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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2013/C 367/01)

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

OJ C 359, 7.12.2013

Past publications

OJ C 352, 30.11.2013

OJ C 344, 23.11.2013

OJ C 336, 16.11.2013

OJ C 325, 9.11.2013

OJ C 313, 26.10.2013

OJ C 304, 19.10.2013

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 17 October 2013 — Council of the European Union v Access Info Europe, Hellenic Republic, United Kingdom of Great Britain and Northern Ireland

(Case C-280/11 P) [1]

(Appeal — Right of access to documents of the institutions — Regulation (EC) No 1049/2001 — Article 4(3), first subparagraph — Protection of the institutions' decision-making process — Note from the Council General Secretariat on the proposals submitted in the course of the legislative process for the revision of Regulation No 1049/2001 — Partial access — Refusal of access to information relating to the identity of Member States which put forward proposals)

(2013/C 367/02)

Language of the case: English

Parties

Appellant: Council of the European Union (represented by: B. Driessen and C. Fekete, Agents)

Interveners in support of the appellant: Czech Republic (represented by: M. Smolek and D. Hadroušek, Agents), Kingdom of Spain (represented by: S. Centeno Huerta, Agent), French Republic (represented by: G. de Bergues and N. Rouam, Agents)

Other parties to the proceedings: Access Info Europe (represented by: O. Brouwer and J. Blockx, advocaten), Hellenic Republic (represented by: E.-M. Mamouna and K. Boskovits, Agents), United Kingdom of Great Britain and Northern Ireland

Intervener in support of Access Info Europe: European Parliament (represented by A. Caiola and M. Dean, Agents)

Re:

Appeal against the judgment of 22 March 2011 in Case T-233/09 *Access Info Europe* v *Council* by which the General Court (Third Chamber) annulled the Council's decision of 26 February 2009 refusing in part to grant the applicant access to a note drawn up by the Council General Secretariat and addressed to the Working Party on Information (Document No 16338/08), concerning a proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the Council of the European Union to pay the costs incurred by Access Info Europe;*

3. *Orders the Czech Republic, the Hellenic Republic, the Kingdom of Spain, the French Republic and the European Parliament to bear their own costs.*

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[1] OJ C 238, 13.8.2011.

Judgment of the Court (Tenth Chamber) of 24 October 2013 — Kone Oyj, Kone GmbH, Kone BV v European Commission

(C-510/11 P) [1]

(Appeal — Competition — Agreements, decisions and concerted practices — Market for the installation and maintenance of elevators and escalators — Fines — Notice on immunity from fines and reduction of fines in cartel cases — Effective judicial remedy)

(2013/C 367/03)

Language of the case: English

Parties

Appellants: Kone Oyj, Kone GmbH, Kone BV (represented by: T. Vinje, Solicitor, D. Paemen, avocat, and A. Tomtsis, dikigoros,)

Other party to the proceedings: European Commission (represented by: E. Gippini Fournier and R. Sauer, acting as Agents)

Re:

Appeal against the judgment of the General Court (Eighth Chamber) of 13 July 2011 in Case T-151/07 *Kone and Others* v *Commission*, by which the General Court dismissed an action for annulment or reduction of the fine imposed on the applicants by Commission Decision C(2007) 512 final of 21 February 2007 relating to a proceeding under Article 81 of the EC Treaty (Case COMP/E 1/38.823 — Elevators and Escalators), concerning a cartel in the market for the installation and maintenance of elevators and escalators in Belgium, Germany, Luxembourg and the Netherlands, concerning bid-rigging, market-sharing, price-fixing, the awarding of projects and contracts related thereto and exchange of information

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Kone Oyj, Kone GmbH and Kone BV to bear their own costs and, in addition, to pay the costs incurred by the European Commission.*

([1]) OJ C 362, 10.12.2011.

Judgment of the Court (Fifth Chamber) of 17 October 2013 — European Commission v Kingdom of Belgium

(Case C-533/11) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste-water treatment — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Article 260 TFEU — Financial penalties — Imposition of a lump sum and a penalty payment)

(2013/C 367/04)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Wils, A. Marghelis and S. Pardo Quintillán, Agents)

Defendant: Kingdom of Belgium (represented by: C. Pochet, M. Neumann and T. Materne, Agents, and A. Lepièce, E. Gillet, J. Bouckaert and H. Viaene, avocats)

Intervener in support of the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Murrell, Agent, and D. Anderson QC)

Re:

Failure of a Member State to fulfil obligations — Failure to comply fully with the Court's judgment of 8 July 2004 in Case C-27/03 *Commission* v *Belgium* concerning the failure to transpose, within the period prescribed, the provisions of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40) — Infringement of Article 3(1), second subparagraph, and of Article 5(2) and (3) of that directive — Calculation of penalties: payment of a periodic penalty and a lump sum

Operative part of the judgment

The Court:

1. *Declares that, by failing to take all the measures necessary to comply with the judgment of 8 July 2004 in Case C-27/03 Commission v Belgium, establishing the failure of the Kingdom of Belgium to fulfil its obligations under Articles 3 and 5 of Council Directive 91/271/EEC. of 21 May 1991 concerning urban waste-water treatment, as amended by Commission Directive 98/15/EC of 27 February 1998, that Member State has failed to fulfil its obligations under Article 260(1) TFEU.*

2. *Orders the Kingdom of Belgium to pay to the European Commission, into the 'European Union own resources' account, a lump sum of EUR 10 million.*

3. *Declares that, if the failure to fulfil obligations found in point 1 has continued until the day of delivery of the present judgment, the Kingdom of Belgium shall be ordered to pay to the European Commission, into the 'European Union own resources' account, a penalty payment of EUR 859 404 for each six-month period of delay in taking the measures necessary to comply with the judgment in Commission v Belgium, from the date of delivery of this judgment until the date on which the judgment in Commission v Belgium has been complied with in full, the actual amount of which is to be calculated at the end of each six-month period by reducing the total relating to such periods by a percentage corresponding to the proportion which the number of population equivalents which have been brought into compliance with the judgment in Commission v Belgium by end of such a period bears to the number of population equivalents which were not compliant with this judgment on the day of its delivery.*

4. *Orders the Kingdom of Belgium to pay the costs.*

5. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.*

([1]) OJ C 25, 28.1.2012.

Judgment of the Court (Third Chamber) of 17 October 2013 (request for a preliminary ruling from the Simvoulio tis Epikrateias — Greece) — Enosi Epangelmation Asfaliston Ellados (EEAE), Sillogos Asfalistikon Praktoron N. Attikis (SPATE), Panellinios Sillogos Asfalistikon Simboulon (PSAS), Sindesmos Ellinon Mesiton Asfaliseon (SEMA), Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSSAS) v Ipourgos Anaptixis, Omospondia Asfalistikon Sillogon Ellados

(Case C-555/11) [1]

(Directive 2002/92/EC — Insurance mediation — Exclusion of the activities pursued by an insurance undertaking or an employee acting under the responsibility of such an undertaking — Whether it is possible for such an employee to pursue insurance mediation activities on an incidental basis — Professional requirements)

(2013/C 367/05)

Language of the case: Greek

Referring court

Simvoulio tis Epikrateias

Parties to the main proceedings

Applicants: Enosi Epangelmation Asfaliston Ellados (EEAE), Sillogos Asfalistikon Praktoron N. Attikis (SPATE), Panellinios Sillogos Asfalistikon Simboulon (PSAS), Sindesmos Ellinon Mesiton Asfaliseon (SEMA), Panellinios Sindesmos Sintoniston Asfalistikon Simboulon (PSASS)

Defendant: Ipourgos Anaptixis, Omospondia Asfalistikon Sillogon Ellados

Re:

Request for a preliminary ruling — Simvoulio tis Epikrateias — Interpretation of the second subparagraph of Article 2(3) of Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation — Meaning of 'insurance mediation' — Exclusion of activities pursued by an insurance undertaking or an employee of an insurance undertaking acting under its responsibility — Scope

Operative part of the judgment

The second subparagraph of Article 2(3), in conjunction with Article 4(1), of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation must be interpreted as precluding an employee of an insurance undertaking who does not possess the qualifications required under the latter provision from pursuing — on an incidental basis and not as his main professional activity — the activity of insurance mediation where such an employee does not act as a subordinate of that undertaking, even though the latter in any event supervises that person's activities.

[1] OJ C 25, 28.1.2012.

Judgment of the Court (Fifth Chamber) of 17 October 2013 (requests for a preliminary ruling from the Tribunal Supremo — Spain) — Iberdrola SA, Gas Natural SDG SA (C-566/11), Gas Natural SDG SA (C-567/11), Tarragona Power SL (C-580/11), Gas Natural SDG SA, Bizcaia Energía SL (C-591/11), Bahía de Bizcaia Electricidad SL (C-620/11), E.ON Generación SL and Others (C-640/11)

(Joined Cases C-566/11, C-567/11, C-580/11, C-591/11, C-620/11 and C-640/11) [1]

(Request for a preliminary ruling — Protection of the ozone layer — Scheme for greenhouse gas emission allowance trading within the Community — Method of allocating allowances — Allocation of allowances free of charge)

(2013/C 367/06)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicants: Iberdrola SA, Gas Natural SDG SA,

Intervening parties: Administración del Estado and Others (C-566/11),

Applicant: Gas Natural SDG SA,

Intervening parties: Endesa SA and Others (C-567/11),

Applicant: Tarragona Power SL,

Intervening parties: Gas Natural SDG SA and Others (C-580/11),

Applicants: Gas Natural SDG SA, Bizcaia Energía SL,

Intervening parties: Administración del Estado and Others (C-591/11),

Applicant: Bahía de Bizcaia Electricidad SL,

Intervening parties: Gas Natural SDG SA and Others (C-620/11),

Applicant: E.ON Generación SL and Others (C-640/11)

Re:

Requests for a preliminary ruling — Tribunal Supremo — Interpretation of Article 10 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — Protection of the ozone layer — Scheme for greenhouse gas emission allowance trading within the Community — Method of allocating allowances — Allocation of allowances free of charge

Operative part of the judgment

Article 10 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC must be interpreted as not precluding application of national legislative measures, such as those at issue in the main proceedings, the purpose and effect of which are to reduce remuneration for electricity production by an amount equal to the increase in such remuneration brought about through the incorporation, in the selling prices offered on the wholesale electricity market, of the value of the emission allowances allocated free of charge.

([1]) OJ C 25, 28.1.2012
OJ C 39, 11.2.2012.

Judgment of the Court (Second Chamber) of 24 October 2013 (request for a preliminary ruling from the Krajský súd v Prešove (Slovakia)) — Katarína Haasová v Rastislav Petrík, Blanka Holingová

(Case C-22/12) ([1])

(Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Directive 90/232/EEC — Article 1 — Road traffic accident — Death of a passenger — Right to compensation of the partner and of the child, who is a minor — Non-material damage — Compensation — Cover by compulsory insurance)

(2013/C 367/07)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties in the main proceedings

Applicant: Katarína Haasová

Defendants: Rastislav Petrík, Blanka Holingová

Re:

Request for a preliminary ruling — Krajský súd v Prešove — Interpretation of Article 1 of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33) and Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ 1972 L 103, p. 1) — Scope of the guarantee in favour of third parties provided by compulsory insurance — National provision not providing for compensation for non-material damage

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, and Article 1(1) of Third Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable in the dispute in the main proceedings.

([1]) OJ C 98, 31.3.2012.

Judgment of the Court (Second Chamber) of 24 October 2013 — Deutsche Post AG v European Commission, UPS Europe NV/SA, UPS Deutschland Inc. & Co. OHG

(Case C-77/12 P) ([1])

(Appeal — State aid — Commission decision to initiate the procedure laid down in Article 88(2) EC — Action for annulment — Measure against which action for annulment may be brought — Measures intended to have binding legal effects — Earlier decision to initiate on the same measures)

(2013/C 367/08)

Language of the case: German

Parties

Appellant: Deutsche Post AG (represented by: J. Sedemund and T. Lübbig, Rechtsanwälte)

Other parties to the proceedings: European Commission (represented by: B. Martenczuk and T. Maxian Rusche, acting as Agents), UPS Europe NV/SA, UPS Deutschland Inc. & Co. OHG (represented by: T. Ottervanger and E. Henny, advocaten)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 8 December 2011 in Case T-421/07 *Deutsche Post* v *Commission*, in which the General Court dismissed as inadmissible the applicant's action seeking the annulment of the Commission decision of 12 September 2007 to initiate the procedure laid down in Article 88(2) EC in respect of State aid granted by the Federal Republic of Germany to Deutsche Post AG (aid C 36/07 (ex NN 25/07)) — Infringement of the fourth paragraph of Article 263 TFEU and the right to an effective legal remedy — Misinterpretation of the right to sound administration as well as the principles of legitimate expectations and legal certainty — Inadequate statement of reasons in the General Court's judgment

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 8 December 2011 in Case T-421/07 Deutsche Post v Commission;*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Fifth Chamber) of 24 October 2013 (request for a preliminary ruling from the Cour de cassation — France) — LBI hf, formerly Landsbanki Islands hf v Kepler Capital Markets SA, Frédéric Giraux

(Case C-85/12) ([1])

(Request for a preliminary ruling — Reorganisation and winding-up of credit institutions — Directive 2001/24/EC — Articles 3, 9 and 32 — National legislative act conferring on reorganisation measures the effects of winding-up proceedings — Legislative measure prohibiting or suspending any legal proceedings against a credit institution after the entry into force of a moratorium)

(2013/C 367/09)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: LBI hf, formerly Landsbanki Islands hf

Defendants: Kepler Capital Markets SA, Frédéric Giraux

Re:

Request for a preliminary ruling — Cour de cassation — Interpretation of Articles 3, 9 and 32 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15) — Authorities authorised to adopt reorganisation and winding up measures for credit institutions — Administrative or judicial authorities — Permissibility of measures stemming directly from a law of a Member State of the EEA — Law applicable to proceedings concerning assets of a credit institution situated in a Member State — Effects on the application, in a Member State, of a legislative measure of another Member State, prohibiting or suspending any legal proceedings against a credit institution after the entry into force of a moratorium, in the case of interim protective measures adopted prior to the declaration of the moratorium

Operative part of the judgment

1. *Articles 3 and 9 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions must be interpreted as meaning that reorganisation or winding-up measures in regard to a financial institution, such as those based on the transitional provisions in point II of Law No 44/2009, are to be regarded as measures adopted by an administrative or judicial authority for the purposes of those articles of Directive 2001/24, where those transitional provisions take effect only by means of judicial decisions granting a moratorium to a credit institution.*

2. *Article 32 of Directive 2001/24 must be interpreted as not precluding a national provision, as Article 98 of Law No 161/2002 on financial institutions, as amended by Law No 129/2008 of 13 November 2008, which prohibited or suspended any legal action against a financial institution once it benefitted from a moratorium, from being effective in regard to interim protective measures, such as those at issue in the main proceedings, adopted in another Member State before the declaration of the moratorium.*

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Grand Chamber) of 22 October 2013 — European Commission v Federal Republic of Germany

(Case C-95/12) ([1])

(Failure of a Member State to fulfil obligations — Judgment of the Court establishing a failure to fulfil obligations — National legislation providing for a blocking minority of 20 % in respect of the adoption of certain decisions by the shareholders of Volkswagen AG)

(2013/C 367/10)

Language of the case: German

Parties

Applicant: European Commission (represented by: E. Montaguti and G. Braun, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze, J. Schwarze, J. Möller and J. Kemper, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Failure to comply fully with the judgment of the Court of 23 October 2007 in Case C-112/05 *Commission* v *Germany* concerning the infringement of Article 56(1) EC — National legislation requiring, exceptionally, a majority of more than 80 % for the adoption of certain decisions by the shareholders of Volkswagen AG, thereby enabling the *Land* of Lower Saxony, which holds 20 % of those shares, to block those decisions — Calculation of penalties: payment of both a penalty payment and a lump sum

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 118, 21.4.2012.

Judgment of the Court (Fifth Chamber) of 17 October 2013 (request for a preliminary ruling from the Verwaltungsgericht Stuttgart — Germany) — Herbert Schaible v Land Baden-Württemberg

(Case C-101/12) ([1])

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 21/2004 — System for the identification and registration of ovine and caprine animals — Obligation of individual electronic identification — Obligation to keep a holding register — Validity — Charter of Fundamental Rights of the European Union — Freedom to conduct a business — Proportionality — Equal treatment)

(2013/C 367/11)

Language of the case: German

Referring court

Verwaltungsgericht Stuttgart

Parties to the main proceedings

Applicant: Herbert Schaible

Defendant: Land Baden-Württemberg

Re:

Request for a preliminary ruling — Verwaltungsgericht Stuttgart — Validity of Articles 3(1), 4(2), 5(1) and 9(3), first subparagraph, of Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ 2004 L 5, p. 8), as amended by Council Regulation (EC) No 1560/2007 of 17 December 2007 (OJ 2007 L 340, p. 25), from the point of view of the Charter of Fundamental Rights of the European Union, in particular Articles 15(1) and 16 — Proportionality of the system of individual identification of ovine and caprine animals

Operative part of the judgment

The consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Articles 3(1), 4(2), 5(1) and the first subparagraph of Article 9(3) and point B(2) of the Annex to Council Regulation No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC, as amended by Commission Regulation (EC) No 933/2008 of 23 September 2008.

([1]) OJ C 133, 5.5.2012.

Judgment of the Court (Grand Chamber) of 22 October 2013 (requests for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staat der Nederlanden v Essent NV and Others,

(Joined Cases C-105/12 to C-107/12) [1]

(Reference for a preliminary ruling — Free movement of capital — Article 63 TFEU — Rules governing the system of property ownership — Article 345 TFEU — Electricity and gas distribution system operators — Prohibition of privatisation — Prohibition of links with undertakings which generate/produce, supply or trade electricity or gas — Prohibition of activity which may adversely affect system operation)

(2013/C 367/12)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staat der Nederlanden

Defendants: Essent NV (C-105/12), Essent Nederland BV (C-105/12), Eneco Holding NV (C-106/12), Delta NV (C-107/12),

Re:

Requests for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 63 TFEU and 345 TFEU — Restrictions on the free movement of capital — Rules governing the system of property ownership — Meaning — National legislation providing for an absolute prohibition on the privatisation of energy distribution system operators

Operative part of the judgment

1. *Article 345 TFEU must be interpreted as covering rules entailing the prohibition of privatisation, such as those at issue in the main proceedings, which have the effect that shares held in an electricity or gas distribution system operator active in the Netherlands must be held, directly or indirectly, by the public authorities identified by the national legislation. However, that interpretation does not mean that Article 63 TFEU does not apply to provisions of national law, such as those at issue in the main proceedings, which prohibit the privatisation of electricity or gas distribution system operators, or, further, which prohibit, first, ownership or control links between companies which are members of the same group as an electricity or gas distribution system operator active in the Netherlands and companies which are members of the same group as an undertaking which produces, supplies, or trades in electricity or gas in the Netherlands and, secondly, engagement by such an operator and by the group of which it is a member in transactions or activities which may adversely affect the operation of the system concerned.*

2. *As regards the rules entailing the prohibition of privatisation at issue in the main proceedings, which falls within the scope of Article 345 TFEU, the objectives which underlie the choice of the legislature in relation to the adopted rules governing the system of property ownership may be taken into consideration as overriding reasons in the public interest to justify the restriction on the free movement of capital. As regards the other prohibitions, the objectives of combating cross-subsidisation in the broad sense, including exchange of strategic information, in order to achieve transparency in the electricity and gas markets, and to prevent distortions of competition may, as overriding reasons in the public interest, justify restrictions on the free movement of capital caused by provisions of national law, such as those at issue in the main proceedings.*

[1] OJ C 151, 26.05.2012.

Judgment of the Court (Grand Chamber) of 22 October 2013 — European Commission v Council of the European Union

(Case C-137/12) [1]

(Action for annulment — Council Decision 2011/853/EU — European Convention on the legal protection of services based on, or consisting of, conditional access — Directive 98/84/EC — Legal basis — Article 207 TFEU — Common commercial policy — Article 114 TFEU — Internal market)

(2013/C 367/13)

Language of the case: French

Parties

Applicant: European Commission (represented by: E. Cujo, I. Rogalski, R. Vidal Puig and D. Stefanov, Agents)

Defendant: Council of the European Union (represented by: R. Liudvinaviciute-Cordeiro, J.-P. Hix and H. Legal, Agents)

Intervener in support of the applicant: European Parliament (represented by: D. Warin and J. Rodrigues, Agents)

Interveners in support of the defendant: French Republic (represented by: G. de Bergues, D. Colas and N. Rouam, Agents); Kingdom of the Netherlands (represented by: C. Wissels, M. Bulterman and M. de Ree, Agents); Republic of Poland (represented by: M. Szpunar and B. Majczyna, Agents); Kingdom of Sweden (represented by: A. Falk and C. Stege, Agents); United Kingdom of Great Britain and Northern Ireland (represented by: A. Robinson, Agent, assisted by G. Facenna, Barrister)

Re:

Action for annulment — Council Decision 2011/853/EU of 29 November 2011 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access (OJ 2011 L 336, p. 1) — Choice of legal basis — Replacement of the proposed legal basis, in the field of common commercial policy, with another legal basis, linked to the establishment and functioning of the internal market — Objective of promoting trade in services based on conditional access between the European Union and other European countries — Infringement of the European Union's external competence

Operative part of the judgment

The Court:

1. *Annuls Council Decision 2011/853/EU of 29 November 2011 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access;*

2. *Maintains the effects of Decision 2011/853 until the entry into force, within a reasonable period which is not to exceed six months, of a new decision based on the appropriate legal bases;*

3. *Orders the Council of the European Union to pay the costs;*

4. *Orders the French Republic, the Kingdom of the Netherlands, the Republic of Poland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

([1]) OJ C 151, 26.5.2012.

Judgment of the Court (Fifth Chamber) of 24 October 2013 — European Commission v Kingdom of Spain

(Case C-151/12) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 2000/60/EC — Framework for Community action in the field of water policy — Transposition of Articles 4(8), 7(2), 10(1) and (2) of and sections 1.3 and 1.4 of Annex V to Directive 2000/60 — Intracommunal and intercommunal river basins — Article 149(3) of the Spanish Constitution — Supplementing clause)

(2013/C 367/14)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: G. Valero Jordana, E. Manhaeve and B. Simon, Agents)

Defendant: Kingdom of Spain (represented by: A. Rubio González, Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4(8), 7(2) and 10(1) and (2), and Sections 1.3 and 1.4 of Annex V, of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1) — Environmental objectives — Waters used for the abstraction of drinking water — Surface water — Intracommunal river basins

Operative part of the judgment

The Court:

1. *Declares that, by having failed to adopt all the measures necessary to transpose Articles 4(8), 7(2) and 10(1) and (2) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and section 1.3 and subsection 1.4.1(i) to (iii) of Annex V thereto, to which Article 8(2) of that directive refers, in respect of the intracommunal river basins outside Catalonia, and Articles 7(2) and 10(1) and (2) of Directive 2000/60 in respect of the intracommunal river basins in Catalonia, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

3. *Orders the Kingdom of Spain to pay the costs.*

([1]) OJ C 174, 16.6.2012.

Judgment of the Court (Tenth Chamber) of 24 October 2013 (request for a preliminary ruling from the Finanzgericht München — Germany) — Sandler AG v Hauptzollamt Regensburg

(Case C-175/12) ([1])

(Customs union and Common Customs Tariff — Preferential arrangement for the import of products originating in the African, Caribbean and Pacific (ACP) States — Articles 16 and 32 of Protocol 1 to Annex V of the Cotonou Agreement — Import of synthetic fibres from Nigeria into the European Union — Irregularities in the movement certificate EUR.1 established by the competent authorities of the State of export — Stamp not matching the specimen notified to the Commission — Post-clearance and replacement certificates — Community Customs Code — Articles 220 and 236 — Possibility of retrospective application of a preferential customs duty no longer in effect on the date when the request for repayment is made — Conditions)

(2013/C 367/15)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: Sandler AG

Defendant: Hauptzollamt Regensburg

Re:

Request for a preliminary ruling — Finanzgericht München — Interpretation of Article 236(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), the second indent of Article 889(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 (OJ 1993 L 253, p. 1) as amended by Commission Regulation (EC) No 214/2007 of 28 February 2007 (OJ 2007 L 62, p. 6), and Articles 16 and 32 of Protocol No 1 of Annex V to the Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ 2000 L 317, p. 3) — Import of synthetic fibres from Nigeria into the European Union — Whether possible to apply *a posteriori* a preferential customs tariff no longer in force when the request for repayment is made — Situation in which the goods were imported when that preferential tariff was still in force but its application was refused because of a stamp not complying with the specimen notified to the Commission on the EUR.1 goods movement certificate

Operative part of the judgment

1. *The second indent of the first subparagraph of Article 889(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended most recently by Commission Regulation (EC) No 214/2007, must be interpreted as not precluding a request for repayment of customs duties where preferential customs treatment was requested and granted at the time the goods were placed in free circulation and it was only subsequently, in the course of a post-clearance examination after the expiry of the preferential customs arrangement and the re-establishment of the customs duties normally due, that the authorities of the State of import recovered the difference between that and the customs duty applicable to goods originating from a non-member country.*

2. *Articles 16(1)(b) and 32 of Protocol No 1 of Annex V to the Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, and approved in behalf of the Community by Council Decision 2003/159/EC of 19 December 2002, must be interpreted as meaning that if it transpires in a post-clearance examination that a stamp not matching the specimen notified by the authorities of the State of export was affixed to the EUR.1 certificate, the customs authorities of the State of import may refuse that certificate and return it to the importer in order to allow him to obtain a certificate issued retrospectively pursuant to Article 16(1)(b) of Protocol No 1 rather than triggering the procedure provided for in Article 32 of that protocol.*

3. *Articles 16(4) and (5) and 32 of Protocol No 1 must be interpreted as precluding the authorities of a State of import from refusing to accept, as a EUR.1 certificate issued retrospectively within the meaning of Article 16(1) of that protocol, a EUR.1 certificate which, whilst complying in all other respects with the requirements of the provisions of that protocol, does not contain, in the 'Remarks' box, the wording specified by Article 16(4) of Protocol No 1, but an indication to the effect that the EUR.1 certificate was issued pursuant to Article 16(1) of that protocol. In cases of doubt as to the authenticity of that document or the originating status of the products concerned, those authorities are required to initiate the control procedure provided for in Article 32 of that protocol.*

([1]) OJ C 194, 30.6.2012.

Judgment of the Court (Fifth Chamber) of 24 October 2013 (request for a preliminary ruling from the Cour de cassation du Grand-Duché de Luxembourg (Luxembourg)) — Caisse nationale des prestations familiales v Salim Lachheb, Nadia Lachheb

(Case C-177/12) ([1])

(Request for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Family benefit — Child bonus — National regulation providing for a benefit to be granted by way of an automatic tax rebate for children — Non-cumulation of family benefits)

(2013/C 367/16)

Language of the case: French

Referring court

Cour de cassation du Grand-Duché de Luxembourg

Parties to the main proceedings

Appellant: Caisse nationale des prestations familiales

Respondents: Salim Lachheb, Nadia Lachheb

Re:

Request for a preliminary ruling — Cour de cassation du Grand-Duché de Luxembourg — Interpretation of Articles 1(u)(i), 3, 4(1)(h) and 76 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (English Special Edition, 1971(II), p. 416) — Interpretation of Articles 18 TFEU and 45 TFEU, Article 7 of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community

(English Special Edition, 1968(II), p. 475) and Article 10 of Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 (English Special Edition, 1972(I), p. 159) — Concept of 'family benefit' — Permissibility of a national regulation providing for a benefit in respect of every dependent child by way of tax reduction for workers who carry out their professional activity in the territory of another Member State — Equality of treatment — Suspension of the grant of family benefit in the State of employment in the amount of the family benefits provided by the legislation of the State of residence — Rules to prevent overlapping

Operative part of the judgment

Articles 1(u)(i) and 4(1)(h) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, must be interpreted as meaning that a benefit such as the child bonus introduced by the Law of 21 December 2007 on the child bonus is a family benefit within the meaning of that regulation.

