This interpretation is that the national right at issue must confer upon its proprietor the right to prohibit the use of a subsequent trade mark in the entire territory of the Member State in which the right originates.

This view is supported by the significance of the opposition procedure in respect of a Community trade mark application, by the provisions of Articles 110 and 111 of Regulation No 207/2009 and by the way in which the criterion in Article 4(4)(b) of Directive 2008/95/EC, ⁽²⁾ which is identical to that in Article 8(4) of Regulation No 207/2009, is understood.

The German legislature, interpreting Article 4(4)(b) of Directive 2008/95/EC correctly, transposed that provision into national law so as to mean that the right at issue must confer upon its proprietor the power to prohibit the use of a subsequent trade mark in the entire territory of the Federal Republic of Germany. The interpretation of the criterion ‘confers ... the right to prohibit the use of a subsequent trade mark’ is relevant to the dispute.

In the alternative, the appellant pleads an infringement of Article 8(4) of Regulation No 207/2009 through misinterpretation of the concept ‘of more than mere local significance’ by the General Court. It relies in this regard on the significance of the opposition procedure, on the purpose of limiting the category of national signs that can be relied upon in opposition, on the connection with the provisions of Articles 110 and 111 of Regulation No 207/2009, and on Article 4(4)(b) of Directive 2008/95/EC.

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

(²) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

Request for a preliminary ruling from the Administrativen sad — Burgas (Bulgaria), lodged on 18 June 2013 — Lukoil Neftohim Burgas AD v Nachalnik na Mitnicheski punkt ‘Pristanishte Burgas tsentar’ pri Mitnitsa Burgas

(Case C-330/13)

(2013/C 245/09)

Language of the case: Bulgarian

Referring court

Administrativen sad — Burgas

Parties to the main proceedings

Applicant: Lukoil Neftohim Burgas AD

Defendant: Nachalnik na Mitnicheski punkt ‘Pristanishte Burgas tsentar’ pri Mitnitsa Burgas

Questions referred

1. Is the method for determining the aromatic constituent [content] of products under Chapter 27 of the CN, set out in Annex A to the explanatory notes to Chapter 27 of the CN, inconsistent with the definition of aromatic constituents contained in the general rules on Chapter 27 of the HS? If so, how are those constituents to be determined and is the ASTM D 2007 method a suitable and appropriate means of doing so?
2. What is the meaning of the term ‘**non-aromatic constituents**’ used in the explanatory notes to Chapter 27 of the

CN, the explanatory notes to Chapter 27 of the HS and note 2 to Chapter 27 of the HS? Is the meaning of that term the same as that of the term ‘**non-aromatic hydrocarbons**’ or is it broader? If it is broader than the meaning of the latter term, does it include all constituents which, by reference to weight, are not covered by the term ‘aromatic constituents’, or does it refer to constituents of a product, such as the product at issue in the main proceedings, which, by reference to weight, do not fall under either of those two categories, that is to say ‘aromatic constituents’ or ‘non-aromatic constituents’?

3. Is it permissible for one and the same method to be used to determine both aromatic and non-aromatic constituent content for the purposes of Chapter 27 of the CN and Chapter 27 of the HS and, if so, which? If this is not permissible, which method must be used to determine the aromatic constituents and the non-aromatic constituents respectively?
4. Which of the two headings — 2707 or 2710 — of Chapter 27 of the CN most accurately describes a product with characteristics such as those of the product at issue in the main proceedings?
5. In the event that both headings describe with equal accuracy a product having characteristics such as those of the product at issue in the main proceedings, is it the fact that its weight is made up predominantly of aromatic constituents that gives the product its essential character?
6. Which of the two headings — 2707 or 2710 — covers products with properties which are most similar to the characteristics of the product at issue in the main proceedings?
7. Is there an inconsistency between part of the **CN explanatory notes to [sub]headings 2707 99 91 and 2707 99 99 and note 2 to Chapter 27 of the HS, or is that note not exhaustive and to be regarded as merely illustrative?**

In accordance with the CN explanatory notes to subheadings 2707 99 91 and 2707 99 99, ‘heavy oils (other than crude) obtained from the distillation of high-temperature coal tar’ are to be classified according to their characteristics in subheadings ‘... 2710 19 31 to 2710 19 99 ...’ if they do not fulfil the four cumulative conditions set out in the CN explanatory notes to the former subheadings.

Pursuant to note 2 to Chapter 27 of the HS, the description ‘petroleum oils and oils obtained from bituminous minerals’ in heading 2710 is to be understood as also including similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, **obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.**

8. Is there an inconsistency between the **CN explanatory notes to subheadings 2707 99 91 and 2707 99 99** (which assign products consisting primarily of aromatic constituents that do not fulfil all four conditions set out at (a) to (d) to subheadings 2710 19 31 to 2710 19 99) and **the explanatory notes to heading 2710 of the HS, Part I (B)**, to which the explanatory notes to Chapter 27 of the CN refer (and in accordance with which that heading does not cover oils in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents, irrespective of whether they were obtained by the processing of petroleum oil or by any other process)?
9. Which is the authentic text and what is the authentic meaning of the second sentence of the CN explanatory notes to subheadings 2707 99 91 and 2707 99 99, which, in Bulgarian, reads 'Между тези продукти могат да се упоменат' [literal translation: 'of these products mention may be made of'] and, in English, '[t]hese products [include]'?
10. How is a product with characteristics such as those of the product at issue in the main proceedings to be classified if the weight of the aromatic constituents in that product exceeds that of the non-aromatic constituents, but the product does not fulfil all four cumulative conditions set out in the first point of the explanatory notes to subheadings 2707 99 91 and 2707 99 99 of the CN?
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GENERAL COURT

Judgment of the General Court of 9 July 2013 — Arango Jaramillo and Others v EIB(Case T-234/11 P-RENV-RX) ⁽¹⁾*(Appeal — Civil service — Staff of the EIB — Review of the judgment of the General Court — Action at first instance dismissed as inadmissible — Pensions — Increase in the contribution to the pension scheme — Time-limit for bringing proceedings — Reasonable period)*

(2013/C 245/10)

Language of the case: French

Parties

Appellants: Oscar Orlando Arango Jaramillo (Luxembourg, Luxembourg) and the 34 other appellants whose names are set out in the annex to the judgment (represented by: B. Cortese and C. Cortese, lawyers)

Other party to the proceedings: European Investment Bank (EIB) (represented by: C. Gómez de la Cruz and T. Gilliams, acting as Agents, and by P.-E. Partsch, lawyer)

Re:

Appeal against the order of the European Union Civil Service Tribunal (First Chamber) of 4 February 2011 in Case F-34/10 *Arango Jaramillo and Others v EIB* [2011] ECR-SC I-A-1-0000 and II-A-1-0000, seeking to have that order set aside.

