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(2013/C 325/01)

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 17 September 2013 — Council of the European Union v European Parliament

(Case C-77/11) ([1])

(Action for annulment — Definitive adoption of the European Union's general budget for the financial year 2011 — Act of the President of the Parliament declaring that the budget has been definitively adopted — Article 314(9) TFEU — Establishment by the Parliament and the Council of the European Union's annual budget — Article 314, introductory paragraph, TFEU — Principle of institutional balance — Principle that the institutions must act within the limits of their powers — Duty to cooperate in good faith — Compliance with essential procedural requirements)

(2013/C 325/02)

Language of the case: French

Parties

Applicant: Council of the European Union (represented by: G. Maganza and M. Vitsentzatos, Agents)

Defendant: European Parliament (represented by: C. Pennera, R. Passos, D. Gauci and R. Crowe, Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Action for annulment — Act of the President of the European Parliament of 14 December 2010 establishing the annual budget of the European Union for the financial year 2011 — Choice of legal basis — Failure of that non-typical and non-legislative act to comply with the new budget procedure introduced by the TFEU — Failure to respect the institutional balance — Breach of the principle of the conferment of powers and the duty of sincere cooperation — Breach of essential procedural requirements — Temporary maintenance of the effects of the budget

Operative part of the judgment

The Court:

1. *Dismisses the action*

2. *Orders the Council of the European Union to pay the costs.*

3. *Orders the Kingdom of Spain to bear its own costs.*

([1]) OJ C 120, 16.4.2011.

Judgment of the Court (First Chamber) of 12 September 2013 (request for a preliminary ruling from the Conseil d'État — France) — Le Crédit Lyonnais v Ministre du Budget, des Comptes publics et de la Réforme de l'État

(Case C-388/11) ([1])

(Value added tax — Sixth Directive 77/388/EEC — Articles 17 and 19 — Deduction of input tax paid — Use of goods and services for both taxable and exempt transactions — Proportional deduction — Calculation of the proportion — Branches established in other Member States and in third States — Not taking their turnover into account)

(2013/C 325/03)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Le Crédit Lyonnais

Defendant: Ministre du Budget, des Comptes publics et de la Réforme de l'État

Re:

Request for a preliminary ruling — Conseil d'État — Interpretation of Article 13B(d)(1) to (5), Article 17(2), (3)(a) and (c), and (5), and Article 19 of the Sixth Council Directive

77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p.1) — Deduction of input tax — Goods and services used both for deductible and non-deductible transactions — Calculation of the deductible proportion — Obligation of the principal establishment of a company established in a Member State to take account of income of branches established in another Member State

Operative part of the judgment

1. *Article 17(2) and (5) and Article 19(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in other Member States.*

2. *Article 17(3)(a) and (c) and Article 19(1) of the Sixth Directive 77/388 must be interpreted as meaning that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a Member State, may not take into account the turnover of its branches established in third States.*

3. *The third subparagraph of Article 17(5) of the Sixth Directive 77/388 must be interpreted as not permitting a Member State to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another Member State or in a third State.*

([1]) OJ 2011 C 298, 8.10.2011.

Judgment of the Court (Fourth Chamber) of 12 September 2013 (request for a preliminary ruling from the Berufsgericht für Heilberufe bei dem Verwaltungsgericht Gießen — Germany) — Kostas Konstantinides

(Case C-475/11) ([1])

(Freedom to provide medical services — Service provider travelling to another Member State to provide the service — Applicability of the rules of professional conduct of the host Member State, in particular those relating to fees and advertising)

(2013/C 325/04)

Language of the case: German

Referring court

Berufsgericht für Heilberufe bei dem Verwaltungsgericht Gießen

Parties to the main proceedings

Defendant: Kostas Konstantinides

Re:

Request for a preliminary ruling — Berufsgericht für Heilberufe bei dem Verwaltungsgericht Gießen — Interpretation of Article 5(3) and the first sentence, point (a), of Article 6 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22) — Freedom to provide medical services — Situation in which the service provider travels to another Member State in order to provide the service — Applicability of rules of professional conduct of the host Member State, in particular those relating to fees and advertising

Operative part of the judgment

1. *Article 5(3) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications must be interpreted as meaning that national rules such as, first, Paragraph 12(1) of the Code of professional conduct for doctors in Hesse, under which fees must be reasonable and, unless provided otherwise by law, calculated on the basis of the official Regulation on doctors' fees, and, secondly, Paragraph 27(3) of that code, which prohibits doctors from engaging in unprofessional advertising, do not fall within its material scope. It is, however, for the referring court to ascertain, taking into account the indications given by the Court of Justice of the European Union, whether those rules constitute a restriction within the meaning of Article 56 TFEU, and, if so, whether they pursue an objective in the public interest, are appropriate to ensuring that it is attained, and do not go beyond what is necessary for attaining it.*

2. *Article 6(a) of Directive 2005/36 must be interpreted as not laying down the rules of conduct or disciplinary procedures to which a service provider who travels to the territory of the host Member State to pursue his profession on a temporary and occasional basis may be subject, but as merely stating that Member States may provide either for automatic temporary registration with or for pro forma membership of a professional organisation or body, in order to facilitate the application of disciplinary provisions in accordance with Article 5(3) of that directive.*

([1]) OJ C 355, 3.12.2011.

Judgment of the Court (Fifth Chamber) of 12 September 2013 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — IVD GmbH & Co. KG v Ärztekammer Westfalen-Lippe

(Case C-526/11) [1]

(Public procurement — Directive 2004/18/EC — Article 1(9), second subparagraph, point (c) — Concept of 'body governed by public law' — Condition relating to the financing of the activity, or to management supervision, or to supervision of the activity by the State, by regional or local authorities or other bodies governed by public law — Association of medical practitioners — Financing provided for by law by means of contributions paid by the members of that association — Amount of the contributions fixed by the assembly of that association — Independence of that association in determining the scope and the rules for the performance of its statutory duties)

(2013/C 325/05)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: IVD GmbH & Co. KG

Defendant: Ärztekammer Westfalen-Lippe

intervening party: WWF Druck + Medien GmbH

Re:

Request for a preliminary ruling — Oberlandesgericht Düsseldorf — Interpretation of the second paragraph of Article 1(9)(c) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2002 L 134, p. 114) — Concept of 'public authorities' — Conditions of being financed, for the most part, by the State and subject to management supervision by the State — Professional association, which has the right by law to raise contributions from its members, the amount and use of those contributions having to be set by regulations requiring State approval

Operative part of the judgment

On a proper construction of point (c) of the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, a body such as a professional association governed by public law satisfies neither the criterion relating to financing for the most part by the public authorities when that body is financed for the most part by contributions paid by its members, in respect of which it is authorised by law to fix and collect the amount, if that law does not determine the scope of, and procedures for, the actions undertaken by that body in the performance of its statutory tasks, which those contributions are intended to finance, nor the criterion relating to management supervision by the public authorities simply because the decision by which that body sets the amount of those contributions must be approved by a supervisory authority.

[1] OJ C 25, 28.1.2012.

Judgment of the Court (Fifth Chamber) of 12 September 2013 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Niederösterreichische Landes-Landwirtschaftskammer v Anneliese Kuso

(Case C-614/11) [1]

(Social policy — Equal treatment for men and women — Directive 76/207/EEC — Fixed-term employment contract concluded prior to the accession of the Member State — Expiry of the fixed term after the accession — Employment legislation fixing the expiry date for the contract as the last day of the year in which retirement age is reached — Retirement age for men different from the age set for women)

(2013/C 325/06)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Niederösterreichische Landes-Landwirtschaftskammer

Defendant: Anneliese Kuso

Re:

Request for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 3(1)(a) and (c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 4), as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (OJ 2002 L 269, p. 15) — Fixed term employment contracts concluded between an institution of a Member State and its employees, before the accession of that State to the European Union, under which the expiry of the contracts is fixed as the last day of the year in which a male employee has attained the age of 65 and a female employee the age of 60

Operative part of the judgment

Article 3(1)(c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, must be interpreted as meaning that national legislation, such as that at issue in the main proceedings, consisting of a body of employment rules which form an integral part of an employment contract concluded before the Member State concerned acceded to the European Union and under which the employment relationship is to come to an end upon attainment of the fixed retirement age, which differs depending on whether the employee is a man or a woman, constitutes discrimination prohibited by that directive where the employee concerned reaches that age after the accession.

([1]) OJ C 80, 17.3.2012.

Judgment of the Court (Third Chamber) of 12 September 2013 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Toscana — Italy) — Daniele Biasci and Others v Ministero dell'Interno, Questura di Livorno

(Joined Cases C-660/11 and C-8/12) ([1])

(Freedom of establishment — Freedom to provide services — Articles 43 EC and 49 EC — Betting and gaming — Collection of bets — Conditions of authorisation — Requirement of police authorisation and a licence — National legislation — Mandatory minimum distances between bet collection points — Cross-border activities analogous to those covered by the licence — Prohibition — Mutual recognition of betting and gaming licences)

(2013/C 325/07)

Language of the case: Italian

Referring court

Tribunale amministrativo regionale per la Toscana

Parties to the main proceedings

(Case C-660/11)

Applicants: Daniele Biasci, Alessandro Pasquini, Andrea Milianti, Gabriele Maggini, Elena Secenti, Gabriele Livi

Defendants: Ministero dell'Interno, Questura di Livorno

Other party to the proceedings: SNAI — Sindacato Nazionale Agenzie Ippiche SpA

(Case C-8/12)

Applicants: Cristian Rainone, Orentino Viviani, Miriam Befani

Defendants: Ministero dell'Interno, Questura di Prato, Questura di Firenze

Other parties to the proceedings: SNAI — Sindacato Nazionale Agenzie Ippiche SpA, Stanley International Betting Ltd, Stanleybet Malta Ltd

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale per la Toscana — Freedom of movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation making the exercise of that activity conditional upon the obtaining of a public security authorisation and permit issued by the national authorities — Non-recognition of authorisations and permits issued by foreign authorities — Whether compatible with Articles 43 EC and 49 EC (now Articles 49 TFEU and 56 TFEU)

Operative part of the judgment

1. *Articles 43 EC and 49 EC must be interpreted as not precluding national legislation which requires companies wishing to pursue activities linked to gaming and betting to obtain a police authorisation in addition to a licence issued by the State in order to pursue such activities and which restricts the grant of such authorisation inter alia to applicants who already hold such a licence.*

2. *Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of European Union law, has excluded a category of operators from the award of licences to engage in a particular economic activity and which seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the existing operators, by providing inter alia that a minimum distance must be observed between the establishments of new licence holders and those of existing operators.*

   It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a tendering procedure such as that at issue in the cases before the referring court and, in particular, the provisions concerning the withdrawal of licences granted under that tendering procedure, such as those laid down in Article 23(3) of the model contract, must be drawn up in a clear, precise and unequivocal manner, a matter which it is for the referring court to verify.

   National legislation which in fact precludes all cross-border activity in the betting and gaming sector, irrespective of the form in which that activity is undertaken and, in particular, in cases where there is the possibility of direct contact between consumer and operator and where physical checks for police purposes can be made of an undertaking's intermediaries who are present on national territory, is contrary to Articles 43 EC and 49 EC. It is for the referring court to verify whether that is the case as regards Article 23(3) of the model contract.

3. *Articles 43 EC and 49 EC must be interpreted as meaning that, under the current state of EU law, the fact that an operator holds, in the Member State in which it is established, an authorisation permitting it to offer betting and gaming does not prevent another Member State, while complying with the requirements of EU law, from making such a provider offering such services to consumers in its territory subject to the holding of an authorisation issued by its own authorities.*

([1]) OJ C 73, 10.03.2012.

Judgment of the Court (Third Chamber) of 12 September 2013 (request for a preliminary ruling from the Østre Landsret (Denmark)) — The Commissioners for Her Majesty's Revenue & Customs v Sunico ApS, M & B Holding ApS, Sunil Kumar Harwani

(Case C-49/12) ([1])

(Judicial cooperation in civil matters — Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Article 1(1) — Scope — Concept of 'civil and commercial matters' — Action brought by a public authority — Damages in respect of involvement in a tax fraud by a third party not subject to VAT)

(2013/C 325/08)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: The Commissioners for Her Majesty's Revenue & Customs

Defendants: Sunico ApS, M & B Holding ApS, Sunil Kumar Harwani,

Re:

Request for a preliminary ruling — Østre Landsret — Interpretation of Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Scope — Whether or not it covers a claim for damages in respect of non-payment of value added tax brought by the tax authorities of a Member State against undertakings and natural persons resident in another Member State and based on an alleged unlawful means conspiracy under the law of tort

Operative part of the judgment

The concept of 'civil and commercial matters' within the meaning of Article 1(1) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that it covers an action whereby a public authority of one Member State claims, as against natural and legal persons resident in another Member State, damages for loss caused by a tortious conspiracy to commit value added tax fraud in the first Member State.

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Third Chamber) of 12 September 2013 (request for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Anton Schlecker, trading as 'Firma Anton Schlecker' v Melitta Josefa Boedeker

(Case C-64/12) ([1])

(Rome Convention on the law applicable to contractual obligations — Contract of employment — Article 6(2) — Applicable law in the absence of a choice made by the parties — Law of the country in which the employee 'habitually carries out his work' — Contract more closely connected with another Member State)

(2013/C 325/09)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Anton Schlecker, trading as 'Firma Anton Schlecker'

Defendant: Melitta Josefa Boedeker

Re:

Request for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 6(2) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) — Law applicable where none chosen — Employment contract — Law of the country in which the employee habitually carries out his work — Employee who has carried out his work for a lengthy period and without interruption in a particular Member State — Employment contract which appears, in the light of all the other circumstances of the case, to be very closely connected with another Member State

Operative part of the judgment

Article 6(2) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980, must be interpreted as meaning that, even where an employee carries out the work in performance of the contract habitually, for a lengthy period and without interruption in the same country, the national court may, under the concluding part of that provision, disregard the law of the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country.

([1]) OJ C 126, 28.4.2012.

Judgment of the Court (Sixth Chamber) of 12 September 2013 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Slancheva sila EOOD v Izpalnitelen direktor na Darzhaven fond Zemedelie Razplashtatelna agentsia

(Case C-434/12) ([1])

(Common agricultural policy — EAFRD — Regulation (EU) No 65/2011 — Support for rural development — Support for the creation and development of micro-enterprises — Concept of 'artificially created conditions' — Abuses — Evidence)

(2013/C 325/10)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Slancheva sila EOOD

Defendant: Izpalnitelen direktor na Darzhaven fond 'Zemedelie' Razplashtatelna agentsia

Re:

Request for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Article (4)(8) of Regulation (EU) No 65/2011 of the Commission of 27 January 2011, laying down detailed rules for implementing Regulation (EC) No 1698/2005 as regards the implementation of control procedures and compliance in measures to support rural development (OJ 2005 L 25, p. 8.) — Support for rural Development — Concept of 'artificially created circumstances' — Admissibility of national law according to which, for the recognition of conditions 'artificially created' a legal link between the aid applicants is required and Article 4(8) of Regulation (EU) No 65/2011 is applied subject to three cumulative conditions — Submission of requests for assistance by different applicants with an effective link and using independent neighbouring land which previously formed a single field — Need for a deliberate coordination between candidates and/or third parties in order to gain an advantage — Criteria for the recognition of the benefit within the meaning of Article 4(8) of Regulation (EU) No 65/2011

Operative part of the judgment

1. *Article 4(8) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures must be interpreted as meaning that the conditions for its application require both an objective and a subjective element. With regard to the first of those elements, it is for the referring court to consider the objective circumstances of the case in question which may lead to the conclusion that the objective pursued by the European Agricultural Fund for Rural Development (EAFRD) support scheme cannot be achieved. With regard to the second element, it is for the referring court to consider the objective evidence which may lead to the conclusion that, by artificially creating the conditions required for obtaining such a payment under the EAFRD support scheme, the applicant for such a payment intended exclusively to obtain an advantage contrary to the objectives of that scheme. In that regard, the referring court can take as its basis not only elements such as the legal, economic and/or personal links between the persons involved in similar investment projects, but also indications showing that there was intentional coordination between those persons.*

2. *Article 4(8) of Regulation No 65/2011 must be interpreted as precluding the rejection of an application for payment under the EAFRD support scheme on the sole ground that an investment project in respect of which support under that scheme is sought, is not functionally independent or that there is a legal link between the applicants for such support without the other objective elements of the particular case being taken into consideration.*

([1]) OJ C 366, 24.11.2012.

