ISSN 1977-091X

Official Journal of the European Union

C 336

English edition

Information and Notices

Volume 56

16 November 2013

Notice No | Contents | Page

EN

Price: EUR 3

(Continued overleaf)

V *Announcements*

COURT PROCEEDINGS

Court of Justice

EN

General Court

EN

(Continued overleaf)

EN

(Continued overleaf)

EN

(Continued on inside back cover)

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 336/01)

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

OJ C 325, 9.11.2013

Past publications

OJ C 313, 26.10.2013

OJ C 304, 19.10.2013

OJ C 298, 12.10.2013

OJ C 291, 5.10.2013

OJ C 284, 28.9.2013

OJ C 274, 21.9.2013

These texts are available on:

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

COURT OF JUSTICE

Taking of the oath by the new Member of the Court of Justice

(2013/C 336/02)

Following his appointment as Judge at the Court of Justice for the period from 6 October 2013 to 6 October 2015 by decision of the Representatives of the Governments of the Member States of the European Union of 26 June 2013, [1] Mr Biltgen took the oath before the Court of Justice on 7 October 2013.

[1] OJ L 179, 29.6.2013, p. 94.

Election of the Presidents of the Chambers of three Judges

(2013/C 336/03)

At a meeting on 1 October 2013, the Judges of the Court of Justice elected, pursuant to the Article 12(2) of the Rules of Procedure, Mr Borg Barthet as President of the Sixth Chamber, Ms Da Cruz Vilaça as President of the Seventh Chamber, Mr Fernlund as President of the Eighth Chamber, Mr Safjan as President of the Ninth Chamber and Mr Juhász as President of the Tenth Chamber for the period from 8 October 2013 to 6 October 2014.

Decisions adopted by the Court in its General Meeting on 8 October 2013

(2013/C 336/04)

At its General Meeting on 8 October 2013, the Court decided to assign Mr Biltgen to the First and Sixth Chambers.

Consequently, the composition of the First and Sixth Chambers is as set out below.

First Chamber

Mr Tizzano, President of the Chamber,
Mr Borg Barthet, Mr Levits, Ms Berger, Mr Rodin and Mr Biltgen, Judges.

Sixth Chamber

Mr Borg Barthet, President of the Chamber,
Mr Levits, Ms Berger, Mr Rodin and Mr Biltgen, Judges.

Lists for the purposes of determining the composition of the formations of the Court

(2013/C 336/05)

At its General Meeting on 8 October 2013, the Court drew up the list for determining the composition of the Grand Chamber as follows:

Mr Rosas
Mr Biltgen
Mr Juhász
Mr Rodin
Mr Arestis
Mr Vajda
Mr Borg Barthet
Mr Da Cruz Vilaça
Mr Malenovský
Mr Fernlund
Mr Lõhmus
Mr Jarašiūnas
Mr Levits
Ms Prechal
Mr Ó Caoimh
Ms Berger
Mr Bonichot
Mr Šváby
Mr Arabadjiev
Mr Safjan
Ms Toader

At its General Meeting on 8 October 2013, the Court drew up the list for determining the composition of the First Chamber of five Judges as follows:

First Chamber:

Mr Borg Barthet
Mr Biltgen
Mr Levits
Mr Rodin
Ms Berger

At its General Meeting on 8 October 2013, the Court drew up the list for determining the composition of the Sixth Chamber of three Judges as follows:

Sixth Chamber

Mr Levits
Ms Berger
Mr Rodin
Mr Biltgen

Decision adopted by the Court in its General Meeting on 24 September 2013

(2013/C 336/06)

At its meeting on 24 September 2013, the Court decided to assign the Vice-President to a Chamber of five Judges for all cases in which he is the Judge Rapporteur and which have been allocated by the Court to such a Chamber.

By application of Article 11(1) of the Rules of Procedure, the Court decides to assign Mr Lenaerts to the Second Chamber for the period from 7 October 2013 to 6 October 2015.

Designation of the Chamber responsible for cases of the kind referred to in Article 107 of the Rules of Procedure of the Court

(2013/C 336/07)

At its General Meeting on 24 September 2013, the Court designated the Third Chamber as the Chamber that is, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 107 of those Rules, for the period from 7 October 2013 to 6 October 2014.

Designation of the Chamber responsible for cases of the kind referred to in Article 193 of the Rules of Procedure of the Court

(2013/C 336/08)

At its General Meeting on 24 September 2013, the Court designated the Fifth Chamber as the Chamber that is, in accordance with Article 11(2) of the Rules of Procedure, responsible for cases of the kind referred to in Article 193 of those Rules, for the period from 7 October 2013 to 6 October 2014.

Appointment of the First Advocate General

(2013/C 336/09)

At its General Meeting on 1 October 2013, the Court of Justice appointed Mr Cruz Villalón as First Advocate General for the period from 7 October 2013 to 6 October 2014.

Taking of the oath by a new Member of the Civil Service Tribunal

(2013/C 336/10)

Following his appointment as Judge at the Civil Service Tribunal for the period from 1 October 2013 to 30 September 2019 by decision of the Representatives of the Governments of the Member States of the European Union of 16 September 2013, [1] Mr Svenningsen took the oath before the Court of Justice on 7 October 2013.

[1] OJ L 247, 18.9.2013, p. 37.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Second Chamber) of 19 September 2013 — Dashiqiao Sanqiang Refractory Materials Co. Ltd v Council of the European Union

(Case C-15/12 P) ([1])

(Appeals — Dumping — Regulation (EC) No 826/2009 — Imports of certain magnesia bricks originating in the People's Republic of China — Regulation (EC) No 384/96 — Article 2(10)(b) — Fair comparison — Article 11(9) — Interim partial review — Obligation to apply the same methodology as in the investigation leading to the imposition of the duty — Change in circumstances)

(2013/C 336/11)

Language of the case: French

Parties

Appellant: Dashiqiao Sanqiang Refractory Materials Co. Ltd (represented by: J.-F. Bellis and R. Luff, avocats)

Other party to the proceedings: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrisch, Rechtsanwalt, and by N. Chesaites, Barrister), European Commission (represented by: E. Gippini Fournier and H. van Vliet, acting as Agents)

Re:

Appeal against the judgment of the General Court (First Chamber) of 16 December 2011 in Case T-423/09 *Dashiqiao Sanqiang Refractory Materials* v *Council*, by which the General Court dismissed the application for annulment of Council Regulation (EC) No 826/2009 of 7 September 2009 amending Regulation (EC) No 1659/2005 imposing a definitive anti-dumping duty on imports of certain magnesia bricks originating in the People's Republic of China (OJ 2009 L 240, p. 7) — Comparison between the normal value and the export price — Taking into account the value added tax of the country of origin — Application of a different methodology from that used in the initial investigation — Errors of law

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Dashiqiao Sanqiang Refractory Materials Co. Ltd to pay the costs of the present proceedings;*

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

([1]) OJ C 89, 24.3.2012.

Appeal brought on 7 February 2013 by H-Holding AG against the order of the General Court (Sixth Chamber) delivered on 27 November 2012 in Case T-672/11 H-Holding AG v European Parliament

(Case C-64/13 P)

(2013/C 336/12)

Language of the case: German

Parties

Appellant: H-Holding AG (represented by: R. Závodný, advokát)

Other party to the proceedings: European Parliament

By order of 5 September 2013 the Court of Justice of the European Union (Seventh Chamber) dismissed the appeal and decided to order the appellant to bear its own costs.

Request for a preliminary ruling from the Szombathelyi Törvényszék (Hungary) lodged on 24 June 2013 — Katalin Sebestyén v Kővári Zsolt Csaba and Others

(Case C-342/13)

(2013/C 336/13)

Language of the case: Hungarian

Referring court

Szombathelyi Törvényszék

Parties to the main proceedings

Applicant: Katalin Sebestyén

Defendants: Kővári Zsolt, Csaba OTP Bank, OTP Faktoring Követeléskezelő Zrt., Raiffeisen Bank Zrt.

Questions referred

1. On the basis of Article 3(1) [of Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts], is a contractual clause to be regarded as unfair that makes disputes regarding a loan contract concluded by a consumer and a bank subject to the exclusive jurisdiction of a Chamber made up of three arbitrators of the Pénz- és Tőkepiaci Állandó Választottbíróság (Permanent Arbitration Court of the Financial and Capital Market)?

2. On the basis of Article 3(1) [of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts], is a contractual clause to be regarded as unfair that makes disputes concerning a loan contract entered into by a consumer and a bank subject to the exclusive jurisdiction of a Chamber made up of three arbitrators of the Permanent Arbitration Court of the Financial and Capital Market, save in the exceptional cases provided for in the contract, regardless of the fact that the contract contains general information concerning differences between the procedure governed by Law LXXI of 1994 on Arbitration and ordinary legal proceedings?

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

Request for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 25 July 2013 — Zuchtvieh-Export GmbH v Stadt Kempten

(Case C-424/13)

(2013/C 336/14)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Appellant: Zuchtvieh-Export GmbH

Respondent: Stadt Kempten

Questions referred

1. Is Article 14(1) of Regulation (EC) No 1/2005 [1] to be interpreted as meaning that in the case of long journeys for domestic Equidae and domestic animals of bovine, ovine, caprine and porcine species, where the place of departure is in a Member State of the European Union but the place of destination is in a third country, the competent authority of the place of departure may stamp the journey log submitted by the organiser in accordance with Article 14(1)(c) only if the journey log meets the requirements set out in Article 14(1)(a)(ii) for the entire journey from the place of departure to the place of destination, and thus also for sections of the journey which lie entirely outside the territory of the European Union?