Operative part of the judgment*The Court:*

1. Sets aside the order of the European Union Civil Service Tribunal (First Chamber) of 4 February 2011 in Case F-34/10 *Arango Jaramillo and Others v EIB*;
2. Refers the case back to the Civil Service Tribunal;
3. Reserves the costs.

⁽¹⁾ OJ C 211, 16.7.2011.**Judgment of the General Court of 9 July 2013 — Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro v Commission**(Case T-552/11) ⁽¹⁾*(Action for annulment — Contract concerning financial assistance of the European Union for a project in the field of medical collaboration — Debit note — Contractual nature of the dispute — Measure not reviewable — Inadmissibility — Counterclaim for payment)*

(2013/C 245/11)

Language of the case: Greek

Parties

Applicant: Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro AE (Athens, Greece) (represented by: E. Tzannini, lawyer)

Defendant: European Commission (represented by: M. Condou-Durande and S. Lejeune, Agents, and E. Petrtsi, lawyer)

Re:

Action for annulment of a debit note issued by the Commission on 9 September 2011 in order to recover the sum of EUR 83 001,09 paid to the applicant in the context of financial assistance for a project and, on the other hand, a counterclaim seeking an order requiring the applicant to pay that sum together with interest.

Operative part of the judgment*The Court:*

1. Dismisses the action for annulment as inadmissible;
2. Orders Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro AE to pay the European Commission EUR 83 001,09 by way of principal sum and EUR 11,37 per day in respect of default interest falling due from 25 October 2011 until discharge of the principal debt;
3. Orders Lito Maieftiko Ginaikologiko kai Khirurgiko Kentro to pay the costs, including those relating to the proceedings for interim measures.

⁽¹⁾ OJ C 6, 7.1.2012.

Judgment of the General Court of 10 July 2013 — Kreyenberg v OHIM — Commission (MEMBER OF € euro experts)

(Case T-3/12) ⁽¹⁾

(Community trade mark — Invalidity proceedings — Figurative Community trade mark MEMBER OF € euro experts — Absolute ground for refusal — Symbols of the European Union and its spheres of activity — Euro symbol — Article 7(1)(i) of Regulation (EC) No 207/2009)

(2013/C 245/12)

Language of the case: German

Parties

Applicant: Heinrich Kreyenberg (Ratingen, Germany) (represented by: J. Krenzler, lawyer)

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

Other party to the proceedings before the Board of Appeal: European Commission

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 5 October 2011 (Case R 1804/2010-2) concerning invalidity proceedings between the European Commission and Mr Heinrich Kreyenberg.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Mr Heinrich Kreyenberg to bear his own costs and to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

⁽¹⁾ OJ C 65, 3.3.2012.

Appeal brought on 31 May 2013 by van der Aat and Others against the judgment of the Civil Service Tribunal of 21 March 2013 in Case F-111/11, van der Aat and Others v Commission

(Case T-304/13 P)

(2013/C 245/13)

Language of the case: French

Parties

Appellants: Chris van der Aat (Besozzo, Italy), Kamel Abbas (Besozzo), Roberto Accorsi (Ispra, Italy), Fredric Achard (Masciago Primo, Italy), Tuomas Aitasalo (Travedona Monate, Italy), Robert Alabrese (Cuvio, Italy), Daniel Albrecht (Comabbio, Italy), Stefano Alessandrini (Cittiglio, Italy), Marlene Alvarez Alvarez (Besozzo), Salvatore Amato (Lavagna, Italy), Angiola Amore (Angera, Italy), Giuseppe Amoruso (Besozzo), Michel Amsellem (Sangiano, Italy), Fivos Andritsos (Gavirate, Italy), Alessandro Annoni (Laveno, Italy), Massimo Anselmi