Judgment of the Court (Second Chamber) of 10 September 2013 (request for a preliminary ruling from the Raad van State — Netherlands) — M. G., N. R. v Staatssecretaris van Veiligheid en Justitie

(Case C-383/13 PPU) [1]

(Visas, asylum, immigration and other policies related to free movement of persons — Immigration policy — Illegal immigration and illegal residence — Repatriation of illegal residents — Directive 2008/115/EC — Return of illegally staying third-country nationals — Removal process — Detention measure — Extension of detention — Article 15(2) and (6) — Rights of the defence — Right to be heard — Infringement — Consequences)

(2013/C 325/11)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: M. G., N. R.

Defendant: Staatssecretaris van Veiligheid en Justitie

Re:

Request for a preliminary ruling — Raad van State — Interpretation of Article 41(2) of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1) and of Article 15(6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) — Detention measures — Extension — Lack of cooperation on the part of the nationals concerned in the removal procedure — Breach of the rights of the defence — Right of every person to be heard before any individual measure which would affect him adversely is taken

Operative part of the judgment

European Union law, in particular Article 15(2) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, must be interpreted as meaning that, where the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.

[1] OJ C 260, 7.9.2013.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 25 June 2013 — BestWater International GmbH v Michael Mebes, Stefan Potsch

(Case C-348/13)

(2013/C 325/12)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: BestWater International GmbH

Defendants: Michael Mebes, Stefan Potsch

Question referred

Does the embedding, within one's own website, of another person's work made available to the public on a third-party website, in circumstances such as those in the main proceedings, constitute communication to the public within the meaning of Article 3(1) of Directive 2001/29/EC, [1] even where that other person's work is not thereby communicated to a new public and the communication of the work does not use a specific technical means which differs from that of the original communication?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 27 June 2013 — Criminal proceedings against Markus D.

(Case C-358/13)

(2013/C 325/13)

Language of the case: German

Referring court

Bundesgerichtshof

Party/parties to the main proceedings

Markus D.

Question referred

Is Article 1(2)(b) of Directive 2001/83/EC of 6 November 2001, [1] as amended by Directive 2004/27/EC of 31 March 2004, [2] to be interpreted as meaning that substances or combinations of substances within the meaning of that provision which merely modify — that is, do not restore or correct — human physiological functions are to be regarded as medicinal products only if they are of therapeutic benefit or at any rate bring about a modification of bodily functions along positive lines? Consequently, do substances or combinations of substances which are consumed solely for their — intoxication-inducing — psychoactive effects, and in the process also have an effect which at least poses a risk to health, fall under the definition of 'medicinal product' contained in the directive?

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[1] Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2011 L 311, p. 67).

[2] Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ 2004 L 136, p. 34).

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 2 July 2013 — H. T. v Land Baden-Württemberg

(Case C-373/13)

(2013/C 325/14)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg

Parties to the main proceedings

Applicant: H. T.

Defendant: Land Baden-Württemberg

Questions referred

1. (a) Must the rule contained in the first subparagraph of Article 24(1) of Directive 2004/83/EC, [1] concerning the obligation of Member States to issue a residence permit to persons who have been granted refugee status, be observed even in the case of revocation of a previously issued residence permit?

   (b) Must that rule therefore be interpreted as meaning that it precludes the revocation or termination of the residence permit (by expulsion under national law, for example) of a beneficiary of refugee status in cases where the conditions laid down in Article 21(3) in conjunction with (2) of Directive 2004/83/EC are not fulfilled or there are 'compelling reasons of national security or public order' within the meaning of the first subparagraph of Article 24(1) of Directive 2004/83/EC?

2. If the first question is to be answered in the affirmative:

   (a) How must the ground for exclusion of 'compelling reasons of national security or public order' in the first subparagraph of Article 24(1) of Directive 2004/83/EC be interpreted in relation to the risks represented by support for a terrorist association?

   (b) Is it possible for 'compelling reasons of national security or public order' within the meaning of the first subparagraph of Article 24(1) of Directive 2004/83/EC to exist in the case where a beneficiary of refugee status has supported the PKK, in particular by collecting donations and regularly participating in PKK-related events, even if the conditions for non-compliance with the principle of non-refoulement laid down in Article 33(2) of the Geneva Convention relating to the Status of Refugees and also, therefore, the conditions laid down in Article 21(2) of Directive 2004/83/EC are not fulfilled?

3. If Question 1(a) is to be answered in the negative:

   Is the revocation or termination of the residence permit issued to a beneficiary of refugee status (by expulsion under national law, for example) permissible under European Law only in cases where the conditions laid down in Article 21(3) in conjunction with (2) of Directive 2004/83/EC (or the identically-worded provisions of Directive 2011/95/EU, the successor to Directive 2004/83/EC) are satisfied?

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[1] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12).

Request for a preliminary ruling from the Gerechtshof Den Haag (Netherlands) lodged on 22 July 2013 — FNV Kunsten Informatie en Media v Staat der Nederlanden

(Case C-413/13)

(2013/C 325/15)

Language of the case: Dutch

Referring court

Gerechtshof Den Haag

Parties to the main proceedings

Appellant: FNV Kunsten Informatie en Media

Respondent: Staat der Nederlanden

Questions referred

1. Must the competition rules of European Union law be interpreted as meaning that a provision in a collective labour agreement concluded between associations of employers and associations of employees, which provides that self-employed persons who, on the basis of a contract for professional services, perform the same work for an employer as the workers who come within the scope of that collective labour agreement must receive a specific minimum fee, falls outside the scope of Article 101 TFEU, specifically on the ground that that provision occurs in a collective labour agreement?

2. If the answer to the first question is in the negative, does that provision then fall outside the scope of Article 101 TFEU in the case where that provision is (also) intended to improve the working conditions of the employees who come within the scope of the collective labour agreement, and is it also relevant in that regard whether those working conditions are thereby improved directly or only indirectly?

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo de Oviedo lodged on 23 July 2013 — Mario Vital Pérez v Ayuntamiento de Oviedo

(Case C-416/13)

(2013/C 325/16)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo de Oviedo

Parties to the main proceedings

Applicant: Mario Vital Pérez

Defendant: Ayuntamiento de Oviedo

Question referred

Do Articles 2(2), 4(1) and 6(1)(c) of Council Directive 2000/78/EC [1] of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, [2] and Article 21(1) of the Charter of Fundamental Rights of the European Union, inasmuch as they prohibit all discrimination on grounds of age, preclude the fixing, in a notice of competition issued by a municipality expressly applying a regional law of a Member State, of a maximum age of 30 for access to the post of local police officer?

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[1] OJ 2000 L 303, p. 16.
[2] OJ 2000 L 364, p. 1.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 23 July 2013 — ÖBB Personenverkehr AG v Gotthard Starjakob

(Case C-417/13)

(2013/C 325/17)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Defendant and appellant on a point of law: ÖBB Personenverkehr AG

Applicant and respondent in the appeal on a point of law: Gotthard Starjakob

Questions referred

1. Is Article 21 of the Charter of Fundamental Rights, in conjunction with Articles 7(1), 16 and 17 of Directive 2000/78/EC, [1] to be interpreted as meaning:

   (a) that an employee for whom the employer initially sets an incorrect increment reference date based on an age-discriminatory accreditation of previous periods of service as prescribed by law is in any event entitled to payment of the difference in salary based on the non-discriminatory increment reference date,

   (b) or that the Member State has the option of eliminating the age-based discrimination by way of a non-discriminatory accreditation of previous periods of service even without financial compensation (by setting a new increment reference date and at the same time extending the period for advancement to the next salary step), in particular where such a solution, having a neutral effect on pay, is intended to preserve the employer's liquidity and avoid unreasonable expense resulting from recalculation?

2. If Question 1(b) is answered in the affirmative:

May the legislature:

(a) also introduce such non-discriminatory accreditation of previous periods of service retroactively (specifically by way of the promulgated Law of 27 December 2011, BGBl I 2011/129, retroactive as from 1 January 2004) or

(b) does such accreditation take effect only from the point in time at which the new accreditation and incremental advancement rules are enacted or promulgated?

3. If Question 1(b) is answered in the affirmative:

Is Article 21 of the Charter of Fundamental Rights, in conjunction with Article 2(1) and (2) and Article 6(1) of Directive 2000/78/EC, to be interpreted as meaning:

(a) that a legislative rule which provides for a longer period for incremental advancement for employment at the start of a career, thereby making it more difficult to advance to the next salary step, constitutes an indirect difference in treatment based on age,

(b) and, if such is the case, that such a rule is appropriate and necessary in the light of the limited professional experience at the start of a career?

4. If Question 1(b) is answered in the affirmative:

Are Article 7(1) and Article 8(1), in conjunction with Article 6(1), of Directive 2000/78/EC to be interpreted as meaning that the maintenance of an old, age-discriminatory rule simply in order to protect an employee from being disadvantaged in terms of income by a new, non-discriminatory rule (salary safeguard clause) is permissible and justified in order to preserve existing rights and legitimate expectations?

5. If Question 1(b) and Question 3(b) are answered in the affirmative:

(a) May the legislature provide that the employee has a duty (or obligation) to cooperate for the purpose of establishing the accreditable previous periods of service and make transfer to the new accreditation and incremental advancement system dependent on fulfilment of that obligation?

(b) Can an employee who fails to cooperate as may reasonably be expected in setting the new increment reference date under the new, non-discriminatory accreditation and incremental advancement system, and who therefore deliberately does not avail himself of the non-discriminatory rule (remaining of his own volition under the old, age-discriminatory accreditation and advancement system), invoke age discrimination under the old system, or does his remaining under the old, discriminatory system simply in order to be able to bring monetary claims constitute an abuse of rights?

6. If Question 1(a) or Questions 1(b) and 2(b) are answered in the affirmative:

Does the EU-law principle of effectiveness under the first paragraph of Article 47 of the Charter of Fundamental Rights und Article 19(1) TEU require that the period of limitation for claims founded in EU law cannot start to run until the legal position has been conclusively clarified by the pronouncement of a relevant decision by the Court of Justice of the European Union?

7. If Question 1(a) or Questions 1(b) and 2(b) are answered in the affirmative:

Does the EU-law principle of equivalence require that a restriction, provided for in national law, of the period of limitation for bringing claims under a new accreditation and incremental advancement system (Paragraph 53a(5) of the Bundesbahngesetz (Austrian Law on Federal Railways)) must be extended to claims for differences in pay resulting from an old system involving age discrimination?

([1]) 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).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 24 July 2013 — Art & Allposters International BV; other party: Stichting Pictoright

(Case C-419/13)

(2013/C 325/18)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Art & Allposters International BV

Other party: Stichting Pictoright

Questions referred

1. Does Article 4 of the Copyright Directive [1] govern the answer to the question whether the distribution right of the copyright holder may be exercised with regard to the reproduction of a copyright-protected work which has been sold and delivered within the European Economic Area by or with the consent of the rightholder in the case where that reproduction had subsequently undergone an alteration in respect of its form and is again brought into circulation in that form?

2. (a) If the answer to Question 1 is in the affirmative, does the fact that there has been an alteration as referred to in Question 1 have any bearing on the answer to the question whether exhaustion within the terms of Article 4(2) of the Copyright Directive is hindered or interrupted?

   (b) If the answer to Question 2(a) is in the affirmative, what criteria should then be applied in order to determine whether an alteration exists in respect of the form of the reproduction which hinders or interrupts exhaustion within the terms of Article 4(2) of the Copyright Directive?

   (c) Do those criteria leave room for the criterion developed in Netherlands national law to the effect that there is no longer any question of exhaustion on the sole ground that the reseller has given the reproductions a different form and has disseminated them among the public in that form (judgment of the Hoge Raad of 19 January 1979 in *Poortvliet*, NJ 1979/412)?

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

Request for a preliminary ruling from the Autorità per la Vigilanza sui Contratti pubblici di lavori, servizi e forniture (Italy) lodged on 25 July 2013 — Emmeci v Cotral

(Case C-427/13)

(2013/C 325/19)

Language of the case: Italian

Referring court

Autorità per la Vigilanza sui Contratti pubblici di lavori, servizi e forniture

Parties to the main proceedings

Applicant: Emmeci Srl

Defendant: Cotral SpA

Questions referred

1. Must Article 56 of Directive 2004/17/EC [1] be interpreted as meaning that it is not permissible for the national legislature to allow contracting authorities to prevent competitors, during the final bid phase, from viewing their rankings or the bids made by other economic operators, and to postpone disclosure of that information until the end of the auction?

2. Do Article 56 of Directive 2004/17/EC and the principles of transparency and equal treatment preclude national legislation or administrative practices, such as those described in these proceedings, which provide for a five-minute 'black-out' in the final phase of the electronic auction, during which competitors are unable to ascertain their respective rankings?

[1] Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1).

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 31 July 2013 — Vietnam Airlines Co. Ltd v Brigitta Voss, Klaus-Jürgen Voss

(Case C-431/13)

(2013/C 325/20)

Language of the case: German

Referring court

Landgericht Frankfurt am Main (Germany)

Parties to the main proceedings

Defendant and appellant: Vietnam Airlines Co. Ltd

Applicants and respondents: Brigitta Voss, Klaus-Jürgen Voss

Questions referred

1. Is a passenger entitled to receive in full the compensation provided for in Article 7 of Regulation No 261/2004 [1] for long delay of flights, even when a third party, other than a passenger, has already made a payment to the passenger as compensation for the delay suffered, or should such payment be deducted?

2. If such a deduction should be made: Is that deduction applicable only to claims for damages within the meaning of German law or also to claims for a price reduction?

(1) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 2 August 2013 — Unitrading Ltd; other party: Staatssecretaris van Financiën

(Case C-437/13)

(2013/C 325/21)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant in cassation: Unitrading Ltd

Other party: Staatssecretaris van Financiën

Questions referred

1. Do the rights enshrined in Article 47 of the Charter (1) [of Fundamental Rights of the European Union] mean that if customs authorities, in the context of the submission of evidence as to the origin of imported goods, intend to rely on the results of an examination carried out by a third party with regard to which that third party does not disclose further information either to the customs authorities or to the declarant, as a result of which it is made difficult or impossible for the defence to verify or disprove the correctness of the conclusion arrived at and the court is hampered in its task of evaluating the results of the examination, those examination results may not be taken into account by the court? Does it make any difference to the answer to that question that that third party withholds the information concerned from the customs authorities and from the party concerned on the ground, not further explained, that 'law enforcement sensitive information' is involved?

2. Do the rights enshrined in Article 47 of the Charter mean that when the customs authorities cannot disclose further information in respect of the examination carried out which forms the basis for their position that the goods have a specific origin — the results of which are challenged by reasoned submissions — the customs authorities — in so far as can reasonably be expected of them — must cooperate with the party concerned in connection with the latter's request that it conduct, at its own expense, an inspection and/or sampling in the country of origin claimed by that party?

3. Does it make a difference to the answer to the first and second questions that, following the notification of the customs duties payable, portions of the samples of the goods, to which the party concerned could have obtained access with a view to having an examination carried out by another laboratory, were still available for a limited period, even though the result of such an examination would have had no bearing on the fact that the results obtained by the laboratory used by the customs authorities could not be verified, with the result that even in that case it would have been impossible for the court — if that other laboratory were to find in favour of the origin claimed by the party concerned — to compare the results of the two laboratories with respect to their reliability? If so, must the customs authorities point out to the party concerned that portions of the samples of the goods are still available and that it may request those samples for purposes of such an examination?

(1) OJ 2000 C 364, p. 1.

Request for a preliminary ruling from the Curtea de Apel București (Romania) lodged on 2 August 2013 — SC BCR Leasing IFN SA v Agenția Națională de Administrare Fiscală — Direcția generală de administrare a marilor contribuabili, Agenția Națională de Administrare Fiscală — Direcția generală de soluționare a contestațiilor

(Case C-438/13)

(2013/C 325/22)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: SC BCR Leasing IFN SA

Defendants: Agenția Națională de Administrare Fiscală — Direcția generală de administrare a marilor contribuabili, Agenția Națională de Administrare Fiscală — Direcția generală de soluționare a contestațiilor

Question referred

May a situation involving goods under a financial leasing contract which, following termination of the contract as a result of the user's breach, have not been recovered from the

user by the leasing company, even though that company has instituted and followed the statutory procedures for recovery and, after termination, has not received any further amount for the use of the goods, be considered a supply of goods for consideration within the meaning of Article 16 of Directive 2006/[112]/EC [1] or, possibly, a supply of goods for consideration within the meaning of Article 18 of Directive 2006/[112]/EC?