([1]) OJ C 200, 7.7.2012.

Judgment of the Court (Third Chamber) of 24 October 2013 (request for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Stoilov i Ko EOOD v Nachalnik na Mitnitsa Stolichna

(Case C-180/12) ([1])

(Request for a preliminary ruling — Legal basis of the decision at issue in the main proceedings no longer present — Lack of relevance of the questions asked — No need to adjudicate)

(2013/C 367/17)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad

Parties to the main proceedings

Applicant: Stoilov i Ko EOOD

Defendant: Nachalnik na Mitnitsa Stolichna

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Commission Regulation (EC) No 1031/2008 of 19 September 2008, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2008 L 291, p. 1) and Council Regulation No (EEC) No 2913/92 of 12 October 1992, establishing the Community Customs Code (OJ 1992 L 302, p. 1) as well as Articles 41(2)(a) and 47 of the Charter of Fundamental Rights of the European Union — Tariff classification of goods — Classification of goods (materials for the manufacture of awnings) under heading 5407 61 30 on account of its characteristics as 'woven fabric' or under heading 6303 92 10 on account of their sole intended purpose as 'interior blinds' — Enforcement order of a Member State requiring payment of a customs duty supplement and VAT after the findings in an expert's report of the customs laboratory — Protection of legitimate expectation in light of the circumstances of the filing of the customs declaration

Operative part of the judgment

There is no need to answer the questions raised by the Administrativen sad Sofia-grad (Bulgaria).

([1]) OJ C 194, 30.6.2012.

Judgment of the Court (Third Chamber) of 17 October 2013 (request for a preliminary ruling from the Finanzgericht Düsseldorf — Germany) — Yvon Welte v Finanzamt Velbert

(Case C-181/12) ([1])

(Free movement of capital — Articles 56 EC to 58 EC — Inheritance tax — Deceased person and heir resident in a third country — Estate — Immovable property located in a Member State — Right to an allowance against the taxable value — Different treatment of residents and non-residents)

(2013/C 367/18)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Yvon Welte

Defendant: Finanzamt Velbert

Re:

Request for a preliminary ruling — Finanzgericht Düsseldorf — Interpretation of Articles 63 and 65 TFEU — Legislation of a Member State on inheritance tax fixing the tax-free part of the value of land at EUR 2 000 if the deceased person and the acquirer are resident in a third country, whereas the tax-free part is EUR 500 000 if either the deceased person or the acquirer is resident in the national territory

Operative part of the judgment

Articles 56 EC and 58 EC must be interpreted as precluding legislation of a Member State relating to the calculation of inheritance tax which provides that, in the event of inheritance of immovable property in that State, in a case where, as in the main proceedings, the deceased and the heir had a permanent residence in a third country, such as the Swiss Confederation, at the time of the death, the tax-free allowance is less than the allowance which would have been applied if at least one of them had been resident in that Member State at that time.

([1]) OJ 2012 C 174, p. 20

Judgment of the Court (Third Chamber) of 17 October 2013 (request for a preliminary ruling from the Hof van Cassatie van België — Belgium) — United Antwerp Maritime Agencies (UNAMAR) NV v Navigation Maritime Bulgare

(Case C-184/12) ([1])

(Rome Convention on the law applicable to contractual obligations — Articles 3 and 7(2) — Freedom of choice of the parties — Limits — Mandatory rules — Directive 86/653/EEC — Self-employed commercial agents — Contracts for sale or purchase of goods — Termination of the agency contract by the principal — National implementing legislation providing for protection going beyond the minimum requirements of the directive and providing also for protection for commercial agents in the context of contracts for the supply of services)

(2013/C 367/19)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: United Antwerp Maritime Agencies (UNAMAR) NV

Defendant: Navigation Maritime Bulgare

Re:

Request for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1), and Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17) — Freedom of choice of the parties — Limits — Commercial agency contract — Clause designating the law of the State of the principal to be the applicable law — Bringing of a case before the court of the commercial agent's place of establishment

Operative part of the judgment

Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 must be interpreted as meaning that the law of a Member State of the European Union which meets the minimum protection requirements laid down by Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents and which has been chosen by the parties to a commercial agency contract may be rejected by the court of another Member State before which the case has been brought in favour of the law of the forum, owing to the mandatory nature, in the legal order of that Member State, of the rules governing the situation of self-employed commercial agents, only if the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of that transposition, the legislature of the State of the forum held it to be crucial, in the legal order concerned, to grant the commercial agent protection going beyond that provided for by that directive, taking account in that regard of the nature and of the objective of such mandatory provisions.

([1]) OJ C 200, 7.7.2012.

Judgment of the Court (Second Chamber) of 17 October 2013 (request for a preliminary ruling from the Högsta domstolen — Sweden) — Billerud Karlsborg AB, Billerud Skärblacka AB v Naturvårdsverket

(Case C-203/12) ([1])

(Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Penalty for excess emissions — Concept of excess emission — Equated with infringement of the obligation to surrender, within the time periods prescribed by the directive, a sufficient number of allowances to cover the emissions from the previous year — No exculpatory cause in the event of actual holding of non-surrendered allowances, unless force majeure — No possibility of varying the amount of the penalty — Proportionality)

(2013/C 367/20)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicants: Billerud Karlsborg AB, Billerud Skärblacka AB

Defendant: Naturvårdsverket

Re:

Request for a preliminary ruling — Högsta domstolen — Interpretation of Article 16(3) and (4) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) — Penalties provided for by the directive — Obligation for an operator who has not surrendered sufficient allowances by 30 April of each year to cover its emissions to pay a penalty, even where the non-surrender is due to negligence, administrative error or a technical problem — Possibility or non-possibility of varying the penalty or reducing the amount

Operative part of the judgment

1. *Article 16(3) and (4) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC must be interpreted as precluding operators who have not surrendered, by 30 April of the current year, the carbon dioxide equivalent allowances equal to their emissions for the preceding year, from avoiding the imposition of a penalty for the excess emissions for which it provides, even where they hold a sufficient number of allowances on that date;*

2. *Article 16(3) and (4) of Directive 2003/87 must be interpreted as meaning that the amount of the lump sum penalty provided for therein may not be varied by a national court on the basis of the principle of proportionality.*

([1]) OJ C 184, 23.6.2012.

Judgment of the Court (Eighth Chamber) of 17 October 2013 (request for a preliminary ruling from the Bundespatentgericht — Germany) — Sumitomo Chemical Co. Ltd v Deutsches Patent- und Markenamt

(Case C-210/12) ([1])

(Patent law — Plant protection products — Supplementary protection certificate — Regulation (EC) No 1610/96 — Directive 91/414/EEC — Emergency marketing authorisation under Article 8(4) of that directive)

(2013/C 367/21)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: Sumitomo Chemical Co. Ltd

Defendant: Deutsches Patent- und Markenamt

Re:

Request for a preliminary ruling — Bundespatentgericht — Interpretation of Articles 3(1)(b) and 7(1) of Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (OJ 1996 L 198, p. 30) — Conditions under which a supplementary certificate can be obtained — Possibility of having that certificate issued on the basis of a prior marketing authorisation granted in accordance with Article 8(4) of Directive 91/414/EEC — Active substance Clothianidin

Operative part of the judgment

1. *Article 3(1)(b) of Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products must be interpreted as precluding the issue of a supplementary protection certificate for a plant protection product in respect of which an emergency marketing authorisation has been issued under Article 8(4) of Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, as amended by Commission Directive 2005/58/EC of 21 September 2005.*

2. *Articles 3(1)(b) and 7(1) of Regulation No 1610/96 must be interpreted as precluding an application for a supplementary protection certificate being lodged before the date on which the plant protection product has obtained the marketing authorisation referred to in Article 3(1)(b) of that regulation.*

([1]) OJ C 209, 14.7.2012.

Judgment of the Court (Second Chamber) of 24 October 2013 — Land Burgenland, Grazer Wechselseitige Versicherung AG, Republic of Austria v European Commission

(Joined Cases C-214/12 P, C-215/12 P and C-223/12 P) [1]

(Appeal — Competition — State aid — Aid declared illegal and incompatible with the common market — Aid granted to the Grazer Wechselseitige group (GRAWE) at the time of the privatisation of Bank Burgenland AG — Determination of the market price — Tender procedure — Unlawful conditions with no impact on the highest offer — 'Private vendor' test — Distinction between a State's obligations in cases where it acts as a public authority and where it acts as a shareholder — Distortion of evidence — Obligation to state reasons)

(2013/C 367/22)

Language of the cases: German

Parties

Appellants: Land Burgenland (represented by: U. Soltész, P. Melcher and A. Egger, Rechtsanwälte), Grazer Wechselseitige Versicherung AG (represented by: H. Wollmann, Rechtsanwalt), Republic of Austria (represented by: C. Pesendorfer and J. Bauer, acting as Agents)

Other parties to the proceedings: European Commission (represented by: L. Flynn, V. Kreuschitz and T. Maxian Rusche, acting as Agents), Republic of Austria, Land Burgenland

Interveners in support of Land Burgenland and the Republic of Austria: Federal Republic of Germany (represented by: K. Petersen, T. Henze and J. Möller, acting as Agents)

Re:

Appeal against the judgment of the General Court (Sixth Chamber) of 28 February 2012 in Joined Cases T-268/08 and T-281/08 *Land Burgenland and Austria* v *Commission*, by which that Court dismissed the action for annulment of Commission Decision 2008/719/EC of 30 April 2008 on the State aid granted by Austria as part of the privatisation of the Bank Burgenland (OJ 2008 L 239, p. 32) — Breach of European Union law and, in particular, of Article 107(1) TFEU — Incorrect assessment of the performance bond ('Ausfallshaftung') of the Land Burgenland in favour of Bank Burgenland

Operative part of the judgment

The Court:

1. *Dismisses the appeals;*

2. *Orders Land Burgenland, Grazer Wechselseitige Versicherung AG and the Republic of Austria to pay the costs;*

3. *Orders the Federal Republic of Germany to bear its own costs.*

[1] OJ C 194, 30.6.2012.
OJ C 184, 23.6.2012.

Judgment of the Court (Third Chamber) of 17 October 2013 (request for a preliminary ruling from the Landgericht Saarbrücken — Germany) — Lokman Emrek v Vlado Sabranovic

(Case C-218/12) [1]

(Regulation (EC) No 44/2001 — Article 15(1)(c) — Jurisdiction over consumer contracts — Whether jurisdiction limited to distance contracts — Causal link between the commercial or professional activity directed to the Member State of the consumer's domicile via an Internet site and the conclusion of the contract)

(2013/C 367/23)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the main proceedings

Applicant: Lokman Emrek

Defendant: Vlado Sabranovic

Re:

Request for a preliminary ruling — Landgericht Saarbrücken — Interpretation of Article 15(1)(c) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Jurisdiction over consumer contracts — Situation in which a trader operates an internet site 'directed' towards the Member State in which the consumer is resident — Need for a causal link between that activity and the conclusion of the contract by the consumer — Possible restriction of jurisdiction over consumer contracts to contracts which have been concluded at a distance

Operative part of the judgment

Article 15(1)(c) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that it does not require the existence of a causal link between the means employed to direct the commercial or professional activity to the Member State of the consumer's domicile. However, the existence of such a causal link constitutes evidence of the connection between the contract and such activity.

[1] OJ C 243, 11.8.2012.

Judgment of the Court (Third Chamber) of 24 October 2013 (request for a preliminary ruling from the Verwaltungsgericht Hannover — Germany) — Andreas Ingemar Thiele Meneses v Region Hannover

(Case C-220/12) ([1])

(Citizenship of the Union — Articles 20 TFEU and 21 TFEU — Right of free movement and residence — National of a Member State — Studies pursued in another Member State — Education or training grant — Permanent residence requirement — Place of education or training located in the applicant's State of residence or in a neighbouring State — Limited exception — Applicant's specific circumstances)

(2013/C 367/24)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Andreas Ingemar Thiele Meneses

Defendant: Region Hannover

Re:

Request for a preliminary ruling — Verwaltungsgericht Hannover — Interpretation of Articles 20 and 21 TFEU — Education or training grant ('BAföG') — Member State's legislation making its award subject to the condition that its nationals who are resident abroad show 'special circumstances' and restricting the place of education or training to the Member State of residence or a neighbouring State

Operative part of the judgment

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, as a rule, makes the award of an education or training grant for studies pursued in another Member State subject to the sole condition of having established a permanent residence, within the meaning of that legislation, on national territory and which, in a case where the applicant is a national of that State with no permanent residence within that State, provides for a grant for education or training abroad only in the applicant's State of residence or in a neighbouring State thereof and only where specific circumstances justify such a grant.

([1]) OJ C 287, 22.9.2012.