(Sesto Calende, Italy), Carlo Antoniotti (Orino, Italy), Aldo Ardia (Besozzo), Fernando Arroja (Varese, Italy), Karin Aschberger (Ranco, Italy), Andreas Aschberger (Ranco), Heikki Aulamo (Besozzo), Davide Auteri (Varese), Roberto Babich (Gavirate), Valentino Bada (Ispra), Vagn Bak-Mikkelsen (Angera), Simone Bano (Mornago, Italy), Joaquin Baraibar (Ispra), Vittorio Barale (Vercelli, Italy), Stefano Baranzini (Angera), Thomas Barbas (Varese), Caterina Barbera (Laveno), Marco Barbero (Verbania, Italy), Paulo Barbosa (Ispra), Elena Bardelli (Monvalle, Italy), Renzo Bardelli (Besozzo), Jose Ignacio Barredo Cano (Ispra), Marco Basso (Varano Borghi, Italy), Maurizio Bavetta (Cadrezzate, Italy), Claudio Belis (Ispra), Carlo Bellora (Milan, Italy), Alan Belward (Cittiglio), Zita Bemova (Taino, Italy), Enrico Ben (Varese), Jose Bento Valente (Varese), Claudio Bergonzi (Angera), Walter Bertato (Taino), Paolo Bertoldi (Varese), Luciana Bervoets Rossini (Angera), Emanuela Besozzi Pedroncin (Taino), Rene Beuchle (Ispra), Massimo Bianchi (Marnate, Italy), Pierangelo Biavaschi (Brescia, Italy), Giovanni Bidoglio (Somma Lombardo, Italy), James William Bishop (Taino), Herve Blanchard (Ispra), Ornella Blo (Casciago, Italy), Fabio Bocci (San Giuliano Terme, Italy), Giuseppe Bof (Ispra), Ottavio Bolchini (Varese), Silvia Bombardone (Verbania), Renato Bonaldo (Ispra), Fabrizio Bonato (Ispra), Laura Bonfini (Sesto Calende), Chiara Boni (Porto Valtravaglia, Italy), Isabelle Borgotti (Ispra), Gilles Bories (Masciago Primo), Ann-Charlotte Boström (Cadrezzate), Pernille Brandt (Besozzo), Olivier Breas (Ranco), Norbert Brinkhof (Besozzo), Norbert Brinkhoff-Button (Ranco), Marco Broglia (Cernusco sul Naviglio, Italy), Davide Brunella (Varese), Bruno Brunori (Besozzo), Roberto Brunotti (Ispra), Philippe Buchet (Biandronno, Italy), Barbara Bulgarelli (Taino), Armin Burger (Brescia), Janice Cake (Malgesso, Italy), Philip Cake (Malgesso), Francesco Calcerano (Brescia), Erika Caldarozzi (Laveno Mombello, Italy), Maria Paula Caldeira Guimaraes (Luviniate, Italy), Luisa Cali (Ispra), Luigi Calzolari (Gavirate), Cecilia Campo (Brescia), Jose Cancelinha (Varese), Daniela Cancellieri (Besozzo), Pierluigi Canevari (Brescia), Elisabetta Canuti (Caravate, Italy), Natale Cao (Ispra), Valerio Capelli (Angera), Philippe Caperan (Ranco), Guiseppina Carabellò (Varese), Manuela Carcano (Besozzo), Giancarlo Carnielli (Gavirate), Massimo Carriero (Ranco), Eda Carriero (Cadrezzate), Folco Casadei (Barasso, Italy), Juan Casado Poblador (Varano Borghi), Silvia Casati (Angera), Anna Casè (Angera), Roberto Cattalini (Cadrezzate), Fabrizia Cavalli (Angera), Mauro Caviglia (Sesto Calende), Mario Centurelli (Travedona Monate), Alessandra Cerutti (Laveno Mombello), Jean-Marc Chareau (Monvalle), Diana Charels (Cocquio Trisvago, Italy), Fiorella Chennaux (Ranco), Michael Cherlet (Leggiano, Italy), Frans M. Christensen (Taino), Laura Ciafre' (Monvalle), Ewa Ciesielska (Ispra), Francis Clement (Leggiano), Sandra Coecke (Varese), Giacomo Cojazzi (Ispra), Angelo Collotta (Ispra), Ambrogio Colombo (Lonate Pozzolo, Italy), Rinaldo Colombo (Angera, Italy), Michele Conti (Angera), Valeria Contini (Cadrezzate), Maida Contini (Leggiano), Stephane Cordeil (Besozzo), Johannes Bonefatus Comelissen (Cerro di Laveno, Italy), Raffaella Corvi (Varese), Loredana Costantini-Barresi (Besozzo), Philip Costeloe (Varese), Giulio Cotogno (Rovellasca, Italy), Constantin Coutsomitros (Ranco), Raymond Crandon (Monvalle), Marino Crivelli (Gavirate), Yves Robert Crutzen (Ranco), Una Cullinan (Malgesso), Leopoldo Da Silva Pestana (Ispra), Felice Dal Bosco (Leggiano), Carla Dal Molin D'Alessio (Orino), Francesco D'Alberti (Brescia), Gianfranco De Grandi (Ispra), Johannes De Lange (Bardello, Italy), Arie De Roo (Besozzo), Gaetano De Vita (Ispra), Gerhard De Vries (Ispra), Luc Dechamp (Monvalle), Massimo Della Rossa (Besozzo), Alessandro Dell'Acqua (Carnago, Italy), Franciscus Dentener (Caravate), Marc Detry