2. Is Article 14(1) of Regulation (EC) No 1/2005 to be interpreted as meaning that the competent authority at the place of departure pursuant to that provision may, in accordance with Article 14(1)(b) of that regulation, require the organiser of the transport to change the arrangements for the intended long journey in such a way that it will comply with the provisions of that regulation for the entire journey from the place of departure to the place of destination, even if some sections of that journey lie entirely within third countries?

[1] Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ 2005 L 3, p. 1).

Action brought on 31 July 2013 — European Commission v Slovak Republic

(Case C-433/13)

(2013/C 336/15)

Language of the case: Slovak

Parties

Applicant: European Commission (represented by: A. Tokár and F. Schatz, acting as Agents)

Defendant: Slovak Republic

Form of order sought

— declare that, by refusing to provide the cash benefit for care, cash benefit for assistance and cash benefit to compensate for increased costs under Law No 447/2008 to persons entitled who have their residence in a Member State other

than the Slovak Republic, the Slovak Republic has failed to fulfil its obligations under Article 48 of the Treaty on the Functioning of the European Union and Articles 7 and 21 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems; ([1])

— order the Slovak Republic to pay the costs.

Pleas in law and main arguments

The Commission submits that the cash benefit for care, cash benefit for assistance and cash benefit to compensate for increased costs under Law No 447/2008 are sickness benefits within the meaning of Article 3(1)(a) of Regulation No 883/2004 which must also be paid to persons entitled who reside outside the Member State concerned (in the present case the Slovak Republic). National legislation thus may not restrict the right of persons entitled who have their residence outside the Slovak Republic to the receipt of those benefits. The national legislation of the Slovak Republic which lays down such a restriction is therefore contrary to Article 48 TFEU and Articles 7 and 21 of Regulation No 883/2004.

([1]) OJ 2004 L 166, p. 1.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 27 August 2013 — Europäische Schule München v Silvana Oberto

(Case C-464/13)

(2013/C 336/16)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: Europäische Schule München

Respondent on a point of law: Silvana Oberto

Questions referred

1. Is the first sentence of Article 27(2) of the Convention defining the Statute of the European Schools of 21 June 1994 (SES) ([1]) to be interpreted as meaning that part-time teachers employed by a European School, who are not seconded by the Member States, are persons covered by the Convention and are not — unlike the administrative and ancillary staff — excepted from the application of that provision?

2. If the Court of Justice answers the first question in the affirmative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that that provision also covers the legality of any act, based on the Convention or on the rules made under it, which is performed in relation to part-time teachers by the headteacher of a school in the exercise of his powers as specified by that Convention and which adversely affects such teachers?

3. If the Court of Justice answers the second question in the affirmative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that the conclusion of a contract between the headteacher of a European School and a part-time teacher concerning the fixed-term nature of the part-time teacher's employment relationship also constitutes an act which is performed by the headteacher in relation to that part-time teacher and which adversely affects the latter?

4. If the Court of Justice answers the second or third question in the negative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that the Complaints Board referred to therein has exclusive jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute relating to the fixed-term nature of a contract of employment which the headteacher of a school concludes with a part-time teacher if that contract is essentially based on the requirement of the Board of Governors in point 1.3 of the Conditions of Employment for Part-time Teachers recruited after 31 August 1994, which provides for 'annual contracts'?

([1]) OJ 1994 L 212, p. 3.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 27 August 2013 — Europäische Schule München v Barbara O'Leary

(Case C-465/13)

(2013/C 336/17)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellant on a point of law: Europäische Schule München

Respondent on a point of law: Barbara O'Leary

Questions referred

1. Is the first sentence of Article 27(2) of the Convention defining the Statute of the European Schools of 21 June 1994 (SES) ([1]) to be interpreted as meaning that part-time teachers employed by a European School, who are not seconded by the Member States, are persons covered by the Convention and are not — unlike the administrative and ancillary staff — excepted from the application of that provision?

2. If the Court of Justice answers the first question in the affirmative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that that provision also covers the legality of any act, based on the Convention or on the rules made under it, which is performed in relation to part-time teachers by the headteacher of a school in the exercise of his powers as specified by that Convention and which adversely affects such teachers?

3. If the Court of Justice answers the second question in the affirmative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that the conclusion of a contract between the headteacher of a European School and a part-time teacher concerning the fixed-term nature of the part-time teacher's employment relationship also constitutes an act which is performed by the headteacher in relation to that part-time teacher and which adversely affects the latter?

4. If the Court of Justice answers the second or third question in the negative:

   Is the first sentence of Article 27(2) of the SES to be interpreted as meaning that the Complaints Board referred to therein has exclusive jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute relating to the fixed-term nature of a contract of employment which the headteacher of a school concludes with a part-time teacher if that contract is essentially based on the requirement of the Board of Governors in point 1.3 of the Conditions of Employment for Part-time Teachers recruited after 31 August 1994, which provides for 'annual contracts'?

([1]) OJ 1994 L 212, p. 3.

Appeal brought on 27 August 2013 by Industries Chimiques du Fluor (ICF) against the judgment of the General Court (First Chamber) delivered on 18 June 2013 in Case T-406/08 ICF v Commission

(Case C-467/13P)

(2013/C 336/18)

Language of the case: French

Parties

Appellant: Industries Chimiques du Fluor (ICF) (represented by: P. Wytinck and D. Gillet, lawyers)

Other party to the proceedings: European Commission

Form of order sought

— set aside the judgment of the General Court of the European Union of 18 June 2013 in Case T-406/08 *Industries Chimiques du Fluor (ICF)* v *European Commission* and, if the Court considers that it has all the information at its disposal necessary in order itself to give final judgment on the substance of the case, annul the fine of EUR 1 700 000 imposed on ICF in the contested decision or, at least, reduce the amount of that fine;

— in the alternative, set aside the judgment of the General Court and refer the case back to the General Court;

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

Pleas in law and main arguments

In support of its appeal, the applicant relies on three grounds.

By its first ground, the applicant maintains that the General Court erred in law, or at least was guilty of a substantive inaccuracy in its finding of the facts, or distorted the facts in its assessment thereof, when holding that the fact that the Commission based the contested decision on documents not referred to in the statement of objections did not constitute an infringement of the rights of the defence or of Article 27 of Regulation (EC) No 1/2003. ([1])

The appellant also considers that the General Court erred in law when holding that the reduction by the Commission of the number of persons considered to have committed an infringement made between the statement of objections and the adoption of the contested decision did not infringe the appellant's interests or its rights of the defence, given that the appellant did not have the opportunity to comment on that reduction before adoption of the contested decision.

By its second ground, the appellant criticises the General Court for having infringed Article 23 of Regulation (EC) No 1/2003. The General Court misinterpreted paragraph 18 of the Guidelines on the method of setting fines when it interpreted the expression 'the total value of the sales of the goods or services to which the infringement relates' as covering only the total value of the sales of the undertakings which participated in the infringement and not as the total value of sales on that market.

The appellant also complains that the General Court failed to comply with its duty to state reasons by not responding in a relevant or adequate way to its argument to the effect that the Commission departed from its decision-making practice when fixing the amount of the fine.

By its third ground, the appellant considers that the length of the proceedings before the General Court was excessive, and therefore in breach of Article 47 of the Charter of Fundamental Rights, given that in its view the case was a straightforward one involving few documents. Consequently, the appellant seeks, in application of the *Baustahlgewebe* v *Commission* [2] case-law, a reduction in the amount of the fine imposed on it.

Finally, the appellant accuses the General Court of having infringed Article 31 of Regulation (EC) No 1/2003. The General Court did not exercise its unlimited jurisdiction correctly, having failed to evaluate itself or explain why, in the present case, the fine imposed was justified. In that regard, the appellant considers that the General Court did not reply to the various arguments raised by it in the proceedings before the General Court.

---

[1] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1).

[2] Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417.

Request for a preliminary ruling from the Bayerisches Verwaltungsgericht München (Germany) lodged on 2 September 2013 — Andre Lawrence Shepherd v Federal Republic of Germany

(Case C-472/13)

(2013/C 336/19)

Language of the case: German

Referring court

Bayerisches Verwaltungsgericht München

Parties to the main proceedings

Applicant: Andre Lawrence Shepherd

Defendant: Federal Republic of Germany

Questions referred

1. Is Article 9(2)(e) of Directive 2004/83/EC [1] to be interpreted as meaning that the protection afforded extends only to those persons whose specific military duties include direct participation in combat, that is armed operations, and/or who have the authority to order such operations (first alternative), or can other members of the armed forces also fall within the scope of the protection afforded by that legislation if their duties are confined to logistical, technical support for the unit outwith actual combat and have only an indirect effect on the actual fighting (second alternative)?

2. If the answer to Question 1 is that the second alternative applies:

   Is Article 9(2)(e) of Directive 2004/83/EC to be interpreted as meaning that military service in a conflict (international or domestic) must predominantly or systematically call for or require the commission of crimes or acts as defined in Article 12(2) of Directive 2004/83/EC (first alternative), or is it sufficient if the applicant for asylum states that, in individual cases, crimes, as defined in Article 12(2)(a) of Directive 2004/83/EC, were committed by the armed forces to which he belongs in the area of operations in which they were deployed, either because individual operational orders have proved to be criminal in that sense, or as a result of the excesses of individuals (second alternative)?

3. If the answer to Question 2 is that the second alternative applies:

   Is refugee protection granted only if it is significantly likely, beyond reasonable doubt, that violations of international humanitarian law can be expected to occur in the future also, or is it sufficient if the applicant for asylum sets out facts which indicate that such crimes are (necessarily or probably) occurring in that particular conflict, and the possibility of his becoming involved in them therefore cannot be ruled out?

4. Does the intolerance or prosecution by military service courts of violations of international humanitarian law preclude refugee protection pursuant to Article 9(2)(e) of Directive 2004/83/EC, or is that aspect immaterial?

   Must there even have been a prosecution before the International Criminal Court?