Judgment of the Court (Sixth Chamber) of 17 October 2013 — European Commission v Hellenic Republic

(Case C-263/12) ([1])

(Failure of a Member State to fulfil obligations — State aid — Commission Decision ordering recovery of aid — Failure to comply with a Commission Decision)

(2013/C 367/25)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and B. Stromsky, acting as Agents)

Defendant: Hellenic Republic (represented by: P. Mylonopoulos, K. Boskovits, G. Kanellopoulos and M. Karageorgou, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2, 3 and 4 of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Khrisos A.E. (notified under document C(2011) 1006) (OJ 2011 L 193, p. 27) — Failure to take all the measures necessary for the recovery of aid which has been found to be unlawful and incompatible with the common market

Operative part of the judgment

The Court:

1. *Declares that, by not adopting within the prescribed period all the measures necessary to recover from Ellinikos Khrisos A.E. the aid granted to that undertaking on the sale, by the Greek State, of immovable property, aid declared to be unlawful and incompatible with the common market by Commission Decision C(2011) 1006 final of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Khrisos A.E., the Hellenic Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision.*

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

([1]) OJ C 217, 21.7.2012.

Judgment of the Court (Third Chamber) of 24 October 2013 (request for a preliminary ruling from the Verwaltungsgericht Hannover — Germany) — Samantha Elrick v Bezirksregierung Köln

(Case C-275/12) [1]

(Citizenship of the Union — Articles 20 TFEU and 21 TFEU — Right of free movement and residence — National of a Member State — Studies pursued in another Member State — Education or training grant — Conditions — Duration of course greater than or equal to two years — Obtaining a vocational qualification)

(2013/C 367/26)

Language of the case: German

Referring court

Verwaltungsgericht Hannover

Parties to the main proceedings

Applicant: Samantha Elrick

Defendant: Bezirksregierung Köln

Re:

Request for a preliminary ruling — Verwaltungsgericht Hannover — Interpretation of Articles 20 and 21 TFEU — Entitlement to a 'BAföG' education or training grant — Member State legislation providing for such entitlement in respect of a certain course, of one year's duration, pursued in that Member State, but excluding such entitlement for a comparable course pursued in another Member State

Operative part of the judgment

Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, that makes the award of an education or training grant, to a national resident in that Member State, for a course pursued in another Member State, subject to the requirement that the course in question lead to a vocational qualification equivalent to that provided by a vocational school in the State awarding the grant, following a course of at least two years' duration, whereas an education or training grant would have been awarded if the national had chosen to undertake, in the State awarding the grant, a course equivalent to that which she wished to pursue in another Member State, and which is of less than two years' duration.

[1] OJ C 250, 18.8.2012.

Judgment of the Court (Grand Chamber) of 22 October 2013 (request for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Jiří Sabou v Finanční ředitelství pro hlavní město Prahu

(Case C-276/12) [1]

(Directive 77/799/EEC — Mutual assistance by the authorities of the Member States in the field of direct taxation — Exchange of information on request — Tax proceedings — Fundamental rights — Limit on the scope of the obligations of the requesting and the requested Member States towards the taxpayer — No obligation to inform the taxpayer of the request for assistance — No obligation to invite the taxpayer to take part in the examination of witnesses — Taxpayer's right to challenge the information exchanged — Minimum content of the information exchanged)

(2013/C 367/27)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Jiří Sabou

Defendant: Finanční ředitelství pro hlavní město Prahu

Re:

Request for a preliminary ruling — Nejvyšší správní soud — Interpretation of Articles 1, 2, 6, 7(1) and 8(1) of Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15) and Article 41(2)(a) of the Charter of Fundamental Rights of the European Union (OJ 2007 C 303, p. 1) — Fundamental rights of taxpayers in tax proceedings brought against them, such as the right to be informed of a decision of the competent authority of the requesting Member State to make a request for information, to take part in formulating that request, to be informed beforehand of the examination of witnesses in the requested Member State and to take part in the examination, and to challenge the correctness of the information provided by the competent authority of that State

Operative part of the judgment

1. *European Union law, as it results in particular from Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums, as amended by Council Directive 2006/98/EC of 20 November 2006, and the fundamental right to be heard, must be interpreted as not conferring on a taxpayer of a Member State either the right to be informed of a request for assistance from that*

Member State addressed to another Member State, in particular in order to verify the information provided by that taxpayer in his income tax return, or the right to take part in formulating the request addressed to the requested Member State, or the right to take part in examinations of witnesses organised by the requested Member State.

2. *Directive 77/799, as amended by Directive 2006/98, does not govern the question of the circumstances in which the taxpayer may challenge the accuracy of the information conveyed by the requested Member State, and it does not impose any particular obligation with regard to the content of the information conveyed.*

([1]) OJ C 273, 8.9.2012.

Judgment of the Court (Second Chamber) of 24 October 2013 (request for a preliminary ruling from the Augstākās tiesas Senāts (Latvia)) — Vitālijs Drozdovs v AAS 'Baltikums'

(Case C-277/12) ([1])

(Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC — Article 3(1) — Directive 90/232/EEC — Article 1 — Road traffic accident — Death of the parents of the applicant, who is a minor — Right to compensation of the child — Non-material damage — Compensation — Cover by compulsory insurance)

(2013/C 367/28)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Vitālijs Drozdovs

Defendant: AAS 'Baltikums'

Re:

Request for a preliminary ruling — Augstakas tiesas Senats — Interpretation of Article 3 of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ 1972 L 103, p. 1) and of Article 1(2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17) — Insurance against civil liability in respect of the use of motor vehicles — Determination of damages which must be covered by the civil liability insurance — Possibility to include non-material damage in the compulsory protection for personal injuries — National legislation providing for an amount of compensation for psychological pain and suffering which is significantly lower that the amount laid down in the directives for compensation for personal injuries

Operative part of the judgment

1. *Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability and Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles must be interpreted as meaning that compulsory insurance against civil liability in respect of the use of motor vehicles must cover compensation for non-material damage suffered by the next of kin of the deceased victims of a road traffic accident, in so far as such compensation is provided for as part of the civil liability of the insured party under the national law applicable in the dispute in the main proceedings.*

2. *Article 3(1) of Directive 72/166 and Article 1(1) and (2) of Second Directive 84/5 must be interpreted as precluding national provisions, pursuant to which compulsory insurance against civil liability in respect of the use of motor vehicles covers compensation for non-material damage resulting from the death of a person's next of kin in a road traffic accident — payable in accordance with national civil liability law — only to a maximum amount which is lower than the minimum amounts laid down in Article 1(2) of Second Directive 84/5.*

([1]) OJ C 235, 4.8.2012.

Judgment of the Court (Fourth Chamber) of 17 October 2013 (request for a preliminary ruling from the Verwaltungsgericht Gelsenkirchen (Germany)) — Michael Schwarz v Stadt Bochum

(Case C-291/12) ([1])

(Reference for a preliminary ruling — Area of freedom, security and justice — Biometric passport — Fingerprints — Regulation (EC) No 2252/2004 — Article 1(2) — Validity — Legal basis — Procedure for adopting — Articles 7 and 8 of the Charter of Fundamental Rights of the European Union — Right to respect for private life — Right to the protection of personal data — Proportionality)

(2013/C 367/29)

Language of the case: German

Referring court

Verwaltungsgericht Gelsenkirchen

Parties to the main proceedings

Applicant: Michael Schwarz

Defendant: Stadt Bochum

Re:

Request for a preliminary ruling — Verwaltungsgericht Gelsenkirchen — Validity of Article 1(2) of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States (OJ 2004 L 385, p. 1), as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009 (OJ 2009 L 142, p. 1), as amended (OJ 2009 L 188, p. 127), in the light of Article 8 of the Charter of Fundamental Rights and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms — Right of a person to be issued with a passport without his fingerprints being taken

Operative part of the judgment

Examination of the question referred has revealed nothing capable of affecting the validity of Article 1(2) of Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, as amended by Regulation (EC) No 444/2009 of the European Parliament and of the Council of 6 May 2009.

([1]) OJ C 273, 8.9.2012.

Judgment of the Court (Eighth Chamber) of 17 October 2013 — European Commission v Italian Republic

(Case C-344/12) ([1])

(Failure of a Member State to fulfil obligations — State aid — Aid granted by the Italian Republic for the benefit of Alcoa Trasformazioni — Commission Decision 2010/460/EC declaring that aid to be incompatible and ordering its recovery — Failure to implement within the prescribed period)

(2013/C 367/30)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: G. Conte and D. Grespan, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Failure to have adopted the necessary measures to comply with Articles 2, 3 and 4 of Commission Decision C(2009) 8112 final of 19 November 2009, concerning State aids C 38/A/2004 (ex NN 58/2004) and C 36/B/2006 (ex NN 38/2006), implemented by the Italian Republic for Alcoa Trasformazioni srl, and infringement of Article 288 TFEU

Operative part of the judgment

The Court:

1. *Declares that, by not adopting within the prescribed period all the measures necessary to recover from the beneficiary of the State aid declared to be unlawful and incompatible with the common market under Article 1 of Commission Decision 2010/460/EC of 19 November 2009 concerning State aids Nos C 38/A/2004 (ex NN 58/2004) and C 36/B/2006 (ex NN 38/2006) implemented by Italy for Alcoa Trasformazioni, the Italian Republic has failed to fulfil its obligations under Articles 2, 3 and 4 of that decision*

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

([1]) OJ C 287, 22.9.2012

Judgment of the Court (Third Chamber) of 17 October 2013 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — RLvS Verlagsgesellschaft mbH v Stuttgarter Wochenblatt GmbH

(Case C-391/12) ([1])

(Directive 2005/29/EC — Unfair commercial practices — Scope ratione personae — Misleading omissions in advertorials — Legislation of a Member State prohibiting any publication for remuneration not identified by the term 'advertisement' ('Anzeige') — Complete harmonisation — Stricter measures — Freedom of the press)

(2013/C 367/31)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: RLvS Verlagsgesellschaft mbH

Defendant: Stuttgarter Wochenblatt GmbH

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22), and in particular Articles 3(5), 4 and 7(2) thereof and point 11 of Annex I thereto — Misleading omissions in editorial-style advertising — Legislation of a Member State prohibiting a publication for remuneration which does not mention that it is an 'advertisement' ('Anzeige')

Operative part of the judgment

In circumstances such as those of the main proceedings, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive') may not be relied on as against newspaper publishers, with the result that, in those circumstances, that directive must be interpreted as not precluding the application of a national provision under which those publishers are required to identify specifically, in this case through the use of the term 'advertisement' ('Anzeige'), any publication in their periodicals for which they receive remuneration, unless it is already evident from the arrangement and layout of the publication that it is an advertisement.

([1]) OJ C 343, 10.11.2012.

Judgment of the Court (Tenth Chamber) of 24 October 2013 (request for a preliminary ruling from the Înalta Curte de Casație și Justiție — Romania) — Agenția Națională de Administrare Fiscală v SC Rafinăria Steaua Română SA

(Case C-431/12) ([1])

(Taxation — Value added tax — Refund of excess VAT by set-off — Annulment of set-off decision — Obligation to pay default interest to the taxable person)

(2013/C 367/32)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicant: Agenția Națională de Administrare Fiscală

Defendant: SC Rafinăria Steaua Română SA

Re:

Request for a preliminary ruling — Înalta Curte de Casație și Justiție — Interpretation of Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Refund of excess VAT by set-off — Obligation on the tax authorities to pay default interest where the set-off decisions are annulled by a court

Operative part of the judgment

Article 183 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as precluding a situation in which a taxable person, having made a claim for refund of excess input value added tax over the value added tax which it is liable to pay, cannot obtain from the tax authorities of a Member State default interest on a refund made late by those authorities in respect of a period during which administrative measures precluding the refund, which were subsequently annulled by a court ruling, were in force.

([1]) OJ C 399, 22.12.2012.

Judgment of the Court (First Chamber) of 24 October 2013 (request for a preliminary ruling from the Finanzgericht Hamburg — Germany) — Metropol Spielstätten Unternehmergesellschaft (haftungsbeschränkt) v Finanzamt Hamburg-Bergedorf

(Case C-440/12) ([1])

(Taxation — VAT — Betting and gaming — Legislation of a Member State under which VAT and a special tax are to be levied cumulatively on the operation of low-prize slot machines — Whether permissible — Basis of assessment — Whether the taxable person can pass on the VAT)

(2013/C 367/33)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Metropol Spielstätten Unternehmergesellschaft (haftungsbeschränkt)

Defendant: Finanzamt Hamburg-Bergedorf

Re:

Request for a preliminary ruling — Finanzgericht Hamburg — Interpretation of the first sentence of Article 1(2), Article 73, Article 135(1)(i) and Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Taxation of betting and gaming — Legislation of a Member State under which VAT and a special tax are to be levied cumulatively on the operation of low-prize slot machines

Operative part of the judgment

1. *Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Article 135(1)(i) thereof, must be interpreted as meaning that value added tax and a special national tax on games of chance may be levied cumulatively, provided that the special national tax cannot be characterised as a tax on turnover;*

2. *The first sentence of Article 1(2) and Article 73 of Directive 2006/112 must be interpreted as not precluding a national provision or practice whereby, in the operation of gaming machines offering the possibility of winnings, the amount of the cash receipts from those machines is used after a set interval as the basis of assessment;*

3. *Article 1(2) of Directive 2006/112 must be interpreted as not precluding a national system regulating an unharmonised tax, under which the value added tax owed is to be set in full against that tax.*

([1]) OJ C 389, 15.12.2012.

Judgment of the Court (Seventh Chamber) of 17 October 2013 (request for a preliminary ruling from the Kúria — Hungary) — OTP Bank Nyilvánosan Működő Részvénytársaság v Hochtief Solutions AG

(Case C-519/12) ([1])

(Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters — Regulation (EC) No 44/2001 — Special jurisdiction — Article 5(1)(a) — Concept of 'matters relating to a contract')

(2013/C 367/34)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: OTP Bank Nyilvánosan Működő Részvénytársaság

Defendant: Hochtief Solutions AG

Re:

Request for a preliminary ruling — Kúria — Interpretation of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Jurisdiction of the court of a Member State in matters relating to a contract — Action by a creditor, on the basis of a credit agreement, against a company holding a controlling share in the debtor company which is a party to the contract pursuant to the specific national rules governing the liability of the first company

Operative part of the judgment

An action such as that in the main proceedings, in which national legislation renders a person liable for the debts of a company which he controls, where that person did not comply with the reporting obligations following the acquisition of that company, cannot be regarded as concerning 'matters relating to a contract' for the purposes of Article 5(1)(a) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

([1]) OJ C 46, 16.2.2013.