(Brescia), Claudio Devisoni (Ispra), Wim Devos (Castelvecchio, Italy), Lorenzo Di Cesare (Monvalle), Fabiana Di Fabio (Cocquio Trevisago), Michele Di Franco (Palermo, Italy), Pietro Di Maggio (Ispra), Luisa Diez (Ispra), Hendrik Doerner (Varese), Soledad Dominguez (Travedona Monate), Tijmen Doppenberg (Besozzo), Fernando Manuel Dos Santos Marques (Ispra), Kevin Douglas (Brescia), Pascal Dransart (Ispra), Ioannis Drossinos (Azzio, Italy), Jean-Noël Druon (Cadrezzate), Matthew Duane (Angera), Gregoire Dubois (Angera), Janja Dugar (Leggiano), Thierry Dujardin (Osmate, Italy), Ewan Duncan Dunlop, Vergiate (Ispra), Torbjon Dyingeland (Malgesso), Zdzislaw Dzbikowicz (Taino), Alexander Nicolaas Ebbeling (Monvalle), Patrizia Ebbeling Cerreoni (Monvalle), Andrée Ebser (Porto Valtravaglia), Robert Edwards (Ispra), Adriaan Eeckels (Bardello), Daniele Ehrlich (Malborghetto, Italy), Filippo Elio (Gavirate), Federico Ereno (Osmate), José Esteves (Varese), Luciano Fabbri (Piolto, Italy), Natale Faedda (Ispra), Henrique Fattori (Gavirate), Carlo Ferigato (Baveno, Italy), Fernando Fernandez Espinosa (Ispra), Manuel Ferreira (Laveno Mombello), Michael Field (Besozzo), Jorge Manuel Figueiredo Morgado (Varese), Roberto Fioravazzi (Ispra), Luca Fiore (Varese), Gianluca Fiore (Varese), Christian Folco (Ranco), Claudio Fontanella (Besozzo), Vittorio Forcina (Ranco), Marie-Christine Forment (Bregano, Italy), Fausto Forni (Brescia), Marina Forte, (Varese), Patrizia Forti (Malgesso), Susanne Fortunato (Besozzo), Romuald Franielczyk (Ispra), Alberto Franzetti (Taino), Fabio Fratino (Besozzo), Marco Luca Frattini (Varese), Santino Frison (Taino), Claudia Fuccillova (Bregano), Karen Fullerton (Sangiano), Salvatore Furfaro (Taino), Alberto Fusari (Malgesso), Nathalie Galfre' Dumont (Varese), Roberto Galleano (Besozzo), Francisco Javier Gallego Pinilla (Laveno-Mombello, Italy), Ana Gallego Romero (Barasso), Paola Galmarini (Tradate, Italy), Stefano Galmarini (Porto Valtravaglia), Marco Galparoli (Tradate), Anabela Galvao Saraiva (Ranco), Gino Gangale (Caravate), Maurizio Garbin (Comignago, Italy), Garcia Luis Garcia Centeno (Ispra), Teofilo Garcia Domingo (Varese), Maurizio Gastaldello (Casciago), Simone Gatti (Milan), Bernd Manfred Gawlik (Sarrebruck, Germany), Marco Gemelli (Massino Visconti, Italy), Cristina Gemo (Varese), Tommaso Genovese (Cocquio Trevisago), Michel Gerboles (Gavirate), Stefania Gerli (Comerio, Italy), Eugenio Gervasini (Varese), Alessia Ghezzi (Varese), Michela Ghiani (Laveno M., Italy), Georgios Giannopoulos (Taino), Peter Neil Gibson (Ispra), Sabrina Giora (Veruno, Italy), Raimondo Giuliani (Bologna, Italy), Davide Giussani (Leggiano), Marusca Gnechi (Gavirate), Joao Gonçalves (Orino), Eddy Gorts (Varese), Caterina Gozzi (Ranco), Jean-Marie Gregoire (Besozzo), Claudius Griesinger (Orino), Carsten Gruenig (Leggiano), Claude Guillou (Ispra), Jean-Philippe Guisset (Comerio), Laurence Guy-Mikkelsen (Angera), Maria Elizabeth Halder (Besozzo), Stamatia Halkia (Varese), George Ranke (Ranco), Philippe Hannaert (Cittiglio), Isabelle Hariga (Brescia), Carina Henriksson (Vernazza, Italy), Pierette Henset Chambefort (Besozzo), Francisco Javier Hervas de Diego (Ispra), Michel Hick (Besozzo), Jens Liengard Hjorth (Laveno Mombello), Eddo J. Hoekstra (Leggiano), Johann Hofberr (Laveno Mombello), Marc Charles Hohenadel (Azzate, Italy), Uwe Holzwarth (Taino), Wijbe Horstmann (Ispra), Tania Huber (Cadrezzate), Philippe Hubert (Besozzo), Bogdan Ionescu (Reno di Leggiano), Henrique Jaecques (Ranco), Kathleen James (Angera), Annett Janunsch Roi (Laveno Mombello), Dominique Jassogne (Angera), Niels Roland Jensen (Ispra), Francesco Joudioux (Varese), Ilmo Kalkas (Cadrezzate), Kristina Kalkas (Cadrezzate), Ioannis Kannelopoulos (Besozzo), Simon Kay (Besozzo), Robert Kenny (Cittiglio), Hervé Kerdiles (Monvalle), Raoul Kiefer (Varese), Françoise Kievits (Luvinate), Agnieszka Kinsner Ovaskainen (Travedona Monate), Manfred Kohl (Cadrezzate), Jan Kozempel (Uhersky Brod, Czech Republic), Elisabeth