5. Does the fact that the deployment of troops and/or the occupation statute is sanctioned by the international community or is based on a mandate from the United Nations Security Council preclude refugee protection?

6. Is it necessary, in order for refugee protection to be granted pursuant to Article 9(2)(e) of Directive 2004/83/EC, that the applicant for asylum could, if he performs his duties, be convicted under the statutes of the International Criminal

Court (first alternative), or is refugee protection afforded even before that threshold is reached and the applicant for asylum thus has no criminal prosecution to fear but is nevertheless unable to reconcile the performance of the military service with his conscience (second alternative)?

7. If the answer to Question 6 is that the second alternative applies:

   Does the fact that the applicant for asylum has not availed himself of the ordinary conscientious objection procedure — even though he would have had the opportunity to do so — preclude refugee protection pursuant to the above-mentioned provisions, or is refugee protection also a possibility in the case of a particular decision based on conscience?

8. Does a dishonourable discharge from the army, the imposition of a prison sentence and the social ostracism and disadvantages associated therewith constitute an act of persecution within the meaning of Article 9(2)(b) or (c) of Directive 2004/83/EC?

(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 Bundesgerichtshof (Germany) lodged on 3 September 2013 — Adala Bero

(Case C-473/13)

(2013/C 336/20)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Adala Bero

Authority involved: Regierungspräsidium Kassel

Question referred

Does Article 16(1) 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 (1) also require a Member State to carry out detentions for the purpose of removal as a rule in specialised detention facilities when such facilities exist in only one part of the federal subdivisions of that Member State but not in others?

(1) OJ 2008 L 348, p. 98.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 3 September 2013 — Thi Ly Pham

(Case C-474/13)

(2013/C 336/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant: Thi Ly Pham

Authority involved: Stadt Schweinfurt, Amt für Meldewesen und Statistik

Question referred

Is it consistent with Article 16(1) 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 (1) to place a pre-deportation detainee in accommodation together with prisoners if he consents to such accommodation?

(1) OJ 2008 L 348, p. 98.

Action brought on 6 September 2013 — European Commission v Republic of Poland

(Case C-478/13)

(2013/C 336/22)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: D. Bianchi and M. Owsiany-Hornung, Agents)

Defendant: Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that, in view of (a) its failure to impose, within the national legal system, an obligation to notify the competent Polish authorities of the locations at which GMO crops are being grown pursuant to Part C of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, [1] (b) its failure to establish a register for recording the locations at which such GMO crops are being grown, and (c) its failure to provide information to the public on the locations at which such GMO crops are being grown, the Republic of Poland has failed to meet its obligations under Article 31(3)(b) of Directive 2001/18/EC;

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

Pleas in law and main arguments

The period within which Directive 2001/18/EC had to be transposed expired on 17 October 2002.

[1] OJ 2001 L 106, p. 1.

Appeal brought on 24 September 2013 by Metropolis Inmobiliarias y Restauraciones, SL against the judgment of the General Court (Eighth Chamber) delivered on 11 July 2013 in Case T-197/12 Metropolis Inmobiliarias y Restauraciones, SL v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-509/13 P)

(2013/C 336/23)

Language of the case: German

Parties

Appellant: Metropolis Inmobiliarias y Restauraciones, SL (represented by: J. Carbonell Callicó, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), MIP Metro Group Intellectual Property GmbH & Co. KG

Form of order sought

The appellant claims that the Court of Justice should:

— set aside the judgment of the General Court (Eighth Chamber) of 11 July 2013 in Case T-197/12 and, consequently, reject the application to register Community figurative mark No 7585045 METRO for services in Class 36;

— order the other parties to the proceedings to bear the costs of the proceedings.

Grounds of appeal and main arguments

The appellant essentially raises three grounds of appeal against the judgment of the General Court referred to above.

First, the appellant accuses the General Court of having infringed Article 8(1)(b) of Community trade mark Regulation No 207/2009, [1] as a result of a misinterpretation of the services covered by the mark in conflict and a failure to assess the marks at issue as a whole.

Second, the General Court has delivered contradictory judgments in cases involving the same parties and in which similar marks were at issue. The judgment in Case T-284/11, which is very closely related to the present case, was not taken into account even though it was submitted in the proceedings in good time and in accordance with the procedure.

Third, the appellant submits that there were errors in the proceedings before the General Court which adversely affected its interests and which deprived it repeatedly of legal protection. In particular, the oral proceedings were carried out without the applicant, even though it had applied for them to be postponed for an important reason, and did so in accordance with the relevant procedure.

[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 25 September 2013 by the Kingdom of Spain against the judgment of the General Court (Eighth Chamber) delivered on 11 July 2013 in Case T-358/08 Spain v Commission

(Case C-513/13 P)

(2013/C 336/24)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

Other party to the proceedings: European Commission

Form of order sought

— Declare that the present appeal is well founded and set aside the judgment of the General Court of 11 July 2013 in Case T-358/08 *Kingdom of Spain* v *European Commission*;

— Annul Commission Decision No C(2008) 3249 of 25 June 2008 concerning the reduction of the assistance granted under the Cohesion Fund to Project No 96/11/61/018 — 'Saneamiento de Zaragoza' by Commission Decision No C(96) 2095 of 26 July 1996;

— Order the respondent to pay the costs.

Pleas in law and main arguments

1. ***Error of law with respect to the effects of the period referred to in Article H(2) of Annex II to Council Regulation (EC) No 1164/94*** [1] ***of 16 May 1994 establishing a Cohesion Fund***. After the expiry of the period referred to, the Commission may no longer adopt any financial correction measures and, therefore, it is obliged to make payment and the correction applied is unlawful.

2. ***Error of law in relation to the concept of 'work', in holding that the whole of a network constitutes a single work within the meaning of Article 1(c) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts*** [2]. The judgment under appeal departs from the case-law in Case C-16/98 *Commission* v *France* [2000] ECR I-8315 in failing to take account of the need for geographical continuity of the works taken as a whole and for interdependence between them, namely, the need for interconnection for the provision of the service.

[1] OJ L 130, 25.5.1994, p. 1.
[2] OJ L 199, 9.8.1993, p. 54.

GENERAL COURT

Judgment of the General Court of 16 September 2013 — Galp Energía España and Others v Commission

(Case T-462/07) [1]

(Competition — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Decision finding an infringement of Article 81 EC — Annual market-sharing and price-fixing arrangements — Evidence of participation in the cartel — Calculation of the amount of the fine)

(2013/C 336/25)

Language of the case: English

Parties

Applicants: Galp Energía España, SA (Alcobendas, Spain); Petróleos de Portugal (Petrogal), SA (Lisbon, Portugal); Galp Energia, SGPS, SA (Lisbon) (represented by: M. Slotboom and G. Gentil Anastácio, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, acting as Agent, assisted initially by J. Rivas Andrés, lawyer, and by M. Heenan Bróna, Solicitor, and subsequently by J. Rivas Andrés)

Re:

Application, principally, for annulment in whole or in part of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/38.710 — Bitumen (Spain)) and, in the alternative, for reduction of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Annuls Article 1 of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/38.710 — Bitumen Spain) in so far as it finds that Galp Energía España, SA, Petróleos de Portugal (Petrogal), SA, and Galp Energia, SGPS, SA were involved in a complex of agreements and concerted practices in the Spanish market for bitumen, to the extent that that complex includes (i) the system for monitoring the implementation of the market sharing and customer-allocation arrangements and (ii) the compensation mechanism to correct deviations from the market-sharing and customer-allocation arrangements;*

2. *Annuls Article 3 of Decision C(2007) 4441 final in so far as it requires Galp Energía España, Petróleos de Portugal (Petrogal) and Galp Energia, SGPS to bring to an end the infringement as found in Article 1 of that decision and to refrain from repeating any act or conduct described in that article or having the same or similar object or effect, to the extent that that infringement includes (i) the system for monitoring the implementation of the market-sharing and customer-allocation arrangements and (ii) the compensation mechanism to correct deviations from the market-sharing and customer-allocation arrangements;*

3. *Sets the amount of the fine imposed on Galp Energía España and on Petróleos de Portugal (Petrogal) in Article 2 of Decision C(2007) 4441 final at EUR 8 277 500, and the amount of the fine imposed on Galp Energia, SGPS in Article 2 of Decision C(2007) 4441 at EUR 6 149 000;*

4. *Dismisses the remaining heads of claim in the application;*

5. *Orders each party to bear its own costs.*

---

[1] OJ C 51, 23.2.2008.

Judgment of the General Court of 16 September 2013 — Nynäs Petroleum and Nynas Petróleo v Commission

(Case T-482/07) [1]

(Competition — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Decision finding an infringement of Article 81 EC — Annual market-sharing and price-fixing arrangements — Evidence of participation in the cartel — Calculation of the amount of the fine)

(2013/C 336/26)

Language of the case: English

Parties

Applicants: Nynäs Petroleum AB (Stockholm, Sweden); and Nynas Petróleo, SA (Madrid, Spain) (represented by: D. Beard QC, and M. Dean, Solicitor)

Defendant: European Commission (represented: initially by X. Lewis and F. Castillo de la Torre, subsequently by F. Castillo de la Torre and J. Bourke, and lastly by F. Castillo de la Torre and C. Urraca Caviedes, Agents)

Re:

Application, principally, for annulment in part of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/38.710 — Bitumen (Spain)) or, in the alternative, for reduction of the fine imposed on the applicants.

Operative part of the judgment

The Court:

1. *Sets the amount of the fine imposed on Nynas Petróleo, SA in Article 2 of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/38.710 — Bitumen (Spain)) at EUR 10 406 000, and the amount of the fine imposed on Nynäs Petroleum, AB in Article 2 of that decision at EUR 10 164 000;*

2. *Dismisses the remaining heads of claim in the application;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 51, 23.2.2008.