Judgment of the Court (Seventh Chamber) of 17 October 2013 — Isdin, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Bial-Portela & Ca SA

(Case C-597/12 P) ([1])

(Appeal — Community trade mark — Opposition proceedings — Application for Community word mark ZEBEXIR — Earlier word mark ZEBINIX — Relative grounds for refusal — Regulation (EC) No 207/2009 — Article 8(1)(b) — Obligation to state reasons)

(2013/C 367/35)

Language of the case: English

Parties

Appellant: Isdin, SA (represented by: G. Marín Raigal and P. López Ronda, abogados)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Geroulakos, Agent), Bial-Portela & C[a], SA

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 9 October 2012 in Case T-366/11 *Bial-Portela & C[a] v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* by which the General Court annulled Decision R 1212/2009-1 of the First Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 6 April 2011, dismissing the action brought against the Opposition Division's decision which rejected the opposition brought by the owner of the Community word mark 'ZEBENIX' in respect of goods and services classified in Classes 3, 5 and 42, against the application for registration of the word mark 'ZEBEXIR' in respect of goods classified in Classes 3 and 5 — Article 8(1)(b) of Regulation (EC) No 207/2009 — Likelihood of confusion

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 9 October 2012 in Case T-366/11 Bial-Portela v OHIM — Isdin (ZEBEXIR);*

2. *Refers the case back to the General Court of the European Union;*

3. *Reserves the costs.*

(1) OJ C 86, 23.3.2013.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 2 September 2013 — Generali-Providencia Biztosító Zrt. v Közbeszerzési Hatóság — Közbeszerzési Döntőbizottság

(Case C-470/13)

(2013/C 367/36)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Generali-Providencia Biztosító Zrt.

Defendant: Közbeszerzési Hatóság — Közbeszerzési Döntőbizottság

Questions referred

1. May the Member States exclude an economic operator from participating in a procedure for the award of a public contract on grounds other than those listed in Article 45 of Directive 2004/18/EC (1) of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (in particular, on grounds that are considered to be justified from the point of view of protecting the public interest, the legitimate interests of the contracting authority or fair competition and the maintenance of lawfulness in competition) and, if so, is the provision of such exclusion in relation to an economic operator that has committed an infringement related to his economic or professional activity and established by court judgment which has the authority of *res judicata* given not more than five years ago compatible with the second recital in the preamble to that directive and with Articles 18 TFEU, 34 TFEU, 49 TFEU and 56 TFEU?

2. If the Court of Justice should answer the first question in the negative, must the first subparagraph of Article 45(2) of Directive 2004/18, in particular points (c) and (d) of that provision, be interpreted as meaning that it is possible to exclude from the procedure for the award of a public contract any economic operator who has committed an infringement established by an administrative or judicial authority in competition proceedings initiated on account of his economic or professional activity, legal consequences in matters of competition having been applied to the economic operator, as a result of that infringement?

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

Request for a preliminary ruling from the Gerechtshof Arnhem-Leeuwarden (Netherlands) lodged on 16 September 2013 — F. Faber v Autobedrijf Hazet Ochten BV

(Case C-497/13)

(2013/C 367/37)

Language of the case: Dutch

Referring court

Gerechtshof Arnhem-Leeuwarden

Parties to the main proceedings

Applicant: F. Faber

Defendant: Autobedrijf Hazet Ochten BV

Questions referred

1. Is the national court, either on the grounds of the principle of effectiveness, or on the grounds of the high level of consumer protection within the European Union sought by Directive 1999/44, (1) or on the grounds of other provisions or norms of European law, obliged to investigate of its own motion whether, in relation to a contract, the purchaser is (a) consumer within the meaning of Article 1(2)(a) of Directive 1999/44?

2. If the answer to the first question is in the affirmative, does it also apply if the case file contains no (or insufficient or contradictory) information to enable the status of the purchaser to be determined?

3. If the answer to the first question is in the affirmative, does it also apply to appeal proceedings, where the purchaser has not raised any complaint against the judgment of the court of first instance, to the extent that in that judgment that assessment (of its own motion) was not carried out, and the question of whether the purchaser may be deemed to be a consumer was expressly left open?

4. Must (Article 5 of) Directive 1999/44 be regarded as a norm which is equivalent to the national rules which in the internal legal system are deemed to be rules of public policy?

5. Do the principle of effectiveness, the high level of consumer protection within the European Union sought by Directive 1999/44 or other provisions or norms of European Union law preclude Netherlands law relating to the burden resting on the consumer-purchaser of presenting the facts and adducing the evidence in relation to the duty of notifying the seller (in good time) of the presumed lack of conformity of delivered goods?

6. Do the principle of effectiveness, the high level of consumer protection within the European Union sought by Directive 1999/44 or other provisions or norms of European Union law preclude Netherlands law relating to the burden resting on the consumer-purchaser of presenting the facts and adducing the evidence that the goods are not in conformity and that that lack of conformity became apparent within six months of delivery? What is the meaning of the words 'any lack of conformity which becomes apparent' in Article 5(3) of Directive 1999/44 and in particular: to what extent must the consumer-purchaser establish facts and circumstances concerning (the cause of) the lack of conformity? Is it sufficient in that regard that the consumer-purchaser establish, and in the case of a substantiated challenge prove, that the purchased goods do not function (well), or must he also establish, and in the case of a substantiated challenge prove, which defect in the purchased goods caused the purchased goods not to function (well)?

7. Does the fact that Ms Faber has been assisted by a lawyer in both instances in these proceedings still play a role when answering the foregoing questions?

([1]) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 16 September 2013 — Marian Macikowski — acting as court enforcement officer for Section I at the Sąd Rejonowy w Chojnicach v Dyrektor Izby Skarbowej w Gdańsku

(Case C-499/13)

(2013/C 367/38)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Marian Macikowski — acting as court enforcement officer for Section I at the Sąd Rejonowy w Chojnicach

Respondent: Dyrektor Izby Skarbowej w Gdańsku

Questions referred

1. In the light of the system of value added tax resulting from Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ('the directive'), ([1]) in particular Articles 9 and 193, in conjunction with Article 199(1)(g) thereof, is a provision of national law permissible, such as that established in Article 18 of the Ustawa o podatku od towarów i usług (Law on the tax on goods and services) of 11 March 2004 (*Dziennik Ustaw* of 2011, No 177, item 1054, as amended; 'the VAT Law'), which introduces derogations from the general rules on that tax, in particular with regard to the persons required to calculate and collect the tax, by establishing the concept of paying agent, that is to say, a person who is required, on behalf of the taxable person, to calculate the amount of tax, collect it from the taxable person, and pay it to the tax authority in good time?

2. If the answer to the first question is in the affirmative:

   (a) In the light of the principle of proportionality, which is a general principle of European Union law, is a provision of national law permissible, such as that established in Article 18 of the VAT Law, under which, inter alia, tax on the supply of immovable property effected through enforcement in respect of goods owned by the debtor or in his possession in breach of existing law is calculated, collected and paid by a court enforcement officer carrying out an enforcement action who, as paying agent, bears liability in the event of failure to fulfil that obligation?

   (b) In the light of Articles 206, 250 and 252 of the directive and of the principle of neutrality arising therefrom, is a provision of national law permissible, such as that established in Article 18 of the VAT Law, under which a paying agent as referred to in that provision is required to calculate, collect and pay, within the tax period of the taxable person, an amount of value added tax on a supply, effected through enforcement, of goods owned by that taxable person or in his possession in breach of the law in force, in an amount comprising the product of the proceeds from the sale of the goods, minus value added tax and the applicable rate of that tax, with no reduction of that amount by the amount of input tax from the beginning of the tax period to the date of the collection of that tax from the taxable person?

([1]) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Naczelny Sąd Administracyjny (Poland) lodged on 16 September 2013 — Gmina Międzyzdroje v Minister Finansów

(Case C-500/13)

(2013/C 367/39)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Gmina Międzyzdroje

Respondent: Minister Finansów

Question referred

Must Articles 167, 187 and 189 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] and the principle of tax neutrality be interpreted as permitting provisions of national law such as Article 91(7) and (7a) of the Polish Law of 11 March 2004 on the tax on goods and services (Dz. U. No 177 of 2011, item 1054, as amended), which provide that, in the event of a change in the purpose of capital goods from use in activities not conferring entitlement to deduct input tax to use in activities which do confer such entitlement, the adjustment of deductions may not be effected on a one-off basis but must be spread over the subsequent five years, and, in the case of immovable property, over ten years, following the year in which the capital goods were surrendered for use?

[1] OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 25 September 2013 — X; other party: Staatssecretaris van Financiën

(Case C-512/13)

(2013/C 367/40)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant in cassation: X

Other party: Staatssecretaris van Financiën

Questions referred

1. Can an indirect distinction on the basis of nationality or an impediment to the free movement of workers — requiring justification — be said to exist if the legislation of a Member State allows the tax-free reimbursement of extraterritorial expenses for incoming workers and a worker who, in the period prior to his employment in that Member State, lived outside that Member State at a distance of more than 150 kilometres from the border of that Member State may, without the provision of further proof, be granted tax-free reimbursement of expenses calculated on a flat-rate basis, even if that amount exceeds the extraterritorial expenses actually incurred, whereas, in the case of a worker who, during that period, lived within a shorter distance of that Member State, the extent of the tax-free reimbursement is limited to the demonstrable actual amount of the extraterritorial expenses?

2. If Question 1 is to be answered in the affirmative: is the relevant Netherlands rule, as laid down in the 1965 Uitvoeringsbesluit loonbelasting (Implementing Decision concerning wages tax), based on overriding reasons in the public interest?

3. If Question 2 is also to be answered in the affirmative: does the 150-kilometre criterion in that rule go further than is necessary to attain the objective pursued?

Request for a preliminary ruling from the Landgericht München I (Germany) lodged on 26 September 2013 — Ettayebi Bouzalmate v Kreisverwaltung Kleve

(Case C-514/13)

(2013/C 367/41)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Ettayebi Bouzalmate

Defendant: Kreisverwaltung Kleve

Question referred

Does it follow from 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] that a

Member State is required, as a rule, to detain a person for the purposes of removal in a specialised detention facility if such facilities exist only in a part of the federal structure of the State, but not in another part in which the detention is carried out in accordance with the provisions governing the federal structure of that Member State?

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

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 27 September 2013 — Dimensione Direct Sales srl, Michele Labianca v Knoll International SpA

(Case C-516/13)

(2013/C 367/42)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicants: Dimensione Direct Sales srl, Michele Labianca

Defendant: Knoll International SpA

Questions referred

1. Does the distribution right under Article 4(1) of Directive 2001/29/EC (1) include the right to offer the original or copies of the work to the public for sale?

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

2. Does the right to offer the original or copies of the work to the public for sale include not only contractual offers, but also advertising measures?

3. Is the distribution right infringed even if no purchase of the original or copies of the work takes place on the basis of the offer?

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

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 26 September 2013 — The Queen on the application of Eventech Ltd v The Parking Adjudicator

(Case C-518/13)

(2013/C 367/43)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: The Queen on the application of Eventech Ltd

Defendant: The Parking Adjudicator

Interested parties: London Borough of Camden, Transport for London

Questions referred

1. Does making a bus lane on a public road available to Black Cabs but not minicabs, during the hours of operation of that bus lane, involve the use of 'State resources' within the meaning of Article 107(1) TFEU, in the circumstances of the present case?

2. (a) In determining whether making a bus lane on a public road available to Black Cabs but not minicabs, during the hours of operation of that bus lane, is selective for the purposes of Article 107(1) TFEU, what is the relevant objective by reference to which the question whether Black Cabs and minicabs are in a comparable legal and factual situation should be assessed?

   (b) If it can be shown that the relevant objective, for the purposes of question 2(a), is at least in part to create a safe and efficient transport system, and that there are safety and/or efficiency considerations that justify allowing Black Cabs to drive in bus lanes and that do not apply in the same way to minicabs, can it be said that the measure is not selective within the meaning of Article 107 (1) TFEU?

   (c) In answering question 2(b), is it necessary to consider whether the Member State relying on that justification has demonstrated, in addition, that the favourable treatment of Black Cabs by comparison with minicabs is proportionate and does not go beyond what is necessary?

3. Is making a bus lane on a public road available to Black Cabs but not to minicabs, during the hours of operation of that bus lane, liable to affect trade between Member States for the purposes of Article 107(1) TFEU, in circumstances where the road in question is located in central London, and there is no bar to citizens from any Member State owning or driving either Black Cabs or minicabs?

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo No 1 de Ferrol (Spain) lodged on 1 October 2013 — Ministerio de Defensa, Navantia S.A. v Concello de Ferrol

(Case C-522/13)

(2013/C 367/44)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo No 1 de Ferrol

Parties to the main proceedings

Applicants: Ministerio de Defensa, Navantia S.A.

Defendant: Concello de Ferrol

Question referred

Is the tax exemption enjoyed by NAVANTIA, S.L. in respect of the Impuesto de Bienes Inmuebles (Tax on Real Property) compatible with Article 107 of the Treaty on the Functioning of the European Union (TFEU), and is it compatible with Article 107 TFEU for a Member State (SPAIN) to establish a tax exemption in respect of State-owned land (property registered as 2825201QA5422N0001YG), made available to a private company whose capital is entirely publicly owned (NAVANTIA, S.L.), on which that company provides goods and services that may be traded between Member States?