Krausmann (Angera), Pascal Kupper (Brescia), Jurgita Kurganiene (Ispra), Donato Lacerenza (Ternate, Italy), Salvatore Laganga (Ispra), Friedrich Lagler (Besozzo), Izabella Lahodinsky (Leggiano), Gaston Francisco Lanappe (Varese), Ingrid Langezaal (Orino), Eric Yann Lazarus (Ispra), Peter Lazzari (Laveno Mombello), Philippe Le Lijour (Leggiano), Bernadette Legros (Taino), Massimo L'Episcopo (Ispra), Dominique Leriche (Laveno Mombello), Dominique Lesueur (Varese), An Lievens (Brescia), Amin Lievens (Angera), Jacobus Lighthart (Luino, Italy), Jens Patrick Linge (Gavirate), Giovanni Locoro (Lonate Ceppino, Italy), Per Andreas Loekkemyhr (Brescia), Giovanna Lombardo (Besozzo), Robert Loos (Laveno Mombello), Maciej Lopatka (Angera), Francisco Lopes (Brescia), Manuel Lozano (Sesto Calende), Luigi Lunardi Bizzarri (Bregano), Shirley Lutz (Ispra), Egidio Macavero (Ispra), Giovanni Macchi (Gavirate), Girolamo Maddi (Laveno Mombello), Carmela Maddi Brunoni (Malgesso), Georges Magonette (Besozzo), Vincent Mahieu (Brussels, Belgium), Giuseppe Angelo Mainardi (Brevello Carpuigno, Italy), Sergio Mainetti (Ispra), Francesca Malgaroli (Paruzzaro, Italy), Rosemarie Marabelli (Gavirate), Barbara Marchetti (Brenta, Italy), Giulio Mariani (Ispra), Alessandro Marotta (Varese), Sebastiao Martins Dos Santos (Cittiglio), Osvaldo Mattana (Lavena Ponte Tresa, Italy), Philippe Mayaux (Laveno, Italy), Matteo Mazzucato (Legnano, Italy), Wolfgang Mehl (Angera), Frederic Melin (Taino), Katia Menegon (Montebelluna, Italy), Giovanni Mercurio (Varese), Eva Merglova (Laveno Mombello), Giuseppe Merlo (Cerretto Langhe, Italy), Fabio Micale (Ispra), Roberto Migliani (Monvalle), Anne Milcamps (Gavirate), Pascal Millan (Varese), Michel Millot (Orino), G. Franco Minchillo (Varese), Apollonia Miola (Varese), Silvana Mistri (Brescia), Javier Molina Ruiz (Osmate), Umberto Montaretto Marullo (Castel Rozzone, Italy), François Montigny (Barasso), Giuseppe Morelli (Besozzo), Sergio Mota (Ispra), Paolo Mozzaglia (Ranco), Friedrich Muehlbauer (Varese), Harald Muellejans (Induno Olona, Italy), Sharon Munn (Besozzo), Rino Tiziano Nangeroni (Malgesso), Luciano Nannucci (Ranco), Vito Nardo (Angera), Fabrizio Natale (Gavirate), Paul Nauwelaers (Casciago), Remedios Navas Castro (Cocquio Trevisago), Paolo Negro (Sesto Calende), Francesca Neviani (Varese), Nicholas Charles Nicholson (Laveno Mombello), Birgit Nickel (Monvalle), George Nicol (Cuvio), Tonny Nielsson (Taino), Hans Nieman (Brescia), Ole Norager (Laveno Mombello), Jean-Pierre Nordvik (Cocquio Trevisago), Francesco Noseda (Leggiano), Gianni Novello (Cominago, Italy), Leo Nykjaer (Laveno Mombello), Franco Oliveri (Genova, Italy), Marco Ooms (Sesto Calende), Marie Oskarsson (Leggiano), Juha Ovaskainen (Travedona Monate), Ramona Pagnottaro (Parma, Italy), Rita Paiola (Ranco), Sazan Pakalin (Varese), Panagiotis Panagos (Monvalle), Arrigo Panizza (Brescia), Antonio Pannunzio (Besozzo), Rana Pant (Leggiano), Bruno Paracchini (Ispra), Sergio Paris (Azzio), Alberto Paris (Taino), Rosanna Passarella (Laveno Mombello), Marco Pastori (Brugherio, Italy), Alexandre Patak Dennstedt (Sangiano), Valerio Pedroni (Besozzo), Paolo Peerani (Caravate), Pierre Pegon (Varese), Paolo Pellegrini (Ghiffa, Italy), Grazia Pellegrini (Brescia), Rogerio Peralta (Gavirate), Domenico Perrotta (Malnate, Italy), Ugo Pesee (Cadrezzate), Georg Peter (Castelletto Ticino, Italy), Paola Piccinini (Turin), Fabio Pieri (Vasanello, Italy), Ronald Piers de Raveshoot (Leggiano), Tiziano Pinato (Besozzo), Gregor Pinski (Castelletto Ticino), Giuliano Pirelli (Lecce, Italy), Antonio Piscia (Cadrezzate), Paolo Pizziol (Varese), Maria Carmen Pombo Lopez (Casciago), Wietse Post (Taino), Jesus Felix Pozuelo Moreno (Varese), Marsia Pozzato (Sesto Calende), Steven Price (Taino), Pilar Prieto Peraita (Angera), Giocchino Puccia (Besozzo) Michel Quicheron (Angera), Maria-Antonella Rafele (Bregano), Alessandra

Ravagli (Varese), Diana Rembges (Travedona Monate), Graziano Renaldi (Porto Ceresio, Italy), Fabiano Reniero (Taino), Patrice Richir (Leggiuno), Alessandra Rigamonti (Arcisate, Italy), Maurizio Ristori (Comerio), Luca Riva (Besozzo), Paolo Roggeri (Travedona Monate), Francesco Rossi (Veruno), François Rossi (Cittiglio), Carlo Rovei (Leggiuno), Mauro Roveri (Taino), Espedito Ruotolo (Ispra), Pasquale Salvatore (Angera), Francesco Salvi (Angera), Ilario Santangelo (Osmate), Juan Jose Sanz Ortega (Besozzo), Juan Ignacio Saracho (Ranco), Gianpiero Sartorio (Cadrezzate), Antonio Scanga (Dumenza, Italy), Rita Scardigli (Ispra), Stefan Scheer (Caravate), Hans Guenther Schneider (Laveno Mombello), Christiane Schwartz (Varese), Dario Scotto (Varese), Mirco Sculati (Angera), Arcadio Segura Arnau (Ispra), Gianfranco Selvagio (Gallarate, Italy), Fabrizio Sena (Ispra), Chiara Senaldi (Somma Lombardo), Natalia Serra Francisco (Brescia), René Seynaeve (Besozzo), David Shaw (Cittiglio), Christos Siaterlis (Taino), Gilles Siccardi (Ispra), Anna Maria Silvano (Casciago), Federica Simonelli (Besozzo), Maria Carmen Simonetta (Sesto Calende), Susanna Simonetta (Sesto Calende), Philippe Simons (Sesto Calende), Helle Skejo (Orino), Birgit Sokull-Kluettgen (Ranco), Piero Soldo (Cadrezzate), Pere Soler Legresa (Besozzo), George Solomos (Barasso), Michel Sondag (Ispra), Sandra Sottocorno (Ispra), Peter Spruyt (Castelvecchana), Valeria Staltari (Laveno Mombello), Hermann Stamm (Castelvecchana), Hans Jürgen Stibig (Fribourg, Germany), Nikolaos Stilianakis (Varese), Adolf Stips (Besozzo), Elena Stringa (Besozzo), Peter Strobl (Besozzo), Marinus Stroosnijder (Cittiglio), Marco Stuardi (Cadrezzate), Luc Suetens (Leggiuno), Ewelina Sujka (Varese), Carmen Helena Suleau (Monvalle), Fabio Tamborini (Sesto Calende), Cristina Tarabugi (Cadrezzate), Pietro Tarateo (Comabbio), Vittorio Tarditi (Galliate Lombardo, Italy), G. Piero Tartaglia (Varese), Adrien Taruffi (Leggiuno), Fabio Taucer (Milan), Simona Tavazzi (Ispra), Nigel Georg Taylor (Varese), Roberto Tedeschi (Gavirate), Pierluigi Tenuta (Cadrezzate), An Thijs (Bardello), Mary Claude Thiriat (Ispra), Lionel Thoquer (Leggiuno), Philippe Thunis (Besozzo), Friedemann Timm (Castelvecchana), Paolo Timossi (Arquata Scrivia, Italy), Daniel Tirelli (Taino), Salvatore Tirendi (Travedona Monate), Charles Edouard Tixier (Ranco), Daniela Toccafondi (Ispra), Andrea Tognoli (Varese), Pilade Tonini (Ispra), Katalin Toth (Cittiglio), Jutta Triebe (Varano Borghi), Georgios Tzamalīs (Athens, Greece), Enrico Vaccarezza (Mercallo, Italy), Ioannis Vakalis (Luvinata), Nadia Valentini (Varese), Angelo Valli (Biandronno), Massimo Valsesia (Paruzzaro), Geertruida Van Os (Varese), Diederik Van Regenmortel (Leggiuno), Serge Vanacker (Besozzo), Sabrina Vanelli (Vergiate), Ludo Vanvolsem (Halle, Belgium), Antonio Vargiu (Cagliari, Italy), Roberto Vasselli (Varese), Patricia Vedovatto (Besozzo), Stefano Venanzi (Bologna), Stefano Venturini (Brenta), Jean Verdebout (Ixelles, Belgium), Cristina Vlassis (Taino), Vincenzo Vocino (Varese), Jürgen Vogt (Brescia), Massimiliano Voinich (Besozzo), David Walker (Ranco), Uwe Weng (Besozzo), Helmuth Willers (Besozzo), Ulrike Winter (Ispra), Clemens Wittwehr (Laveno Mombello), Jan Wollgast (Travedona Monate), Maureen Wood (Cuveglio, Italy), Nikolaos Zampoukas (Sesto Calende), Marco Zanni (Sovere, Italy), Giuseppe Zibordi (Gavirate), Carlo Zonca (Arona, Italy), Salvatore Zoppeddu (Sangiano), Antonio Zorzan (Leggiuno) and Valerie Zuang (Casciago) (represented by: S. Orlandi, D. Abreu Caldas and J.-N. Louis, lawyers)