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 6 August 2013 — Sarah Nagy v Marcel Nagy

(Case C-442/13)

(2013/C 325/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Sarah Nagy

Defendant: Marcel Nagy

Questions referred

1. Are two proceedings brought 'between the same parties', within the meaning of Article 12 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, [1] where in one set of proceedings the child makes a claim against the father for past and current maintenance, and the father, in divorce proceedings, seeks a determination of his maintenance obligation relating to that child and of payments to be made to the mother after the divorce?

2. If the answer to that question is in the affirmative: Where, in one set of proceedings, the maintenance creditor makes a claim for current maintenance and, in another set of proceedings, the maintenance debtor seeks to have his obligation to pay current maintenance postponed to a later date, will the proceedings then involve 'the same cause of action', within the meaning of Article 12 of the regulation, from the later date?

[1] OJ 2008 L 7, p. 1.

Request for a preliminary ruling from the Tribunalul Brașov (Romania) lodged on 7 August 2013 — Imre Solyom, Luiza Solyom v Direcția Generală a Finanțelor Publice a Județului Brașov

(Case C-444/13)

(2013/C 325/24)

Language of the case: Romanian

Referring court

Tribunalul Brașov

Parties to the main proceedings

Applicants: Imre Solyom, Luiza Solyom

Defendant: Direcția Generală a Finanțelor Publice a Județului Brașov

Question referred

Where the parties agree a firm and final price in a sales contract and subsequently the tax authorities consider the transaction to be taxable as a result of the reclassification of the vendor as a taxable person, must Articles 73 and 78 of Council Directive 2006/112/EC [1] be interpreted as meaning that the price is deemed to include the appropriate value added tax or that value added tax is to be added to that price? In other words, what is the taxable amount for such a transaction?

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

Request for a preliminary ruling from the Landesgericht Salzburg (Austria) lodged on 12 August 2013 — Germanwings GmbH v Ronny Henning

(Case C-452/13)

(2013/C 325/25)

Language of the case: German

Referring court

Landesgericht Salzburg

Parties to the main proceedings

Applicant: Germanwings GmbH

Defendant: Ronny Henning

Question referred

What time is relevant for the term 'time of arrival' used in Articles 2, 5, 6 and 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91: ([1])

(a) the time that the aircraft lands on the runway ('touchdown');

(b) the time that the aircraft reaches its parking position and the parking brakes are engaged or the chocks have been applied ('in-block time');

(c) the time that the aircraft door is opened;

(d) a time defined by the parties in the context of party autonomy.

([1]) OJ 2004 L 46, p. 1.

Appeal brought on 12 August 2013 by Confederazione Cooperative Italiane, Cooperativas Agro-alimentarias, Fédération française de la coopération fruitière, légumière et horticole (Felcoop) against the judgment of the General Court (Second Chamber) delivered on 30.05.2013 in Case T-454/10: Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon) v European Commission

(Case C-455/13 P)

(2013/C 325/26)

Language of the case: English

Parties

Appellants: Confederazione Cooperative Italiane, Cooperativas Agro-alimentarias, Fédération française de la coopération fruitière, légumière et horticole (Felcoop) (represented by: M. Merola, M.C. Santacroce, avvocati)

Other parties to the proceedings: Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon), Associazione Italiana Industrie Prodotti Alimentari (AIIPA), European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment under appeal in its entirety;

— declare the action of the F&V industrial processors inadmissible, and therefore grant the forms of order sought by the Appellants at first instance;

— alternatively, should the Court decide that the actions for annulment are admissible (*quod non*), revoke the judgment under appeal for serious and manifest errors in law, as well as for insufficient and contradictory legal reasoning, as explained in the appeal and refer the case back to the General Court for the examination of the merits of the case;

— alternatively, should the Court decide to confirm (*quod non*) the General Court's assessment of the substance of the case, revoke the part of the judgment concerning the effects of the annulment of Article of Article. 60(7) of Regulation No. 543/2011 ([1]) because it is based on a contradictory reasoning, which also conflicts with the principles of legal certainty and legitimate expectation, given the duration and functioning of operational programmes;

— order the applicants in first instance to bear the costs of both instances of the proceeding or reserve the costs of the proceedings at first instance and on appeal if the case is referred back to the General Court.

Pleas in law and main arguments

The Appellants submit that, in the judgment under appeal, the General Court:

— incorrectly assessed the admissibility of the action in case T-454/l0 insofar as it refers to Annex VIII to Regulation No. 1580/2007 ([2]), in particular by considering that Annex VIII formed a whole with Article 52(2)a, second subparagraph of the above-mentioned Regulation and not realizing that the latter provision has brought no change to the content of Annex VIII, which has always been admitting to EU funding actions and investments on certain processing activities;

— incorrectly assessed the first instance applicants' standing to bring the actions for annulment under Article 263(4) and (6) TFEU;

— erroneously ruled that the contested provisions were adopted in breach of the Single CMO Regulation, by wrongly assuming that this Regulation excluded from the scope of European funding all activities carried out by producer organisations other than the production of fresh products (either for consumption or intended for processing);

— incorrectly applied the principle of non-discrimination, by confusing it with the principle of undistorted competition between equal market players and forgetting that the agricultural sector is subject to its own rules within the framework of the Common Agricultural Policy;

— as far as the effects of the annulment are concerned, misapplied Article 264(2) TFEU by drawing a distinction between Article 52(2)a — second subparagraph — of former Regulation No. 1580/2007 and Article 50(3) of Regulation No. 543/2011, on the one hand, and Article 60(7) of Regulation No. 543/2011 on the other, and by delivering a judgment that is impossible to execute with reference to Article 60(7) of Regulation No. 543/2011.

(1) 543/2011/EU: Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors
OJ L 157, p. 1

(2) Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector
OJ L 350, p. 1

Appeal brought on 09/08/2013 by T & L Sugars Ltd, Sidul Açúcares, Unipessoal Lda against the judgment of the General Court (Fifth Chamber) delivered on 6 June 2013 in Case T-279/11: T & L Sugars Ltd, Sidul Açúcares, Unipessoal Lda v European Commission

(Case C-456/13 P)

(2013/C 325/27)

Language of the case: English

Parties

Appellants: T & L Sugars Ltd, Sidul Açúcares, Unipessoal Lda (represented by: D. Waelbroeck, avocat, D. Slater, Solicitor)

Other parties to the proceedings: European Commission, Council of the European Union, French Republic

Form of order sought

The appellants claim that the Court should:

— declare the present appeal admissible and well founded;

— set aside the judgment of the General Court of 6 June 2013 in Case T-279/11 ('the Contested Judgment') to the extent it dismisses as inadmissible the Appellants' action for annulment and rejects its related pleas of illegality;

— refer the case back to the General Court for examination of the substance;

— order the Commission to pay all costs and expenses before the Court of Justice.

Pleas in law and main arguments

The Appellants put forward the following grounds in support of their Appeal:

1. the GC committed an error of law in concluding that the Contested Regulations entailed implementing measures within the meaning of Article 263(4) TFEU;

2. the GC committed an error of law in concluding that Regulation 393/2011 (1) was not of individual concern to the Appellants;

3. the GC committed an en-or of law in rejecting the plea of illegality, as a result of errors (1) and (2) above.

As a result, the Appellants request your Court (i) to set aside the Contested Judgment to the extent that it declares inadmissible the Application for Annulment and rejects the plea of illegality; and (ii) refer the case back to the GC.

(1) Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences
OJ L 104, p. 39

Appeal brought on 16 September 2013 by GRE Grand River Enterprises Deutschland GmbH against the judgment of the General Court (Third Chamber) delivered on 3 July 2013 in Case T-205/12 GRE Grand River Enterprises Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-494/13 P)

(2013/C 325/28)

Language of the case: German

Parties

Appellant: GRE Grand River Enterprises Deutschland GmbH (represented by: I. Memmler and S. Schulz, Rechtsanwältinnen)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Villiger Söhne GmbH

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of 3 July 2013 in Case T-205/12 and annul the decision of the First Board of Appeal of OHIM of 1 March 2012 in Case R 387/2011-1;

— Order the defendant to bear the costs.

Pleas in law and main arguments

The appellant puts forward a single plea in law, namely misinterpretation and misapplication of Article 8(1)(b) of Regulation (EC) 207/2009. ([1])

In support of that plea, the appellant alleges that:

The General Court misinterpreted the term 'identity of the goods' because it equated the goods 'cigars' with the generic term 'tobacco products'. By so doing, the General Court unduly extended the scope of the opposing mark.

The General Court misinterpreted the term 'similarity of the goods' because in assessing the similarity of the goods it also should not have sweepingly considered the individual goods 'cigars' to be similar to the generic term 'smokers' articles'.

When comparing the signs, the General Court did not correctly apply the global assessment theory because it sweepingly compared the components 'LIBERTAD' and 'LIBERTE' and in so doing took no account of all the other components of the marks.

In particular, several other components of the marks at issue have dominant aspects, including the colour combination of the mark at issue and the opposing figurative mark and the 'LA' label.

The General Court also misapplied the principles established by the Court of Justice on conceptual similarity since it did not sufficiently take into account the different languages of the marks.

Overall, the General Court thereby came to a wrong conclusion.

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

Appeal brought on 16 September 2013 by GRE Grand River Enterprises Deutschland GmbH against the judgment of the General Court (Third Chamber) delivered on 3 July 2013 in Case T-206/12 GRE Grand River Enterprises Deutschland GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case C-495/13 P)

(2013/C 325/29)

Language of the case: German

Parties

Appellant: GRE Grand River Enterprises Deutschland GmbH (represented by: I. Memmler and S. Schulz, Rechtsanwältinnen)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Villiger Söhne GmbH

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of 3 July 2013 in Case T-206/12 and annul the decision of the First Board of Appeal of OHIM of 1 March 2012 in Case R 411/2011-1;

— Order the defendant to bear the costs.

Pleas in law and main arguments

The present appeal is against the judgment of the General Court, by which it dismissed the appellant's claim for annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 1 March 2012 concerning opposition proceedings between Villiger Söhne GmbH and GRE Grand River Enterprises Deutschland GmbH.

The appellant puts forward a single plea in law, namely misinterpretation and misapplication of Article 8(1)(b) of Regulation (EC) 207/2009. ([1])

In support of that plea, the appellant alleges that:

The General Court misinterpreted the term 'identity of the goods' because it equated the goods 'cigars' with the generic term 'tobacco products'. By so doing, the General Court unduly extended the scope of the opposing mark.

The General Court misinterpreted the term 'similarity of the goods' because in assessing the similarity of the goods it also should not have sweepingly considered the individual goods 'cigars' to be similar to the generic term 'smokers' articles'.

When comparing the signs, the General Court did not correctly apply the global assessment theory because it sweepingly compared the components 'LIBERTAD' and 'LIBERTE' and in so doing took no account of all the other components of the marks.

In particular, by correctly applying the global assessment theory the General Court should have attributed more significance to several other components of the marks at issue, including the colour combination of the mark at issue and the 'LA' label of the opposing mark.

The General Court also misapplied the principles established by the Court of Justice on conceptual similarity since it did not sufficiently take into account the different languages of the marks.

Overall, the General Court thereby came to a wrong conclusion.

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

GENERAL COURT

Judgment of the General Court of 16 September 2013 — Spain v Commission

(Case T-402/06) [1]

(Cohesion fund — Regulation (EC) No 1164/94 — Environmental infrastructure projects under way in the territory of Catalonia (Spain) — Partial withdrawal of financial assistance — Public works and services contracts — Award criteria — Economically most advantageous tender — Equal treatment — Transparency — Abnormally low offer — Eligibility of expenditure — Determination of the financial corrections — Article H(2) of Annex II of Regulation (EC) No 1164/94 — Proportionality)

(2013/C 325/30)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented: initially by J. M. Rodríguez Cárcamo, then A. Rubio González, lawyers in the State legal service)

Defendant: European Commission (represented: initially by A. Steiblytė and L. Escobar Guerrero, then A. Steiblytė and S. Pardo Quintillán, Agents)

Re:

Application for annulment of Commission Decision C(2006) 5105 of 20 October 2006 reducing the financial assistance granted by the Cohesion Fund for eight projects under way in the territory of the Autonomous Community of Catalonia (Spain).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 42, 24.2.2007.

Judgment of the General Court of 16 September 2013 — Spain v Commission

(Case T-2/07) [1]

(Cohesion fund — Regulation (EC) No 1164/94 — Projects concerning the clearance of the hydrographical basin of Júcar (Spain) — Partial withdrawal of financial assistance — Public works contracts — Award criteria — Economically most advantageous tender — Equal treatment — Transparency — Eligibility of expenditure — Determination of the financial corrections — Article H(2) of Annex II of Regulation (EC) No 1164/94 — Proportionality)

(2013/C 325/31)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented: initially by J. M. Rodríguez Cárcamo, then A. Rubio González, lawyers in the State legal service)

Defendant: European Commission (represented: initially by A. Steiblytė and L. Escobar Guerrero, Agents, and M. Canal Fontcuberta, lawyer, then A. Steiblytė and S. Pardo Quintillán, Agents)

Re:

Application for annulment of Commission Decision C(2006) 5102 of 20 October 2006, reducing the financial assistance from the Cohesion Fund to the group of projects bearing the reference 2001.ES.16.C.PE.050 and concerning the clearance of the hydrographical basin of Júcar (Spain).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

2. *Orders the Kingdom of Spain to bear its own costs and to pay those incurred by the European Commission.*

[1] OJ C 56, 10.3.2007.

Judgment of the General Court of 16 September 2013 — Spain v Commission

(Case T-3/07) [1]

(Cohesion fund — Regulation (EC) No 1164/94 — Environmental infrastructure projects under way in the territory of Andalucia (Spain) — Partial withdrawal of financial assistance — Public works and services contracts — Award criteria — Publicity — Eligibility of expenditure — Determination of the financial corrections — Article H(2) of Annex II of Regulation (EC) No 1164/94 — Proportionality)

(2013/C 325/32)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented: initially by J.M. Rodríguez Cárcamo, then A. Rubio González, lawyers in the State legal service)

Defendant: European Commission (represented: initially by A. Steiblytė and L. Escobar Guerrero, Agents, and by M. Canal Fontcuberta, lawyer, then A. Steiblytė and S. Pardo Quintillán, Agents)

Re:

Application for annulment of Commission Decision C(2006) 5103 of 20 October 2006 reducing the financial assistance from the Cohesion Fund for five projects being undertaken in the Autonomous Community of Andalucia (Spain).

Operative part of the judgment

The Court:

1. *Annuls Articles 2 to 6 Commission Decision C(2006) 5103 of 20 October 2006 reducing the financial assistance from the Cohesion Fund for five projects being undertaken in the Autonomous Community of Andalucia (Spain) in so far as they include an amount of EUR 476 460 by way of financial corrections concerning the projects bearing the references 2000.ES.16.C.PE.004, 2000.ES.16.C.PE.025, 2000.ES.16.C.PE.066 et 2000.ES.16.C.PE.0138;*

2. *Dismisses the remainder of the application;*

3. *Orders the Kingdom of Spain and the European Commission to bear their own costs.*

[1] OJ C 56, 10.3.2007.

Judgment of the General Court of 16 September 2013 — British Telecommunications and BT Pension Scheme Trustees v Commission

(Joined Cases T-226/09 and T-230/09) [1]

(State aid — Partial exemption from the obligation to contribute to the Pension Protection Fund — Decision declaring the aid incompatible with the internal market — Concept of State aid — State resources — Advantage — Selective nature — Adverse effect on competition — Effect on trade between Member States — Equal treatment — Proportionality — Legitimate expectations — Obligation to state reasons — Putting into effect of the aid)

(2013/C 325/33)

Language of the case: English

Parties

Applicants: British Telecommunications (London, United Kingdom) (represented by: G. Robert, M. Newhouse and T. Castorina, Solicitors, and by J. Holmes, Barrister, and H. Legge QC) (Case T-226/09) and BT Pension Scheme Trustees Ltd (London) (represented by: J. Derenne and A. Müller-Rappard, lawyers) (Case T-230/09)

Defendant: European Commission (represented by: L. Flynn and N. Khan, acting as Agents)

Re:

Application for annulment of Commission Decision 2009/703/EC of 11 February 2009 concerning the State aid C-55/2007 (ex NN 63/07, CP 106/06) implemented by the United Kingdom of Great Britain and Northern Ireland — Public guarantee in favour of [British Telecommunications] (OJ 2009 L 242, p. 21).