Request for a preliminary ruling from the Amtsgericht Karlsruhe (Germany) lodged on 3 October 2013 — Eycke Braun v Land Baden-Württemberg

(Case C-524/13)

(2013/C 367/45)

Language of the case: German

Referring court

Amtsgericht Karlsruhe

Parties to the main proceedings

Applicant: Eycke Braun

Defendant: Land Baden-Württemberg

Question referred

Is Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital, [1] as amended by Council Directive 85/303/EEC of 10 June 1985, [2] to be interpreted as meaning that the fees received by a notary employed as a civil servant for the drawing up of a notarially attested act recording a transaction concerning the conversion of a capital company into a different type of capital company constitute taxes for the purposes of that Directive, even if the conversion does not lead to an increase in the capital of the acquiring or transforming company?

[1] OJ 1969 L 249, p. 25.
[2] Council Directive 85/303/EEC of 10 June 1985 amending Directive 69/335/EEC concerning indirect taxes on the raising of capital (OJ 1985 L 156, p. 23).

Request for a preliminary ruling from the Tribunal administratif de Strasbourg (France) lodged on 8 October 2013 — Geoffrey Léger v Ministre des affaires sociales et de la santé, Établissement français du sang

(Case C-528/13)

(2013/C 367/46)

Language of the case: French

Referring court

Tribunal administratif de Strasbourg

Parties to the main proceedings

Applicant: Geoffrey Léger

Defendants: Ministre des affaires sociales et de la santé, Établissement français du sang

Question referred

In the light of Annex III to Directive 2004/33/EC, [1] does the fact that a man has sexual relations with another man constitute in itself sexual behaviour placing him at a high risk of acquiring severe infectious diseases that can be transmitted by blood and justifying a permanent deferral from blood donation for persons having engaged in that sexual behaviour, or is it merely capable

of constituting, in the light of the circumstances of the individual case, sexual behaviour placing him at a risk of acquiring infectious diseases that can be transmitted by blood and justifying a temporary deferral from blood donation for a period determined after the cessation of the risk behaviour?

(1) Commission Directive 2004/33/EC of 22 March 2004 implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components (OJ 2004 L 91, p. 25).

Request for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 17 October 2013 — Mohamed M'Bodj v Conseil des ministres

(Case C-542/13)

(2013/C 367/47)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicant: Mohamed M'Bodj

Defendant: Conseil des ministres

Questions referred

1. Must Articles 2(e) and (f), 15, 18, 28 and 29 of 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' (1) be interpreted as meaning that not only a person who has been granted, at his request, subsidiary protection status by an independent authority of the Member State must be entitled to benefit from the social welfare and health care referred to in Articles 28 and 29 of that directive, but also a foreign national who has been authorised by an administrative authority of a Member State to reside in the territory of that Member State and who suffers from an illness occasioning a real risk to his life or physical integrity or a real risk of inhuman or degrading treatment in the case where there is no appropriate treatment in his country of origin or in the country in which he resides?

2. If the answer to the first question referred for a preliminary ruling is that the two categories of persons who are there described must be capable of benefiting from the social welfare and health care referred to therein, must Articles 20(3), 28(2) and 29(2) of Directive 2004/83 be interpreted as meaning that the obligation imposed on Member States to take into account the specific situation of vulnerable persons such as disabled people implies that the latter must be granted the allowances provided for by the Law of 27 February 1987 concerning allowances for disabled people, in view of the fact that social assistance which takes account of the handicap may be granted pursuant to the Basic Law of 8 July 1976 on public social welfare centres?

(1) OJ L 304. p. 12.

GENERAL COURT

Judgment of the General Court of 5 November 2013 — Rusal Armenal v Council

(Case T-512/09) [1]

(Dumping — Imports of certain aluminium foil originating in Armenia, Brazil and China — Accession of Armenia to the WTO — Market economy treatment — Article 2(7) of Regulation (EC) No 384/96 — Whether compatible with the Anti-Dumping Agreement — Article 277 TFEU)

(2013/C 367/48)

Language of the case: English

Parties

Applicant: Rusal Armenal ZAO (Yerevan, Armenia) (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union (represented: initially by J.-P. Hix, Agent, and by G. Berrisch and G. Wolf, lawyers, and subsequently by J.-P. Hix and B. Driessen, Agents, and by G. Berrisch, and lastly by J.-P. Hix and B. Driessen)

Intervener in support of the defendant: European Commission (represented by M. França and C. Clyne, Agents)

Re:

Application for the annulment of Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ 2009 L 262, p. 1).

Operative part of the judgment

The Court:

1. *Annuls Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China in so far as it concerns Rusal Armenal ZAO;*

2. *Orders the Council of the European Union to pay the costs incurred by Rusal Armenal;*

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

[1] OJ C 80, 27.3.2010.

Judgment of the General Court of 5 November 2013 — Capitalizaciones Mercantiles v OHIM — Leineweber (X)

(Case T-378/12) [1]

(Community trade mark — Opposition proceedings — Application for Community figurative mark X — Relative ground for refusal — Likelihood of confusion — Similarity of the signs — Distinctive character of the earlier mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2013/C 367/49)

Language of the case: Spanish

Parties

Applicant: Capitalizaciones Mercantiles Ltda (Bogota, Colombia) (represented by: J. Devaureix and L. Montoya Terán, lawyers)

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: Leineweber GmbH & Co. KG (Herford, Germany) (represented by: S. Jackermeier and D. Wiedemann, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 15 May 2012 (Case R 1524/2011-1) concerning opposition proceedings between Leineweber GmbH & Co. KG and Capitalizaciones Mercantiles Ltda.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Capitalizaciones Mercantiles Ltda to pay the costs.*

[1] OJ C 366, 24.11.2012.

Order of the General Court of 24 October 2013 — Stromberg Menswear v OHIM — Leketoy Stormberg Inter (STORMBERG)

(Case T-451/12) [1]

(Community trade mark — Revocation proceedings — Earlier Community word mark STORMBERG — Surrender of the disputed mark by the proprietor — Decision to close the revocation proceedings — Request for restitutio in integrum — Obligation to state reasons — Articles 58(1), 76(1) and 81(1) of Regulation (EC) No 207/2009 — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2013/C 367/50)

Language of the case: English

Parties

Applicant: Stromberg Menswear Ltd (Leeds, United Kingdom) (represented by: A. Tsoutsanis, lawyer, and C. Tulley, Solicitor)

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, intervener before the General Court: Leketoy Stormberg Inter AS (Kristiansand S, Norway) (represented initially by T. Mølsgaard, and subsequently by J. Løje, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 August 2012 (Case R 389/2012-4), relating to revocation proceedings between Stromberg Menswear Ltd and Leketoy Stormberg Inter AS.

Operative part of the order

1. *The action is dismissed.*

2. *Stromberg Menswear Ltd shall pay the costs.*

[1] OJ C 63, 2.3.2013.

Order of the General Court of 24 October 2013 — Stromberg Menswear v OHIM — Leketoy Stormberg Inter (STORMBERG)

(Case T-457/12) [1]

(Community trade mark — Community word mark STORMBERG — Appeal against the request for conversion of a Community trade mark into national trade mark applications — Inadmissibility of the appeal before the Board of Appeal — Action manifestly lacking any foundation in law)

(2013/C 367/51)

Language of the case: English

Parties

Applicant: Stromberg Menswear Ltd (Leeds, United Kingdom) (represented by: A. Tsoutsanis, lawyer, and C. Tulley, Solicitor)

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, intervener before the General Court: Leketoy Stormberg Inter AS (Kristiansand S, Norway) (represented initially by T. Mølsgaard, and subsequently by J. Løje, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 3 August 2012 (Case R 428/2012-4), relating to the request for conversion of a Community trade mark into national trade mark applications submitted by Leketoy Stormberg Inter AS.

Operative part of the order

1. *The action is dismissed.*

2. *Stromberg Menswear Ltd shall pay the costs.*

[1] OJ C 63, 2.3.2013.

Action brought on 2 August 2013 — APRAM v European Commission

(Case T-403/13)

(2013/C 367/52)

Language of the case: Portuguese

Parties

Applicant: APRAM — Administração dos Portos da Região Autónoma da Madeira, SA (Funchal, Portugal) (represented by: M. Gorjão-Henriques, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Articles 1 and 2 of Commission Decision C(2013) 1870 final, of 27 March 2013, which reduces the contribution from the Cohesion Fund to the project 'Development of Port infrastructures of the Autonomous Region of Madeira — Port of Caniçal', Madeira, Portugal;

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

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

— in the alternative:

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

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

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

Pleas in law and main arguments

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

1. **First plea in law: infringement of rules on the eligibility of expenditure**

The contested decision infringes legal rules implementing the Treaty, in particular in so far they concern the eligibility of expenditure for financing by European funds, namely Article 11 of Regulation (EC) No 1164/94 and Article 7 of Regulation (EC) No 16/2003. In that regard, the parties disagree on the question whether payments made after and during the beginning of the eligibility period, though invoiced prior to that period, constitute expenditure which is eligible for European financing.

2. **Second plea in law: Regulation (EC) No 16/2003 is unlawful, since it infringes essential procedural requirements and a higher-ranking rule of law**

The decision is also unlawful because it is based on Regulation No 16/2003, which is unlawful since it was not adopted by the College of Commissioners in accordance with the authorisation procedure or the written procedure, or any other simplified procedure in accordance with the Rules of Procedure of the Commission, ([3]) nor did it comply with Article 18 of those Rules of Procedure, and in so far as the Commission failed to interpret Article 7 of Regulation No 16/2003 in conformity with Regulation (EC) No 1164/94.

3. **Third plea in law: infringement of the principle of subsidiarity**

The principle of subsidiarity requires the establishment of national rules concerning the eligibility of expenditure, since economic, social and territorial cohesion is an area in which jurisdiction is shared between the European Union and the Member States and, for this reason, it is necessary to observe that principle. However, Regulation No 16/2003 infringes that principle to the extent that it not only fails to invoke the principle, but also fails to justify the need for the system that it establishes having regard to that principle.

4. **Fourth plea in law: infringement of the principles of legitimate expectations and legal certainty and the obligation on administrative bodies to observe their own acts**

The European Commission has consistently interpreted the legislative rule at issue in the way defended in the present case by APRAM.

That interpretation came from authorised European Commission sources, which was communicated to the Portuguese Republic, as well as other Member States, and the content thereof was clearly such that the Portuguese Republic could legitimately expect that the invoices received prior to, and paid after, receipt by the European Commission of the request for full payment were eligible. This was also the view of the competent national authorities. This is how APRAM created the legitimate expectation that that expenditure was effectively eligible.

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

5. **Fifth plea in law: infringement of the principle of proportionality**

Although it is true that, in accordance with Article H of Annex II to Regulation (EC) No 1164/94, the European Commission is empowered to make financial corrections as its deems necessary, and which may imply full or partial annulment of the aid granted, it must also observe the principle of proportionality, taking account of the circumstances of the individual case, such as the type of irregularity and the possible financial

impact of potential deficiencies in the management or monitoring systems, so as not to opt for a disproportionate response. In that regard, it is incomprehensible why it was regarded necessary to cancel all of the aid granted, since corrections at a rate of 100 % apply only when the deficiencies in the management and monitoring systems are so significant, or the irregularity found is so serious, as to constitute a complete disregard of European Union law rendering all of the payments improper. When that is not the case, those authorities propose corrections limited to 5 %, 2 % or even 0 %.

Difficulties in interpreting the rule at issue are a decisive attenuating circumstance which should always be taken into account by the Commission. In the light of the circumstances described, less restrictive means exist — such as the application of a reduced rate or even no correction at all — to achieve the desired objective. Accordingly, even if the Commission decides to apply a correction to the assistance granted — which is not the case — that correction should in no case exceed 5 % and should in fact be less or even zero.

6. **Sixth plea in law: the limitation period has expired**

In any event, the limitation period in relation to requiring the recovery of expenditure predating 3 June 2003 has already expired, given that the last invoice was dated 28 February 2008, namely three months and two days before the date at issue. In accordance with Regulation (EC) No 2988/95 ([4]) of 18 December 1995, the limitation period for proceedings is four years as from the time when the irregularity was committed.

([1]) Commission Regulation (EC) No 16/2003 of 6 January 2003 laying down special detailed rules for implementing Council Regulation (EC) No 1164/94 as regards eligibility of expenditure in the context of measures part-financed by the Cohesion Fund (OJ 2003 L 2, p. 7).
([2]) Council Regulation (EC) No 1164/94 of 16 May 1994 establishing a Cohesion Fund (OJ 1994 L 130, p. 1).
([3]) OJ 2000 L 308, p. 26.
([4]) Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Action brought on 2 August 2013 — Companhia Previdente and Socitrel v Commission

(Case T-409/13)

(2013/C 367/53)

Language of the case: Portuguese

Parties

Applicants: COMPANHIA PREVIDENTE — Sociedade de Controle de Participações Financeiras, SA (Lisbon, Portugal) and SOCITREL — Sociedade Industrial de Trefilaria, SA (Trofa, Portugal) (represented by: D. Proença de Carvalho, J. Caimoto Duarte, F. Proença de Carvalho and T. Luísa Faria, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— declare the action admissible and well founded;

— annul Decision D/2013/048425 of the European Commission's Directorate-General for Competition of 24 May 2013, relating to the refusal to reduce, on grounds of inability to pay, the fine imposed on SOCITREL in a proceeding for infringement of Article 101 TFEU and Article 53 of the EEA Agreement, which also declared COMPANHIA PREVIDENTE jointly and severally liable for payment of that fine;

— impose a reduced fine on the applicants as a result of their inability to pay the fine;

Pleas in law and main arguments

The applicants rely on two pleas in law which, in essence, consist of the following:

1. First plea in law: infringement by the Commission of the obligation to state reasons under Article 296 TFEU, in that it disregarded the evidence submitted by the COMPANHIA PREVIDENTE group relating to its lack of finances.