Judgment of the General Court (Eighth Chamber) of 16 September 2013 — PROAS v European Commission

(Case T-495/07) ([1])

(Competition — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Decision finding an infringement of Article 81 EC — Annual market-sharing and price-fixing agreements — Translation of the statement of objections — Calculation of the amount of the fine — Reasonable time — Res judicata)

(2013/C 336/27)

Language of the case: Spanish

Parties

Applicant: Productos Asfálticos (PROAS), SA (Madrid, Spain) (represented: initially by C. Fernández Vicién, A. Pereda Miquel and P. Carmona Botana, then C. Fernández Vicién and A. Pereda Miquel and finally C. Fernández Vicién, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, acting as Agent, assisted initially by J. Rivas Andrés, lawyer, and M. Heenan Bróna, Solicitor, then J. Rivas Andrés and J. Gutiérrez Gisbert, lawyers, and finally J. Rivas Andrés)

Re:

Application for annulment of Decision C(2007) 4441 final of the Commission, of 3 October 2007, relating to a procedure of application of Article 81 (EC) [Case COMP/38.710 — Bitumen (Spain)], and the reduction of the amount of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Dismisses the claim of the European Commission seeking an increase of the amount of the fine.*

3. *Orders Productos Asfálticos (PROAS), SA to pay the costs.*

([1]) OJ C 64, 8.3.2008.

Judgment of the General Court of 16 September 2013 — Repsol Lubricantes y Especialidades and Others v Commission

(Case T-496/07) ([1])

(Competition — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Annual market-sharing and price-fixing agreements — Rights of defence — Imputability of the unlawful conduct — Principle that penalties must be specific to the offender — Calculation of the amount of the fine — Res judicata)

(2013/C 336/28)

Language of the case: Spanish

Parties

Applicants: Repsol Lubricantes y Especialidades, SA, formerly Repsol Lubricantes YPF y Especialidades, SA (Madrid, Spain); Repsol Petróleo, SA (Madrid); and Repsol, SA, formerly Repsol YPF, SA (Madrid) (represented by: L. Ortiz Blanco, J. Buendía Sierra, M. Muñoz de Juan and Á. Givaja Sanz, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre and C. Urraca Caviedes, acting as Agents)

Re:

Application for annulment of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP-38.710 Bitumen (Spain)), and for reduction in the amount of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the claim of the European Commission seeking an increase of the amount of the fine;*

3. *Orders Repsol Lubricantes y Especialidades, SA, Repsol Petróleo, SA and Repsol, SA to pay the costs.*

([1]) OJ C 64, 8.3.2008.

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

(Case T-497/07) [1]

(Competition — Agreements, decisions and concerted practices — Spanish market for penetration bitumen — Annual market-sharing and price-fixing agreements — Translation of the statement of objections — Imputability of the unlawful conduct — Reasonable period — Principle of impartiality — Calculation of the amount of the fine — Res judicata)

(2013/C 336/29)

Language of the case: Spanish

Parties

Applicant: Compañía Española de Petróleos (CEPSA), SA (Madrid, Spain) (represented: initially by O. Armengol i Gasull, P. Pérez-Llorca Zamora and Á. Pascual Morcillo, subsequently by O. Armengol i Gasull and J. Rodríguez Cárcamo, lawyers)

Defendant: European Commission (represented by: F. Castillo de la Torre, acting as Agent, and initially by J. Rivas Andrés, lawyer, and M. Heenan Bróna, solicitor, subsequently by J. Rivas Andrés and J. Gutiérrez Gisbert, lawyer, and finally by J. Rivas Andrés)

Re:

Application for annulment of Commission Decision C(2007) 4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP-38.710 Bitumen (Spain)), and for reduction in the amount of the fine imposed on the applicant in that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Dismisses the claim of the European Commission regarding the amount of the fine.*

3. *Orders Compañía Española de Petróleos (CEPSA), SA to pay the costs.*

[1] OJ C 64, 8.3.2008.

Judgment of the General Court of 16 September 2013 — Müller-Boré & Partner v OHIM — Popp and Others (MBP)

(Case T-338/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark MBP — Earlier Community word mark ip_law@mbp./email — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — National sign used in the course of trade mbp.de — Article 8(4) of Regulation No 40/94 (now Article 8(4) of Regulation 207/2009)

(2013/C 336/30)

Language of the case: German

Parties

Applicant: M Müller-Boré & Partner Patentanwälte. Rechtsanwälte (Munich, Germany) (represented by: C. Osterrieth and T. Schmitz, lawyers)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Eugen Popp (Munich, Germany); Wolf E. Sajda (Munich); Johannes Bohnenberger (Munich); and Volkmar Kruspig (Munich) (represented by: C. Rohnke, M. Jacob and J. Herrlinger, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 23 June 2009 (Case R 1176/2007-4), relating to opposition proceedings between Eugen Popp, Wolf E. Sajda, Johannes Bohnenberger, Volkmar Kruspig and Müller-Boré & Partner Rechtsanwälte. Patentanwälte.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Müller-Boré & Partner Patentanwälte. Rechtsanwälte to pay the costs.*

[1] OJ C 267, 7.11.2009.

Judgment of the General Court of 16 September 2013 — Colt Télécommunications France v Commission

(Case T-79/10) [1]

(State Aid — Compensation for public service costs in connection with a very high-speed broadband electronic communications network in the Hauts-de-Seine department — Decision finding no State aid — Failure to initiate the formal investigation procedure — Serious difficulties)

(2013/C 336/31)

Language of the case: French

Parties

Applicant: Colt Télécommunications France (Paris, France) (represented by: M. Debroux, lawyer)

Defendant: European Commission (represented by: B. Stromsky and C. Urraca Caviedes, acting as Agents)

Interveners in support of the defendant: The French Republic (represented: initially by G. de Bergues and J. Gstalter, and subsequently by D. Colas, J. Bousin and J. S. Pilczer, acting as Agents); Sequalum SAS (Puteaux, France) (represented by: L. Feldman, lawyer); and the Hauts-de-Seine department (France) (represented by: J. D. Bloch and G. O'Mahony, lawyers)

Re:

Application for annulment of Commission Decision C(2009) 7426 final of 30 September 2009 concerning the compensation for public service costs for the establishment and operation of a very high speed broadband electronic communications network in the Hauts-de-Seine department (State Aid N 331/2008 — France).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Colt Télécommunications France to bear its own costs and to pay those incurred by the European Commission;*

3. *Orders the French Republic, Sequalum SAS and the Hauts-de-Seine department to pay their own costs.*

[1] OJ C 113, 1.5.2010.

Judgment of the General Court of 26 September 2013 — Pioneer Hi-Bred International v Commission

(Case T-164/10) [1]

(Approximation of laws — Deliberate release into the environment of genetically modified organisms — Authorisation procedure for placing on the market — Failure by the Commission to submit a draft decision to the Council — Action for failure to act)

(2013/C 336/32)

Language of the case: English

Parties

Applicant: Pioneer Hi-Bred International, Inc. (Johnston, Iowa, United States) (represented by: J. Temple Lang, Solicitor, and T. Müller Ibold, lawyer)

Defendant: European Commission (represented by: L. Pignataro-Nolin, N. Yerrell and C. Zadra, acting as Agents)

Re:

Application for a declaration under Article 265 TFEU that, by failing to submit to the Council a draft of the measures to be taken in accordance with Article 5(4) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23) and by failing to take all other measures that may, depending on the development of the decision-making procedure, be necessary to ensure the adoption of the decision referred to in Article 18 of Directive 2001/18/EC of 12 March 2001 of the European Parliament and the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1), the Commission has failed to fulfil its obligations under Article 18 of Directive 2001/18.

Operative part of the judgment

The Court:

1. *Declares that the European Commission has failed to fulfil its obligations under Article 18 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC by failing to submit to the Council a proposal relating to the measures to be taken pursuant to Article 5(4) of Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission;*

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

[1] OJ C 161, 19.6.2010.

Judgment of the General Court of 16 September 2013 — Avery Dennison v OHIM (AVERY DENNISON)

(Case T-200/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark AVERY DENNISON — Earlier national word mark DENNISON — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009 — Subject-matter of the dispute before the Board of Appeal)

(2013/C 336/33)

Language of the case: Spanish

Parties

Applicant: Avery Dennison Corp. (Pasadena, California, United States) (represented by: E. Armijo Chávarri, A. Castán Pérez-Gómez and A. Sanz Cerralbo, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dennison-Hesperia, SA (Torrejón de Ardoz, Spain) (represented by: L. Broschat García, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 9 February 2010 (Case R 798/2009-2), relating to opposition proceedings between Dennison-Hesperia, SA and Avery Dennison Corp.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Avery Dennison Corp. to pay the costs.*

[1] OJ C 161, 19.6.2010.

Judgment of the General Court of 16 September 2013 — Knut IP Management v OHIM — Zoologischer Garten Berlin (KNUT — DER EISBÄR)

(Case T-250/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark KNUT – DER EISBÄR — Earlier national word mark KNUD — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2013/C 336/34)

Language of the case: German

Parties

Applicant: Knut IP Management Ltd (London, United Kingdom) (represented: initially by C. Jaeckel, then by J. Steinberg, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Zoologischer Garten Berlin AG (Berlin, Germany) (represented by: J. Schulz and P. Vatankhah, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 17 March 2010 (Case R 650/2009-1), relating to opposition proceedings between Zoologischer Garten Berlin AG and Knut IP Management Ltd.

Operative part of the judgment

The General Court:

1. *Dismisses the action;*

2. *Orders Knut IP Management Ltd to pay the costs.*

[1] OJ C 209, 31.7.2010.