Operative part of the judgment

The Court:

1. *Dismisses the actions;*

2. *In Case T-226/09, orders British Telecommunications plc to pay the costs;*

3. *In Case T-230/09, orders BT Pension Scheme Trustees Ltd to pay the costs.*

[1] OJ C 193, 15.8.2009.

Judgment of the General Court of 16 September 2013 — GL2006 Europe Ltd v Commission

(Case T-435/09) [1]

(Arbitration clause — Contracts for financial assistance concluded in the context of the Fifth and Sixth Framework Programmes for Community activities in the field of research and technological development and in the context of the eTEN Programme — Highway, J WeB, Care Paths, Cocoon, Secure-Justice, Qualeg, Lensis, E-Pharm Up, Liric, Grace, Clinic and E2SP projects — Termination of contracts — Reimbursement of amounts paid — Debit notes — Counterclaim — Representation of the applicant)

(2013/C 325/34)

Language of the case: English

Parties

Applicant: GL2006 Europe Ltd (Birmingham, United Kingdom) (represented by: M. Gardenal and E. Bélinguier-Raiz, lawyers)

Defendant: European Commission (represented initially by: S. Delaude and N. Bambara, and subsequently by S. Delaude, Agents, and by R. Van der Hout, lawyer)

Re:

Action brought by GL2006 Europe Ltd pursuant to Article 238 EC, on the basis of arbitration clauses, whereby the applicant disputes the checks carried out by OLAF at its premises in December 2008, the decision in the letter of 10 July 2009 whereby the Commission terminated the applicant's participation in two research and technological development projects, and 12 debit notes issued by the Commission on 7 August 2009, seeking the reimbursement of the sums paid by the Commission to the applicant for its participation in 12 research and development projects, and a counterclaim for the reimbursement of those sums

Operative part of the judgment

The Court:

1. *Declares that there is no longer any need to adjudicate on the action brought by GL2006 Europe Ltd;*

2. *Orders GL2006 Europe to pay to the European Commission the sum of EUR 2 258 456,31, along with interest calculated from the time-limits set out in the debit notes of 7 August 2009;*

3. *Orders GL2006 Europe to pay the costs.*

[1] OJ C 11, 16.1.2010.

Judgment of the General Court of 16 September 2013 — Poland v Commission

(Case T-486/09) [1]

(EAGGF — Guarantee Section — EAGF and EAFRD — Expenditure excluded from financing — Rural development measures — Less favoured areas and agri-environment — Flat-rate financial correction — Expenditure incurred by Poland — Control reports — Effectiveness of controls — System of penalties — Obligation to state reasons)

(2013/C 325/35)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented: initially by M. Szpunar, subsequently by M. Szpunar and B. Majczyna, and lastly by B. Majczyna and S. Balcerak, Agents)

Defendant: European Commission (represented by: P. Rossi and M. Owsiany-Hornung, Agents)

Re:

Application for annulment in part of Commission Decision 2009/721/EC of 24 September 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2009 L 257, p. 28).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Republic of Poland to pay the costs.*

[1] OJ C 51, 27.2.2010.

Judgment of the General Court of 16 September 2013 — Ecoceane v EMSA

(Case T-518/09) [1]

(Public service contracts — Tendering procedures — Operation of stand-by oil spill recovery vessels — Rejection of a tenderer's bid — Obligation to state reasons — Equal treatment — Transparency — Manifest error of assessment — Non-contractual liability)

(2013/C 325/36)

Language of the case: French

Parties

Applicant: Ecoceane (Paris, France) (represented by: S. Spalter, lawyer)

Defendant: European Maritime Safety Agency (EMSA) (represented by: J. Menze, Agent, assisted by J. Stuyck, lawyer)

Re:

Application for (i) annulment of EMSA's decision of 28 October 2009 rejecting the tender submitted by the applicant in the tendering procedure EMSA/NEG/1/2009, relating to the conclusion of public service contracts for stand-by oil spill recovery vessels (Lot No 2: Atlantic/Channel), and of the decision awarding the contract to another tenderer; and (ii) damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ecoceane to bear its own costs and to pay those incurred by the European Maritime Safety Agency (EMSA).*

[1] OJ C 80, 27.3.2010.

Judgment of the General Court of 16 September 2013 — ATC and Others v Commission

(Case T-333/10) [1]

(Non-contractual liability — Health policy — Safeguard measures in crisis situation — Protection measures in relation to highly pathogenic avian influenza in certain third countries — Prohibition on imports of wild birds captured in their natural habitat — Sufficiently serious breach of rules of law conferring rights on individuals — Manifest and grave disregard of the limits on the discretion — Directives 91/496/EC and 92/65/C — Precautionary principle — Duty of diligence — Proportionality)

(2013/C 325/37)

Language of the case: Dutch

Parties

Applicants: Animal Trading Company (ATC) BV (Loon op Zand, Netherlands); Avicentra NV (Malle, Belgium); Borgstein Birds and Zoofood Trading VOF (Wamel, Netherlands); Bird Trading Company Van der Stappen BV (Dongen, Netherlands); New Little Bird's srl (Anagni, Italy); Vogelhuis Kloeg (Zevenbergen, Netherlands) and Giovanni Pistone (Westerlo, Belgium) (represented by: M. Osse and J. Houdijk, lawyers)

Defendant: European Commission (represented by: F. Jimeno Fernández and B. Burggraaf, acting as Agents)

Re:

Action for compensation in respect of the harm allegedly suffered by the applicants as a result of the adoption first, of Commission Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds (OJ 2005 L 285, p. 60), as extended, and of Commission Regulation (EC) No 318/2007 of 23 March 2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof (OJ 2007 L 84, p. 7).

Operative part of the judgment

The Court:

1. *The European Union is ordered to compensate for the loss suffered by the Animal Trading Company (ATC) BV, Avicentra NV, Borgstein Birds and Zoofood Trading vof, Bird Trading Company Van der Stappen BV, New Little Bird's srl, Vogelhuis Kloeg and Mr Pistone Giovanni as a result of the adoption and implementation by the European Commission of: (i) Commission Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds; (ii) Commission Decision 2005/862/EC of 30 November 2005 amending Decisions 2005/759/EC and 2005/760/EC relating to measures to combat avian influenza in birds other than poultry; (iii) Commission Decision 2006/79/EC of 31 January 2006 amending Decisions 2005/759/EC and*

2005/760/EC as regards an extension of their period of application; (iv) Commission Decision 2006/405/EC of 7 June 2006 amending Decisions 2005/710/EC, 2005/734/EC, 2005/758/EC, 2005/759/EC, 2005/760/EC, 2006/247/EC and 2006/265/EC as regards certain protection measures in relation to highly pathogenic avian influenza; (v) Commission Decision 2006/522/EC of 25 July 2006 amending Decisions 2005/759/EC and 2005/760/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of certain live birds into the Community; (vi) Commission Decision 2007/21/EC of 22 December 2006 amending Decision 2005/760/EC as regards certain protection measures in relation to highly pathogenic avian influenza and imports of birds other than poultry into the Community; (vii) Commission Decision 2007/183/EC of 23 March 2007 amending Decision 2005/760/EC.

2. *The action is dismissed as to the remainder.*

3. *The parties are ordered to provide the General Court with the amounts (in figures) of compensation to be paid, established by common agreement, within three months of the date of judgment.*

4. *If the parties fail to reach an agreement, they are to provide the General Court with their forms of order sought, including figures, within the same period.*

5. *Costs are reserved.*

([1]) OJ C 274, 9.10.2010.

Judgment of the General Court of 16 September 2013 — Duravit and Others v Commission

(Case T-364/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Single and continuous infringement — Burden of proof — Fines — Equal treatment — Proportionality — Principle that penalties must have a proper legal basis)

(2013/C 325/38)

Language of the case: German

Parties

Applicants: Duravit AG (Hornberg, Germany); Duravit SA (Bischwiller, France); and Duravit BeLux SPRL/BVBA (Overijse, Belgium) (represented by: R. Bechtold, U. Soltész and C. von Köckritz, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and A. Antoniadis, Agents, assisted by P. Thyri, lawyer)

Intervener in support of the defendant: Council of the European Union (represented by: M. Simm and F. Florindo Gijón, Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) and for reduction of the fine imposed on the applicants in that decision.

Operative part of the judgment

The Court:

1. *Annuls point (8) of Article 1(1) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as the European Commission finds that Duravit AG, Duravit BeLux SPRL/BVBA and Duravit SA participated in an infringement in Italy, Austria and the Netherlands;*

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

3. *Orders Duravit AG, Duravit BeLux and Duravit SA to bear three quarters of their own costs;*

4. *Orders the Commission to pay one quarter of the costs incurred by Duravit AG, Duravit BeLux and Duravit SA and to bear its own costs;*

5. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 288, 23.10.2010.

Judgment of the General Court of 16 September 2013 — Rubinetteria Cisal v Commission

(Case T-368/10) [1]

(Competition — Agreements, decisions and concerted parties — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Concept of infringement — 2002 Leniency Notice — Cooperation — 2006 Guidelines on the method of setting fines — Calculation of the fine — Inability to pay)

(2013/C 325/39)

Language of the case: Italian

Parties

Applicant: Rubinetteria Cisal (Alzo Frazione di Pella, Italy) (represented by: M. Pinnarò and P. Santer, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, A. Antoniadis and L. Malferrari, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Application for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), and, in the alternative, for reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rubinetteria Cisal SpA to bear its own costs and to pay those of the European Commission.*

[1] OJ C 288, 23.10.2010.

Judgment of the General Court of 16 September 2013 — Villeroy & Boch Austria and Others v Commission

(Joined Cases T-373/10, T-374/10, T-382/10 and T-402/10) [1]

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Single infringement — Attributability of the unlawful conduct — Proof — Fines — 2006 Guidelines on the method of setting fines — Non-retroactivity — Reasonable period)

(2013/C 325/40)

Languages of the case: German, French and Dutch

Parties

Applicants: Villeroy & Boch Austria GmbH (Mondsee, Austria) (represented by: A. Reidlinger, S. Dethof, M. Klusmann and K. Blau-Hansen, lawyers) (Case T-373/10); Villeroy & Boch AG (Mettlach, Germany) (represented by: M. Klusmann, lawyer, Prof. S. Thomas) (Case T-374/10); Villeroy & Boch SAS (Paris, France) (represented by: J. Philippe, K. Blau-Hansen, lawyers, and A. Villette, Solicitor) (Case T-382/10); and Villeroy & Boch — Belgium (Brussels, Belgium) (represented by: O. Brouwer, J. Blockx and N. Lorjé, lawyers) (Case T-402/10)

Defendant: European Commission (represented by: in Case T-373/10, initially, F. Castillo de la Torre, R. Sauer, F. Ronkes Agerbeek and A. Antoniadis, and, subsequently, F. Castillo de la Torre, R. Sauer and F. Ronkes Agerbeek, Agents, assisted by G. van der Wal and M. van Heezik, lawyers; in Case T-374/10, A. Antoniadis, R. Sauer and F. Ronkes Agerbeek; in Case T-382/10, F. Castillo de la Torre, F. Ronkes Agerbeek and N. von Lingen, Agents, assisted by G. van der Wal and M. van Heezik; and, in Case T-402/10, F. Castillo de la Torre and F. Ronkes Agerbeek, assisted by G. van der Wal and M. van Heezik)

Re:

Application for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as it concerns the applicants and, in the alternative, for reduction of the fines imposed on them.

Operative part of the judgment

The Court:

1. *In Cases T-373/10, T-382/10 and T-402/10, dismisses the actions;*

2. *In Case T-374/10, annuls Article 1(7) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), in so far as it finds that Villeroy & Boch AG participated in a cartel in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria before 12 October 1994;*

3. *In Case T-374/10, dismisses the action as to the remainder;*

4. *Orders Villeroy & Boch Austria GmbH, Villeroy & Boch SAS and Villeroy & Boch — Belgium to bear their own costs and to pay those incurred by the European Commission in Cases T-373/10, T-382/10 and T-402/10;*

5. *Orders Villeroy & Boch AG to bear seven eighths of its own costs and to pay seven eighths of the costs incurred by the Commission in Case T-374/10;*

6. *Orders the Commission to bear one eighth of its own costs and to pay one eighth of the costs incurred by Villeroy & Boch AG in Case T-374/10.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Hansa Metallwerke and Others v Commission

(Case T-375/10) ([1])

(Competition — Agreements, decisions and concerted parties — Bathroom fittings and fixtures markets in Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Cooperation during the administration procedure — 2002 Leniency Notice — Reduction of the fine — 2006 Guidelines on the method of setting fines — Non-retroactivity)

(2013/C 325/41)

Language of the case: German

Parties

Applicants: Hansa Metallwerke and Others (Stuttgart, Germany); (Hansa Nederland BV (Nijkerk, Netherlands); Hansa Italiana Srl (Castelnuovo del Garda, Italy); Hansa Belgium (Asse, Belgium); and Hansa Austria GmbH (Salzbourg, Austria) (represented by: H.-J. Hellmann and C. Mal, lawyers)

Defendant: European Commission (represented by: A. Antoniadis and R. Sauer, Agents)

Intervener before the Court on behalf of the defendant: Council of the European Union (represented by: M. Simm and F. Florindo Gijón, Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceedings under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), and, in the alternative, for reduction of the fine imposed on the applicants in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hansa Metallwerke AG, Hansa Nederland BV, Hansa Italiana Srl, Hansa Belgium and Hansa Austria GmbH to bear their own costs and to pay those of the European Commission;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Mamoli Robinetteria v Commission

(Case T-376/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Rights of the defence — 2002 Leniency Notice — Plea of illegality — Concept of agreements, decisions and concerted practices — Calculation of the fine — 2006 Guidelines on the method of setting fines — Gravity — Application of a multiplier to the additional sum)

(2013/C 325/42)

Language of the case: Italian

Parties

Applicant: Mamoli Robinetteria SpA (Milan, Italy) (represented by: F. Capelli and M. Valcada, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, A. Antoniadis and L. Malferrari, acting as Agents, assisted initially by F. Ruggeri Laderchi and A. De Matteis, and subsequently by F. Ruggeri Laderchi, lawyers)

Re:

Application for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), in so far as it concerns the applicant, and, in the alternative, for cancellation or reduction of the fine imposed on the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mamoli Robinetteria SpA to bear its own costs and to pay those of the European Commission.*

([1]) OJ C 288, 23.10.2010.

Judgment of the General Court of 16 September 2013 — Masco and Others v Commission

(Case T-378/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Single infringement)

(2013/C 325/43)

Language of the case: English

Parties

Applicants: Masco Corp. (Michigan, United States of America); Hansgrohe AG (Schiltach, Germany); Hansgrohe Deutschland Vertriebs GmbH (Schiltach); Hansgrohe Handelsgesellschaft mbH (Wiener Neudorf, Austria); Hansgrohe SA/NV (Brussels, Belgium); Hansgrohe BV (Westknollendam, Netherlands); Hansgrohe SARL (Antony, France); Hansgrohe SRL (Villanova d'Asti, Italy); Hüppe GmbH (Bad Zwischenahn, Germany); Hüppe Ges.mbH (Laxenburg, Austria); Hüppe Belgium SA (Woluwé Saint-Étienne, Belgium); Hüppe BV (Alblasserdam, Netherlands) (represented by: D. Schroeder, S. Heinz, lawyers, and J. Temple Lang, Solicitor)

Defendant: European Commission (represented by: F. Castillo de la Torre and F. Ronkes Agerbeek, Agents, assisted by B. Kennelly, Barrister)

Re:

Application for annulment in part of Article 1 of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 EEA (Case COMP/39.092 — Bathroom Fittings and Fixtures), in so far as the Commission finds that the applicants participated in a single complex infringement in the bathroom fittings and fixtures sector.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Masco Corp., Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hansgrohe Handelsgesellschaft mbH, Hansgrohe SA/NV, Hansgrohe BV, Hansgrohe SARL, Hansgrohe SRL, Hüppe GmbH, Hüppe Ges.mbH, Hüppe Belgium SA and Hüppe BV to bear their own costs and to pay those incurred by the European Commission.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Keramag Keramische Werke and Others v Commission

(Joined Cases T-379/10 and T-381/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Duration of the infringement — Rights of the defence — Access to the file — Attributability of unlawful conduct)

(2013/C 325/44)

Language of the case: English

Parties

Applicants: Keramag Keramische Werke AG (Ratingen, Germany); Koralle Sanitärprodukte GmbH (Vlotho, Germany); Koninklijke Sphinx BV (Maastricht, Netherlands); Allia SAS (Avon, France); Produits Céramique de Touraine SA (Selles-sur-Cher, France); Pozzi Ginori SpA (Milan, Italy) (Case T-379/10); Sanitec Europe Oy (Helsinki, Finland) (Case T-381/10) (represented by: J. Killick, Barrister, I. Reynolds, Solicitor, and P. Lindfelt and K. Struckmann, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and F. Ronkes Agerbeek, acting as Agents, assisted by B. Kennelly, Barrister)

Re:

Applications for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) and, in the alternative, for reduction of the fine imposed on the applicants by that decision.