Other parties to the proceedings: European Commission and Council of the European Union

Forms of order sought

The appellants claim that the Tribunal should:

- Set aside the judgment of the Civil Service Tribunal of the European Union (Third Chamber) of 21 March 2013 in Case F-111/11 *Chris Van der Aat and Others v European Commission*;
- Giving judgment itself,
- Declare illegal Article 1 of Annex XI to the Staff Regulations and the methodological manual referred to in Annex I to Regulation No 1445/2007 of 11 December 2007;
- Declare illegal Article 3 of Council Regulation (EU) No 1239/2010 of 20 December 2010 fixing the correction coefficient for the calculation of the remuneration of staff assigned to Varese at 92.3;
- Annul the decisions establishing the applicants' salary statements drawn up on the basis of the correction coefficient for the town of Varese set out in Council Regulation (EC) No 1239/2010 of 20 December 2010 applicable with effect from 1 July 2010;
- Order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellants put forward the following grounds of appeal.

1. First ground of appeal, alleging that the Civil Service Tribunal, when it examined the plea in law alleging breach of the obligation to state reasons, erred in law in holding that the Commission could confine itself to referring to Regulation No 1239/2010⁽¹⁾ to substantiate its decision to apply a correction coefficient reduced by 4.8 percentage points to 92.3 % for the calculation of the appellants' salaries in Varese, even though the Commission played a decisive role in the laying down of those weightings by assessing the statistical data and the methods used to set those coefficients. Thus, the Commission did not merely apply an act of general application without exercising discretion (paragraphs 27 and 28 of the judgment under appeal).
2. Second ground of appeal, alleging that the Civil Service Tribunal, when it examined the plea in law alleging breach of the right of access to documents, erred in law in holding that the Commission had no obligation to communicate the information requested by the staff representatives, members of the 'Technical Group on Salaries' (TGS), then by the appellants, in response to their claim. Inter alia, the appellants submit that:
 - in so doing, the Civil Service Tribunal misconstrued, inter alia, the nature of the contested acts, the complex procedure by which the correction coefficients are set which justifies the creation of a TGS, the very existence of that TGS and the subject-matter of the pre-litigation procedure;

- the procedure recommended by the Civil Service Tribunal, which requires that the parties concerned

must submit a request for access to documents outside the TGS and apply the remedies available to them, breaches the right to an effective remedy given the period in which the access to the documents could be obtained and as the analysis of the technical data will be difficult to carry out by the hundreds of agents concerned individually;

— that position further misconstrues the ‘effectiveness’ of the constitution of a TGS and the nature of the *lex specialis* of the statutory remedies established to contest correction coefficients affecting remuneration.

3. Third ground of appeal, alleging that the Civil Service Tribunal, when it examined the plea in law alleging a manifest error of assessment, erred in law:

— in holding that the disparity between the cost of living in Brussels and that in Varese, on the one hand, and the reduction of the correction coefficient of Varese as established by Regulation No 1239/2010, on the other, is not enough to support a conclusion that there was a manifest error of assessment and

— in requiring that the appellants submit data as relevant and precise as that which only the Commission possesses even though the case-law does not require the production of a body of evidence sufficiently probative as to reverse the burden of proof and the presumption of legality of the contested coefficient.

(¹) Council Regulation (EU) No 1239/2010 adjusting with effect from 1 July 2010 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2010 L 338, p. 1).