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

(Case T-258/10) [1]

(State Aid — Compensation for public service costs in connection with a very high-speed broadband electronic communications network in the Hauts-de-Seine department — Decision finding no State aid — Failure to initiate the formal investigation procedure — Serious difficulties — Altmark judgment — Service of general economic interest — Market failure — Overcompensation)

(2013/C 336/35)

Language of the case: French

Parties

Applicant: Orange, formerly France Télécom (Paris, France) (represented: initially by M van der Woude and D. Gillet, and subsequently by D. Gillet and H. Viaene, lawyers)

Defendant: European Commission (represented by: B. Stromsky and C. Urraca Caviedes, acting as Agents)

Interveners in support of the defendant: The French Republic (represented: initially by G. de Bergues and J. Gstalter, and subsequently by D. Colas and J. Bousin, acting as Agents); the Hauts-de-Seine department (France) (represented by: J.-D. Bloch and G. O'Mahony, lawyers); and Sequalum SAS (Puteaux, France) (represented by: L. Feldman, lawyer)

Re:

Application for annulment of Commission Decision C(2009) 7426 final of 30 September 2009 concerning the compensation for public service costs for the establishment and operation of a very high-speed broadband electronic communications network in the Hauts-de-Seine department (State Aid N 331/2008 — France).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

3. *Orders the Hauts-de-Seine department, Sequalum SAS and the French Republic to pay their own costs.*

[1] OJ C 234, 28.8.2010.

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

(Case T-325/10) [1]

(State Aid — Compensation for public service costs in connection with a very high-speed broadband electronic communications network in the Hauts-de-Seine department — Decision finding no State aid — Failure to initiate the formal investigation procedure — Serious difficulties — Altmark judgment — Service of general economic interest — Market failure — Overcompensation)

(2013/C 336/36)

Language of the case: French

Parties

Applicants: Iliad (Paris, France); Free infrastructure (Paris); and Free (Paris) (represented by: T. Cabot, lawyer)

Defendant: European Commission (represented by: B. Stromsky and C. Urraca Caviedes, acting as Agents)

Interveners in support of the defendant: The French Republic (represented: initially by G. de Bergues and J. Gstalter, and subsequently by D. Colas and J. Bousin, acting as Agents); the Republic of Poland (represented initally by M. Szpunar and B. Majczyna, and subsequently by B. Majczyna, acting as Agents); the Hauts-de-Seine department (France) (represented by: J.-D. Bloch and G. O'Mahony, lawyers)

Re:

Application for annulment of Commission Decision C(2009) 7426 final of 30 September 2009 concerning the compensation for public service costs for the establishment and operation of a very high-speed broadband electronic communications network in the Hauts-de-Seine department (State Aid N 331/2008 — France).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Iliad, Free infrastructure and Free to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders the Hauts-de-Seine department, the French Republic and the Republic of Poland to pay their own costs.*

[1] OJ C 288, 23.10.2010.

Judgment of the General Court of 16 September 2013 — Rovi Pharmaceuticals v OHIM — Laboratorios Farmacéuticos Rovi (ROVI Pharmaceuticals)

(Case T-97/11) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark ROVI Pharmaceuticals — Earlier Community figurative mark ROVI and earlier national word mark ROVIFARMA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Equal treatment)

(2013/C 336/37)

Language of the case: English

Parties

Applicant: Rovi Pharmaceuticals GmbH (Schlüchtern, Germany) (represented by: M. Berghofer, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Laboratorios Farmacéuticos Rovi, SA (Madrid, Spain) (represented by: G. Marín Raigal, P. López Ronda and G. Macias Bonilla, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 7 December 2010 (Case R 500/2010-2), relating to opposition proceedings between Laboratorios Farmacéuticos Rovi, SA and Rovi Pharmaceuticals GmbH

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Rovi Pharmaceuticals GmbH to pay the costs, including those incurred by Laboratorios Farmacéuticos Rovi, SA in the proceedings before the Board of Appeal.*

[1] OJ C 120, 16.4.2011.

Judgment of the General Court of 16 September 2013 — Golden Balls Ltd v OHIM — Intra-Presse (GOLDEN BALLS)

(Case T-437/11) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark GOLDEN BALLS — Earlier Community word mark BALLON D'OR — Similarity of the signs — Likelihood of confusion — Article 8(1)(b) of Regulation No 207/2009 — Application for annulment filed by the intervener — Article 134(3) of the Rules of Procedure of the General Court — Scope of the examination to be carried out by the Board of Appeal — Obligation to rule on the entirety of the action — Articles 8(5), 64(1) and 76(1) of Regulation No 207/2009)

(2013/C 336/38)

Language of the case: English

Parties

Applicant: Golden Balls Ltd (London, United Kingdom) (represented by: M. Edenborough QC, and S. Smith, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Intra-Presse (Boulogne-Billancourt, France) (represented by: P. Péters, T. de Haan and M. Laborde, avocats)

Re:

Application for annulment of the decision of the First Board of Appeal of OHIM of 26 May 2011 (Case R 1310/2010-1) relating to opposition proceedings between Intra-Presse and Golden Balls Ltd.

Operative part of the judgment

The Court:

1. *Annuls point 1 of the operative part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 26 May 2011 (Case R 1310/2010-1);*

2. *Rejects the application for annulment submitted by Intra-Presse;*

3. *Orders OHIM to bear, in addition to its own costs, those incurred by Golden Balls Ltd, with the exception of the latter's costs concerning the application for annulment based on Article 134(3) of the Rules of Procedure;*

4. *Orders Intra-Presse to bear, in addition to its own costs, those incurred by Golden Balls Ltd concerning the application for annulment based on Article 134(3) of the Rules of Procedure.*

[1] OJ C 298, 8.10.2011.

Judgment of the General Court of 16 September 2013 — Golden Balls Ltd v OHIM — Intra-Presse (GOLDEN BALLS)

(Case T-448/11) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark GOLDEN BALLS — Earlier Community word mark BALLON D'OR — Similarity of the signs — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Application for annulment filed by the intervener — Article 134(3) of the Rules of Procedure of the General Court — Scope of the examination to be carried out by the Board of Appeal — Obligation to rule on the entirety of the action — Articles 8(5), 64(1) and 76(1) of Regulation No 207/2009)

(2013/C 336/39)

Language of the case: English

Parties

Applicant: Golden Balls Ltd (London, United Kingdom) (represented by: M. Edenborough QC, and S. Smith, Solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM: Intra-Presse (Boulogne-Billancourt, France) (P. Péters, T. de Haan and M. Laborde, lawyers)

Re:

Application for annulment of the decision of the First Board of Appeal of OHIM of 22 June 2011 (R 1432/2010-1) relating to opposition proceedings between Intra-Presse and Golden Balls Ltd.

Operative part of the judgment

The Court:

1. *Annuls point 1 of the operative part of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 22 June 2011 (Case R 1432/2010-1);*

2. *Rejects the application for annulment submitted by Intra-Presse;*

3. *Orders OHIM to bear, in addition to its own costs, those incurred by Golden Balls Ltd, with the exception of the latter's costs concerning the application for annulment based on Article 134(3) of the Rules of Procedure;*

4. *Orders Intra-Presse to bear, in addition to its own costs, those incurred by Golden Balls Ltd concerning the application for annulment based on Article 134(3) of the Rules of Procedure.*

[1] OJ C 298, 8.10.2011.

Judgment of the General Court of 16 September 2013 — Gitana SA v OHIM — Teddy (GITANA)

(Case T-569/11) [1]

(Community trade mark — Opposition proceedings — Application for the Community figurative mark GITANA — Earlier Community figurative mark KiTANA — Proof of genuine use of the earlier mark — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Relative ground for refusal — Likelihood of confusion — Identity or similarity of the goods — Similarity of the signs — Article 8(1)(b) of Regulation No 207/2009 — Partial refusal of registration)

(2013/C 336/40)

Language of the case: English

Parties

Applicant: Gitana SA (Pregny-Chambésy, Switzerland) (represented by: F. Benech, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Teddy SpA (Rimini, Italy) (represented by: S. Rizzo, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 4 August 2011 (Case R 1825/2007-1), relating to opposition proceedings between Rosenruist — Gestão e serviços, L[da] and Gitana SA

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Gitana SA to pay the costs.*

[1] OJ C 6, 7.1.2012.

Judgment of the General Court of 16 September 2013 — Oro Clean Chemie v OHIM (PROSEPT)

(Case T-284/12) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark PROSEPT — Earlier national word mark Pursept — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Rights of defence — Article 75 of Regulation No 207/2009)

(2013/C 336/41)

Language of the case: German

Parties

Applicant: Oro Clean Chemie AG (Fehraltorf, Switzerland) (represented by: F. Ekey, lawyer)

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

Other party/parties to the proceedings before the Board of Appeal of OHIM: Merz Pharma GmbH & Co. KGaA (Frankfurt am Main, Germany) (represented by: M. Hirsch and C. Mayerhöffer, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 29 March 2012 (Case R 1053/2011-1), relating to opposition proceedings between Merz Pharma GmbH & Co. KGaA and Oro Clean Chemie AG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Oro Clean Chemie AG to pay the costs.*

[1] OJ C 258, 25.8.2012.

Order of the General Court of 11 September 2013 — Rungis express AG v OHIM — Žito (MARESTO)

(Case T-243/10) [1]

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

(2013/C 336/42)

Language of the case: German

Parties

Applicant: Rungis express AG (Meckenheim, Germany) (represented: initially by U. Feldmann and subsequently by O. Dimopoulou, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: B. Schmidt, R. Pethke and D. Botis, agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Žito prehrambena industrija d.d. (Ljubljana, Slovenia) (represented by: M. Praviček, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 March 2010 (Case R 691/2009-1) concerning opposition proceedings between Žito prehrambena industrija d.d. and Rungis express AG.

Operative part of the order

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

2. *The applicant and the intervener are ordered to bear their own costs and, each of them, to bear half of the defendant's costs.*

[1] OJ C 234, 28.8.2010.