Operative part of the judgment

The Court:

1. *Annuls point (6) of Article 1(1) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as the European Commission finds (i) that Allia SAS and Produits Céramique de Touraine SA participated in an infringement relating to a cartel on the French market for a period from 25 February 2004 to 9 November 2004 and (ii) that Pozzi Ginori SpA participated in an infringement relating to a cartel on the Italian market for a period other than that from 14 May 1996 to 9 March 2001;*

2. *Annuls Article 2(7) of Decision C(2010) 4185 final in so far as the total amount of the fine imposed on Keramag Keramische Werke AG, Koralle Sanitärprodukte GmbH, Koninklijke Sphinx BV, Pozzi Ginori and Sanitec Europe Oy exceeds EUR 50 580 701;*

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

4. *Orders Keramag Keramische Werke, Koralle Sanitärprodukte, Koninklijke Sphinx, Allia, Produits Céramique de Touraine, Pozzi Ginori and Sanitec Europe to bear three quarters of their own costs;*

5. *Orders the Commission to pay a quarter of the costs incurred by Keramag Keramische Werke, Koralle Sanitärprodukte, Koninklijke Sphinx, Allia, Produits Céramique de Touraine, Pozzi Ginori and Sanitec Europe and to bear its own costs.*

(1) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Wabco Europe and Others v Commission

(Case T-380/10) (1)

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Distortion of competition — Proof — Calculation of the fine — Cooperation during the administrative procedure — 2002 Leniency Notice — Immunity from fines — Reduction of the fine — Significant added value — 2006 Guidelines on the method of setting fines — Principle of non-retroactivity)

(2013/C 325/45)

Language of the case: English

Parties

Applicants: Wabco Europe (Brussels, Belgium); Wabco Austria GesmbH (Vienna, Austria); Trane Inc. (Piscataway, New Jersey, United States); Ideal Standard Italia Srl (Milan, Italy); Ideal Standard GmbH (Bonn, Germany) (represented by: S. Völcker, F. Louis, A. Israel, N. Niejahr, lawyers, C. O'Daly, E. Batchelor, Solicitors, and F. Carlin, Barrister)

Defendant: European Commission (represented by: F. Castillo de la Torre, F. Ronkes Agerbeek and G. Koleva, acting as Agents)

Re:

Application for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as it concerns the applicants, and for reduction of the fines imposed on them.

Operative part of the judgment

The Court:

1. *Annuls points (3) and (4) of Article 1(1) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom fittings and fixtures) in so far as the European Commission makes a finding of infringement against Trane Inc., Wabco Europe and Ideal Standard Italia Srl in respect of a cartel on the Italian market for ceramics for a period other than the period from 12 May 2000 to 9 March 2001;*

2. *Sets the amount of the fine imposed on Trane in Article 2(3)(a) of Decision C(2010) 4185 final at EUR 92 664 493;*

3. *Sets the amount of the fine imposed jointly and severally on Wabco Europe and Trane in Article 2(3)(b) of Decision C(2010) 4185 at EUR 15 820 767;*

4. *Sets the amount of the fine imposed jointly and severally on Ideal Standard Italia, Wabco Europe and Trane in Article 2(3)(e) of Decision C(2010) 4185 at EUR 4 520 220;*

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

6. *Orders the Commission to pay half of the costs incurred by Wabco Europe, Wabco Austria GesmbH, Trane, Ideal Standard Italia and Ideal Standard GmbH and to bear its own costs;*

7. *Orders Wabco Europe, Wabco Austria, Trane, Ideal Standard Italia and Ideal Standard to bear half of their own costs.*

([1]) OJ C 288, 23.10.2010.

Judgment of the General Court of 16 September 2013 — Dornbracht v Commission

(Case T-386/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Plea of illegality — Gravity of the infringement — Mitigating circumstances — Equal treatment — Proportionality — Non-retroactivity)

(2013/C 325/46)

Language of the case: German

Parties

Applicant: Aloys F. Dornbracht GmbH & Co. KG (Iserlohn, Germany) (represented: initially by H. Janssen, T. Kapp and M. Franz, and subsequently by H. Janssen and T. Kapp, lawyers)

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

Intervener in support of the defendant: Council of the European Union (represented by: M. Simm and F. Florindo Gijón, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), and, in the alternative, for reduction of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Aloys F. Dornbracht GmbH & Co. KG to bear its own costs and pay those of the European Commission;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Zucchetti Rubinetteria v Commission

(Case T-396/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Concept of infringement — Single infringement — Relevant market — 2006 Guidelines on the method of setting fines — Gravity — Multipliers)

(2013/C 325/47)

Language of the case: Italian

Parties

Applicant: Zucchetti Rubinetteria SpA (Gozzano, Italy) (represented by: M. Condinanzi, P. Ziotti and N. Vasile, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, A. Antoniadis and L. Malferrari, acting as Agents, assisted initially by F. Ruggeri Laderchi and A. De Matteis, and subsequently by F. Ruggeri Laderchi, lawyers)

Re:

Application for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), in so far as it concerns the applicant, and, in the alternative, for cancellation or reduction of the fine imposed on it.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Zucchetti Rubinetteria SpA to bear its own costs and to pay those incurred by the European Commission.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Roca Sanitario v Commission

(Case T-408/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Attributability of unlawful conduct — Fines — 2006 Guidelines on the method of setting fines — Gravity of the infringement — Multipliers — Mitigating circumstances — Reduction of the fine — Significant added value)

(2013/C 325/48)

Language of the case: Spanish

Parties

Applicant: Roca Sanitario, SA (Barcelona, Spain) (represented by: J. Folguera Crespo and M. Merola, lawyers)

Defendant: European Commission (represented: initially by F. Castillo de la Torre, A. Antoniadis and F. Castilla Contreras, and subsequently by F. Castillo de la Torre, A. Antoniadis and F. Jimeno Fernández, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), and, in the alternative, for reduction of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Roca Sanitario, SA in Article 2(4)(b) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) at EUR 6 298 000;*

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

3. *Orders the European Commission to pay, in addition to its own costs, one third of the costs incurred by Roca Sanitario;*

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

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Laufen Austria v Commission

(Case T-411/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Attributability of unlawful conduct — Fines — 2006 Guidelines on the method of setting fines — Gravity of the infringement — Multipliers — Mitigating circumstances — Economic crisis — Pressure exerted by wholesalers — 2002 Leniency Notice — Reduction of the fine — Significant added value)

(2013/C 325/49)

Language of the case: Spanish

Parties

Applicant: Laufen Austria AG (Wilhelmsburg, Austria) (represented by: E. Navarro Varona and L. Moscoso del Prado González, lawyers)

Defendant: European Commission (represented: initially by F. Castillo de la Torre, A. Antoniadis and F. Castilla Contreras, and subsequently by F. Castillo de la Torre, A. Antoniadis and F. Jimeno Fernández, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) and for reduction of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Laufen Austria AG to bear its own costs and to pay those of the European Commission.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Roca v Commission

(Case T-412/10) ([1])

(Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the EEA Agreement — Coordination of price increases and exchange of sensitive business information — Attributability of the unlawful conduct — Fines — 2006 Guidelines on the method of setting fines — Gravity of the infringement — Mitigating circumstances — Economic crisis — 2002 Leniency Notice — Reduction of the fine — Significant added value)

(2013/C 325/50)

Language of the case: Spanish

Parties

Applicant: Roca (Saint Ouen l'Aumône, France) (represented by: P. Vidal Martínez, lawyer)

Defendant: European Commission (represented: initially by F. Castillo de la Torre, A. Antoniadis and F. Castilla Contreras, and subsequently by F. Castillo de la Torre, A. Antoniadis and F. Jimeno Fernández, acting as Agents)

Re:

Application for annulment in part of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures), and for reduction of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Annuls Article 2(4)(b) of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/39.092 — Bathroom Fittings and Fixtures) in so far as the European Commission set the amount of the fine to be imposed on Roca jointly and severally without taking account of its cooperation;*

2. *Sets the amount of the fine imposed on Roca in Article 2(4)(b) of Decision C(2010) 4185 final at EUR 6 298 000;*

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

4. *Orders the Commission to pay one third of the costs incurred by Roca and to bear its own costs;*

5. *Orders Roca to bear two thirds of its own costs.*

([1]) OJ C 301, 6.11.2010.

Judgment of the General Court of 16 September 2013 — Islamic Republic of Iran Shipping Lines and Others v Council

(Case T-489/10) ([1])

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Error of assessment)

(2013/C 325/51)

Language of the case: English

Parties

Applicants: Islamic Republic of Iran Shipping Lines (Tehran (Iran)), and the 17 other applicants whose names appear in the annex to the judgment (represented by: F. Randolph QC, M. Lester, Barrister, and M. Taher, Solicitor)

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

Interveners in support of the defendant: European Commission (represented by: M. Konstantinidis and T. Scharf, Agents) and French Republic (represented by: G. de Bergues and É. Ranaivoson, Agents)

Re:

Application for annulment in part of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 195, p. 39), of Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ 2010 L 195, p. 25), of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413 (OJ 2010 L 281, p. 81), of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation

(EC) No 423/2007 (OJ 2010 L 281, p. 1), and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1)

Operative part of the judgment

The Court:

1. *Annuls the following measures, in so far as they concern Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex:*

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

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

   — *the annex to Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413;*

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

   — *Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010;*

2. *Orders the effects of Decision 2010/413, as amended by Decision 2010/644, to be maintained as regards Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex until the annulment of Regulation No 267/2012 takes effect;*

3. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Islamic Republic of Iran Shipping Lines and the 17 other applicants whose names appear in the annex;*

4. *Orders the European Commission and the French Republic to bear their own costs.*

(1) OJ 2011 C 30, 29.1.2011.

Judgment of the General Court of 16 September 2013 — Bank Kargoshaei and Others v Council

(Case T-8/11) (1)

(Common foreign and security policy — Restrictive measures against Iran with the aim of preventing nuclear proliferation — Freezing of funds — Obligation to state reasons — Rights of the defence — Right to effective judicial protection — Legitimate expectations — Review of the restrictive measures adopted — Error of assessment — Equal treatment — Legal basis — Essential procedural requirements — Proportionality — Right to property)

(2013/C 325/52)

Language of the case: English

Parties

Applicants: Bank Kargoshaei (Tehran, Iran); Bank Melli Iran Investment Company (Tehran); Bank Melli Iran Printing and Publishing Company (Tehran); Cement Investment & Development Co. (Tehran); Mazandaran Cement Company (Tehran); Melli Agro-chemical Company (Tehran); Shomal Cement Co. (Tehran) (represented initially by L. Defalque and S. Woog, and subsequently by L. Defalque and C. Malherbe, lawyers)

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

Intervener in support of the defendant: European Commission (represented by: F. Erlbacher and M. Konstantinidis, acting as Agents)

Re:

Application, first, for annulment in part of Council Decision 2010/644/CFSP of 25 October 2010 amending Decision 2010/413/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ 2010 L 281, p. 81); of Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1); of Council Decision 2011/783/CFSP of 1 December 2011 amending Decision 2010/413/CFSP (OJ 2011 L 319, p. 71); of Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation No 961/2010 (OJ 2011 L 319, p. 11); and of Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation No 961/2010 (OJ 2012 L 88, p. 1); and, secondly, for annulment of any future regulation or decision in force as at the date of closure of the oral procedure which supplements or amends any of the contested measures.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Council of the European Union to bear its own costs and to pay those incurred by Bank Kargoshaei, Bank Melli Iran Investment Company, Bank Melli Iran Printing and Publishing Company, Cement Investment & Development Co., Mazandaran Cement Company, Melli Agro-chemical Company and Shomal Cement Co.;*

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

([1]) OJ C 72, 5.3.2011.

Judgment of the General Court of 16 September 2013 — Netherlands v Commission

(Case T-343/11) ([1])

(EAGGF — Guarantee Section — Expenditure excluded from financing — Fruits and vegetables — Exclusion of financing of costs of printing on packaging — Non-compliance with criteria for recognising a producers' organisation — Exclusion of expenses of all members of the producers' organisation in question — Proportionality)

(2013/C 325/53)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: C. Wissels, M. de Ree, B. Koopman and C. Schillemans, subsequently by C. Wissels, M. de Ree and C. Schillemans, acting as Agents)

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

Re:

Application for annulment of Commission Implementing Decision 2011/244/EU of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33) in so far as it concerns certain expenditure incurred by the Kingdom of the Netherlands.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 252, 27.8.2011.

Appeal brought on 17 July 2013 by Geoffroy Alsteens against the order of the Civil Service Tribunal of 8 May 2013 in Case F-87/12 Alsteens v Commission

(Case T-373/13 P)

(2013/C 325/54)

Language of the case: French

Parties

Appellant: Geoffroy Alsteens (Marcinelle, Belgium) (represented by: S. Orlandi, D. Abreu Caldas and J.-N. Louis, lawyers)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Set aside the order of the Civil Service Tribunal of the European Union (Third Chamber) of 8 May 2013 in Case F-87/12 *Alsteens* v *European Commission*

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of his appeal, the appellant relies on single plea in law, alleging error of law, as the CST held that annulment of the decision to limit the extension period of the appellant's contract as a member of temporary staff would place him retroactively under the system of contracts of indefinite duration. The appellant argues that that is not the case and submits that the CST infringed his right to an effective judicial remedy in finding that he could not apply for partial annulment of the decision to limit the extension period of his contract, namely that part of the decision limiting the duration of the extension in time.

Action brought on 6 August 2013 — Bitiqi and Others v Commission and Others

(Case T-410/13)

(2013/C 325/55)

Language of the case: French

Parties

Applicants: Burim Bitiqi (London, United Kingdom); Arlinda Gjebrea (Prishtina, Republic of Kosovo); Anna Gorska (Warsaw, Poland); Agim Hajdini (London); Josefa Martínez Estéve (Valencia, Spain); Denis Vasile Miron (Bucharest, Romania); James Nicholls (Swindon, United Kingdom); Zornitsa Popova Glodzhani (Varna, Bulgaria); Andrei Mihai Popovici (Bucharest); and Amaia San José Ortiz (Llodio, Spain) (represented by: A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Defendants: European Commission, Eulex Kosovo and the European External Action Service (EEAS)

Form of order sought

The applicants claim that the General Court should:

— annul the decisions of 27 May and 2 July 2013 not to renew their contracts;

— order the Commission to pay the 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 infringement of the principle that staff representatives should be consulted, since the staff was not informed of the consequences of the decision to restructure the Eulex Kosovo Mission until after that decision had been taken, and the hierarchy refused to consult with a trade union representative.

2. Second plea in law, alleging infringement of the protection of workers in the context of a mass redundancy, in so far as each of the workers made redundant must have the law in force in her/his Member State of origin applied to her/him, resulting in significant differences in the rules applied and the protection granted to each worker.

3. Third plea in law, alleging misuse of the right to use successive fixed-term contracts.

4. Fourth plea in law, alleging infringement of the principles of equal treatment and non-discrimination between 'seconded' and 'contracted' workers, in so far as only those workers who were 'contracted' staff will actually be made redundant, whereas 'seconded' members of staff have been offered the opportunity to be deployed elsewhere.

5. Fifth plea in law, concerning one of the applicants, alleging a breach of Article 8 of the European Social Charter, since that applicant was informed of the contested decision while she was pregnant and on maternity leave.

Action brought on 13 August 2013 — Richter + Frenzel GmbH v OHIM — Richter (Richter+Frenzel)

(Case T-418/13)

(2013/C 325/56)

Language in which the application was lodged: German

Parties

Applicant: Richter + Frenzel GmbH + Co. KG (Würzburg, Germany) (represented by: D. Altenburg, lawyer)

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

*Other party to the proceedings before the Board of Appeal:*Ferdinand Richter GmbH (Pasching, Austria)

Form of order sought

The applicant claims that the Court should:

— Annul the contested decision of the Fourth Board of Appeal of OHIM of 12 March 2013 (R 2001/2011-4);

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

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Richter+Frenzel' for goods and services in Classes 1, 6, 7, 8, 9, 11, 16, 17, 19, 20, 24, 25, 35, 37, 39, 41 and 42 Community trade mark application No 8 545 998

Proprietor of the mark or sign cited in the opposition proceedings: Ferdinand Richter GmbH

Mark or sign cited in opposition: the word mark 'RICHTER', the figurative mark 'RICHTER edition' and the non-registered mark 'Richter' used in the course of trade in Austria

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

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 14 August 2013 — Brouillard v Court of Justice

(Case T-420/13)

(2013/C 325/57)

Language of the case: French

Parties

Applicant: Alain Laurent Brouillard (Brussels, Belgium) (represented by: J.-M. Gouazé, lawyer)

Defendant: Court of Justice of the European Union

Form of order sought

The applicant requests the General Court to:

— annul the decision of 5 June 2013 of the Court of Justice of the European Union — Directorate-General for Translation — concerning contract 2013/S 047-075037, eliminating Mr Brouillard from the lot for translation into French;

— order the defendant to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks annulment of the decision to invite the candidate selected to tender in the context of a negotiated tender procedure relating to the conclusion of framework contracts for the translation of legal texts from certain official languages of the European Union into French (OJ 2013/S 47-075037) to submit a tender in which it is confirmed that the applicant will not be engaged in providing the services concerned on the ground that the applicant does not fulfil the full legal education requirement.

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

1. The first plea in law, alleging lack of competence of the authority which adopted the contested act.

2. Second plea in law, alleging infringement of Directives 2000/78/EC [1] and 2005/36/EC, [2] and the case-law of the Court of Justice.

3. Third plea in law, alleging a manifest error of assessment concerning the applicant's academic and professional qualifications.

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[1] 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).

[2] Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22).

Action brought on 14 August 2013 — CPME and Others v Council

(Case T-422/13)

(2013/C 325/58)

Language of the case: English

Parties

Applicants: Committee of Polyethylene Terephthalate (PET) Manufacturers in Europe (CPME) (Brussels, Belgium); Artenius España, SL (El Prat del Llobregat, Spain); Cepsa Quimica, SA (Madrid, Spain); Equipolymers Srl (Milan, Italy); Indorama Ventures Poland sp. z o.o. (Włocławek, Poland); Lotte Chemical UK Ltd (Newcastle upon Tyne, United Kingdom); M&G Polimeri Italia SpA (Patrica, Italy); Novapet, SA (Zaragoza, Spain); Ottana Polimeri Srl (Ottana, Italy); UAB Indorama Polymers Europe (Klaipėda, Lithuania); UAB Neo Group (Rimkai, Lithuania); and UAB Orion Global pet (Klaipėda) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Declare the application admissible and well-founded;

— Annul Council Implementing Decision 2013/226/EU [1];

— Order the defendant to pay the applicants damages; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 20(4) and (5) of the Council Regulation (EC) No 1225/2009 [2] (the 'Basic Anti-Dumping Regulation') and violation of the applicants' rights of defence, as the Council did not disclose to the applicants the facts and considerations that led to the adoption of the contested decision, and allow a reasonable time for comment.

2. Second plea in law, alleging that the Council committed a manifest error of assessment of the facts and violated Articles 11(2) and 21(1) of the Basic Anti-Dumping Regulation when adopting the contested decision, in particular when concluding in recitals 17 and 23 of the contested decision that material injury is unlikely to recur upon lapse of the measures, and that the continuation of the anti-dumping measures is clearly not in the EU interest.

3. Third plea in law, alleging that the Council manifestly and seriously violated its duties of care and of good administration as it did not disclose to the applicants the facts and considerations that led to the adoption of the contested decision.

4. Fourth plea in law, raised in support of the claim for damages, alleging that the Council acted unlawfully by adopting the contested decision and thereby caused damages to the applicants for which the EU is liable under Article 340(2) TFEU.

([1]) Council Implementing Decision of 21 May 2013 rejecting the proposal for a Council implementing regulation imposing a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating the expiry review proceeding concerning imports of certain polyethylene terephthalate originating in Indonesia and Malaysia, in so far as the proposal would impose a definitive anti-dumping duty on imports of certain polyethylene terephthalate originating in India, Taiwan and Thailand (OJ 2013 L 136, p. 12)

([2]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community, (OJ 2009 L 343, p. 51).

Action brought on 16 August 2013 — Good Luck Shipping v Council

(Case T-423/13)

(2013/C 325/59)

Language of the case: English

Parties

Applicant: Good Luck Shipping LLC (Dubai, United Arab Emirates) (represented by: F. Randolph, QC, M. Lester, Barrister, and M. Taher, Solicitor)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision 2013/270/CFSP of 6 June 2013 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ 2013 L 156, p. 10) and Council Implementing Regulation (EU) No 522/2013 of 6 June 2013 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran (OJ 2013 L 156, p. 3), in so far as they relate to the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council failed to give adequate or sufficient reasons.

2. Second plea in law, alleging that the Council failed to fulfill the criteria for listing, and/or committed a manifest error of assessment in determining that those criteria were satisfied in relation to the applicant and/or included the applicant without an adequate legal basis for doing so.

3. Third plea in law, alleging that the Council failed to safeguard the applicant's rights of defence and right to effective judicial review.

4. Fourth plea in law, alleging that the Council infringed, without justification or proportion, the applicant's fundamental rights, including its right to protection of its property, business, and reputation.

Action brought on 7 August 2013 — Jinan Meide Casting v Council

(Case T-424/13)

(2013/C 325/60)

Language of the case: English

Parties

Applicant: Jinan Meide Casting Co. Ltd (Jinan, China) (represented by: R. Antonini and E. Monard, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia, insofar as it relates to the applicant (OJ 2013 L 129, p. 1); and

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

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 failure to provide access/disclose to the applicant information relevant to the normal value determination violates the rights of defense of the applicant and Articles 6(7), 20(2) and 20(4) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

2. Second plea in law, alleging that the rejection of certain adjustments requested by the applicant violates Article 2(10) of Council Regulation (EC) No 1225/2009 and Article 2.4 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. In the alternative, the applicant considers that the Council violated Article 296 of the Treaty on the Functioning of the European Union

3. Third plea in law, alleging that the normal value determination for non-matching product types violates Articles 2(7)(a), 2(10) and 2(10)(a) and Articles 2(11) *juncto* 2(8), 2(9), 2(7)(a) and 9(5) of Council Regulation (EC) No 1225/2009 and the principle of non-discrimination.

4. Fourth plea in law, alleging that the failure to make a determination as to whether market economy conditions prevail for the applicant within three months of the initiation of the investigation violates Article 2(7) of Council Regulation (EC) No 1225/2009.

5. Fifth plea in law, alleging that the reliance on inaccurate import data for the injury determination violates Articles 3(1), 3(2) and 3(3) of Council Regulation (EC) No 1225/2009.

Action brought on 19 August 2013 — Giant (China) v Council

(Case T-425/13)

(2013/C 325/61)

Language of the case: English

Parties

Applicant: Giant (China) Co. Ltd (Kunshan, China) (represented by: P. De Baere, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ 2013 L 153, p. 17), in so far as it relates to the applicant; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the that the Council applied the wrong legal test to determine that Jinshan and Giant China formed a single economic entity thereby violating Article 9(5) of Regulation (EC) No 1225/2009 (the basic regulation).

2. Second plea in law, alleging that the Council made a manifest error of assessment when concluding that Giant China and the Jinshan group of companies have a close commercial and structural relationship.

3. Third plea in law, alleging that the Council violated Article 18 of the basic regulation by requesting the production of information that was not necessary and could not reasonably be expected to be provided by Giant China.

4. Fourth plea in law, alleging that the Council made a manifest error of assessment in considering that Giant China did not claim that obtaining the information relating to Jinshan was unreasonably burdensome.

5. Fifth plea in law, alleging that the Council made a manifest error of assessment in considering that the evidence submitted by applicant could not be verified.

6. Sixth plea in law, alleging that the Commission and the Council violated the rights of defense of Giant China by requesting information it was unable to provide and by dismissing the alternative evidence adduced.

7. Seventh plea in law, alleging that the Council made a manifest error of assessment in considering that the imposition of an individual duty on Giant China would have created a risk of circumvention.

8. Eighth plea in law, alleging that the Council applied different criteria in assessing whether there was a risk of circumvention in the case of the applicant than the criteria applied for other producers and thereby violated the principles of non-discrimination and proportionality.

Action brought on 19 August 2013 — Bayer CropScience v Commission

(Case T-429/13)

(2013/C 325/62)

Language of the case: English

Parties

Applicant: Bayer CropScience AG (Monheim am Rhein, Germany) (represented by: K. Nordlander, lawyer, and P. Harrison, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare its application admissible;

— Annul Commission's Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances (OJ L 139, 25.5.2013, p.12); and

— Order the Commission to pay the Applicant's costs.

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 by adopting the Contested Measure, the Commission exceeded the powers granted to it under Regulation 1107/2009 [1] (the 'Enabling Regulation'), and that the Contested Measure therefore lacks a proper legal basis, because:

   — the Commission breached Article 21 of the Enabling Regulation by: (i) failing to take into account monitoring data showing that the active substances in question did not pose unacceptable risks to bees; and (ii) concluding, erroneously, that there existed new and relevant scientific information such as to give the Commission competence to act; and

   — the Commission breached Article 49 of the Enabling Regulation by banning the sale of seeds treated with the active substances in question without establishing '*substantial concerns*' that the treated seeds are '*likely to constitute a serious risk to human or animal health or to the environment*' that '*cannot be contained satisfactorily*' through other measures.

2. Second plea in law, alleging that the Contested Measure was adopted in a manner that breached Article 12(2) and Annex II point 3.8.3. of the Enabling Regulation, and denied the Applicant's legitimate expectations, because:

   — the Enabling Regulation mandated that, and the Applicant had legitimate expectations that, existing and applicable guidance would be used in the conduct of the risk assessments that gave rise to the Contested Measure, but that existing and applicable guidance was ignored in favour of a scientific opinion that did not constitute guidance and a draft guidance document that was neither available nor agreed.

3. Third plea in law, alleging that the Commission's application of the Enabling Regulation in adopting the Contested Measure constituted a breach of the Applicant's fundamental rights to property and to conduct its business, because:

— the decisions to remove (and amend) approvals for the Applicant's products were based on an unlawful application of the Enabling Regulation that failed adequately to take into account the long history of safe use of the active substances in question or the value and significance of the Applicant's intellectual property in, and long-term investments in, the active substances.

4. Fourth plea in law, alleging that the Contested Measure was adopted following a procedure that failed to respect the Applicant's right to be heard, because:

— the conduct of the relevant risk assessments on the basis of a scientific opinion and a draft guidance document (as opposed to the existing and applicable guidance) automatically led to the identification of 'data gaps' that the Applicant had never had the opportunity to address.

5. Fifth plea in law, alleging that the adoption of the Contested Measure breaches the principle of proportionality, because:

— in a number of areas (including in its restrictions on foliar, amateur and indoor uses of the Applicant's products), the Contested Measure goes beyond what is appropriate to the achievement of its legitimate objectives and may even undermine them, and the Commission failed to consider less restrictive options for regulation that were available to it.

6. Sixth plea in law, alleging that that the adoption of the Contested Measure breaches the precautionary principle, because:

— inter alia, it involved the Commission, as risk manager, taking a purely hypothetical approach to risk, which was founded on mere conjecture and which was not scientifically verified (a result, in large part of the risk assessments not constituting a thorough scientific assessment), and it involved the Commission refusing to conduct any analysis of the potential benefits and costs of its actions.

(1) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC

Appeal brought on 19 August 2013 by the Comité économique et social européen (CESE) against the judgment of 26 June 2013 of the Civil Service Tribunal in Case F-21/12 Achab v CESE

(Case T-430/13 P)

(2013/C 325/63)

Language of the case: French

Parties

Appellant: Comité économique et social européen (CESE) (represented by: M. Arsène, acting as Agent, assisted by D. Waelbroeck and A. Duron, lawyers)

Other party to the proceedings: Mohammed Achab (Brussels, Belgium)

Form of order sought by the appellant

The appellant requests the General Court to:

— set aside the judgment of the Civil Service Tribunal in Case F-21/12 in so far as it annuls the CESE's decision of 9 June 2011 concerning the repayment of the expatriation allowance paid to Mr Achab after 1 July 2010 and orders the CESE to bear its own costs and half of the costs incurred by the applicant at first instance;

— uphold the order sought by the appellant on appeal, that is to say dismiss the action as wholly unfounded;

— order the respondent in the appeal to pay the costs of the present proceedings and of the proceedings before the Civil Service Tribunal.

Pleas in law and main arguments

In support of its appeal, the appellant relies on five grounds:

1. First ground, alleging errors of law in so far as the Civil Service Tribunal erred in holding that the conditions for the repayment of the amount received in error were not fulfilled.

2. Second ground, alleging an error of law in so far as the judgment under appeal contributes to the unjust enrichment of the applicant at first instance.

3. Third ground, alleging a manifest error of assessment, the Civil Service Tribunal having wrongly considered that the CESE had never communicated with its staff in order to draw their attention to the consequences of naturalisation.

4. Fourth ground, alleging an error of law owing to the fact that the Civil Service Tribunal breached the principle according to which financial provisions are to be applied strictly and the principle that provisions which lay down exceptions must be interpreted in a limited and restrictive way.

5. Fifth ground, alleging an error of law with regard to the allocation of expenses.

Action brought on 20 August 2013 — Makhlouf v Council

(Case T-441/13)

(2013/C 325/64)

Language of the case: French

Parties

Applicant: Eyad Makhlouf (Damascus, Syria) (represented by: C. Rygaert and G. Karouni, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria;

— order the Council of the European Union to pay the costs pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are in essence identical or similar to those relied on in Case T-383/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 282, p.30.

Action brought on 20 August 2013 — Makhlouf v Council

(Case T-442/13)

(2013/C 325/65)

Language of the case: French

Parties

Applicant: Hafez Makhlouf (Damascus, Syria) (represented by: C. Rygaert and G. Karouni, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria;

— order the Council of the European Union to pay the costs pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are in essence identical or similar to those relied on in Case T-359/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 282, p.25.

Action brought on 20 August 2013 — Makhlouf v Council

(Case T-443/13)

(2013/C 325/66)

Language of the case: French

Parties

Applicant: Mohammad Makhlouf (Damascus, Syria) (represented by: C. Rygaert and G. Karouni, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria;

— order the Council of the European Union to pay the costs pursuant to Articles 87 and 91 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law which are in essence identical or similar to those relied on in Case T-383/11 *Makhlouf* v *Council*. ([1])

([1]) OJ 2011 C 282, p.30.

Appeal brought on 20 August 2013 by the Agence européenne des médicaments (EMA) against the judgment of the Civil Service Tribunal of 26 June 2013 in Joined Cases F-135/11, F-51/12 and F-110/12, BU v EMA

(Case T-444/13 P)

(2013/C 325/67)

Language of the case: French

Parties

Appellant: Agence européenne des médicaments (EMA) (represented by: T. Jabloński and N. Rampal Olmedo, acting as Agents, and D. Waelbroeck and A. Duron, lawyers)

Other party to the proceedings: BU (London, United Kingdom)

Form of order sought by the appellant

The appellant claims that the Court should:

— annul the judgment of the Civil Service Tribunal in Cases F-135/11, F-51/12 and F-110/12 in so far as it annuls the decision of the EMA not to renew the defendant's contract, and orders the EMA to bear the costs of BU in Cases F-135/11 and F-51/12;

— grant the form of order sought at first instance by the appellant, namely dismiss the action as wholly unfounded

— order the defendant to pay the costs of the present proceedings and those which took place before the Civil Service Tribunal.

Pleas in law and main arguments

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

First plea in law, alleging infringement by the Civil Service Tribunal of the prohibition on ruling *ultra vires* in that it decided that it has the power to ascertain whether the grounds given by the administration for refusing to renew a contract are not such as to call into question the criteria and conditions which have been laid down by the legislature in the Staff Regulations of Officials of the European Union seeking to ensure that contractual staff are able to benefit, over time, from a certain continuity of employment (concerning paragraphs 57 to 62 of the judgment under appeal). The EMA claims that there is no legal basis for the power claimed by the Civil Service Tribunal.

Second plea in law, alleging that the Civil Service Tribunal erred in law when interpreting the first subparagraph of Article 8 of the Conditions of Employment of Other Servants of the European Union (CEO), since the Civil Service Tribunal held that it is for the competent authority to examine whether there exists a position to which the temporary agent whose contract has terminated could be usefully appointed or reappointed.

Third plea in law, alleging that the Civil Service Tribunal erred in law in that it distorts the concept of the interests of the service, in so far as the interpretation given by the Civil Service Tribunal creates a presumption according to which the interested person's employment is continued unless the competent authority is able to establish that there exists no position to which the temporary agent whose contract has terminated could be usefully appointed or reappointed.

Fourth plea in law, alleging an error of law with regard to the order that the EMA pay the costs in Case F-51/12, which was dismissed as inadmissible.

Action brought on 14 August 2013 — Syngenta Crop Protection and Others v Commission

(Case T-451/13)

(2013/C 325/68)

Language of the case: English

Parties

Applicants: Syngenta Crop Protection AG (Basel, Switzerland); Syngenta Crop Protection (Brussels, Belgium); Syngenta Bulgaria (Sofia, Bulgaria); Syngenta Czech s.r.o. (Prague, Czech

Republic); Syngenta Crop Protection A/S (Copenhagen, Denmark); Syngenta France SAS (Saint-Sauveur, France); Syngenta Agro GmbH (Maintal, Germany); Syngenta Hellas AEBE — Proïonta Fytoprostasias & Sporoi (Anthoussa Attica, Greece); Syngenta Növényvédelmi kft (Budapest, Hungary), Syngenta Crop Protection SpA (Milan, Italy); Syngenta Crop Protection BV (Roosendaal, Netherlands); Syngenta Polska sp. z o.o. (Warsaw, Poland); Syngenta Agro Srl (Bucharest, Romania); Syngenta Slovakia s.r.o. (Bratislava, Slovakia); Syngenta Agro, SA (Madrid, Spain); Syngenta UK Ltd (Cambridge, United Kingdom) (represented by: D. Waelbroeck, lawyer, D. Slater, Solicitor, and I. Antypas, lawyer)

Defendants: European Commission and European Union, as represented by the European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Commission Implementing Regulation (EU) No 485/13 ('Contested Regulation') in its entirety or, in the alternative, to annul the Contested Regulation to the extent it imposes restrictions on thiamethoxam ('TMX'), seeds treated with TMX and products containing TMX;

— Condemn the EU as represented by the Commission to repair any damage suffered by the applicants as a result of the Commission's breach of its legal obligations, including interest;

— Order the Commission to pay all costs and expenses of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Contested Regulation imposed restrictions on TMX that were not based on sound science and failed to respect due process, in violation of Articles 4,12(2), 21, 49 and Annex II of Regulation 1107/2009 ([1]) and the principles of legal certainty and rights of the defence. In particular, the European Food Safety Authority's (EFSA) review and the subsequent restrictions imposed were not based on any new scientific evidence indicating risk, ignored significant amounts of relevant science, contained material errors in key parameters and were not based on any agreed methodology for conducting a risk assessment. Moreover, EFSA did not find any risk for bee colony survival or of sublethal effects and presented no negative conclusions at all based on actual field studies. The process of review and adoption of the restrictive measures was rushed to the extent that the scientific review could not be thoroughly carried out and stakeholders were not given adequate opportunities to give input.

2. Second plea in law, alleging that the the Contested Regulation imposed disproportionate and discriminatory restrictions on TMX, based on purely hypothetical risk, without conducting a thorough scientific assessment or any impact assessment at all, in violation of the precautionary principle and the principle of proportionality.

3. Third plea in law, alleging the Contested Regulation was adopted in violation of the principle of good administration and the duty of care, following an unreasonable mandate given to EFSA, a rushed procedure that failed to allow proper input from stakeholders, failed to take relevant science into account and without any impact assessment.

([1]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1)

Action brought on 26 August 2013 — SNCM v Commission

(Case T-454/13)

(2013/C 325/69)

Language of the case: French

Parties

Applicant: Société nationale maritime Corse Méditerranée (SNCM) (Marseille, France) (represented by: A. Winckler, F.-C. Laprévote, J.-P. Mignard and S. Mabile, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, on the basis of Article 263 TFEU, Commission Decision C(2013) 1926 of 2 May 2013;

— in the alternative, partially annul the decision to the extent that the Commission held that the amount of aid includes the elements referred to in paragraph 218 of the decision;

— order the Commission to pay all the costs.

Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2013) 1926 final of 2 May 2013, by which the Commission, first of all, classified as State aid the financial compensation paid to the Société nationale maritime Corse Méditerranée (SNCM) and to the Compagnie Méridionale de Navigation (CNM) in respect of maritime transport services provided between Marseille and Corsica for the years 2007-2013 in the context of a public service agreement. Next, the Commission declared to be compatible with the internal market the compensation paid to the SNCM and to CNM for transport services provided throughout the whole year ('the basic service'), but declared to be incompatible with the internal market the compensation paid with respect to services provided during the peak periods, namely the Christmas period, February, spring-autumn and/or summer ('the additional service'). Finally, the Commission ordered the recovery of State aid declared to be incompatible with the internal market [State aid case SA.22843 2012/C (ex 2012/NN)].

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

1. First plea in law, alleging errors in law and of fact and manifest errors of assessment on the ground that the Commission incorrectly held that the 'additional' service was not a service of general economic interest. The applicant claims that the Commission thus:

   — erred in law by restricting the wide discretion afforded by the Treaty on the Functioning of the European Union to the States in defining their public services;

   — applied an incorrect test and which is not applicable in the case of a 'genuine need' for a public service;

   — erred in law, committed an error of fact and a manifest error of assessment by analysing separately the 'basic' service and the 'additional' service;

   — committed a manifest error of assessment of the deficiency of the private initiative concerning the 'additional' service.

2. Second plea in law, alleging a manifest error of assessment in that the Commission wrongly held that the allocation of the public service agreement did not meet the fourth criterion set by the judgment of the Court of Justice in Case C-280/00 *Altmark Trans et Regierungspräsidium Magdeburg* [2003] ECR I-7747), even though it was the result of an open and transparent call for tenders.

3. Third plea in law, alleging, in the alternative and on the assumption that the compensation of the 'additional' service constitutes State aid (*quod non*), infringement of Articles 106(2) TFEU and 107 TFEU, the principles of proportionality and the prohibition on unjust enrichment, and a manifest error of assessment in calculating the amount of State aid to be recovered, in so far as the calculation of the State aid to be recovered did not take account of either the genuine additional costs incurred by the SNCM with respect to the 'additional' service, or the under-compensation relating to the 'basic' service, and is based, in any event, on an incorrect assessment of the part of the compensation granted to the 'basic' service and of the part granted to the 'additional' service.

4. Fourth plea in law, alleging infringement of the principle of the protection of legitimate expectations, in so far as the position of the Commission was at odds with its own practice and applied the SIEG communication [1] which had not been adopted at the time the public service agreement was signed. The applicant moreover claims that the length of the procedure was such as to establish a legitimate expectation on its part precluding the Commission from ordering the national authorities to recover the State aid.

5. Fifth plea in law, alleging infringement of the principle of equal treatment by establishing an unjustified difference in treatment between the SNCM and other maritime companies.

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[1] Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ 2012 C 8, p. 4).

Appeal brought on 28 August 2013 by CC against the judgment of the Civil Service Tribunal of 11 July 2013 in Case F-9/12 CC v Parliament

(Case T-457/13 P)

(2013/C 325/70)

Language of the case: French

Parties

Appellant: CC (Bridel, Luxembourg) (represented by: G. Maximini, lawyer)

Other party to the proceedings: European Parliament

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal of 11 July 2013 in Case F-9/12 *CC* v *European Parliament*;

— consequently, uphold the appellant's claim for compensation for the damage sustained on account of the conduct adversely affecting that party;

— give judgment in accordance with the form of order sought by the appellant at first instance;

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

Pleas in law and main arguments

The appellant relies on eight grounds of appeal.

1. First ground of appeal, alleging that the Civil Service Tribunal erred in failing to order necessary measures of inquiry and therefore made a manifest error of assessment regarding the loss of opportunity for the appellant to be recruited to the Parliament as from June 2005.

2. Second ground of appeal, alleging an error in law and a manifest error of assessment and, in the alternative, distortion of the facts when the Civil Service Tribunal concluded that the Council had been informed of the existence of the list of suitable candidates on which the appellant's name appeared.

3. Third ground of appeal, alleging an error in law, a manifest error of assessment, distortion of the facts, a failure to state the reasons and a failure to respond to a plea, inasmuch as the Civil Service Tribunal failed to respond to the appellant's pleas concerning (i) the Parliament's obstruction of the appellant's recruitment by the institutions and bodies of the European Union, (ii) the absence of information concerning the existence of the list of suitable candidates and (iii) the fact that EPSO received permission to enter the appellant in its database and pass on that information.

4. Fourth ground of appeal, alleging an error in law and distortion of the facts, inasmuch as the Civil Service Tribunal (i) erred in finding that the Parliament was not under a legal obligation to distribute the list of suitable candidates to all the institutions and bodies of the European Union, (ii) failed to draw the appropriate conclusions from the breach of the principle of equal treatment, sound administration and legal certainty and (iii) failed to examine documents.

5. Fifth ground of appeal, alleging distortion of the facts and a manifest error of assessment concerning the information on the extension of the list of suitable candidates, inasmuch as the Civil Service Tribunal concluded that the Council and the other institutions and bodies of the European Union were aware of the extension of the list of suitable candidates between June and August 2007.

6. Sixth ground of appeal, alleging an error in law, a manifest error of assessment, distortion of the facts and a failure to examine them, inasmuch as the Civil Service Tribunal concluded that the duration of the validity of the list of suitable candidates extended in respect of the other successful candidates did not imply that the appellant had been treated unequally.

7. Seventh ground of appeal, alleging an error in law and a manifest error of assessment, inasmuch as the Civil Service Tribunal failed to draw the necessary conclusions as a result of the Parliament's destruction of the documents concerning the appellant's situation.

8. Eighth ground of appeal, alleging an error of law, a manifest error of assessment and, in the alternative, distortion of the facts, failure to adopt measures of inquiry and failure to state the reasons, inasmuch as, when analysing whether there was a loss of opportunity to be recruited and evaluating the damage sustained, the Civil Service Tribunal did not take into account the appellant's actual situation and the wrongful conduct of the Parliament.

Action brought on 28 August 2013 — Ranbaxy Laboratories and Ranbaxy (UK) v Commission

(Case T-460/13)

(2013/C 325/71)

Language of the case: English

Parties

Applicants: Ranbaxy Laboratories Ltd (Haryana, Inde); and Ranbaxy (UK) Ltd (London, United Kingdom) (represented by: R. Vidal, A. Penny, Solicitors, and B. Kennelly, Barrister)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Article 1(4) of the Commission Decision in case COMP/39.226 — Lundbeck (citalopram) of 19 June 2013, relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement, insofar as it concerns the applicants;

— Annul Article 2(4) of the Commission Decision in case COMP/39.226 — Lundbeck (citalopram) of 19 June 2013, insofar as it imposes fines on the applicants or, in the alternative, reduce the amount of the fine; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant has erred in concluding that the Settlement Agreement entered into by the applicants qualified as an 'object type' infringement of Article 101(1) TFEU. As such, the applicant submits that the defendant has committed an error of law and/or assessment of the facts.

2. Second plea in law, alleging that the defendant has erred in its determination that the parties to the Settlement Agreement were at least potential competitors. As such, the applicant submits that the defendant has committed an error of law and/or assessment of the facts.

3. Third plea in law, alleging that the defendant has erred in its interpretation of the Settlement Agreement by concluding that it afforded greater protection than that which could have obtained through enforcement of the process patent. As such, the applicant submits that the defendant has committed an error of law and/or assessment of the facts.

4. Fourth plea in law, alleging that the defendant has erred in its calculation of the penalty imposed on the applicants and as such the penalty is unjustified and disproportionate.

Action brought on 28 August 2013 — Hermann Trollius v ECHA

(Case T-466/13)

(2013/C 325/72)

Language of the case: English

Parties

Applicant: Hermann Trollius GmbH (Lauterhofen, Germany) (represented by: M. Ahlhaus and J. Schrotz, lawyers)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— Annul ECHA's decision No SME (2013) 0191 of 31 January 2013, as well as ECHA's invoice No 10035033 of 4 February 2013; and

— Order the Defendant to bear all costs including the Applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging the Defendant's lack of competence.

   — The Applicant submits that the defendant has not been competent to adopt the contested decision SME (2013) 0191, because neither Regulation (EC) 1907/2006 [1] nor Regulation (EC) 340/2008 [2] entitles the Defendant to issue a separate decision as to whether a registrant complies with the SME criteria.

2. Second plea in law, alleging the violation of Article 104(1) of the Reach Regulation in connection with Regulation No 1 of 15 April 1958 [3].

   — The Applicant submits that in its entire communication with the Applicant, the Defendant disregarded its obligation to address a person subject to the sovereignty of a Member State in the official language of that state, and that this breach of law has prevented the Applicant from fulfilling the requirements demanded of him with regard to proving its status as a small enterprise.

3. Third plea in law, alleging that the Applicant in fact is a small enterprise according to Commission Recommendation 2003/361/EC [4], and so the contested decisions are wrong on the substance.

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[1] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (Reach Regulation)

[2] Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

[3] EEC Council: Regulation No 1 determining the languages to be used by the European Economic Community

[4] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises

Action brought on 30 August 2013 — Generics (UK) v Commission

(Case T-469/13)

(2013/C 325/73)

Language of the case: English

Parties

Applicant: Generics (UK) Ltd (Potters Bar, United Kingdom) (represented by: I. Vandenborre and T. Goetz, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul in whole or in part the Commission's Decision C(2013) 3803 final of 19 June 2013, in case COMP/39.226, finding that the applicant committed a single and continuous infringement of Article 101 TFEU from 24 January 2002 to 1 November 2003 by entering into two patent settlement agreements;

— Alternatively, annul or reduce substantially the level of the fine imposed; and

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission errs in its assessment of the content, the purpose and the context of the Settlement Agreements:

   — The Decision's findings are based on a wrong and speculative interpretation of the Settlement Agreements and on highly selective excerpting of the contemporaneous records. The Decision disregards or misconstrues evidence that clearly demonstrates that the Settlement Agreements remained within the scope of Lundbeck's validly issued patents, and were concluded against the background of a genuine patent dispute.

2. Second plea in law, alleging that the Commission errs in law in ignoring the existence of validly issued patents and equating the Settlement Agreements to market sharing agreements:

   — The Decision's finding that the Settlement Agreements constitute a restriction of competition by object ignores the existence of validly issued patents which the applicant had to take into account. The Decision errs in finding that patents have exclusionary powers only once they have been confirmed in litigation, that patent litigation is essential to the competitive process and that a duty existed for the applicant to litigate or exhaust all other options before concluding the Settlement Agreements.

3. Third plea in law, alleging that the Commission errs both in law and in its assessment of the facts in concluding that the payments provided for under the Settlement Agreements were 'decisive' for the finding of a by object infringement:

   — There is no legal or factual basis for the Commission's finding that the mere inclusion in the Settlement Agreements of a payment to the applicant was sufficient to establish the existence of a by object infringement. The Commission has failed to meet its burden of proof.

4. Fourth plea in law, alleging that the Commission commits an error in law and in its assessment of the facts in ignoring the relevant factual and legal context in which the Settlement Agreements were concluded:

   — The Commission has ignored factors critical to the assessment of the Settlement Agreements including relevant law on patent litigation, contemporaneous records discussing the patent litigation and damages risk for the applicant, and the Commission's own findings in relation to the average duration of patent litigation. The Commission has failed to meet its burden of proof.

5. Fifth plea in law, alleging that the Commission errs in finding that the Settlement Agreements do not qualify for an exemption under Article 101(3) TFEU:

   — The Commission fails to undertake an analysis of the relevant, reliable and credible arguments and evidence submitted by the applicant which demonstrate that the Settlement Agreements permitted the applicant to launch almost 18 years prior to the expiry of Lundbeck's key patent.

6. Sixth plea in law, alleging that the Decision violates the principle of proportionality:

   — The Decision violates the principle of proportionality by condemning the Settlement Agreements which constituted the least burdensome means of pursuing legitimate goals.

7. Seventh plea in law, alleging that the Decision is inadequately reasoned contrary to Article 296 TFEU:

   — The Decision is inadequately reasoned contrary to Article 296 TFEU in that it assumes the existence of that which was incumbent upon the Commission to prove.

8. Eighth plea in law, alleging that the Decision infringes an essential procedural requirement:

   — The Decision infringes the applicant's right of defence by introducing new allegations and evidence without providing the applicant with an opportunity to be heard.

9. Ninth plea in law, alleging that the Commission has failed to demonstrate that the applicant committed the alleged infringement intentionally or negligently:

   — The facts at issue raise novel and complex issues for which there was no precedent at the time when the Settlement Agreements were concluded. There is no basis for a finding that what the Commission alleges is an infringement, was committed in negligent or intentional violation of the law.

Action brought on 30 August 2013 — Merck v Commission

(Case T-470/13)

(2013/C 325/74)

Language of the case: English

Parties

Applicant: Merck KGaA (Darmstadt, Germany) (represented by: B. Bär-Bouyssière, K. Lillerud, L. Voldstad, B. Marschall, P. Sabbadini, R. De Travieso, M. Holzhäuser, S. O, lawyers, M. Marelus, Solicitor, R. Kreisberger and L. Osepciu, Barristers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Articles 1(1), 2(1) of Commission's Decision C(2013) 3803 final of 19 June 2013 in case COMP/39.226 — Lundbeck), and Articles 2(5), 3 and 4 insofar as these are addressed to Merck;

— In the alternative, annul or reduce the penalty imposed on Merck; and

— In any event grant Merck its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission erred in its interpretation of the concept of a restriction by object within the meaning of Article 101.

2. Second plea in law, alleging that the Commission's theory of harm was fundamentally flawed.

3. Third plea in law, alleging that the Commission's approach is contrary to the principle of legal certainty.

4. Fourth plea in law, alleging that the Commission erred in failing to take any, or any adequate, account of the factual, economic and legal context, which showed that, absent the Agreements, GUK would not have launched citalopram any more quickly in the UK or other EEA markets.

5. Fifth plea in law, alleging that the Commission erred in its assessment of the scope of the Agreements between Lundbeck and GUK.

6. Sixth plea in law, alleging that the Commission erred in law and in fact in finding that Lundbeck and GUK were potential competitors.

7. Seventh plea in law, alleging that the Commission made a manifest error of assessment in concluding that GUK had an anti-competitive intention in entering into the UK and EEA Agreements.

8. Eighth plea in law, alleging that the Commission erred in fact in its findings as to the size and purpose of the value transfer between Lundbeck and GUK.

9. Ninth plea in law, alleging that the Commission fails properly to assess the arguments raised by the parties under Article 101(3) TFEU.

10. Tenth plea in law, alleging that the Commission has failed to have due regard to evidence from Merck rebutting the presumption of decisive influence and has accordingly erred in fact and law in finding that presumption not rebutted.

11. Eleventh plea in law, alleging that the Commission's decision should be set aside on ground of undue delay.

12. Twelfth plea in law, alleging that the Commission has breached the parties right to be heard.

13. Thirteenth plea in law, alleging that the Commission erred in its assessment of penalties.

Action brought on 30 August 2013 — Xellia Pharmaceuticals and Zoetis Products v Commission

(Case T-471/13)

(2013/C 325/75)

Language of the case: English

Parties

Applicant: Xellia Pharmaceuticals ApS (Copenhagen, Denmark) and Zoetis Products, LLC (New Jersey, United States) (represented by: D. Hull, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul Articles 1(3), 2(3) and 3 of Commission Decision C(2013) 3803 final of 19 June 2013 (COMP/39.229 — Lundbeck) in so far as they concern the applicants; or

— In the alternative, declare Article 1(3) of the Decision partially null and void, and reduce the amount of the fine imposed; and

— Order the Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a manifest error of assessment in finding that the restrictions set forth in the Settlement Agreement exceeded the scope of Lundbeck's patents.

2. Second plea in law, alleging an error of law in using the wrong legal standard to determine whether Alpharma was a potential competitor; and a manifest error of assessment in finding that Alpharma was a potential competitor.

3. Third plea in law, alleging a manifest error of assessment in finding that the Settlement Agreement constituted a restriction of competition 'by object'.

4. Fourth plea in law, alleging an error of law in finding a restriction of competition within the meaning of Article 101 despite the fact that the Settlement Agreement solely reflected the exclusionary scope of Lundbeck's patents, which, as a matter of law, must be presumed to be valid.

5. Fifth plea in law, alleging violation of the Applicants' rights of defence by belatedly notifying them of (i) the existence of the investigation and (ii) the Commission's specific objections.

6. Sixth plea in law, alleging violation of the principle of non-discrimination by addressing the Decision to Zoetis.

7. Seventh plea in law, alleging an error of law in calculating the fine without taking into account the limited gravity of the alleged infringement and a manifest error of assessment in setting the fine proportionately higher than the fine imposed on Lundbeck and failing to take into account the uncertainty in the law, the less serious nature of the infringement, and the geographic scope.

8. Eighth plea in law, alleging a manifest error of assessment in applying the 10 % fine cap to A.L. Industrier based upon its 2011 turnover instead of its significantly higher 2012 turnover, thereby forcing the Applicants to pay a higher proportion of the fine

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Action brought on 30 August 2013 — H. Lundbeck and Lundbeck v Commission

(Case T-472/13)

(2013/C 325/76)

Language of the case: English

Parties

Applicants: H. Lundbeck A/S (Valby, Denmark); and Lundbeck Ltd (Milton Keynes, United Kingdom) (represented by: R. Subiotto, QC, and T. Kuhn, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul the Commission's decision C(2013) 3808 final of 19 June 2013, served to the applicants on 21 June 2013, in case COMP/39.226 — Lundbeck;

— Alternatively, annul the fines imposed on the applicants pursuant to that decision;

— In the further alternative, substantially reduce the fines imposed on the applicants pursuant to that decision;

— In any event, order the Commission to pay the applicants' legal and other costs and expenses in relation to this matter; and

— Take any other measures that this Court considers appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Defendant wrongly concluded that Lundbeck and the other undertakings that were parties to the agreements were actual or potential competitors under Article 101(1) TFEU.

2. Second plea in law, alleging that the Defendant wrongly assessed the relevance under Article 101(1) TFEU of value transfers in the context of patent settlement agreements.

3. Third plea in law, alleging that the Defendant's conclusion that the patent settlement agreements restricted competition by object under Article 101(1) rests on a wrongful application of the established principles on restrictions by object.

4. Fourth plea in law, alleging that the Defendant's decision errs and lacks reasoning in dismissing the 'Scope-of-the-Patent Test' as the relevant standard for the competition law assessment of patent settlement agreements under article 101(1) TFEU.

5. Fifth plea in law, alleging that the Defendant's decision mischaracterizes Lundbeck's actions and fails to explain how these unilateral actions are relevant for a finding of infringement of Article 101(1) TFEU.

6. Sixth plea in law, alleging that the Defendant failed to consider all the circumstances surrounding the agreements and erroneously concluded that their intended scope went beyond the scope of Lundbeck's patent rights.

7. Seventh plea in law, alleging that the Defendant failed to carry out a proper examination of the efficiencies arising from the agreements under article 101(3) TFEU.

8. Eighth plea in law, alleging that the Defendant's decision infringes Lundbeck's rights of defense, because the Defendant has changed the constituent elements of the alleged infringement between the issuance of the statement of objections and the decision, without affording Lundbeck an opportunity of being heard.

9. Ninth plea in law, alleging, in the alternative, that the Defendant wrongly imposed a fine on Lundbeck despite the novelty of the factual and legal issues raised in this case, thereby also violating the principle of legal certainty.

10. Tenth plea in law, alleging, in the further alternative, that the Defendant wrongly calculated the fines imposed on Lundbeck.

Action brought on 13 September 2013 — Schmidt Spiele v OHIM (Representation of a games board)

(Case T-492/13)

(2013/C 325/77)

Language of the case: German

Parties

Applicant: Schmidt Spiele GmbH (Berlin, Germany) (represented by T. Sommer, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of OHIM of 3 July 2013 in Case R 1767/2012-1;

— Order OHIM to pay the costs;

— Set a date for the oral procedure.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark including the representation of a games board for goods and services in Classes 9, 16, 28 and 41 — Community trade mark application No 10 592 103

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) and (3) of Regulation (EC) No 207/2009

Action brought on 13 September 2013 — Schmidt Spiele v OHIM (Representation of a games board)

(Case T-493/13)

(2013/C 325/78)

Language of the case: German

Parties

Applicant: Schmidt Spiele GmbH (Berlin, Germany) (represented by T. Sommer, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of OHIM of 3 July 2013 in Case R 1768/2012-1;

— Order OHIM to pay the costs;

— Set a date for the oral procedure.

Pleas in law and main arguments

Community trade mark concerned: the figurative mark including the representation of a games board for goods and services in Classes 9, 16, 28 and 41 — Community trade mark application No 10 592 095

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) and (3) of Regulation (EC) No 207/2009

Appeal brought on 19 September 2013 by Luigi Marcuccio against the order of the Civil Service Tribunal of 12 July 2013 in Case F-32/12 Marcuccio v Commission

(Case T-503/13 P)

(2013/C 325/79)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the General Court should:

— set aside in its entirety and without exception the order of the Civil Service Tribunal of the European Union of 12 July 2013 in Case F-32/12 *Marcuccio* v *Commission*;

— refer the case back to the Civil Service Tribunal.

Grounds of appeal and main arguments

The appellant relies on two grounds in support of his appeal.

1. First ground of appeal, alleging that Article 14 of the Rules of Procedure of the Civil Service Tribunal is unlawful by reason of tautology and unreasonableness and that there has, in any event, been mistaken, erroneous, misleading and unreasonable interpretation and application of that article, resulting in a serious and manifest infringement of the legally binding principle of natural justice referred to in, inter alia, Article 47 of the Charter of Fundamental Rights of the European Union.

2. Second ground of appeal, alleging a total failure to provide reasons by virtue of, inter alia, a failure to make preliminary inquiries, self-evident, tautologous and arbitrary reasoning, distortion and misrepresentation of the facts, error of law and a manifestly misleading assessment of a procedural fact.

Action brought on 23 September 2013 — SolarWorld e.a. v Commission

(Case T-507/13)

(2013/C 325/80)

Language of the case: English

Parties

Applicants: SolarWorld AG (Bonn, Germany); Brandoni solare SpA (Castelfidardo, Italy); Global Sun Ltd (Sliema, Malta); Silicio Solar, SAU (Puertollano, Spain); and Solaria Energia y Medio Ambiente, SA (Madrid, Spain) (represented by: L. Ruessmann, lawyer, and J. Beck, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Declare the application admissible and well-founded;

— Annul Commission Decision 2013/423/EU of 2 August 2013 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China; and

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision violated the applicants' right to a fair legal process and the principle of good administration, the applicants' rights of defence, and Articles 8(4) and 19(2) of the Basic Anti-dumping Regulation ([1]), as

   — The Commission reached an agreement with the Chinese government and the Chinese Chamber of Commerce for Machinery and Equipment, on behalf of a large group of Chinese exporting producers, without making a proper and adequate disclosure of the key terms of the undertaking under discussion.

   — The Commission failed to give interested parties an opportunity to make timely and effective comments on the undertaking arrangement accepted by the contested decision.

2. Second plea in law, alleging a manifest error of assessment and violation of Articles 6(1) and 8(1) of the Basic Anti-dumping Regulation, insofar as the contested decision deviates arbitrarily from the Commission's investigation findings and sets minimum import prices at levels that are manifestly inadequate to remove the injury to EU producers.

3. Third plea in law, alleging a violation of Article 101(1) TFEU insofar as the contested decision accepts and reinforces a horizontal price fixing arrangement and is therefore contrary to the TFEU requirement that competition not be distorted on the internal market.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, p.51)

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 25 September 2013 — Marqués v Commission

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

(Civil Service — Contract staff — Recruitment — Call for expression of interest EPSO/CAST/02/2010 — Conditions of employment — Appropriate professional experience — Rejection of the application for employment)

(2013/C 325/81)

Language of the case: French

Parties

Applicant: Éric Marqués (Ennery, France) (represented by: A. Salerno and B. Cortese, lawyers)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents)

Re:

Application to annul the decision rejecting the application for employment of the applicant as a member of the contract staff in function group III which was made by the Office for Infrastructures and Logistics in Luxembourg and compensation for the material damage suffered.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 6 March 2012 refusing to employ Mr Marqués as a member of the contract staff in function group III;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission to bear its own costs and to pay the costs incurred by Mr Marqués.*

([1]) OJ C 86, 23.3.2013, p. 30.

Order of the Civil Service Tribunal (Third Chamber) of 20 September 2013 — Marcuccio v Commission

(Case F-99/11) ([1])

(Civil Service — Remuneration — Payment of arrears of remuneration — Locus standi — Action manifestly inadmissible)

(2013/C 325/82)

Language of the case: Italian

Parties

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

Defendant: European Commission (represented by: C. Berardis-Kayser and J. Baquero Cruz, acting as Agents)

Re:

Application for annulment of the implied decision of the Commission rejecting the applicant's claim for payment of salary arrears for the period from 1 June 2005 to 21 July 2010.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Marcuccio shall bear his own costs and shall pay the costs incurred by the European Commission.*

([1]) OJ C 25, 28.1.2012, p. 67.

Action brought on 21 August 2013 — ZZ v ESMA

(Case F-80/13)

(2013/C 325/83)

Language of the case: French

Parties

Applicant: ZZ (represented by: O. Kress and S. Bassis, lawyers)

Defendant: European Securities and Markets Authority (ESMA)

Subject-matter and description of the proceedings

Firstly, annulment of the decision to extend the applicant's probation period and of the subsequent decision to dismiss him and, secondly, application for compensation for the harm allegedly suffered.

Form of order sought

— Annul the decision to extend the probation period;

— Annul the decision to dismiss the applicant;

— Order ESMA to pay him, as compensation for the harm suffered, damages provisionally assessed *ex aequo et bono* at EUR 373 414 for the material harm and EUR 50 000 for the non-pecuniary harm;

— Order ESMA to pay the costs.

Action brought on 4 September 2013 — ZZ v Commission

(Case F-82/13)

(2013/C 325/84)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision on the transfer of the applicant's pension rights under the European Union pension scheme applying the new General Implementing Provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

— Declare Article 9 of the General Implementing Provisions for Article 11(2) of Annex VIII of the Staff Regulations unlawful;

— annul the decision to the transfer of the applicant's pension rights on the basis of the parameters referred to in the General Implementing Provisions for Article 11(2) of Annex VIII of the Staff Regulations of 3 March 2011;

— order the Commission to pay the costs.

Action brought on 9 September 2013 — ZZ v Commission

(Case F-84/13)

(2013/C 325/85)

Language of the case: French

Parties

Applicant: ZZ (represented by: S. Orlandi, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to calculate accredited pension rights acquired before entry into service on the basis of the new General Implementing Provisions and relating to the transfer of the applicant's pension rights under the European Union pension scheme applying the new General Implementing Provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations.

Form of order sought

— Declare Article 9 of the General Implementing Provisions for Article 11(2) of Annex VIII of the Staff Regulations unlawful and therefore inapplicable;

— annul the decision of 26 November 2012 — and that of 27 June 2013 confirming it — concerning the calculation of accredited pension rights acquired by the applicant before his entry into service, in the context of the transfer of those pension rights in the pension scheme of the institutions of the European Union, pursuant to the general implementing provisions of Article 11(2) of Annex VIII of the Staff Regulations of 3 March 2011;

— order the Commission to pay the costs.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-309/13

(Official Journal of the European Union C 226, 3 August 2013, p. 23)

(2013/C 325/86)

The notice in the Official Journal concerning Case T-309/13 *Enosi Mastichoparagogon/OHIM — Gaba International (ELMA)* is to read as follows:

'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 (Therwil, Switzerland)

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.'

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