   — The applicants claim that Article 296 TFEU was infringed, because the refusal to reduce the fine on the ground of inability to pay did not contain a substantiated statement of reasons, since there was no specific analysis of the requirements which, in accordance with the European Union's decision-making practice (in particular under paragraph 35 of the Guidelines for setting fines pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003, ([1]) 'the Guidelines'), and in accordance with the case-law of the European Union relating to inability to pay, must be verified for the purposes of granting a reduction of the fine in this context; nor were the arguments duly addressed, which had been adduced by COMPANHIA PREVIDENTE during the relevant proceeding before the European Commission, relating to the COMPANHIA PREVIDENTE group's fulfilment of those requirements.

2. Second plea in law: error as to the facts, manifest error of assessment and breach of the principle of proportionality, in that the fine was not reduced in the light of the COMPANHIA PREVIDENTE group's inability to pay.

— The applicants claim that an error as to the facts, a manifest error of assessment and a breach of the principle of proportionality were committed because not all the relevant facts were given due consideration, nor was the evidence provided by COMPANHIA PREVIDENTE adequately examined during the procedure to revise the fine on the ground of inability to pay, pursuant to paragraph 35 of the Guidelines, and the fine, which is beyond the current financial resources of the COMPANHIA PREVIDENTE group, was maintained.

In addition, pursuant to Article 261 TFEU, the applicants request a reduction, on the ground of inability to pay, of the fine imposed on SOCITREL, for which COMPANHIA PREVIDENTE is jointly and severally liable.

([1]) OJ 2006, C 210, p. 2.

Action brought on 20 August 2013 — Fard and Sarkandi v Council

(Case T-439/13)

(2013/C 367/54)

Language of the case: English

Parties

Applicants: Mohammad Moghaddami Fard (Tehran, Iran); and Ahmad Sarkandi (United Arab Emirates) (represented by: M. Taher, Solicitor, M. Lester, Barrister, and S. Kentridge, QC)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

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

— Order that the Council pays the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council erred manifestly in its assessment that any of the listing criteria has been fulfilled as regards either of the applicants, and that there is no valid legal basis for the applicants' designation.

2. Second plea in law, alleging that the Council has purported to impose a travel ban on the applicants without a proper legal basis.

3. Third plea in law, alleging that the Council has failed to give adequate or sufficient reasons for including the applicants in the contested measures.

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

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

Appeal brought on 20 September 2013 by AN against the judgment of the Civil Service Tribunal of 11 July 2013 in Case F-111/10 AN v Commission

(Case T-512/13 P)

(2013/C 367/55)

Language of the case: French

Parties

Appellant: AN (Brussels, Belgium) (represented by: É. Boigelot and R. Murru, avocats)

Other party to the proceedings: European Commission

Form of order sought by the appellant

The appellant claims that the Court should:

— set aside the judgment of the Civil Service Tribunal (Second Chamber) of 11 July 2013 in Case F-111/10 *AN* v *Commission*;

— refer the case back to the Civil Service Tribunal;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons when the Civil Service Tribunal examined the plea submitted at first instance relating to the unlawfulness of the inquiry directed against the appellant, since the statement of reasons put forward by the Civil Service Tribunal in paragraphs 95 and 96 of the judgment under appeal is erroneous or at the very least inadequate and incomplete.

2. Second plea in law, alleging distortion by the Civil Service Tribunal of the facts and evidence both when the Civil Service Tribunal held that the appellant enjoyed the protection provided for in paragraph 3 of Article 22a of the Staff Regulations of Officials of the European Union and when the Civil Service Tribunal held that the appellant had not put forward any evidence that the administrative inquiry directed against it was initiated by way of retaliation (concerning paragraphs 87, 88 and 94 of the judgment under appeal).

Action brought on 30. September 2013 — Kenzo/OHIM — Tsujimoto (KENZO ESTATE)

(Case T-528/13)

(2013/C 367/56)

Language in which the application was lodged: English

Parties

Applicant: Kenzo (Paris, France) (represented by: P. Roncaglia, G. Lazzeretti, F. Rossi and N. Parrotta, lawyers)

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

Other party to the proceedings before the Board of Appeal: Kenzo Tsujimoto (Osaka, Japan)

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it accepted International registration No. 1016724 designating the European Union for the mark 'Kenzo Estate' for: '*Olive oil (for food); grape seed oil (for food); edible oils and fats; raisins; processed vegetables and fruits; frozen vegetables; frozen fruits; raw pulses; processed meat products; processed seafood*' in class 29; '*Confectionery, bread and buns; wine vinegar; olive dressing; seasonings (other than spices); spices; sandwiches; pizzas; hot dogs (sandwiches); meat pies; ravioli*' in class 30; and '*Grapes (fresh); olives (fresh); fruits (fresh); vegetables (fresh); seeds and bulbs*' in class 31;

— order OHIM to pay the costs incurred by the applicant during these proceedings;

— order Kenzo Tsujimoto to pay the costs incurred by the applicant in the proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'KENZO ESTATE' for goods and services in classes 29, 30, 31, 35, 41 and 43 — International Registration No W 1 016 724

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

Mark or sign cited in opposition: Community trade mark 'KENZO' for goods in classes 3, 18 and 25

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal in part

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

Action brought on 7 October 2013 — Vakoma v OHIM — VACOM (VAKOMA)

(Case T-535/13)

(2013/C 367/57)

Language in which the application was lodged: German

Parties

Applicant: Vakoma GmbH (Magdeburg, Germany) (represented by: P. Kazzer, lawyer)

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

Other party to the proceedings before the Board of Appeal: VACOM Vakuum Komponenten & Messtechnik GmbH (Jena, Germany)

Form of order sought

The applicant claims that the Court should:

— Reject opposition No B1 833 915 as unfounded by annulling the decision of the First Board of Appeal of OHIM of 1 August 2013 (Case R 0908/2012-1), which was notified to the applicant on 6 August 2013, and by annulling the decision of the Opposition Division of OHIM of 12 March 2012;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'VAKOMA' for goods and services in Classes 7, 40 and 42 — Community trade mark application No 9 437 963

Proprietor of the mark or sign cited in the opposition proceedings: VACOM Vakuum Komponenten & Messtechnik GmbH

Mark or sign cited in opposition: the Community word mark 'VACOM' for goods in Classes 7, 9 and 42

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 4 October 2013 — Roeckl Sporthandschuhe v OHIM — Roeckl Handschuhe & Accessoires (representation of a hand)

(Case T-537/13)

(2013/C 367/58)

Language in which the application was lodged: German

Parties

Applicant: Roeckl Sporthandschuhe GmbH & Co. KG (Munich, Germany) (represented by: O. Baumann, lawyer)

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

Other party to the proceedings before the Board of Appeal: Roeckl Handschuhe & Accessoires GmbH & Co. KG (Munich, Germany)

Form of order sought

— Annul the contested decision of the Fourth Board of Appeal of OHIM of 22 July 2013 in so far as it upheld the intervener's complaint in part and refused registration of a Community trade mark in respect of goods in Class 18 (leather and imitations of leather, and goods made of these materials, in particular purses, pocket wallets, key cases, included in class 18) and in Class 25 (clothing, in particular gloves, included in class 25);

— order the intervener to pay the applicant's costs, including the costs of the opposition and appeal proceedings, and order the defendant (OHIM) to bear its own costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Roeckl Sporthandschuhe GmbH & Co. KG

Community trade mark concerned: Figurative mark, representing a hand, for goods in Classes 18, 25 and 28 – Community trade mark No 6 961 965

Proprietor of the mark or sign cited in the opposition proceedings: Roeckl Handschuhe & Accessoires GmbH & Co. KG

Mark or sign cited in opposition: Community figurative mark and German figurative mark 'Roeckl', containing the representation of a hand, for goods in Classes 18 and 25

Decision of the Opposition Division: Opposition dismissed

Decision of the Board of Appeal: Decision of the Opposition Division annulled in part

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

Action brought on 4 October 2013 — Three-N-Products/OHIM — Munindra (PRANAYUR)

(Case T-543/13)

(2013/C 367/59)

Language in which the application was lodged: English

Parties

Applicant: Three-N-Products Private Ltd (New Delhi, India) (represented by: N. Colombo, lawyer)

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

Other party to the proceedings before the Board of Appeal: Munindra Holding BV (Lelystad, Netherlands)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal No. R 638/2012-4 dated 25 July 2013 in its entirety and, consequently, reject the registration of the opposite application PRANAYUR;

— Order the OHIM to pay the costs incurred by Three-N-Products Private Ltd;

— Order Munindra Holding B.V. to pay the costs incurred by Three-N-Products Private Ltd.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'PRANAYUR' for goods in classes 5 and 30 — Community trade mark application No 7 170 095

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

Mark or sign cited in opposition: The word mark 'AYUR' and figurative marks containing the word element 'Ayur'

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 20 October 2013 — Šumelj and Others v European Union

(Case T-546/13)

(2013/C 367/60)

Language of the case: Croatian

Parties

Applicants: Ante Šumelj (Zagreb, Croatia), Dubravka Bašljan (Zagreb), Đurđica Crnčević (Sv. Ivan Zelina, Croatia), Miroslav Lovreković (Križevci, Croatia) (represented by: Mato Krmek, lawyer)

Defendant: European Union

Form of order sought

The applicants claim that the General Court should:

— Deliver an interlocutory order whereby it declares that the European Commission has breached its obligation to monitor the implementation of the Treaty concerning the accession of the Republic of Croatia to the European Union, under Article 36 of the Act of Accession (Annex VII, point 1), as regards the introduction of the public enforcement officers' service in the legal system of the Republic of Croatia.

— Order the European Union to make good the (material and non-material) damage suffered by the applicants on the basis of the non-contractual liability of the European Union, in accordance with the second paragraph of Article 340 TFEU.

— Order the European Union to pay the costs of the present proceedings.

— In addition, the applicants submit that the General Court should suspend the deliberations on the amount of the claim until the interlocutory order sought in the present proceedings becomes definitive.

Pleas in law and main arguments

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

1. First plea in law, alleging that the European Commission infringed Article 36 of the Act of Accession (Annex VII, point 1), which forms an integral part of the Treaty between the Member States of the European Union and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union (Narodne novine — Međunarodni ugovori nº 2/12 (Official Gazette — International Treaties)), by failing to prevent the repeal of the legislation establishing and regulating the profession of public enforcement officer, which the Republic of Croatia had adopted during the negotiations for accession to the European Union. Article 36 of the Act of Accession requires the Commission to monitor all commitments undertaken by Croatia in the negotiations on accession to the European Union, including, therefore, the legal obligations undertaken by the Republic of Croatia to establish a public enforcement officers' service and to establish all the conditions necessary for the full implementation of that service in the Croatian legal system by 1 January 2012 at the latest.

2. Second plea in law, alleging that, by the above infringement, the European Commission directly caused damage to the applicants, who had been appointed public enforcement officers and who had legitimate expectations of entering into service on 1 January 2012.

3. Third plea in law, alleging that, by failing to meet its obligations under the Treaty of Accession, the Commission seriously and manifestly exceeded the limits of its discretion, and that, by frustrating the legitimate expectations of the applicants (appointed public enforcement officers), it caused the applicants considerable material and non-material damage which it must make good in accordance with the second paragraph of Article 340 TFEU.

Action brought on 8 October 2013 Rosian Express v OHIM (Shape of a box)

(Case T-547/13)

(2013/C 367/61)

Language of the procedure: Romanian

Parties

Applicant: Rosian Express Srl (Mediaș, Romania) (represented by: E. Grecu, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fifth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: three-dimensional mark representing the shape of a box, for goods and services in Classes 28 and 35

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Misinterpretation of Article 7(1)(b) of Regulation No 207/2009

Action brought on 15 October 2013 — Aderans v OHIM — Ofer (VITALHAIR)

(Case T-548/13)

(2013/C 367/62)

Language in which the application was lodged: German

Parties

Applicant: Aderans Company Ltd (Tokyo, Japan) (represented by: M. Graf, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gerhard Ofer (Troisdorf, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 1 August 2013 in Case R 1467/2012-1;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'VITALHAIR' for goods in Classes 3, 21 and 26 — Community trade mark application No 7 254 378

Proprietor of the mark or sign cited in the opposition proceedings: Gerhard Ofer

Mark or sign cited in opposition: the Community word mark 'Haar-Vital' and the German figurative mark 'HAARVITAL' for goods and services in Classes 3, 26 and 44

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

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Articles 42(2) and (3) and 8(1)(b) of Regulation (EC) No 207/2009

Action brought on 14 October 2013 — France v Commission

(Case T-549/13)

(2013/C 367/63)

Language of the case: French

Parties

Applicant: French Republic (represented by: G. De Bergues, D. Colas and C. Candat, acting as Agents)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul Commission's Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultrymeat;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons, in so far as the Commission's reasoning was not clear and unequivocal and, consequently, it did not allow the interested parties to know the reasons for the contested regulation. The applicant claims that:

   — first, obligation to state reasons for the contested regulation was even more fundamental because the Commission had, for the adoption of the contested regulation, a wide discretion and,

— secondly, the Commission was bound to develop its arguments in a clear manner where, by fixing export refunds on poultrymeat at a zero rate, the contested regulation went significantly further than the previous regulations in that sector.

2. Second plea in law, divided into two parts, alleging infringement of Article 164(3) of the Single CMO Regulation [1] by considering that the market situation and the national and international situation at the time the contested regulation was adopted justified fixing export refunds on poultrymeat at a zero rate. The applicant claims that:

— the Commission carried out a manifestly erroneous assessment of the market situation;

— the Commission manifestly infringed the limits of its discretion by taking into account, for the adoption of the contested regulation, the recent reform of the Common Agricultural Policy and the ongoing negotiations in the context of the WTO, which are matters not included among those exhaustively listed in Article 164(3) of the Single CMO Regulation.

[1] Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

Action brought on 15 October 2013 — Radecki v OHIM — Vamed (AKTIVAMED)

(Case T-551/13)

(2013/C 367/64)

Language in which the application was lodged: German

Parties

Applicant: Michael Radecki (Cologne, Germany) (represented by: C. Menebröcker and V. Töbelmann, lawyers)

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

Other party to the proceedings before the Board of Appeal: Vamed AG (Vienna, Austria)

Form of order sought

— Annul the decisions of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 July 2013 (Case R 365/2012-1);

— order OHIM to bear its own costs and to pay the applicant's costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Michael Radecki

Community trade mark concerned: Word mark 'AKTIVAMED' for goods and services in Classes 5, 11 and 44 — Community trade mark No 8 958 886

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

Mark or sign cited in opposition: Austrian figurative marks and international registration 'VAMED' for goods and services in Classes 8, 9, 10, 11, 12, 16, 20, 21, 28, 35, 36, 37, 39, 41, 42, 43, 44 and 45

Decision of the Opposition Division: Opposition dismissed

Decision of the Board of Appeal: Decision of the Opposition Division annulled

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

Action brought on 17 October 2013 — European Dynamics Luxembourg and Evropaïki Dynamiki v European Joint Undertaking for ITER and the Development of Fusion Energy

(Case T-553/13)

(2013/C 367/65)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg); and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: D. Mabger, lawyer)

Defendant: European Joint Undertaking for ITER and the Development of Fusion Energy

Form of order sought

The applicant claims that the Court should:

— Annul the defendant's award decision dated 7 August 2013 in relation to the open Call for Tenders F4E-ADM-0464 (OJ 2012/S 213-352451) for the award of the Framework Service Contract in cascade entitled 'Provision of Information and Communications Technology (ICT) Projects to Fusion for Energy' (OJ 2013/S 198-342743);

— Order the defendant to provide the applicants with the compensation of damages for the loss of opportunity to be awarded a contract;

— Order the defendant to pay the applicants exemplary damages;

— Order the defendant to pay the applicants' legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to comply with EU legislation, as it proceeded with the evaluation of tenders and the award of the contract after the expiration of the validity of tenders.

2. Second plea in law, alleging that the defendant failed to comply with EU legislation through the infringement of the obligation to state reasons. The defendant provided the applicants with an Evaluation Report which did not contain any concrete evaluation comments concerning the applicants' tender.

Action brought on 22 October 2013 — Verband der Kölnisch-Wasser Hersteller, Köln v OHIM (Original Eau de Cologne)

(Case T-556/13)

(2013/C 367/66)

Language in which the application was lodged: German

Parties

Applicant: Verband der Kölnisch-Wasser Hersteller, Köln eV (Cologne, Germany) (represented by: T. Schulte-Beckhausen, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of OHIM of 21 August 2013 (Case R 2064/2012-4);

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

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Original Eau de Cologne' for goods in Class 3 — Community trade mark application No 10 787 794

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 7(1)(b), (c) and (d) of Regulation (EC) No 207/2009

Action brought on 24 October 2013 — Spain v Commission

(Case T-561/13)

(2013/C 367/67)

Language of the case: Spanish

Parties

Applicant: Spain (represented by: N. Díaz Abad, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul in part the contested decision to the extent that it excludes the expenditure, amounting to EUR 757 968,97, incurred by Kingdom of Spain in the context of the ICDN (compensatory allowances for natural handicaps; CANH) aid of Galicia's 2007-2013 Rural Development programme in respect of 'natural handicaps', and

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against Commission Implementing Decision 2013/433/EU of 13 August 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD).

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

1. First plea in law, alleging infringement of Article 10(2) and (4) of Regulation No 1975/2006.

   — The applicant claims that the obligation to count animals during on-the-spot checks in respect of the CANH aid breaches the principle of the continuity of the livestock density criterion and the principle of equal treatment, and that the Commission wrongly interpreted the abovementioned provisions by finding that the Spanish system was not suitable for verifying compliance with the livestock density criterion.

2. Second plea in law, alleging infringement of Article 2(2) of Regulation No 1082/2003 and of Article 26(2)(b) of Regulation No 796/2004.

   — The applicant claims that the contested decision infringes the abovementioned provisions in that it imposes the obligation to carry out a count of animals during an on-the-spot check in order to verify the livestock density criterion.

Action brought on 24 October 2013 — Belgium v Commission

(Case T-563/13)

(2013/C 367/68)

Language of the case: Dutch

Parties

Applicant: Kingdom of Belgium (represented by: J.-C. Halleux and M. Jacobs, acting as Agents, assisted by F. Tuytschaever and M. Varga, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Declare the present application for annulment admissible and well-founded, and accordingly annul the contested decision in so far as it concerns the expenditure incurred by the Kingdom of Belgium amounting to € 4 108 237,42, or in any event to limit the amount to be reduced from the financing to € 1 268 963,04;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks the partial annulment of Commission Implementing Decision 2013/433/EU of 13 August 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), [1] in so far as it concerns the expenditure incurred by the Kingdom of Belgium.

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

1. First plea in law, alleging breach of the duty to state reasons and the principle of legal certainty, due to the contested implementing decision not sufficiently allowing the applicant to know the breach of which it is accused.

2. Second plea in law, alleging breach of Articles 122, 125b(1), and 125d of Regulation (EC) No 1234/2007 [2] and of Articles 25, 28(1), 29 and 33 of Regulation (EC) No 1580/2007, [3] due to the Commission determining that Greenbow cvba was wrongfully recognised as a producer organisation.

3. Third plea in law, alleging breach of the principle of proportionality due to the Commission not having limited the financial correction to the expenditure relating to the Greenbow members that could not be autonomously recognised as producer organisations.

[1] OJ 2013 L 219, p. 49.

[2] Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

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

Action brought on 25 October 2013 — Agriconsulting Europe v Commission

(Case T-570/13)

(2013/C 367/69)

Language of the Procedure: Italian

Parties

Applicant: Agriconsulting Europe SA (Brussels, Belgium) (represented by R. Sciaudone, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— grant the measures of inquiry requested;

— order the Commission to pay damages as assessed in the application, increased as appropriate;

— order that the information provided in Annexes A.23 and A.24 be treated as confidential;

— direct the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

The present application seeks compensation for the harm suffered as a result of the irregularities on the part of the Commission in the tender procedure 'Establishing a network facility for the implementation of the European Innovation Partnership (EIP) "Agricultural Productivity and Sustainability"' (AGRI-2012-EIP-01).

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

1. Error of assessment of the tender and infringement of the principle of equal treatment in relation to award criterion No 1.

   The applicant claims in that regard that:

   — the evaluation committee erred in concluding that Agriconsulting did not develop the communication strategy aspect, given that the applicant's technical tender contained six pages in which that aspect is developed at length;

   — the evaluation committee infringed the principle of equal treatment since it assessed that the communication strategy of the applicant's tender under criterion No 1, even though, in the case of the tender submitted by the successful tenderer, the evaluation committee assessed the communication strategy under criterion No 2.

2. Error of assessment of the tender and misinterpretation and misapplication of award criterion No 2.

   The applicant claims in that regard that:

   — the evaluation committee erred in holding that there was an obligation to ensure the presence of a number of permanent staff and that, therefore, in the absence of such, it had to give a negative assessment to the applicant's tender;

   — the evaluation committee failed to assess the external experts' input.

3. Error of assessment of the tender, breach of the rules concerning contracts financed by European resources and breach of the tender rules in relation to award criterion No 3.

   — The applicant claims in that regard that the evaluation committee carried out a fresh assessment of the elements which had been the subject of the assessment in the previous selection stage, breaching, in so doing, the limits and the rules which govern the selection stage and contract award stage.

4. Infringement, in relation to award criterion No 3, of the principle of proportionality and the obligation to use award criteria which are not confused with the tender selection criteria.

   — The applicant claims in that regard that, if award criteria No 3 permits an assessment based on staffing numbers alone, such a criterion would be disproportionate and inadequate with respect to the objective of identifying the most economically advantageous tender and would infringe the obligation to use, for the purpose of the comparative evaluation of the tenders, award criteria which are not confused with the administrative selection criteria for the tender.

5. Infringement, in relation to award criterion No 3, of the principle of the separation of the various stages of a public tendering procedure which provides that the most economically advantageous tender should be awarded the contract.

   — The applicant claims in that regard that the evaluation committee, having used information gathered in the context of the financial evaluation stage of the tender to amend the assessment made at the earlier qualitative evaluation stage of the applicant's tender, infringed the principle of the separation of the various stages of a public tendering procedure which applies the method of awarding the contract to the most economically advantageous tender.

6. Manifest error of assessment of the tender in relation to the award criterion No 3 in so far as it concerns the capability to complete the main tasks.

   — The applicant claims in that regard that, contrary to that set out in the tender specifications, the evaluation committee held that the involvement, however limited, of the team leader and his deputy in supervising and checking the additional tasks would make it impossible to complete the main tasks.

7. Misinterpretation and misapplication of the concept of an abnormally low tender.

   — The applicant claims in that regard that the evaluation committee identified an anomaly by reference only to one part of the tasks (the additional tasks), without however assessing whether that 'anomaly' rendered, de facto, the entirety of the applicant's tender unreliable or inconsistent with respect to the implementation the subject-matter of the contract.

8. Arbitrariness and irrationality of the parameters used when applying the concept of an abnormally low tender, and infringement of the adversarial principle and the principle of equal treatment.

   — The applicant claims in that regard that the evaluation committee adopted arbitrary and unjustified criteria to calculate the degree of abnormality of the applicant's offer, without taking in account the applicant's organisational and commercial capabilities

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 19th September 2013 — ZZ v Commission

(Case F-91/13)

(2013/C 367/70)

Language of the case: English

Parties

Applicant: ZZ (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

The annulment of the Commission's decision requesting the reimbursement of the expatriation allowance and the travel costs perceived by the Applicant during his secondment in Germany, together with the reimbursement of the amount already recovered and the reparation of moral prejudice.

Form of order sought

— Annul the Commission's decision dated 20 December 2012 by which the Applicant was requested to reimburse his expatriation allowance and annual travel costs granted during his secondment in Germany;

— annul the 24 June 2013 Commission's decision rejecting the Applicant's complaint;

— by consequence, reimburse the amount already recovered by the Appointing authority, plus late interest at the European Central Bank rate +2 points;

— in any case, the reparation of the moral prejudice suffered, assessed ex aequo et bono at 5 000 euros;

— order the Defendant to pay all the costs.

Action brought on 23 September 2013 — ZZ v Commission

(Case F-96/13)

(2013/C 367/71)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision to reassign the applicant, with retroactive effect, from the West Bank and Gaza Strip to East Jerusalem delegation to the DG Mobility and Transport, Common Resources Directorate MOVE/ENER in Brussels.

Form of order sought

— The decision signed by the Head of section: Redistribution of staff, career and performance management of 25 January 2013 to reassign the applicant, with retroactive effect to 1 January 2013, to the DG Mobility and Transport, Common Resources Directorate MOVE/ENER at Brussels 1;

— Order the Commission to pay him the symbolic sum of EUR 1 in compensation for both the non-pecuniary harm and the material harm and to pay the costs.

Action brought on 3 October 2013 — ZZ v Parliament

(Case F-98/13)

(2013/C 367/72)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Salerno and B. Cortese, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application for annulment of the decision drawing up the list of officials promoted in 2012 in so far as, firstly, it does not include the name of the applicant among the officials in grade AST 6, not attested, promoted to grade AST 7 and, secondly, it includes the name of another official.

Form of order sought

— Annul the decision of the Appointing Authority drawing up the list officials promoted in 2012 in so far as, firstly, it does not include the name of the applicant among the

officials in grade AST 6, not attested, promoted to grade AST 7 and, secondly, it includes the name of another official;

— Order the Parliament to pay the costs.

Action brought on 4th October 2013 — ZZ v ECB

(Case F-99/13)

(2013/C 367/73)

Language of the case: English

Parties

Applicant: ZZ (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

The annulment of the 2012 appraisal report and of the decisions taken on that basis, plus the granting of damages for the moral prejudice suffered.

Form of order sought

— Annul the Applicant's 2012 appraisal;

— if necessary, annul the decision of 18th April 2013 rejecting the request for an administrative review and of the decision of 23rd July 2013 rejecting the grievance;

— annul any decision taken on the basis of the illegal 2012 appraisal;

— order the Defendant to compensate the moral prejudice suffered evaluated ex aequo et bono at 10 000 €;

— order the Defendant to pay all costs.

Action brought on 7 October 2013 — ZZ v EEAS

(Case F-101/13)

(2013/C 367/74)

Language of the case: French

Parties

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

Defendant: EEAS

Subject-matter and description of the proceedings

Application for annulment of the decision of the appointing authority of 19 December 2012, taking effect on 1 July 2013, no longer to grant the allowance for living conditions provided for in Article 10 of Annex X to the Staff Regulations of Officials employed in the Republic of Mauritius.

Form of order sought

— annul the decision of the appointing authority to abolish from 1 July 2013 all of the applicants' allowances for living conditions under Article 10 of Annex X to the Staff Regulations;

— order the EEAS to pay the costs.

Action brought on 14th October 2013 — ZZ v EMA

(Case F-103/13)

(2013/C 367/75)

Language of the case: English

Parties

Applicant: ZZ (represented by: S. Rodrigues, A. Blot, lawyers)

Defendant: EMA

Subject-matter and description of the proceedings

The annulment of the appraisal report of the Applicant, covering the period of 15th September 2010 to 16th January 2012.

Form of order sought

— Annul the Applicant's performance evaluation report for the period from 15 September 2010 to 15 September 2012 as finalised on 16 January 2013;

— annul, and so far as necessary, EMA Deputy Executive Director's decision of 2 July 2013, partially rejecting his complaint dated 6 March 2013 against the aforementioned decision;

— order the EMA to pay all the costs incurred by the appellant for the present appeal.

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