Order of the General Court of 9 September 2013 — Altadis v Commission

(Case T-400/11) [1]

(Action for annulment — State aid — Aid scheme allowing for the tax amortisation of financial goodwill for foreign shareholding acquisitions — Decision declaring the aid scheme to be incompatible with the common market and not ordering the recovery of the aid — Act entailing implementing measures — Lack of individual concern — No obligation to recover — Inadmissibility)

(2013/C 336/43)

Language of the case: Spanish

Parties

Applicant: Altadis, SA (Madrid, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, M. Muñoz de Juan and R. Calvo Salinero, lawyers)

Defendant: European Commission (represented by: R. Lyal, C. Urraca Caviedes and P. Němečkova, acting as Agents)

Re:

Application for partial annulment of Commission Decision 2011/282/EU of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions No C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 135, p. 1).

Operative part of the order

1. *The action is dismissed;*

2. *Altadis, SA is ordered to pay the costs.*

(1) OJ C 282, 24.9.2011.

Order of the General Court of 9 September 2013 — Banco Bilbao Vizcaya Argentaria v Commission

(Case T-429/11) (1)

(Action for annulment — State aid — Aid scheme permitting tax amortisation of financial goodwill for foreign shareholding acquisitions — Decision declaring the aid scheme incompatible with the internal market and not ordering the recovery of the aid — Act entailing implementing measures — Lack of individual concern — Lack of status as an actual recipient under the aid scheme — No obligation to repay the aid — Inadmissibility)

(2013/C 336/44)

Language of the case: Spanish

Parties

Applicant: Banco Bilbao Vizcaya Argentaria, SA (Bilbao, Spain) (represented by J. Ruiz Calzado, M. Núñez Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission (represented by R. Lyal, C. Urraca Caviedes and P. Němečková, acting as Agents)

Re:

Request for partial annulment of Commission Decision 2011/282/EU of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions No C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 135, p. 1).

Operative part of the order

1. *The action is dismissed.*

2. *Banco Bilbao Vizcaya Argentaria, SA is ordered to pay the costs.*

(1) OJ C 282, 24.9.2011.

Order of the General Court of 9 September 2013 — Telefónica v Commission

(Case T-430/11) (1)

(Action for annulment — State aid — Aid scheme permitting tax amortisation of financial goodwill for foreign shareholding acquisitions — Decision declaring the aid scheme incompatible with the internal market and not ordering the recovery of the aid — Act entailing implementing measures — Lack of individual concern — Lack of status as an actual recipient under the aid scheme — No obligation to repay the aid — Inadmissibility)

(2013/C 336/45)

Language of the case: Spanish

Parties

Applicant Telefónica, SA (Madrid, Spain) (represented by J. Ruiz Calzado, M. Núñez Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission (represented by R. Lyal, C. Urraca Caviedes and P. Němečková, acting as Agents)

Re:

Request for partial annulment of Commission Decision 2011/282/EU of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions No C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 135, p. 1).

Operative part of the order

1. *The action is dismissed.*

2. *Telefónica, SA is ordered to pay the costs.*

(1) OJ C 282, 24.9.2011.

Order of the General Court of 11 September 2013 — Marcuccio v Commission

(Case T-475/11 P) (1)

(Appeal — Civil Service — Reimbursement of recoverable expenses — Lack of interest in bringing proceedings — Appeal manifestly inadmissible)

(2013/C 336/46)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission (represented by: J. Currall and C. Berardis-Kayser, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (Second Chamber) of 20 June 2011 in Case F-67/10 *Marcuccio* v *Commission* ECR-SC I-A-0000 and II-0000, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

([1]) OJ C 311, 22.10.2011.

Order of the General Court of 11 September 2013 — Melkveebedrijf Overenk and Others v Commission

(Case T-540/11) ([1])

(Action for damages — Levy in the milk and milk products sector — Regulation (EC) No 1468/2006 — Manifest inadmissibility)

(2013/C 336/47)

Language of the case: Dutch

Parties

Applicants: Melkveebedrijf Overenk BV (Sint Anthonis, Netherlands); Maatschap Veehouderij Kwakernaak (Oosterwolde, Netherlands); Mulders Agro vof (Heerle, Netherlands); Melkveebedrijf Engelen vof (Grashoek, Netherlands); Melkveebedrijf De Peel BV (Heusden, Netherlands); and Mathijs Moonen (Nederweert, Netherlands) (represented by P. Mazel and A. van Beelen, lawyers)

Defendants: European Commission (represented by Z. Malůšková and B. Burggraaf, acting as Agents)

Re:

Claim for damages for the loss allegedly caused to the applicants by Commission Regulation (EC) No 1468/2006 of 4 October 2006 amending Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector (JO 2006 L 274, p. 6).

Operative part of the order

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

2. *Melkveebedrijf Overenk BV, Maatschap Veehouderij Kwakernaak, Mulders Agro vof, Melkveebedrijf Engelen vof, Melkveebedrijf De Peel BV and Mr Mathijs Moonen are ordered to pay the costs.*

([1]) OJ C 347, 26.11.2011.

Order of the General Court of 10 September 2013 — Symbio Gruppe v OHIM — Ada Cosmetic (SYMBIOTIC CARE)

(Case T-562/11) ([1])

(Community trade mark — Opposition proceedings — Cancellation of international registration — No need to adjudicate)

(2013/C 336/48)

Language of the case: German

Parties

Applicant: Symbio Gruppe GmbH & Co. KG (Herborn, Germany) (represented by: A. Schulz and C. Onken, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: R. Pethke and D. Botis, agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Ada Cosmetic GmbH (Kehl, Germany) (represented: initially by H. Börjes-Pestalozza, then by R. Douglas Morton and E. Kessler, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 18 August 2011 (Case R 2121/2010-4), relating to opposition proceedings between Symbio Gruppe GmbH & Co. KG and Ada Cosmetic GmbH.

Operative part of the order

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

2. *Each party shall bear its own costs.*

([1]) OJ C 13, 14.1.2012

Order of the General Court of 16 September 2013 — Hübner v OHIM — Silesia Gerhard Hanke (Original silecia Kieselsäure-Gel)

(Case T-211/12) ([1])

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

(2013/C 336/49)

Language of the case: German

Parties

Applicant: Anton Hübner GmBH & Co KG (Ehrenkirchen, Germany) (represented: initially by A. Kirchgäßner and subsequently by R. Kunz-Hallstein, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Silesia Gerhard Hanke GmBH & Co KG (Norf, Germany) (represented by: H.-J. Krieger, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 1 March 2012 (Case R 351/2011-1) concerning opposition proceedings between Silesia Gerhard Hanke GmBH & Co KG and Anton Hübner GmBH & Co KG.

Operative part of the order

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

2. *The applicant and the intervener are ordered to bear their own costs and, each of them, to bear half of the defendant's costs.*

([1]) OJ C 209, 14.7.2012.

Order of the General Court of 13 September 2013 — Conticchio v Commission

(Case T-358/12 P) ([1])

(Appeal — Civil service — Officials — Pensions — Decision concerning the calculation of pension rights — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2013/C 336/50)

Language of the case: Italian

Parties

Appellant: Rosella Conticchio (Rome, Italy) (represented by: R. Giuffrida and A. Tortora, lawyers)

Other party to the proceedings: European Commission (represented by: J. Currall and G. Gattinara, Agents, assisted by A. Dal Ferro, lawyer)

Re:

Appeal brought against the order of the European Union Civil Service Tribunal (First Chamber) of 12 July 2012 in Case F-22/11 *Conticchio* v *Commission* ECR-SC I-A-0000 and II-0000, seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Each party shall bear its own costs.*

([1]) OJ C 295, 29.9.2012.

Order of the General Court of 9 September 2013 — Planet v Commission

(Case T-489/12) ([1])

(Arbitration clause — Sixth framework programme for research, technological development and demonstration — Contracts relating to Ontogov, FIT and RACWeb projects — Eligible costs — No legal interest in bringing proceedings — Inadmissible)

(2013/C 336/51)

Language of the case: Greek

Parties

Applicant: Planet AE Anonymi Etaireia Parochis Symvouleftikon Ypiresion (Athens, Greece) (represented by: V. Christianos, lawyer)

Defendant: European Commission (represented by: R. Lyal and B. Conte, agents, and by S. Drakakakis, lawyer)

Re:

Action based on Article 272 TFEU and the first paragraph of Article 340 TFEU seeking a declaration that, first, the refusal by the Commission to allow as eligible costs certain sums paid in advance of completion of the contracts 'Ontology enabled E-Gov Service Configuration (ONTOGOV)', 'Fostering self-adaptive e-government service improvement using semantic technologies (FIT)' and 'Risk Assessment for Customs in Western Balkans (RACWeb)', concluded as part of the Sixth framework programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006), is an infringement by the Commission of its contractual obligations and, secondly, that those sums are eligible costs and ought not to be repaid.

Operative part of the order

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

2. *Planet AE Anonymi Etaireia Parochis Symvouleftikon Ypiresion shall pay the costs.*

([1]) OJ C 26, 26.1.2013.

Order of the General Court of 12 September 2013 — Yaqub v OHIM — Turkey (ATATURK)

(Case T-580/12) ([1])

(Community trade mark — Appointment of a new representative — Applicant's failure to act — No need to adjudicate)

(2013/C 336/52)

Language of the case: English

Parties

Applicant: J. Yaqub (Nottingham, United Kingdom)

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

The other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court, being: Republic of Turkey

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 17 September 2012 (Case R 2613/2011-2), relating to invalidity proceedings between the Republic of Turkey, and J. Yaqub and G. Yaqub.

Operative part of the order

1. *There is no need to adjudicate on the application.*

2. *J. Yaqub shall bear his own costs.*

([1]) OJ C 79, 16.3.2013.