Action brought on 11 June 2013 — Elmaghraby and El Gzaerly v Council

(Case T-319/13)

(2013/C 245/14)

Language of the case: English

Parties

Applicants: Ahmed Alaeldin Amin Abdelmaksoud Elmaghraby (Cairo, Egypt) and Naglaa Abdallah El Gzaerly (London, United Kingdom) (represented by: D. Pannick, QC, M. Lester, Barrister, and M. O’Kane, Solicitor)

Defendants: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Annul, as far as it concerns the applicants, Council Decision 2013/144/CFSP of 21 March 2013 amending Decision

2011/172/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt (OJ 2013 L 82, p. 54);

— Erase the allegations that each applicant is responsible for the misappropriation of State funds and subject to judicial investigation in Egypt; and

— Order the defendant to bear the applicants’ costs.

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 Council has failed to give adequate or sufficient reasons for including either of the applicants in the 2013 Measures.

2. Second plea in law, alleging that the Council manifestly erred in considering that the listing criterion was fulfilled as regards either of the applicants, as far as there is no legal or factual basis for their designation.

3. Third plea in law, alleging that the Council violated its data protection obligations according to the Data Protection Regulation (EC) No 45/2001 (¹) and to the Data Protection Directive 95/46/EC (²).

4. Fourth plea in law, alleging that the Council has failed to safeguard the applicants’ rights to defence and to effective judicial review.

5. Fifth plea in law, alleging that the Council has infringed, without justification or proportion, the applicants’ fundamental rights, including their right to protection of their property, business, and reputation.

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

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

Action brought on 19 June 2013 — BT Limited Belgian Branch v Commission

(Case T-335/13)

(2013/C 245/15)

Language of the case: English

Parties

Applicant: BT Limited Belgian Branch (Diegem, Belgium) (represented by: T. Leeson, Solicitor, and C. Stockford, Barrister)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- Annul the decision notified to the applicant on 19 April 2013, rejecting the applicant's tender in the framework of the restricted procedure DIGIT/R2/PR/2011/039 and awarding the contract to another tenderer;
- Order the defendant to pay the costs;
- Alternatively, appoint an independent expert with the mission of assessing the compliance of the offer of another tenderer with the tendering specifications and defer its decision until the appointed expert has submitted his/her report, subsequently, annul the decision of the Directorate-General for Informatics ('DOGIT') and order the Commission to pay the costs;
- In the event DIGIT signs the Trans European Services for Telematics between Administrations — new generation ('TESTA-ng') contract, order the Commission to compensate the applicant for the damage it has suffered as a result of DIGIT's unlawful decision.

Pleas in law and main arguments

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

1. First plea in law, alleging that that DIGIT infringed the principle of transparency and the obligation to state reasons set out in Article 113 of the Financial Regulation⁽¹⁾ and Article 296 TFEU. This is because — as a result of the excessive redaction of the contracting authority's evaluation report of another tenderer — BT has not been given the opportunity to verify whether the contracting authority has performed a fair evaluation of the successful tenderer's offer.

The applicant alleges further that DIGIT has, first, not stated sufficient reasons for having redacted massive parts of the evaluation report of the offer of another tender, and second, even where DIGIT has provided reasons, those reasons are inadmissible.

2. Second plea in law, alleging that that DIGIT's scoring methodology for the evaluation of tenders breaches the general principles — including the principles of transparency and fair and equal treatment — applicable to public tendering procedures. In particular, since (i) DIGIT's scoring grid was not disclosed in advance of the tender and (ii) its unusual structure gave another tenderer an unlawful advantage.
3. Third plea in law, alleging that that DIGIT's comments in the evaluation report and the corresponding scores awarded to the offer of another tenderer are inconsistent. These contradictions vitiate the decision, since they render the statement of reasons supporting the decision null and void.
4. Fourth plea in law, alleging that DIGIT has accepted the offer of another tenderer notwithstanding that the abnormally low price proposal should have led to its elimination from the tendering procedure. In this regard, the

applicant submits that this claim cannot be undermined by DIGIT's claim that it scrutinized that offer in light of the rules on abnormally low offers. A generic reference to applicable legislation is not a substitute for a proper statement of reasons as to why — in light of its analysis — DIGIT nonetheless decided not to eliminate that offer from the tender procedure.

As a subsidiary part of this plea in law, the applicant alleges that the price proposed by another tenderer in its offer is unrealistic and cannot correspond to an offer that complies with the tender requirements. In this regard, BT requests the General Court to appoint an independent expert to determine whether the offer in question in fact complies with certain tendering specifications.

5. Fifth plea in law, alleging that that decision is vitiated by the fact that the contract value calculated in that document is not accompanied by a sufficient statement of reasons.
6. Sixth plea in law, alleging that DIGIT lacks competence to adopt the contested decision on the grounds that it lacks the required delegated power.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Action brought on 25 June 2013 — Federación Española de Hostelería v EACEA

(Case T-340/13)

(2013/C 245/16)

Language of the case: Spanish

Parties

Applicant: Federación Española de Hostelería (Madrid, Spain) (represented by: F. del Nogal Méndez and R. Fernández Flores, lawyers)

Defendant: Education, Audiovisual and Culture Executive Agency

Form of order sought

The applicant claims that the General Court should:

- Annul decision 2007-19641 134736-LLP-I-2007-1-ES-Leonardo-LMP;
- In the alternative, return the proceedings to the point of the date of dispatch of the misaddressed communications from the auditors, allowing the applicant to make appropriate representations;
- In the further alternative, reduce, in accordance with the principle of proportionality, the amount which the Commission seeks to recover;

- Order the Commission to pay the professional fees and other costs incurred in the present case;
- Order the Commission to reimburse the amounts paid together with the corresponding interest.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the established procedure

- The applicant claims that the communications concerning the auditor's report were sent to a third-party, external to the relationship established between the applicant and the defendant Executive Agency.

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

- The applicant maintains that the recovery decision is not supported by an adequate statement of reasons, since the Executive Agency sent only a debit note to the applicant, accompanied by the auditor's report.

3. Third plea in law, alleging breach of the rights of the defence.

- The applicant maintains that it was not given an opportunity during the administrative procedure to make known its point of view on the accuracy and relevance of the allegations against it and on all of the documents that the Commission used to support its claim alleging breach of European Union law.

4. Fourth plea in law, alleging breach of the principle of the protection of legitimate expectations.

- The applicant claims that although the contract was concluded in April 2009, the Executive Agency did not give any indication, until April 2013, that it disagreed in any way at all with the arrangements for developing and implementing the Project.

5. Fifth plea in law, alleging misuse of power.

- The applicant maintains that the Commission did not inform it of the facts that could be alleged against it, and did not give it the opportunity to be heard before the adoption of the penalty.

- 6. Lastly, the applicant alleges breach of the principle of proportionality.

Action brought on 28 June 2013 — CN v Parliament

(Case T-343/13)

(2013/C 245/17)

Language of the case: Italian

Parties

Applicant: CN (Brumath, France) (represented by: M. Velardo, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

- order the European Union and the European Parliament to pay the applicant EUR 1 000 for the material damage suffered, plus interest calculated at the rate of 6.75 %;
- order the European Union and the European Parliament to pay the applicant EUR 40 000 for the non-material damage suffered, plus interest calculated at the rate of 6.75 %;
- order the European Union and the European Parliament to pay the costs.

Pleas in law and main arguments

By the present action, CN, a retired former official of the Council, seeks compensation for the material and non-material damage suffered as a result of the publication of an extract from a petition submitted by the applicant containing items of personal data, including information concerning his state of health and the fact that there is a disabled individual in his family, on the European Parliament's own website, which may also be accessed by users from outside that institution.

That information was made widely available, given that it was possible to gain access to the petition extract published by the Parliament by entering the applicant's name in the Google search engine.

In spite of requests made by the applicant, the Parliament withdrew the publication of the personal data in question only after the applicant had instructed a lawyer.

As grounds for his claim that the European Parliament acted unlawfully, the applicant alleges that the following have been infringed:

1. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
2. Article 8 of the Charter of Fundamental Rights;
3. Article 22 of the Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 and ratified by the European Union on 23 December 2010;
4. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

Action brought on 2 July 2013 — Construcción, Promociones e Instalaciones v OHIM — Copisa Proyectos y Mantenimientos Industriales (CPI COPIISA INDUSTRIAL)

(Case T-345/13)

(2013/C 245/18)

Language in which the application was lodged: Spanish

Parties

Applicant: Construcción, Promociones e Instalaciones, SA (Madrid, Spain) (represented by: E. Seijo Veiguela and J. L. Rivas Zurdo, lawyers)

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

Other party to the proceedings before the Board of Appeal: Copisa Proyectos y Mantenimientos Industriales, SL (L'Hospitalet de Llobregat, Spain)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 April 2013 in Case R 1935/2012-2, granting Community trade mark No 9 600 313 'CPI COPIISA INDUSTRIAL' (MIXTA), and order the defendant and, where appropriate, the other party to the proceedings to pay the costs, if that other party appears and contests the action.

Pleas in law and main arguments

Applicant for a Community trade mark: Copisa Proyectos y Mantenimientos Industriales, SL

Community trade mark concerned: Figurative mark with the word elements 'CPI COPIISA INDUSTRIAL' for services in Class 37 — Application for Community trade mark No 9 600 313

Proprietor of the mark or sign cited in the opposition proceedings: Applicant.

Mark or sign cited in opposition: National figurative mark with the word elements 'Cpi construcción promociones e instalaciones, s.a.' and the national registered trade name No 85 647 'Construcción, Promociones e Instalaciones, S.A. — C.P.I.' for services in Class 37.

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law:

- Infringement of Article 42(2) and (3) of Regulation No 207/2009;

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

- Infringement of Article 8(4) of Regulation No 207/2009.

Action brought on 2 July 2013 — Hellenic Republic v Commission

(Case T-346/13)

(2013/C 245/19)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias, X. Basakou and A. Vasilopoulou)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the Commission implementing decision of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2013) 2436 and published at OJ 2013 L 123, as regards the part relating to the Hellenic Republic; and

- order the Commission to pay the costs.

Pleas in law and main arguments

In relation to the financial corrections imposed by the contested Commission implementing decision of 2 May 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), notified under document C(2013) 2436 and published at OJ 2013 L 123, in so far as that decision imposes on the Hellenic Republic a financial correction totalling EUR 6 175 094,49 for expenditure incurred by it within the framework of the European Agricultural Fund for Rural Development, in Axis 2, 2007-13, area related measures in the financial years 2009 and 2010 (claim years 2008 and 2009), the Hellenic Republic puts forward the following pleas for annulment:

By the first plea for annulment, the Hellenic Republic submits that the decision lacks a lawful basis and a statement of reasons as regards the proposed flat rate correction of 5 % because the on-the-spot controls carried out of all the commitments entered into were not undertaken on all the agricultural parcels that are referred to in the aid applications for the years relevant to the investigation.

By the second plea for annulment, the Hellenic Republic contends that the decision concerning the imposition of a flat rate correction of 2 % because deficiencies were found in the traceability of the AEM control reports generally, in breach of

Article 28(1) of Commission Regulation No 796/2004, ⁽¹⁾ was adopted in error as to the facts, and in any event reasons are not stated for the decision.

By the third plea for annulment, the Hellenic Republic asserts that the decision lacks a lawful basis and a statement of reasons as regards the imposition of a flat rate correction of 2 % in the separate matters 'Organic Farming' and 'Organic Livestock Production', since, apart from the carrying out, proved during the procedure, of specific controls relating to the measures in question by specialist accredited organic-crop control bodies, the Paying Agency was also obliged to carry out its own controls.

By the fourth plea for annulment, the Hellenic Republic submits that the principle of proportionality is infringed by the proposed flat rate correction of 5 % because certain commitments and, specifically, those relating to the use of fertiliser, plant protection products, pesticides or other related substances are monitored mainly visually. The reasons stated for the Commission decision are inadequate or otherwise contradictory.

⁽¹⁾ Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

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