Order of the General Court of 16 September 2013 — Bouillez v Council

(Case T-31/13 P) ([1])

(Appeal — Civil service — Officials — Promotion — 2007 promotion year — Decision not to promote the appellant to Grade AST 7 — Obligation to state reasons — Article 266 TFEU — Article 45 of the Staff Regulations — Contradictory reasons — Comparative examination of the merits — Appeal in part clearly inadmissible and in part clearly unfounded)

(2013/C 336/53)

Language of the case: French

Parties

Appellant: Vincent Bouillez (Overijse, Belgium) (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Other party: Council of the European Union (represented by: M. Bauer and A. Bisch, acting as Agents)

Re:

Appeal brought against the decision of the European Union Civil Service Tribunal (Third Chamber) of 14 November 2012 in Case F-75/11 *Bouillez* v *Council* (not yet published in the ECR), and seeking the setting aside of that judgment.

Operative part of the order

1. *The appeal is rejected.*

2. *Mr Vincent Bouillez is to bear his own costs and those incurred by the Council of the European Union in these proceedings.*

([1]) OJ C 86, 23.3.2013.

Order of the General Court of 20 September 2013 –Van Neyghem v Council

(Case T-113/13 P) ([1])

(Appeal — Civil service — Officials — Promotion — 2007 promotion year — Decision to not promote the appellant to Grade AST 7 — Dismissal of action at first instance — Obligation to state reasons — Article 266 TFEU — Appeal in part clearly inadmissible and in part clearly unfounded)

(2013/C 336/54)

Language of the case: French

Parties

Appellant: Kris Van Neyghem (Tienen, Belgium) (represented by: M. Velardo, lawyer)

Other party to the proceedings: Council of the European Union (represented by: M. Bauer and A. Bisch, acting as Agents)

Re:

Appeal brought against the decision of the European Union Civil Service Tribunal (Third Chamber) of 12 December 2012 in Case F-77/11 *Van Neyghem* v *Council*, (not yet published in the ECR), and seeking the setting aside of that judgment.

Operative part of the order

1. *The appeal is rejected.*

2. *Mr Kris Van Neyghem is to bear his own costs and those incurred by the Council of the European Union in these proceedings.*

([1]) OJ C 147, 25.5.2013.

Action brought on 4 September 2013 — Syrian Lebanese Commercial Bank v Council

(Case T-477/13)

(2013/C 336/55)

Language of the case: French

Parties

Applicant: Syrian Lebanese Commercial Bank S.A. L. (Beirut, Lebanon) (represented by: P. Vanderveeren, L. Defalque and T. Bontinck, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— acknowledge the European Union's non-contractual liability on account of the fact that the applicant was included and retained in Annex II to Council Regulation No 36/2012/EU;

— as a result, order full and adequate compensation for the harm suffered by the applicant as a result of the unlawful conduct of the European Union amounting to EUR 41 074 940, together with compensatory and default interest at the rate applied by the European Central Bank to its main refinancing operations, increased by two percentage points, and grant a provisional indemnity of EUR 1 million, to be adjusted according to the expenses and investment which the applicant must incur in order to re-establish its image and reputation;

— in the alternative, if it is held that the amount of harm suffered must be recalculated, order an expert report in accordance with Article 65(d), Article 66(1) and Article 70 of the Rules of Procedure of the Court;

— order the Council to pay the costs of the action.

Pleas in law and main arguments

In support of the action, concerning the unlawful conduct alleged against the Council both in adopting the measures for the freezing of funds and in retaining them since January 2012, the applicant relies on four pleas in law alleging:

— a manifest error of assessment as regards the implication of the applicant in the financing of the Syrian regime;

— a lack of sufficient and precise reasons for the measures taken by the Council against the applicant;

— infringement of the rights of the defence to a fair hearing and to effective judicial protection and

— defects in the examination carried out by the Council, tainting by illegality the restrictive measures applied by the Council.

The applicant claims that the measures for the freezing of funds taken by the Council constitute the definite cause of both the material and non-material harm suffered by it.

Concerning material harm, the applicant claims that it suffered significant operational and technological losses as a result, in particular, of the loss of business relations with several European and Arab banks, the radical reduction in its operating results and the loss of numerous banking assets since 2012. Furthermore, its previous supplier of banking software has terminated all relations with it.

Concerning non-material harm, the applicant asks to be compensated for the damage resulting from the harm done to its image due to the unlawful measures for the freezing of funds adopted by the Council.

Action brought on 3 September 2013 — Marchiani v Parliament

(Case T-479/13)

(2013/C 336/56)

Language of the case: French

Parties

Applicant: Jean-Charles Marchiani (Toulon, France) (represented by: C.-S. Marchiani, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Secretary General of 4 July 2013;

— annul the debit note of 5 July 2013;

— order the European Parliament to pay the costs.

Pleas in law and main arguments

By the present action, the applicant contests the decision of the European Parliament to recover the sums received between 2001 and 2004 by the applicant as Parliamentary assistance expenses.

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

1. First plea in law, alleging an irregularity in procedure, in so far as the decision of the of the Secretary General of the Parliament of 4 July 2013 is in violation of the decision of the Bureau of the European Parliament of 19 May and 9 July 2008 concerning Implementing Measures for the Statute for Members of the European Parliament, of the adversarial principle and of the rights of defence.

2. Second plea in law, alleging an incorrect application of the regulation concerning fees and expenses of Members of the Parliament (the FEM regulation).

3. Third plea in law, alleging an error of assessment of the documents on the file.

4. Fourth plea in law, alleging a lack of impartiality on the part of the Secretary General of the European Parliament when adopting the decision dated 4 July 2013.

5. Fifth and Sixth pleas in law, alleging that the recovery of the sums in question is time-barred.

Action brought on 6 September 2013 — Systran v Commission

(Case T-481/13)

(2013/C 336/57)

Language of the case: French

Parties

Applicant: Systran SA (Paris, France) (represented by: J. Hoss, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decisions of 5 July 2013 and 21 August 2013 taken by the European Commission, alternatively, by the European Union;

— order the European Commission and the European Union to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the decisions of the Commission by which, following the judgment of the Court of Justice of 18 April 2013 in Case C-103/11 P *Commission* v *Systran and Systran Luxembourg* [2013] ECR I-0000, it recovers compensatory interest, plus interest for delay from 19 August 2013, on the amount that the Commission had paid to the applicant by way of damages following the judgment of the General Court of 16 December 2010 in Case T-19/07 *Systran and Systran Luxembourg* v *Commission* [2010] ECR II-6083, annulled by the judgment of the Court of Justice.

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

1. First plea in law, alleging the Commission's lack of competence to take the contested decisions, in so far as the Commission lacks competence to grant compensatory interest to itself, since such interest may be granted solely by a by a court where the interest is intended to compensate for damage resulting from a party's failure to carry out its obligations. The applicant claims that the grant of compensatory interest is not part of the realisation of the effects of a judgment of the Court of Justice.

2. Second plea in law, alleging an infringement of general principles of European law, both in the light of the grant of interest and the general principle of the prohibition of unjust enrichment. The applicant claims that:

   — the Commission infringed the general principle of European law, alternatively, the principle common to the Member States relating to the grant of compensatory interest, by granting compensatory interest to itself, in the absence of any harmful event attributable to the applicant;

   — the Commission infringed the general principle of the prohibition of unjust enrichment by imposing on a legal person governed by private law an obligation not provided for by the Treaties and, in any event, in the light of the calculation of the amount of interest, by granting an amount of flat-rate interest increased by 2 % in respect of inflation.

3. Third plea in law, alleging that the Commission misused its powers, in so far as it may not rely on Article 299 TFEU in order to seek payment of compensatory interest in the absence of a legal basis conferring that power on it and of a judicial decision ordering the applicant to pay it.

Action brought on 16 September 2013 — La Rioja Alta v OHIM — Aldi Einkauf (VIÑA ALBERDI)

(Case T-489/13)

(2013/C 336/58)

Language in which the application was lodged: Spanish

Parties

Applicant: La Rioja Alta, SA (Haro, Spain) (represented by: F. Pérez Álvarez, lawyer)

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

Other party to the proceedings before the Board of Appeal: Aldi Einkauf GmbH & Co. OHG (Essen, Germany)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Fourth Board of Appeal of OHIM in Case R 1190/2011-4 of 9 July 2013;

— declare valid Community trade mark No 3 189 065 'VIÑA ALBERDI' for 'Alcoholic beverages (except beers), except wines from Italy' in Class 33 of the International Nice Classification;

— order OHIM and the other parties before the Court to pay the costs of these proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Word mark 'VIÑA ALBERDI' for goods in Classes 30, 32 and 33 — Community trade mark registration No 3 189 065

Proprietor of the Community trade mark: Applicant

Applicant for the declaration of invalidity of the Community trade mark: Aldi Einkauf GmbH & Co. OHG

Grounds for the application for a declaration of invalidity: Infringement of Article 8(1)(b) of Regulation No 207/2009 in conjunction with Article 53(1)(a) and (b) of the same regulation — Figurative mark with the word elements 'VILLA ALBERTI'

Decision of the Cancellation Division: Application upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009 in conjunction with Article 53(1)(a) and (b) of the same regulation

---

Action brought on 18 September 2013 — May v OHIM — Constantin Film Produktion (WINNETOU)

(Case T-501/13)

(2013/C 336/59)

Language in which the application was lodged: German

Parties

Applicant: Karl May Verwaltungs- und Vertriebs- GmbH (Bamberg, Germany) (represented by: M. Pejman, lawyer)

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

Other party to the proceedings before the Board of Appeal: Constantin Film Produktion GmbH (Munich, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of 9 July 2013 in Case R 125/2012-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark 'WINNETOU' for goods and services in Classes 3, 9, 14, 16, 18, 21, 24, 25, 28, 29, 30, 39, 41, 42 and 43 (Community trade mark No 2 735 017)

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Constantin Film Produktion GmbH

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

Decision of the Cancellation Division: the application for a declaration of invalidity was rejected

Decision of the Board of Appeal: the Cancellation Division's decision was annulled and the Community trade mark was declared invalid in part

Pleas in law: Infringement of the principle of the autonomy and independence of the Community trade mark and of the Community trade mark regime and infringement of Articles 76 and 7(1)(b) and (c) of Regulation No 207/2009

Action brought on 23 September 2013 — Italy v Commission

(Case T-510/13)

(2013/C 336/60)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: P. Gentili, avvocato dello Stato, G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul notice of open competitions EPSO/AD/260/13, 261/13, 262/13, 263/13, 264/13, 265/13 and 266/13 to draw up reserve lists for the recruitment of Danish-language translators, English-language translators, French-language translators, Italian-language translators, Maltese-language translators, Dutch-language translators and Slovenian-language translators, published in the *Official Journal of the European Union* No C 199 A of 11 July 2013;

— order to the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are the same as those relied on in Case T-275/13 *Italy* v *Commission*.

Action brought on 23 September 2013 — Braun Melsungen v OHIM (SafeSet)

(Case T-513/13)

(2013/C 336/61)

Language of the case: German

Parties

Applicant: B. Braun Melsungen AG (Melsungen, Germany) (represented by M.-C. Seiler, 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 contested decision of the First Board of Appeal of OHIM of 27 June 2013;

— Alter the contested decision of the First Board of Appeal of OHIM of 27 June 2013 so that the preceding rejection decision of OHIM of 25 June 2012 is annulled;

— Alter the contested decision of the First Board of Appeal of OHIM of 27 June 2013 so that the registration procedure is continued;

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

Pleas in law and main arguments

Community trade mark concerned: the word mark 'SafeSet' for goods in Class 10 — Community trade mark application No 10 549 368

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Articles 7(1)(b) and (c), 7(2), 75 and 76 of Regulation (EC) No 207/2009

Action brought on 25 September 2013 — Spain v Commission

(Case T-515/13)

(2013/C 336/62)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: N. Díaz Abad, lawyer in the State Legal Service)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

annul the contested decision and

order the defendant to pay the costs.

Pleas in law and main arguments

This action is brought against Commission Decision C(2013) 4426 final of 17 July 2013 on the tax regime applicable to certain finance lease agreements, also known as the Spanish Tax Lease System (STLS) (State Aid SA.21233 C/2011 (ex NN/2011, ex CP 137/2006)). In that decision the Commission considers the measures resulting from Article 115(11) of the consolidated text of the Law on Corporate Tax (early depreciation of leased assets), from the application of the tonnage tax to non-eligible undertakings, vessels or activities and from Article 50(3) of the Regulation on Corporate Tax to be state aid to economic interest groups that is incompatible with the internal market.

In support of its action, the applicant puts forward two pleas in law.

1. The first plea is based on an infringement of Article 107 TFEU, in that the measures examined in the contested decision do not satisfy any of the requirements for being regarded as state aid, since there is no element of selectivity in the advantage open to all potential investors from every sector of the economy, without any precondition being imposed; nor is there any distortion or threat of distortion of competition because it cannot be considered that an advantage open to all without any discrimination (not even on grounds of nationality) favours or is capable of favouring the competitive position of certain sectors or undertakings to the detriment of their competitors, because every investor could participate in the structures of the so-called STLS and obtain the benefits which that system offered. Consequently, there is no impact on trade between Member States either, given that the partners (or shareholders) in an entity do not carry on any activity on the market.

2. The second ground, which is relied on in the alternative, is based on an infringement of the principles of equal treatment, the protection of legitimate expectations and legal certainty, and therefore, under Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, the aid should not be recovered.

Order of the General Court of 10 September 2013 — Aerooria Aigaiou Aeroporiki and Marfin Investment Group Symmetochon v Commission

(Case T-202/11) ([1])

(2013/C 336/63)

Language of the case: English

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

([1]) OJ C 160, 28.5.2011.

Order of the General Court of 16 September 2013 — National Trust for Scotland v OHIM — Comhairle nan Eilean Siar (ST KILDA)

(Case T-222/12) [1]

(2013/C 336/64)

Language of the case: English

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

[1] OJ C 227, 28.7.2012.

Order of the General Court of 3 September 2013 — Nemeco v OHIM — Coca-Cola (NU)

(Case T-549/12) [1]

(2013/C 336/65)

Language of the case: English

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

[1] OJ C 63, 2.3.2013.

Order of the General Court of 3 September 2013 — Seal Trademarks v OHIM — Exel Composites (XCEL)

(Case T-14/13) [1]

(2013/C 336/66)

Language of the case: English

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

[1] OJ C 86, 23.3.2013.

Order of the General Court of 3 September 2013 — Madaus v OHIM — Indena (ECHINAMID)

(Case T-212/13) [1]

(2013/C 336/67)

Language of the case: English

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

[1] OJ C 178, 22.6.2013.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 2 October 2013 — Nardone v Commission

(Case F-111/12) [1]

(Civil Service — Former official — Exposure to asbestos and to other substances — Occupational disease — Accident — Article 73 of the Staff Regulations — Medical Committee — Reasons — Action for damages — Length of the proceedings)

(2013/C 336/68)

Language of the case: French

Parties

Applicant: Albert Nardone (Piétrain, Belgium) (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission (represented by: J. Currall and V. Joris, acting as Agents)

Re:

Application for annulment of the Commission's decision to accept the findings of the Medical Committee ruling on the applicant's level of disability and the occupational origin of his disease.

Operative part of the judgment

The Tribunal:

1. *Orders the European Commission to pay Mr Nardone default interest for the period between 1 March 2006 and 15 July 2010 on the amount of EUR 8 448,51 at the rate fixed by the European Central Bank for main refinancing operations and applicable to the period in question, increased by two points, and the sum of EUR 3 000;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission to bear its own costs and to pay one quarter of the costs incurred by Mr Nardone;*

4. *Orders Mr Nardone to bear three quarters of his own costs.*

---

[1] OJ C 379, 8.12.2012, p. 35.

Action brought on 27 June 2013 — ZZ v ENISA

(Case F-63/13)

(2013/C 336/69)

Language of the case: Greek

Parties

Applicant: ZZ (represented by: V. Christianos, lawyer)

Defendant: European Union Agency for Network and Information Security (ENISA)

Subject-matter and description of the proceedings

The annulment, firstly, of the decision to dismiss the applicant and, secondly, of the decision, adopted after the judgment of the CST in Case F-118/10, to appoint another agent to the post of accountant. Finally, compensation for the non-pecuniary harm allegedly suffered.

Form of order sought

— Annul the decision of ENISA rejecting the applicant's claim, and the other contested decisions, namely the decision of ENISA of 4 September 2012 dismissing the applicant and the decision of ENISA of 9 October 2012 appointing Mr X. to the post of accountant in the applicant's place;

— Order ENISA to pay the applicant, in respect of all the abovementioned unlawful acts, the sum of EUR 100 000 as compensation for the non-pecuniary harm;

— Order ENISA to pay the costs.

Action brought on 13 September 2013 — ZZ v Parliament

(Case F-86/13)

(2013/C 336/70)

Language of the case: English

Parties

Applicant: ZZ (represented by: P. Bentley QC, Barrister, and R. Bäuerle, Rechtsanwalt)

Defendant: European Parliament

Subject-matter and description of the proceedings

The annulment of the decision prohibiting the applicant from taking up an appointment as an adviser to the Prime Minister of Ukraine within two years as from the date of termination of his functions with the European Parliament.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the Parliament's decision dated 3 January 2013 forbidding the Applicant from undertaking an appointment as Adviser to Prime Minister of Ukraine, for two years following the termination of his employment with the Parliament;

— annul the Parliament's decision dated 24 June 2013 rejecting the Complaint filed by the Applicant against the Parliament's decision of 3 January 2013;

— order the Parliament to bear the costs of the present proceedings.

Action brought on 20 September 2013 — ZZ v Commission

(Case F-92/13)

(2013/C 336/71)

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 the bonus on pension rights acquired before the entry into the service on the basis of the new GIP concerning Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials

Form of order sought

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

— Annul the decision of 15 February 2013 to add a bonus to the pension rights acquired by the applicant before her entry into the service, on the transfer thereof to the pension scheme of the European Union institutions ('EUIPS'), by application of the General Implementing Provisions ('GIP') of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— Order the Commission to pay the costs.

Action brought on 23 September 2013 — ZZ v Commission

(Case F-93/13)

(2013/C 336/72)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision to calculate the accrual of pension rights acquired before entry into service on the basis of the new General Implementing Provisions relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Declare Article 9 of the general implementing provisions of Article 11(2) of Annex VIII to the Staff Regulations unlawful and, therefore, inapplicable;

— Annul the decision of 3 October 2012 to accredit the pension rights acquired by the applicant before his entry into service, in the context of their transfer into the pension scheme applicable to staff of the European institutions, pursuant to the General Implementing Provisions ('the GIP') of Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;

— Order the Commission to pay the costs.

Action brought on 23 September 2013 — ZZ v Council

(Case F-94/13)

(2013/C 336/73)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Application for annulment of the decision to calculate the accrual of pension rights acquired before entry into service on the basis of the new General Implementing Provisions relating to Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

— Annul the decision of 30 January 2013 concerning the calculation of accredited pension rights acquired by the applicant before his entry into service with the Council,

— in so far as necessary, annul the decision of 11 June 2013 rejecting his complaint requesting application of the General Implementing Provisions and the actuarial rates in force at the time of his request to transfer his pension rights,

— Order the Council to pay the costs.

European Union Civil Service Tribunal

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN