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*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
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COURT OF JUSTICE OF THE EUROPEAN UNION

*(2014/C 24/01)***Last publication of the Court of Justice of the European Union in the *Official Journal of the European Union***

OJ C 15, 18.1.2014

Past publications

OJ C 9, 11.1.2014

OJ C 377, 21.12.2013

OJ C 367, 14.12.2013

OJ C 359, 7.12.2013

OJ C 352, 30.11.2013

OJ C 344, 23.11.2013

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Bundessozialgericht (Germany) lodged on 3 October 2013 — Walter Larcher v Deutsche Rentenversicherung Bayern Süd

(Case C-523/13)

(2014/C 24/02)

*Language of the case: German***Referring court**

Bundessozialgericht

Parties to the main proceedings*Applicant:* Walter Larcher*Defendant:* Deutsche Rentenversicherung Bayern Süd**Questions referred**

1. Does the principle of equality laid down in Article 39(2) EC (now Article 45(2) TFEU) and Article 3(1) of Regulation (EEC) No 1408/71 ⁽¹⁾ preclude a national provision under which it is a condition of entitlement to an old-age pension following part-time work for older employees that the part-time work for older employees was pursued under the legislation of that Member State, and not of another Member State?
2. If so, what requirements does the principle of equal treatment in Article 39(2) EC (now Article 45(2) TFEU) and Article 3(1) of Regulation (EEC) No 1408/71 impose on the assimilation of part-time work for older employees completed under the legislation of the other Member State as a condition of entitlement to a national old-age pension:
 - (a) Is a comparative examination of the conditions for part-time work for older employees needed?
 - (b) If so, is it sufficient that the part-time work for older employees in both Member States is essentially the same in content, in terms of its functioning and structure?

- (c) Or must the conditions for part-time work for older employees in both Member States be identical in content?

⁽¹⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2).

Request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción nº 2 de Marchena (Spain) lodged on 24 October 2013 — Caixabank SA v Francisco Javier Brenes Jiménez and Andrea Jiménez Jiménez

(Case C-548/13)

(2014/C 24/03)

*Language of the case: Spanish***Referring court**

Juzgado de Primera Instancia e Instrucción nº 2 de Marchena

Parties to the main proceedings*Applicant:* Caixabank SA*Defendants:* Francisco Javier Brenes Jiménez and Andrea Jiménez Jiménez**Questions referred**

1. Under Council Directive 93/13/EEC ⁽¹⁾ of 5 April 1993 on unfair terms in consumer contracts, and in particular Article 6(1) thereof, and in order to ensure the protection of consumers and users in accordance with the principles of equivalence and effectiveness, must a national court, when it finds there to be an unfair default-interest clause in mortgage loans, declare the clause void and not binding or, on the contrary, must it moderate the interest clause, referring the matter back to the party seeking enforcement or lender for recalculation of the interest?

2. Is the Second Transitional Provision of Law 1/2013 of 14 May 2013 nothing more than a clear limitation on the protection of consumer interests, by implicitly imposing upon the court the obligation to moderate a default-interest clause which is tainted by unfairness, recalculating the stipulated interest and maintaining in force a stipulation which was unfair, instead of declaring the clause to be void and not binding upon the consumer?
3. Does the Second Transitional Provision of Law 1/2013 of 14 May 2013 contravene Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and in particular Article 6(1) thereof, by preventing application of the principles of equivalence and effectiveness in relation to consumer protection and avoiding application of the penalty of nullity and lack of binding force in respect of default-interest clauses tainted by unfairness and stipulated in mortgage loans entered into prior to the entry into force of Law 1/2013 of 14 May 2013?

⁽¹⁾ OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Vergabekammer Arnsberg (Germany) lodged on 22 October 2013 — Bundesdruckerei GmbH v Stadt Dortmund

(Case C-549/13)

(2014/C 24/04)

Language of the case: German

Referring court

Vergabekammer Arnsberg

Parties to the main proceedings

Applicant: Bundesdruckerei GmbH

Defendant: Stadt Dortmund

Question referred

Do Article 56 TFEU and Article 3(1) of Directive 96/71/EC ⁽¹⁾ preclude national legislation and/or a procurement condition of a public contracting authority according to which a tenderer who wants to obtain a or the advertised public contract must (1) undertake to pay the staff appointed to carry out the contract a standard or minimum wage fixed in the legislation, and (2) impose the same obligation on an appointed or prospective subcontractor and submit a corresponding undertaking of the subcontractor to the contracting authority, where (a) the legislation provides for such an obligation only for the procurement of public contracts but not also for the award

of private contracts, and (b) the subcontractor is resident in another EU Member State and the employees of the subcontractor carry out the services covered by the contract exclusively in the subcontractor's home country?

⁽¹⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1).

Request for a preliminary ruling from the Juzgado Contencioso-Administrativo nº 6 de Bilbao (Spain) lodged on 25 October 2013 — Grupo Hospitalario Quirón S.A. v Departamento de Sanidad del Gobierno Vasco

(Case C-552/13)

(2014/C 24/05)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo nº 6 de Bilbao

Parties to the main proceedings

Applicant: Grupo Hospitalario Quirón S.A.

Defendant: Departamento de Sanidad del Gobierno Vasco

Co-defendant: Instituto de Religiosas Siervas de Jesús de la Caridad

Question referred

Is the requirement, included in public contracts for the management of public health-care services, that the provision of health services which is the subject-matter of such contracts be carried out ONLY in a determined municipality, which is not necessarily the municipality in which the patients reside, compatible with European Union law?

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 28 October 2013 — UAB 'Litaksa' v 'BTA Insurance Company' SE

(Case C-556/13)

(2014/C 24/06)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Applicant: UAB 'Litaksa'

Defendant: 'BTA Insurance Company' SE

Defendant and appellant on a point of law: Finanzamt Ulm

Other party: Bundesministerium der Finanzen (Federal Ministry of Finance)

Questions referred

1. Is Article 2 of Directive 90/232/EEC, ⁽¹⁾ as amended by Article 4 of Directive 2005/14/EC, ⁽²⁾ to be interpreted as meaning that the parties to an insurance contract do not have the right to agree on a territorial restriction of the insurance cover for the person insured (to apply a different insurance premium depending on the territory in which the vehicle is used — either in the whole of the European Union or only in the Republic of Lithuania), but in any event without the cover of victims being restricted, that is to say, to define use of the vehicle outside the Republic of Lithuania in another Member State of the European Union as a factor increasing the insurance risk, in which event an additional insurance premium has to be paid?
2. Are the principle of the free movement of persons and vehicles in the entire area of the European Union and the general European Union principle of equality (non-discrimination) to be interpreted as being contravened by the aforementioned agreement of the parties to an insurance contract, whereby the insurance risk is linked to the territorial use of the vehicle?

⁽¹⁾ 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).

⁽²⁾ Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (OJ 2005 L 149, p. 14).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 30 October 2013 — Finanzamt Ulm v Ingeborg Wagner-Raith as successor in title to Mrs Maria Schweier

(Case C-560/13)

(2014/C 24/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant and respondent on a point of law: Ingeborg Wagner-Raith as successor in title to Mrs Maria Schweier

Questions referred

1. In the case of holdings in third-country funds, does the free movement of capital provided for in Article 73b TEC (since 1 May 1999, Article 56 EC) ⁽¹⁾ not preclude national legislation (in this instance Paragraph 18(3) of the AuslInvestmG (Law on Foreign Investments)) which provides that, in certain circumstances, national investors in foreign investment funds are deemed to have received, in addition to distributions, notional earnings in the amount of 90 % of the difference between the first and the last redemption price of the year, but of at least 10 % of the final redemption price (or of the stock exchange or market value), because that legislation, which has remained essentially unchanged since 31 December 1993, is concerned with the provision of financial services within the meaning of the rule on the protection of established rights contained in Article 73c(1) TEC (since 1 May 1999, Article 57(1) EC) ⁽²⁾?

If the answer to Question 1 is in the negative:

2. Does the holding in such an investment fund established in a third country always constitute a direct investment within the meaning of Article 73c(1) TEC (since 1 May 1999, Article 57(1) EC) or is the answer to this question dependent on whether, under the national law of the State in which the investment fund is established or on other grounds, the holding allows the investor to be actually involved in the management or control of the investment fund?

⁽¹⁾ Article 63 TFEU.

⁽²⁾ Article 64 TFEU.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 30 October 2013 — UPC DTH S.à.r.l. v Nemzeti Média- és Hírközlési Hatóság Elnöke

(Case C-563/13)

(2014/C 24/08)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: UPC DTH S.à.r.l.

Defendant: Nemzeti Média- és Hírközlési Hatóság Elnöke

Questions referred

1. May Article 2(c) of the Framework Directive, that is to say, Directive 2002/21/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002, as amended by Directive 2009/140/EC ⁽²⁾ of the European Parliament and of the Council of 25 November 2009, be interpreted as meaning that a service by which a service provider supplies, for consideration, conditional access to a package of programmes which contains radio and television broadcast services and is retransmitted by satellite is to be classified as an electronic communications service?
2. May the Treaty on the Functioning of the European Union be interpreted as meaning that the principle of the free movement of services is applicable to the service described in the first question, in the case of a service supplied from Luxembourg to Hungary?
3. May the Treaty on the Functioning of the European Union be interpreted as meaning that, in the case of the service described in the first question, the country of destination, to which the service is sent, is entitled to limit the supply of that type of services by requiring that the [supplier of the] service has to be registered in that Member State and has to be established as a branch or independent legal entity, and allowing this type of services to be supplied only through the establishment of a branch or independent legal entity?
4. May the Treaty on the Functioning of the European Union be interpreted as meaning that administrative proceedings relating to the services described in the first question, regardless of the Member State in which the undertaking supplying that service operates or is registered, will be subject to the administrative authority of the Member State which has jurisdiction on the basis of the place in which the service is supplied?
5. May Article 2(c) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 (Framework Directive) be interpreted as meaning that the service described in the first question must be classified as an electronic communications service, or must such a service be classified as a conditional access service supplied using the conditional access system defined in Article 2(f) of the Framework Directive?

6. On the basis of all the foregoing, may the relevant provisions be interpreted as meaning that the service provider described in the first question must be classified as a provider of electronic communications services pursuant to European Community law?

⁽¹⁾ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33).

⁽²⁾ Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Text with EEA relevance) (OJ 2009 L 337, p. 37).

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 6 November 2013 — Karoline Gruber

(Case C-570/13)

(2014/C 24/09)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Karoline Gruber

Defendant: Unabhängiger Verwaltungssenat für Kärnten

Mitbeteiligte Partei: EMA Beratungs- und Handels GmbH

Weitere Partei: Bundesminister für Wirtschaft, Familie und Jugend

Questions referred

1. Does European Union law, in particular Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (Directive 2011/92), ⁽¹⁾ in particular Article 11 thereof, preclude a provision of national law under which a decision finding that a particular project does not require an environmental impact assessment is also binding

on neighbours who did not have the status of parties in the previous proceedings for a declaratory decision and can be relied on as against them in subsequent development consent proceedings even though they have the opportunity to raise their objections to the project in those consent proceedings (the objection in the main proceedings being that the effects of the project will pose a risk to the appellant's life, health or property or represent an unreasonable nuisance to her in the form of smell, noise, smoke, dust, vibration or otherwise)?

If Question 1 is answered in the affirmative:

- Does European Union law, in particular Directive 2011/92, if applied directly, require that the binding effect referred to in Question 1 be invalidated?

(¹) OJ 2012 L 26, p. 1.

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 7 November 2013 — Annegret Weitkämper-Krug v NRW Bank, an institution governed by public-law

(Case C-571/13)

(2014/C 24/10)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Annegret Weitkämper-Krug

Defendant: NRW Bank, an institution governed by public-law

Question referred

- Is Article 27(1) of Council Regulation (EC) No 44/2001 (¹) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) to be interpreted as meaning that the court other than the court first seised, which has exclusive jurisdiction pursuant to Article 22 of Regulation 44/2001, must nevertheless stay its proceedings until such time as the jurisdiction of the court first seised, which does not have exclusive jurisdiction pursuant to Article 22 of Regulation No 44/2001, is definitively established?

(¹) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium) lodged on 8 November 2013 — Hewlett-Packard Belgium SPRL v Reprobel SCRL

(Case C-572/13)

(2014/C 24/11)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Hewlett-Packard Belgium SPRL

Defendant: Reprobel SCRL

Questions referred

- Must the term 'fair compensation' contained in Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 (¹) be interpreted differently depending on whether the reproduction on paper or a similar medium effected by the use of any kind of photographic technique or by some other process having similar effects is carried out by any user or by a natural person for private use and for ends that are neither directly nor indirectly commercial? If the answer is in the affirmative, on what criteria must that difference of interpretation be based?
- Must Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 be interpreted as authorising the Member States to fix the fair compensation payable to rightholders in the form of:
 - a lump-sum remunerative payment made by the manufacturer, importer or intra-Community acquirer of devices enabling protected works to be copied, at the time when such devices are put into circulation on national territory, the amount of which is calculated solely by reference to the speed at which the copier is capable of producing a number of copies per minute, without being otherwise linked to any harm suffered by rightholders;
 - and,
 - a proportional remunerative payment, determined solely by means of a unit price multiplied by the number of copies produced, which varies depending on whether or not the person liable for payment has cooperated in the collection of that remuneration, which is payable by natural or legal persons making copies of works or, as the case may be, in lieu of those persons, by those who, for consideration or free of charge, make a reproduction device available to others.

If the reply to this question is in the negative, what are the relevant and consistent criteria that the Member States must apply in order to ensure that, in accordance with European Union law, the compensation may be regarded as fair and that a fair balance is maintained between the persons concerned?

3. Must Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 be interpreted as authorising the Member States to allocate half of the fair compensation due to rightholders to the publishers of works created by authors, the publishers being under no obligation whatsoever to ensure that the authors benefit, even indirectly, from some of the compensation of which they have been deprived?
4. Must Article 5(2)(a) and Article 5(2)(b) of Directive 2001/29 be interpreted as authorising the Member States to introduce an undifferentiated system for recovering the fair compensation due to rightholders in the form of a lump-sum and an amount for each copy made, which, implicitly but indisputably, covers in part the copying of sheet music and counterfeit reproductions?

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

Action brought on 14 November 2013 — European Commission v Kingdom of Spain

(Case C-576/13)

(2014/C 24/12)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Nicolae and S. Pardo Quintillán, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare, pursuant to the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, that, by requiring, as a general rule, cargo handling undertakings operating in Spanish ports of general interest to participate in a SAGEP (Sociedad Anónima de Gestión de Estibadores Portuarios, a public limited company for the management of port cargo handlers) and in any event by not permitting them to have recourse to the market, for the purposes of recruiting their own personnel, whether on a permanent or temporary basis, unless the workers put forward by the SAGEP are unsuitable or insufficient, the Kingdom of Spain has failed to fulfil its obligations under Article 49 of the Treaty on the Functioning of the European Union;

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The action brought by the European Commission against the Kingdom of Spain concerns the body of rules established by the Law on State Ports and the Merchant Navy in relation to cargo handling undertakings, with regard to the management of the workers involved in port cargo handling services.

The Commission takes the view that those rules — by requiring, as a general rule, cargo handling undertakings operating in Spanish ports of general interest to participate in a SAGEP and in any event by not permitting them to have recourse to the market, for the purposes of recruiting their own personnel, whether on a permanent or temporary basis, unless the workers put forward by the SAGEP are unsuitable or insufficient — are contrary to the Kingdom of Spain's obligations under Article 49 of the Treaty on the Functioning of the European Union on freedom of establishment.

Request for a preliminary ruling from the Landgericht Kiel (Germany) lodged on 15 November 2013 — Hans-Jürgen Kickler and Others v Hellenic Republic

(Case C-578/13)

(2014/C 24/13)

Language of the case: German

Referring court

Landgericht Kiel

Parties to the main proceedings

Applicants: Hans-Jürgen Kickler, Walter Wöhlk, Zahnärztekammer Schleswig-Holstein Versorgungswerk

Defendant: Hellenic Republic

Questions referred

1. Is Article 1 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ('the Regulation') (¹) to be interpreted as meaning that an action by which the person acquiring government bonds of the defendant makes payment claims against the defendant in the form of claims for performance and damages is to be regarded as a 'civil or commercial matter', within the meaning of the first sentence of Article 1(1) of the Regulation, in the case where the acquirer did not accept the exchange offer made by the defendant at the end of February 2012, which was made possible by Greek Law No 4050/2012 ('Greek-Bondholder-Act')?

2. Does an action which is essentially based on the ineffectiveness or invalidity of the aforementioned Greek-Bondholder-Act concern the liability of a State for actions or omissions in the exercise of State authority, within the meaning of the second sentence of Article 1(1) of the Regulation?

(¹) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ 2007 L 324, p. 79).

Request for a preliminary ruling from the Centrale Raad van Beroep (Nederland) lodged on 15 November 2013 — P v Commissie Sociale Zekerheid Breda, S v College van Burgemeester en Wethouders van de gemeente Amstelveen

(Case C-579/13)

(2014/C 24/14)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: P

Defendant: Commissie Sociale Zekerheid Breda

&

Applicant: S

Defendant: College van Burgemeester en Wethouders van de gemeente Amstelveen

Questions referred

1. Must the aim and scope of Directive 2003/109/EC, (¹) or of Article 5(2) and/or of Article 11(1) thereof, be interpreted as meaning that the imposition of the civic integration obligation, under national law, on third-country nationals who have acquired long-term resident status, with penalties in the form of a system of fines, cannot be reconciled therewith?
2. In answering the first question, is it relevant whether the civic integration obligation was imposed before long-term resident status was granted?

(¹) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

Appeal brought on 15 November 2013 by Intra-Press against the judgment of the General Court (First Chamber) delivered on 16 September 2013 in Case T-448/11: Golden Balls Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-581/13 P)

(2014/C 24/15)

Language of the case: English

Parties

Appellant: Intra-Press (represented by: P. Péters, advocaat, T. de Haan, avocat, M. Laborde, avocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs); Golden Balls Ltd

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the General Court of the European Court of 16 September 2013 in Case T-448/11;

— refer the case back to the General Court of the European Union to rule on the action brought by Intra-Press under Article 8(5) of Regulation No 207/2009 (¹);

— order that the costs be reserved.

Pleas in law and main arguments

Appellant submits that the contested judgment should be annulled on the following grounds.

Firstly, the General Court infringed Article 8(1)(b) CTMR in defining the relevant public, in assessing the degree of conceptual similarity between marks by adding a requirement of ‘intellectual process of translation’, ‘begin by translating’ or ‘prior translation’, and in omitting to take the reputation of the earlier mark for services in Class 41 into account. Secondly, the General Court infringed Article 8(5) CTMR by failing to carry out a global assessment and omitting to examine the relevance of the reputation of Appellant’s earlier mark and the existence of a possible link.

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

Appeal brought on 15 November 2013 by Intra-Press against the judgment of the General Court (First Chamber) delivered on 16 September 2013 in Case T-437/11: Golden Balls Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-582/13 P)

(2014/C 24/16)

Language of the case: English

Parties

Appellant: Intra-Press (represented by: P. Péters, advocaat, T. de Haan, avocat, M. Laborde, avocate)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs); Golden Balls Ltd

Form of order sought

The appellant claims that the Court should:

- annul the judgment of the General Court of the European Court of 16 September 2013 in Case T-437/11;
- refer the case back to the General Court of the European Union to rule on the action brought by Intra-Press under Article 8(5) of Regulation No 207/2009 ⁽¹⁾;
- order that the costs be reserved.

Pleas in law and main arguments

Appellant submits that the contested judgment should be annulled on the following grounds.

Firstly, the General Court infringed Article 8(1)(b) CTMR in defining the relevant public and in assessing the degree of conceptual similarity between marks by adding a requirement of 'intellectual process of translation', 'begin by translating' or 'prior translation'. Secondly, the General Court infringed Article 8(5) CTMR by failing to carry out a global assessment and omitting to examine the relevance of the reputation of Appellant's earlier mark and the existence of a possible link.

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

Appeal brought on 15 November 2013 by Deutsche Bahn and Others against the judgment of the General Court (Fourth Chamber) delivered on 6 September 2013 in Joined Cases T-289/11, T-290/11 and T-521/11 Deutsche Bahn and Others v European Commission

(Case C-583/13 P)

(2014/C 24/17)

Language of the case: German

Parties

Appellants: Deutsche Bahn AG, DB Mobility Logistics AG, DB Energie GmbH, DB Netz AG, DB Schenker Rail GmbH, DB Schenker Rail Deutschland AG, Deutsche Umschlaggesellschaft Schiene-Straße mbH (DUSS) (represented by: W. Deselaers, E. Venot, J. Brückner, lawyers)

Other parties to the proceedings: European Commission, Kingdom of Spain, European Council, EFTA Surveillance Authority

Form of order sought

The appellants claim that the Court should:

- set aside the judgment of the General Court of 6 September 2013 in Joined Cases T-289/11, T-290/11 and T-521/11;
- annul the Commission's decisions C(2011) 1774 of 14 March 2011, C(2011) 2365 of 30 March 2011 and C(2011) 5230 of 14 July 2011, which ordered investigations of Deutschen Bahn AG and all of its subsidiaries (Cases COMP/39.678 and COMP/39.731) pursuant to Article 20(4) of Council Regulation (EC) No. 1/2003;
- order the Commission to pay the costs of the proceedings at first instance and of the appeal.

Pleas in law and main arguments

The appellants base their appeal on four grounds of appeal:

First, the General Court has misinterpreted and misapplied the fundamental right to inviolability of one's premises and the settled case-law of the European Court of Human Rights. Specifically in the context of the scope of the infringement of that fundamental right and the risk of irreparable harm, it is disproportionate for the Commission, which also acts as the investigative authority and has broad discretion, carries out investigations without prior authorisation from a court.

Second, the General Court has misinterpreted and misapplied the fundamental right to effective judicial review. Mere ex post judicial review does not offer the undertakings concerned effective judicial review of Commission investigations.

Third, the General Court has incorrectly categorised the documents relating to alleged infringements of competition law as being chance discoveries, which were obtained in the context of the investigation outside of the scope of the inquiry, although those documents were subject to a prohibition on use. The Commission's agents had been informed before the start of that investigation of suspicions concerning an area outside of the subject-matter of the investigation. Thereby the Commission artificially created the chance and unlawfully potentially broadened the exception to chance discoveries established by the Court of Justice⁽¹⁾ which must be interpreted restrictively.

Finally, the General Court misapplied the rules on the burden of proof. It appears to be logical or at the least it cannot be excluded that certain documents were obtained as apparent 'chance discoveries' only because of prior unlawful information from Commission agents, that is, concerning an area outside of the subject-matter of the investigation. Since it is impossible for the appellants to establish the proof of such causality and since that circumstance is not imputable to them, a reversal of the burden of proof whereby it is for the Commission to adduce the evidence that those documents were in fact the result of a chance discovery should be required.

⁽¹⁾ Judgment of the Court in Case 85/87 *Dow Benelux v Commission* [1989] ECR-3137.

Appeal brought on 20 November 2013 by Telefónica S.A. against the order of the General Court (Eighth Chamber) delivered on 9 September 2013 in Case T-430/11 Telefónica v Commission

(Case C-588/13 P)

(2014/C 24/18)

Language of the case: Spanish

Parties

Appellant: Telefónica S.A. (represented by: J. Ruiz Calzado, M. Núñez Müller and J. Domínguez Pérez, abogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- set aside the order under appeal;
- declare the action for annulment in Case T-430/11 admissible and refer the case back to the General Court for it to give judgment on the substance of the dispute;
- order the Commission to pay all the costs of the proceedings relating to admissibility at both instances.

Pleas in law and main arguments

1. The General Court erred in law in interpreting the last phrase of the fourth paragraph of Article 263 TFEU. The General Court errs in law in stating that decisions regarding State aid schemes, such as the contested decision, require implementing measures within the meaning of the new Treaty provision.
2. The General Court infringed European Union law in interpreting the case-law on the concept of 'actual beneficiary' for the purposes of examining the admissibility of actions brought against decisions declaring an aid scheme unlawful and incompatible. In particular,
 - the General Court wrongly interpreted the case-law on the concept of 'actual beneficiary' and distorted the facts in applying it to the transactions carried out by the applicant after 21 December 2007;
 - the General Court also erred in law as regards the transactions before 21 December 2007 in interpreting the concept of 'actual beneficiary' as developed in the case-law.
3. The General Court erred in law in adopting a decision that infringes the right to effective judicial protection. The contested order upholds a merely theoretical notion of that right, which prevents the applicant from having proper access, and without needing to resort to infringing the law, to the preliminary reference procedure in order to call in question the contested decision.

Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 20 November 2013 — Idexx Laboratoires Italia srl v Agenzia delle Entrate

(Case C-590/13)

(2014/C 24/19)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Idexx Laboratoires Italia srl

Defendant: Agenzia delle Entrate

Questions referred

1. Are the principles established by the Court of Justice of the European Union (CJEU) in its judgment in Joined Cases C-95/07 and C-96/07 [*Ecotrade spa v Agenzia delle Entrate* [2008] ECR I-3457] — to the effect that Article 18(1)(d) and Article 22 of Sixth Directive 77/388, ⁽¹⁾ as amended by Directive 91/680/EEC ⁽²⁾ on the harmonisation of the laws of the Member States relating to turnover taxes, preclude a practice whereby declarations are reassessed and value added tax recovered which penalises a failure to comply with, first, the formal requirements laid down by national law in implementation of Article 18(1)(d) and, second, obligations relating to accounts and tax returns under Article 22(2) and (4) respectively, by denying the right to deduct where the reverse charge procedure applies — also applicable in the case of total failure to comply with the obligations laid down by national law where there is, however, no doubt as to the status of a person as a person liable for payment of the tax or that person's right to deduct?
2. Do the expressions 'obblighi sostanziali', 'substantive requirements' and 'exigences de fond' used by the CJEU in the various language versions of the judgment delivered on 8 May 2008 in Joined Cases C-95/07 and C-96/07 refer, with regard to situations entailing reverse charge VAT, to the requirement to pay VAT or the requirement of assumption of liability for the tax, or to the existence of substantive conditions which justify the imposition of VAT on the taxable person and govern the right to deduct, which is intended to safeguard the principle of VAT neutrality and of a single European system — for example, the presumption that there is an inherent connection between the goods purchased and the business carried on ('inerenza'), whether VAT may be charged and whether it is totally deductible?

⁽¹⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes— Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

⁽²⁾ Council Directive 91/680/EEC of 16 December 1991 supplementing the common system of value added tax and amending Directive 77/388/EEC with a view to the abolition of fiscal frontiers (OJ 1991 L 376, p. 1).

Action brought on 20 November 2013 — European Commission v Federal Republic of Germany

(Case C-591/13)

(2014/C 24/20)

Language of the case: German

Parties

Applicant: European Commission (represented by: W. Mölls, W. Roels, acting as Agents)

Defendant: Federal Republic of Germany

Forms of order sought

The applicant claims that the Court should:

- declare that, by adopting and retaining provisions under which the tax on hidden reserves, which have been realised upon the sale for consideration of certain capital assets, is deferred by 'transfer' to newly purchased or produced capital assets until their sale, in so far as the latter assets belong to the capital assets of a taxpayer's domestic permanent establishment, whereas such a deferral is not possible in so far as the same assets belong to the capital assets of a taxpayer's permanent establishment which is located in another Member State or in another State of the European Economic Area, the Federal Republic of Germany has failed to fulfil its obligations under Article 49 TFEU and Article 31 of the EEA Agreement ⁽¹⁾;
- order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

Under the German provisions, the resulting profit on the sale of certain capital assets of a business is not immediately taxed where the taxpayer goes on to purchase anew or produce certain capital assets of the business within a certain time period. In that case, the taxation of the aforementioned profit from the sale of the original assets is deferred by way of a 'transfer' of the corresponding hidden reserves until the sale of the newly purchased or produced assets. That deferral can, however, be granted only where the newly purchased or produced assets belong to the capital assets of a domestic permanent establishment, and not, however, where the permanent establishment concerned is located in another Member State or in another State of the European Economic Area. According to the Commission, that rule infringes the freedom of establishment.

⁽¹⁾ Agreement of 2 May 1992 on the European Economic Area, OJ 1994 L 1, p. 3.

Request for a preliminary ruling from the Curtea de Apel Suceava (Romania) lodged on 22 November 2013 — Casa Judeţeană de Pensii Botoşani v Polixeni Guletsou

(Case C-598/13)

(2014/C 24/21)

Language of the case: Romanian

Referring court

Curtea de Apel Suceava

Parties to the main proceedings

Applicant: Casa Județeană de Pensii Botoșani

Defendant: Polixeni Guletsou

Question referred

Is Article 7(2)(c) of Regulation (EEC) No 1408/71 ⁽¹⁾ to be interpreted as including within its scope a bilateral agreement which two Member States entered into before the date on which that regulation became applicable and by which those States agreed to the termination of obligations relating to social security benefits owed by one State to nationals of the other State who had been political refugees in the territory of the first State and who have been repatriated to the territory of the second State, in exchange for a payment by the first State of a lump sum for the payment of pensions and to cover periods during which social security contributions were paid in the first Member State?

⁽¹⁾ Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 22 November 2013 — Somalische Vereniging Amsterdam en Omgeving (Somvao); other party: Staatssecretaris van Veiligheid en Justitie

(Case C-599/13)

(2014/C 24/22)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Somalische Vereniging Amsterdam en Omgeving (Somvao)

Other party: Staatssecretaris van Veiligheid en Justitie

Questions referred

1. Does Article 4 of Council Regulation (EC, Euratom) No 2988/95 ⁽¹⁾ of 18 December 1995 on the protection of the European Communities' financial interests or Article 53b(2)(c) of Council Regulation (EC, Euratom) No 1605/2002 ⁽²⁾ of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Council Regulation (EC, Euratom) No 1995/2006 ⁽³⁾ of 13 December 2006, provide national authorities with a legal basis on which they may alter, to

the detriment of a grant recipient, and seek to recover from that recipient a grant already determined and provided from the European Refugee Fund?

2. Does Article 25(2) of Council Decision 2004/904/EC ⁽⁴⁾ of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010 constitute a legal basis on which national authorities may alter, to the detriment of a grant recipient, and seek to recover from that recipient a grant already determined and provided from the European Refugee Fund, without there being any need for authority to do so under national law?

⁽¹⁾ OJ 1995 L 312, p. 1.

⁽²⁾ OJ 2002 L 248, p. 1.

⁽³⁾ OJ 2006 L 390, p. 1.

⁽⁴⁾ OJ 2004 L 381, p. 52.

Appeal brought on 22 November 2013 by Galp Energia España, SA, Petróleos de Portugal (Petrogal), SA, Galp Energia, SGPS, SA against the judgment of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-462/07: Galp Energia España, SA, Petróleos de Portugal (Petrogal), SA, Galp Energia, SGPS, SA v European Commission

(Case C-603/13 P)

(2014/C 24/23)

Language of the case: English

Parties

Appellants: Galp Energia España, SA, Petróleos de Portugal (Petrogal), SA, Galp Energia, SGPS, SA (represented by: M. Slotboom, advocaat)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the Judgment in accordance with the pleas in law put forward by this appeal, and/or to annul Articles 1, 2 and 3 of the Decision in so far as it relates to the applicants, and/or to set aside Article 2 of the Decision to the extent a fine has been imposed on the applicants or to reduce the fine that has been imposed on the applicants in Article 2 of the Decision,
- set aside the Judgment and refer the case back to the General Court for a ruling on the merits in the light of guidance provided by the Court of Justice;
- order the Commission to pay the costs of the present proceedings.

Pleas in law and main arguments

The appellant submits that the contested judgment should be set aside on the following grounds:

The General Court misapplied Article 81(1) EC, distorted evidence, failed to comply with the procedural rules regarding assessment of evidence and disregarded the general principle of the presumption of innocence guaranteed by Article 48 of the Charter of Fundamental Rights by determining that the Commission cannot be regarded as having found unlawfully that the parties participated in price coordination 'until 2002'. Moreover, the General Court failed to give sufficient grounds for that determination.

The General Court misapplied Article 81(1) EC, distorted evidence and failed to comply with the procedural rules regarding the assessment of evidence, including infringement of the principle of 'ne ultra petita', infringement of the right to a fair trial and the right of defence (the right to be heard) by finding that the parties can be held liable in respect of the monitoring system and the compensation mechanism and that therefore there is no need to vary the starting amount of the fine.

The General Court infringed the parties' fundamental right to have their case heard within a reasonable time.

Appeal brought on 25 November 2013 by Aloys F. Dornbracht GmbH & Co. KG against the judgment delivered by the General Court (Fourth Chamber) on 16 September 2013 in Case T-386/10 Aloys F. Dornbracht GmbH & Co. KG v European Commission

(Case C-604/13 P)

(2014/C 24/24)

Language of the case: German

Parties

Appellant: Aloys F. Dornbracht GmbH & Co. KG (represented by: H. Janssen and T. Kapp, Rechtsanwälte)

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

Form of order sought

The appellant claims that the Court should:

- set aside, in its entirety, the judgment of the General Court (Fourth Chamber) of 16 September 2013 in Case T-386/10, and annul Commission Decision C(2010) 4185 final of 23 June 2010 in Case COMP/39.092 — Bathroom fittings and fixtures in so far as it concerns the appellant;
- in the alternative, reduce as appropriate the fine imposed on the appellant in the contested decision;
- order the respondent to pay the costs.

Grounds of appeal and main arguments

The appellant bases its appeal on the following grounds:

First, the General Court infringed Article 23(3) of Regulation No 1/2003⁽¹⁾, the principle of certainty, the principle of equal treatment and the principle of proportionality in interpreting Article 23(2), second sentence, of Regulation No 1/2003 as a ceiling, thereby finding that the Commission did not erroneously determine the amount of the fine and putting itself in a position in which it was not able to reduce the fine as appropriate.

Second, the General Court infringed Article 23(3) of Regulation No 1/2003, since it failed to have regard to the unlawful nature of the 2006 Guidelines in that account should not be taken of the duration and impact of infringements committed by 'single-product' undertakings.

Third, the General Court failed to recognise that the respondent should have exercised its discretion under Number 37 of the 2006 Guidelines so as to apply a fine under the 10 % ceiling to 'single-product' undertakings.

Moreover, the General Court infringed the principle of non-retroactivity by approving the use by the Commission of the 2006 Guidelines to calculate the fine.

Furthermore, the General Court erroneously calculated the amount of the fine imposed on the appellant, namely in relation to the geographical extent, the participation in only one of the three product groups and the appellant's secondary role.

Lastly, the General Court infringed the principle that proceedings must be conducted within a reasonable time.

⁽¹⁾ OJ 2003 L 1, p. 1.

Appeal brought on 25 November 2013 by Compañía Española de Petróleos (CEPSA), S.A. against the judgment delivered on 16 September 2013 in Case T-497/07 CEPSA v Commission

(Case C-608/13 P)

(2014/C 24/25)

Language of the case: Spanish

Parties

Appellant: Compañía Española de Petróleos (CEPSA), S.A. (represented by: O. Armengol i Gasull and J.M. Rodríguez Cárcamo, abogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- uphold the appeal and itself give a final judgment in the case, without referring the case back to the General Court;
- set aside the contested judgment insofar as paragraph 1 of the operative part dismisses CEPESA's action for annulment and paragraph 3 of the operative part orders CEPESA to pay the costs, uphold paragraph 2 of the operative part, rejecting the Commission's claims and, accordingly, amend Decision C(2007)4441 final of 3 October 2007 relating to a proceeding under Article 81 [EC] (Case COMP/38.710 — Bitumen Spain), reducing the amount of the fine to the extent that the Court of Justice considers appropriate; and
- order the European Commission to pay the costs.

Pleas in law and main arguments

1. **Error of law** (Second paragraph of Article 263 TFEU, in relation to Article 3 of Regulation No 1⁽¹⁾ determining the languages to be used by the European Economic Community). In the appellant's view, infringement of the rules governing languages in the statement of objections in a competition proceeding is an infringement of an essential procedural requirement that must entail the annulment of the decision ultimately made in that proceeding, even if that infringement does not affect the undertaking's rights of the defence. Since the General Court did not annul the contested decision in the judgment under appeal, as the appellant had claimed it should, it infringed the second paragraph of Article 263 TFEU, in relation to Article 3 of Regulation No 1 determining the languages to be used by the European Economic Community.
2. **Serious distortion of the facts** in that it is stated in the judgment that the appellant freely accepted that the statement of objections be notified to it in a language not its own, and that the communication of the statement of the objections in that language did not affect its rights of the defence.
3. **Error of law (breach of the principle of proportionality)**. The judgment did not take into account the fact that the activity of production and distribution of penetration bitumen represented a very small percentage of the total turnover of the appellant, considered as a group of companies. The application of the parent company/subsidiary presumption does not preclude the application of the principle of proportionality, as traditionally interpreted by the case law of the Court of Justice (*Parker Pen* case⁽²⁾).
4. **Error of law** (Article 31 of Council Regulation (EC) No 1/2003⁽³⁾ of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and

82 of the Treaty (Regulation 1/2003), in accordance with Article 261 TFEU). The General Court refused to examine whether its delay in delivering the judgment under appeal breached the principle of the observance of a reasonable time-limit, thereby infringing Article 31 of Regulation No 1/2003, pursuant to Article 261 TFEU.

5. **Error of law** (Article 41(1) and the second paragraph of Article 47 of the European Charter of Fundamental Rights⁽⁴⁾). The General Court rejected CEPESA's claim alleging breach of its right to have its case determined within a reasonable time, a right enshrined in Article 41(1) and the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention on Human Rights. The present proceedings have lasted more than 11 years. The proceedings before the Commission lasted 5 years and, in the judicial procedure before the General Court, more than 4 years passed between the end of the written procedure and the opening of the oral procedure.
6. **Error of law** (Article 87(2) of the Rules of Procedure of the General Court). The General Court ordered the appellant to pay all the costs of the action for annulment, despite the fact that the submissions made by the Commission in that action were also rejected in the General Court's judgment. Therefore, the judgment under appeal infringes the rules on costs set out in Article 87(2) of the Rules of Procedure of the General Court.

⁽¹⁾ OJ, English Special Edition 1952-1958, p. 59

⁽²⁾ Case T-77/92 *Parker Pen v Commission* (1994) ECR II-549, paragraphs 94 and 95.

⁽³⁾ OJ 2003, L 1, p. 1.

⁽⁴⁾ OJ 2000, C 364, p. 1.

Appeal brought on 27 November 2013 by Masco Corp., Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hansgrohe Handelsgesellschaft mbH, Hansgrohe SA/NV, Hansgrohe BV, Hansgrohe SARL, Hansgrohe Srl, Hüppe GmbH, Hüppe GmbH, Hüppe Belgium SA (NV), Hüppe BV against the judgment of the General Court (Fourth Chamber) delivered on 16 September 2013 in Case T-378/10: Masco Corp. and Others v European Commission

(Case C-614/13 P)

(2014/C 24/26)

Language of the case: English

Parties

Appellants: Masco Corp., Hansgrohe AG, Hansgrohe Deutschland Vertriebs GmbH, Hansgrohe Handelsgesellschaft mbH, Hansgrohe SA/NV, Hansgrohe BV, Hansgrohe SARL, Hansgrohe Srl, Hüppe GmbH, Hüppe GmbH, Hüppe Belgium SA (NV), Hüppe BV (represented by: D. Schroeder, Rechtsanwalt, S. Heinz, Rechtsanwältin, J. Temple Lang, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the General Court's judgment in Case T-378/10 insofar as it dismisses their request to annul Article 1 of the Commission's decision of 23 June 2010 in Case COMP/39.092 — Bathroom Fittings and Fixtures insofar as it finds that the Appellants have participated in a continuing agreement or concerted practice 'in the bathroom fittings and fixtures sector';
- annul the Commission's decision of 23 June 2010 in Case COMP/39.092 — Bathroom Fittings and Fixtures insofar as it finds that the Appellants have participated in a continuing agreement or concerted practice 'in the bathroom fittings and fixtures sector';
- order the Commission to pay the Appellants' legal and other costs and expenses in relation to this matter; and
- take any other measures that this Court considers appropriate.

Pleas in law and main arguments

The Appeal contains two pleas.

According to the first plea, the General Court erred in law by manifestly distorting the evidence and by misapplying the legal test for finding that the Appellants participated in a single, complex infringement covering ceramics products.

According to the second plea, the General Court erred in law by failing to state adequate reasons for its finding.

Appeal brought on 27 November 2013 by Productos Asfálticos (PROAS), S.A. against the order of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-495/07 PROAS v Commission

(Case C-616/13 P)

(2014/C 24/27)

Language of the case: Spanish

Parties

Appellant: Productos Asfálticos (PROAS), S.A. (represented by: C. Fernández Vicién, abogada)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- declare the appeal admissible and well founded;
- set aside the judgment of the General Court of 16 September 2013;
- grant the application made at first instance and annul the Commission's decision of 3 October 2007 in Case COMP/38.710 — Betún España or, alternatively, reduce the amount of the fine imposed on the applicant;
- or, alternatively, refer the case back to the General Court for the matter to be determined anew;
- order, at all events, the Commission to pay all the costs relating to the present proceedings, and those incurred as a result of the proceedings before the General Court.

Pleas in law and main arguments

1. Breach by the General Court of the principle of effective protection by failing to examine, in the exercise of its unlimited jurisdiction, the pleas in law relied on by Productos Asfálticos, S.A. in relation to the determination of the amount of the penalty. That breach consists of:

- distortion by the General Court of the pleas in law relied on by PROAS in its action for annulment before the General Court;
- lack of an independent analysis by the General Court as to the proportionality of and the statement of reasons for the penalty imposed in relation to the effects of the infringement;
- failure of the General Court to carry out an analysis of observance by the Commission of the principle of equality of treatment and of legal certainty in relation to its earlier decisions;
- failure to carry out an effective analysis in relation to PROAS's specific weight in the infringement and incorrect refusal to grant the procedural measures requested.

2. **Breach by the General Court of the principles of legal certainty and equal treatment, and of PROAS's right to a fair hearing**, as a result of the incorrect interpretation of the guidelines for the calculation of the fines imposed under Article 15(2) of Regulation No 17. ⁽¹⁾

- The General Court has authorised the Commission to infringe its own guidelines by allowing it not to take into account, in determining the fine, the minor effect of the breach.
- The General Court has infringed PROAS's right to a fair hearing in not allowing it to rebut the rebuttable presumption that cartels always have effects.

3. **Breach by the General Court of the principle of sound administration and of the duty to act within a reasonable time.**
4. **Breach by the General Court of the principles relating to costs.**

⁽¹⁾ Council Regulation (EEC) No 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87).

Appeal brought on 27 November 2013 by Repsol Lubricantes y Especialidades and Others against the order of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-496/07 Repsol Lubricantes y Especialidades and Others v Commission

(Case C-617/13 P)

(2014/C 24/28)

Language of the case: Spanish

Parties

Appellants: Repsol Lubricantes y Especialidades, S.A., Repsol Petróleo, S.A. and Repsol, S. A. (represented by: L. Ortiz Blanco, J.L. Buendía Sierra, M. Muñoz de Juan, Á. Givaja Sanz and A. Lamadrid de Pablo, abogados)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. Set aside the judgment under appeal in relation to:
 - the attribution of joint and several liability for the infringement to Repsol Petróleo, S.A. and Repsol YPF, S.A. (currently Repsol, S.A.)
 - the incorrect taking into consideration of the period from 1998 to 2002 for the purposes of calculating the amount of the fine.
 - the incorrect taking into account by the General Court of the basic amount of the fine set by the Commission as a result of that Court's failure to exercise its unlimited jurisdiction and breach of the principle of proportionality.
2. Annul the contested decision to that effect.
3. Reduce, under its unlimited jurisdiction, the amount of the fine in the amount which it considers appropriate.
4. Declare the duration of the judicial proceedings before the General Court excessive and unjustified, in breach of the right to an effective remedy and to a fair hearing within a reasonable time (Article 47 of the Charter and Article 6 of ECHR).
5. Order the Commission to pay the costs.

Pleas in law and main arguments

1. First, Repsol alleges an error in law in relation to the methodology used in the judgment to assess the evidence submitted in support of the full and effective commercial independence of the subsidiary company Repsol Lubricantes y Especialidades, S.A. or, alternatively, a failure to state the reasons.
2. Secondly, Repsol submits that the judgment errs in its interpretation of the leniency notice of 2002.
3. Thirdly, Repsol submits that the judgment infringes Article 261 TFEU and the principle of proportionality, as a result of the General Court's failure to carry out a full review, exercising its unlimited jurisdiction, of the penalties in the field of competition.
4. Finally, Repsol alleges breach by the General Court of Article 47 of the Charter of Fundamental Rights of the European Union ⁽¹⁾ and of Article 6 of the European Convention on Human Rights in failing to dispose of the case within a reasonable time.

⁽¹⁾ OJ 2000, C 364, p. 1

Appeal brought on 27 November 2013 by Castel Frères SAS against the judgment of the General Court (Sixth Chamber) delivered on 13 September 2013 in Case T-320/10: Fürstlich Castell'sches Domänenamt Albrecht Fürst zu Castell-Castell v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-622/13 P)

(2014/C 24/29)

Language of the case: English

Parties

Appellant: Castel Frères SAS (represented by: A. von Mühlendahl, H. Hartwig, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Fürstlich Castell'sches Domänenamt Albrecht Fürst zu Castell-Castell

Form of order sought

The appellant claims that the Court should:

- annul the Judgment of the General Court of 13 September 2013 in Case T-320/10,
- dismiss the application for annulment brought by Fürstlich Castell'sches Domänenamt Albrecht Fürst zu Castell-Castell against the decision of the Second Board of Appeal of OHIM of 4 May 2010 in Case R 962/2009-2,

— order the Office and the Other Party to bear the costs of the proceedings before the General Court and this Court.

Pleas in law and main arguments

The Appellant claims that the General Court committed legal error in rejecting the Appellant's claim that the application to the General Court should have been dismissed as inadmissible because of the 'abus de droit' committed by the Other Party. The Appellant's claim is based on a distortion of the evidence. The claim is also based on a misinterpretation of the role of the abuse of rights in proceedings before European Union institu-

tions. The claim is also based on a failure to give reasons for the decision because the General Court failed to give any reasons for the dismissal of the Appellant's claim.

The Appellant further claims that the General Court violated Article 7 (1) (c) CTMR ⁽¹⁾ in that it applied erroneous legal criteria in determining that the Appellant's mark was improperly registered.

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

GENERAL COURT

Judgment of the General Court of 5 December 2013 — Grebenshikova v OHIM — Volvo Trademark Holding (SOLVO)(Case T-394/10) ⁽¹⁾

(Community trade mark — Opposition proceedings — Application for the Community figurative mark SOLVO — Earlier Community word mark VOLVO — Relative ground for refusal — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 24/30)

Language of the case: English

Parties

Applicant: Elena Grebenshikova (St Petersburg, Russia) (represented by: M. Björkenfeldt, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Volvo Trademark Holding AB (Gothenburg, Sweden) (represented: initially by T. Dolde, V. von Bomhard and A. Renck, lawyers, and subsequently by V. von Bomhard, A. Renck, and I. Fowler, Solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 9 June 2010 (Case R 861/2010-1), relating to opposition proceedings between Volvo Trademark Holding AB and Ms Elena Grebenshikova.

Operative part of the judgment

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 9 June 2010 in Case R 861/2010-1;
2. Orders OHIM to pay, in addition to its own costs, two thirds of the costs incurred by Ms Elena Grebenshikova;
3. Orders Volvo Trademark Holding AB to pay, in addition to its own costs, one third of the costs incurred by Ms Grebenshikova.

⁽¹⁾ OJ C 301, 6.11.2010.

Judgment of the General Court of 4 December 2013 — ETF v Schuerings(Case T-107/11) ⁽¹⁾

(Appeal — Civil service — Temporary staff — Contract of indefinite duration — Decision to terminate — Jurisdiction of the Civil Service Tribunal — Articles 2 and 47 CEOS — Duty of care — Concept of interests of the service — Prohibition on ruling ultra petita — Rights of the defence)

(2014/C 24/31)

Language of the case: French

Parties

Appellant: European Training Foundation (ETF) (represented by: L. Levi, lawyer)

Other party to the proceedings: Gisela Schuerings (represented by: N. Lhoëst, lawyer)

Interveners in support of the appellant: European Commission (represented by: J. Currall and D. Martin, acting as Agents); European Medicines Agency (EMA) (represented: initially by V. Salvatore, and subsequently by T. Jabłoński, acting as Agents); European Environment Agency (EEA) (represented by: O. Cornu, acting as Agent); European Aviation Safety Agency (EASA) (represented by: P. Goudou, acting as Agent); European Union Agency for Network and Information Security (ENISA) (represented by: E. Maurage, acting as Agent); Translation Centre for the Bodies of the European Union (CdT) (represented by: J. Rikkert and M. Garnier, acting as Agents); European Centre for Disease Prevention and Control (ECDC) (represented by: M. Heikkilä, acting as Agent); and European Food Safety Authority (EFSA) (represented by: D. Detken, acting as Agent)

Re:

Appeal against the judgment of the European Union Civil Service Tribunal (Second Chamber) of 9 December 2010 in Case F-87/08 *Schuerings v ETF*, not yet published in the ECR, and seeking that that judgment be set aside.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the European Union Civil Service Tribunal (Second Chamber) of 9 December 2010 in Case F-87/08 *Schuerings v ETF*, in so far as it set aside the decision of the European Training Foundation (ETF) of 23 October 2007 terminating the indefinite contract of Ms Gisela Schuerings and dismissing, as a result, her application for compensation for the material harm suffered as being premature;

2. Dismisses the remainder of the appeal;
3. Refers the case back to the Civil Service Tribunal;
4. Reserves the costs.

(¹) OJ C 139, 7.5.2011.

**Judgment of the General Court of 4 December 2013 —
ETF v Michel**

(Case T-108/11 P) (¹)

(Appeal — Civil service — Temporary staff — Contract for an indefinite period — Decision terminating the contract — Jurisdiction of the Civil Service Tribunal — Articles 2 and 47 of the CEOS — Duty of care — Concept of interest of the service — Prohibition on ruling ultra petita — Rights of the defence)

(2014/C 24/32)

Language of the case: French

Parties

Appellant: European Training Foundation (ETF) (represented by: L. Levi, lawyer)

Other party to the proceedings: Gustave Michel, successor in law to Monique Vandeuuren (represented by: N. Lhoëst, lawyer)

Interveners in support of the appellant: European Commission (represented by: J. Currall and D. Martin, acting as Agents); Translation Centre for the Bodies of the European Union (CdT) (represented by: J. Rikkert and M. Garnier, acting as Agents); European Chemical Agency (ECHA) (represented by: M. Heikkilä, acting as Agent); European Medicines Agency (EMA) (represented initially by: V. Salvatore and subsequently by: T. Jabłoński, acting as Agents); European Environment Agency (EEA) (represented by: O. Cornu, acting as Agent); European Aviation Safety Agency (EASA) (represented by: P. Goudou, acting as Agent); and European Food Safety Agency (EFSA) (represented by: D. Detken, acting as Agent)

Re:

Appeal brought against the judgment delivered by the Civil Service Tribunal (Second Chamber) on 9 December 2010 in Case F-88/08 *Vandeuuren v ETF*, not yet published, seeking the setting aside of that judgment.

Operative part of the judgment

The Court:

1. Sets aside the judgment of the Civil Service Tribunal (Second Chamber) of 9 December 2010 in Case F-88/08 *Vandeuuren v ETF* in so far as it annulled the decision of the European Training Foundation (ETF) of 23 October 2007 to terminate the contract for an indefinite period as a member of the temporary staff of Ms Monique Vandeuuren and dismissed, in consequence, her claim for compensation for the pecuniary harm suffered as premature;
2. Dismisses the remainder of the appeal;
3. Refers the action back to the Civil Service Tribunal;
4. Reserves the costs.

(¹) OJ C 139, 7.5.2011.

**Judgment of the General Court of 3 December 2013 — JAS
v Commission**

(Case T-573/11) (¹)

(Customs union — Imports of denim jeans — Fraud — Recovery a posteriori of the import duties — Article 13 of Regulation (EEC) No 1430/79 — Article 239 of the Customs Code — Application for remission of import duties — Particular case — Equity clause — Commission Decision)

(2014/C 24/33)

Language of the case: French

Parties

Applicant: JAS Jet Air Service France (JAS) (Mesnil-Amelot, France) (represented by: T. Gallois and E. Dereviankine, lawyers)

Defendant: European Commission (represented by: B.-R. Killmann, L. Keppenne and C. Soulay, acting as Agents)

Re:

Application for annulment of the Commission Decision of 5 August 2011 finding that the remission of import duties is not justified in a particular case (Case REM 01/2008).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. *Orders Jet Air Services France (JAS) to bear its own costs and to pay those incurred by the European Commission.*

(¹) OJ C 25, 28.1.2012.

Judgment of the General Court of 5 December 2013 — Olive Line International v OHIM — Carapelli Firenze (Maestro de Oliva)

(Case T-4/12) (¹)

(Community trade mark — Opposition procedure — International registration designating the European Community — Figurative mark Maestro de Oliva — Earlier national word mark MAESTRO — Genuine use of the earlier mark — Likelihood of confusion — Articles 8(1)(b) and 15(1)(a) of Regulation (EC) No 207/2009)

(2014/C 24/34)

Language of the case: Spanish

Parties

Applicant: Olive Line International, SL (Madrid, Spain) (represented by: M. Aznar Alonso, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Carapelli Firenze SpA (Tavarnelle Val di Pesa, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 21 September 2011 (Case R 1612/2010-2), concerning an opposition procedure between Carapelli Firenze SpA and Olive Line International, SL.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Olive Line International, SL to pay the costs.*

(¹) OJ C 89, 24.3.2012.

Judgment of the General Court of 6 December 2013 — Premiere Polish v OHIM — Donau Kanol (ECOFORCE)

(Case T-361/12) (¹)

(Community trade mark — Opposition proceedings — Application for the Community word mark ECOFORCE — Earlier Community figurative mark ECO FORTE — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 24/35)

Language of the case: English

Parties

Applicant: Premiere Polish Co. Ltd (Cheltenham, United Kingdom) (represented by: C. Jones and M. Carter, Solicitors)

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

Other party to the proceedings before the Board of Appeal of OHIM: Donau Kanol GmbH & Co. KG (Ried im Traunkreis, Austria)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 8 June 2012 (Case R 851/2011-4), relating to opposition proceedings between Donau Kanol GmbH & Co. KG and Premiere Polish Co. Ltd.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Premiere Polish Co. Ltd to pay the costs.*

(¹) OJ C 319, 20.10.2012.

Judgment of the General Court of 6 December 2013 — Banco Bilbao Vizcaya Argentaria v OHIM (VALORES DE FUTURO)

(Case T-428/12) (¹)

(Community trade mark — Application for community word mark VALORES DE FUTURO — Absolute ground for refusal — Lack of distinctive character — Descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2014/C 24/36)

Language of the case: Spanish

Parties

Applicant: Banco Bilbao Vizcaya Argentaria, SA (Bilbao, Spain) (represented by: J. de Oliveira Vaz Miranda Sousa and N. González-Alberto Rodríguez, lawyers)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 4 July 2012 (Case R 2299/2011-2), concerning an application for registration of the word sign VALORES DE FUTURO as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Banco Bilbao Vizcaya Argentaria, SA to pay the costs.

(¹) OJ C 366, 24.11.2012.

Order of the President of the General Court of 27 November 2013 — Oikonomopoulos v Commission

(Case T-483/13 R)

(Interim relief — Investigation conducted by OLAF — Action for damages — Financial and non-material damage allegedly suffered by the applicant — Application for interim measures — Inadmissibility — Lack of urgency)

(2014/C 24/37)

Language of the case: English

Parties

Applicant: Athanassios Oikonomopoulos (Athens, Greece) (represented by: N. Korogiannakis and I. Zarzoura, lawyers)

Defendant: European Commission (represented by: J. Baquero Cruz and A. Sauka, acting as Agents)

Re:

Application for interim measures lodged as part of an action for damages seeking compensation for the damage the applicant suffered in the course of his professional activities and regarding his reputation resulting from allegedly unlawful conduct of the European Anti-Fraud Office (OLAF) as part of an investigation conducted by its agents.

Operative part of the order

1. The application for interim measures is dismissed.
2. Costs are reserved.

Action brought on 27 September 2013 — Izsák and Dabis v European Commission

(Case T-529/13)

(2014/C 24/38)

Language of the case: Hungarian

Parties

Applicants: Balázs-Árpád Izsák (Marosvásárhely, Romania) and Attila Dabis (Budapest, Hungary) (represented by: Dr J. Petneházy Tordáné, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2013) 4975 of 25 July 2013 rejecting the application for registration of the European citizens' initiative entitled 'Cohesion policy for the equality of the regions and the preservation of regional cultures'.

— Order the Commission to register the initiative and adopt any other measure required by law.

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following plea(s) in law.

1. First plea in law, alleging the infringement of Article 4(2) of Regulation (EU) No 211/2011 (¹)

— By the first plea the applicants state that their citizens' initiative fulfils all the requirements for registration. Furthermore, they reject as unfounded the Commission's allegation that the proposed citizens' initiative manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. According to the applicants, the initiative put forward a proposal which fell within the powers defined by Article 4(2)(c) TFEU (economic, social and territorial cohesion).

2. Second plea in law, alleging infringement of the third paragraph of Article 174 TFEU

— Under this plea, the applicants allege that, contrary to the Commission's contention, the list in the third paragraph of Article 174 TFEU of disadvantages by virtue of which particular attention is to be paid to a region is not exhaustive but given by way of example.

3. Third plea in law, alleging infringement of Article 174 TFEU and of Regulation (EC) No 1059/2003 ⁽²⁾

— The applicants consider, moreover, that regions which have particular national, linguistic and cultural characteristics belong in any event to the category of ‘regions concerned’ indicated in Article 174 TFEU to which the European Union’s policy on cohesion is applicable, given that, under the secondary legislation of the European Union, culture is an important factor in territorial, social and economic cohesion. In their opinion, this is borne out by Article 3(5) and the tenth recital in the preamble to Regulation No 1059/2003.

4. Fourth plea in law, alleging infringement of Article 4(1) of Regulation No 211/2011 and of Article 167 TFEU

— The applicants argue that the promoters of the initiative are not obliged to indicate the legal basis of the legislative initiative, as the Commission states, but, under Article 4(1) of Regulation No 211/2011, they have to indicate the provisions of the Treaty which, in the opinion of the organisers, relate to the proposed action. Moreover, under Article 167 TFEU, the European Union is to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity.

5. Fifth plea in law, alleging infringement of Article 19(1) TFEU

— According to the applicants, the Commission asserts without justification in the contested decision that, although the European Union institutions are obliged to respect cultural and linguistic diversity and not to discriminate against minorities, those provisions do not constitute a legal basis for any action on the part of the institutions. The applicants object, in particular, that the Commission’s assertion is contrary to Article 19(1) TFEU.

6. Sixth plea in law, alleging infringement of the second paragraph of Article 174 TFEU

— According to the applicants, the Commission misinterprets the initiative in stating that the boost to the situation of national minorities cannot be seen as helping to reduce disparities between the levels of development of the various regions and the backwardness of the least favoured regions in accordance with the second paragraph of Article 174 TFEU. The applicants allege that the promoters of the initiative were not seeking to improve the situation of national minorities but to ensure that the cohesion policy of the European Union could not be used to eliminate or weaken the national linguistic and cultural characteristics of those regions,

and that that the economic resources and objectives of the European Union could not be converted into instruments, however indirect, of policies against minorities.

⁽¹⁾ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens’ initiative (OJ 2011 L 65, p. 1).

⁽²⁾ Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ 2003 L 154, p. 1).

Action brought on 16 October 2013 — Hungary v European Commission

(Case T-554/13)

(2014/C 24/39)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér and K. Szijjártó, agents)

Defendant: European Commission

Form of order sought

— Annul Commission Implementing Decision C(2013) 5029 of 6 August 2013 on the partial repayment of national financial assistance granted to producer organisations for operational programmes carried out in Hungary in 2010.

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant argues that the Commission exceeded its powers and breached the relevant provisions of European Union law in establishing the amount of the partial repayment to Hungary of the national financial assistance granted in 2010 to producer organisations operating in the fruit and vegetable sector.

The applicant argues that European Union law does not allow the Commission, in its decision on the partial Community repayment of the national financial assistance granted pursuant to Article 103e of Council Regulation (EC) No 1234/2007 ⁽¹⁾ to producer organisations operating in the fruit and vegetable sector, to grant the repayment of only those amounts which were described as ‘estimated’ or ‘predicted’ by Hungary in its application for the grant of national assistance.

The applicant takes the view that, under Article 103e of Regulation No 1234/2007, the Commission's authorisation for national assistance relates to the grant of aid and not to the establishment, by the Commission, of an upper limit on the assistance which can be granted. According to the applicant, such an upper limit is unequivocally laid down by Regulation No 1234/2007, which provides that national assistance may not exceed 80 % of financial contributions to the operating funds of the members or of producer organisations. Nor do the rules on the partial Community repayment of national assistance allow the Commission, when authorising such partial repayment, to set as an upper limit for repayment the amount which the Member State indicated to the Commission in its application, either as the total amount of assistance or as the amount of assistance envisaged for certain producer organisations, particularly where the Hungarian Government stated that those amounts were merely projected or estimated amounts.

Moreover, the applicant states that the Commission is entitled to verify that the assistance actually paid did not exceed the above-mentioned upper limit of 80 % and that the repayment requested does not exceed 60 % of the assistance granted, but not to set as an upper limit for repayment the amounts given in the application for authorisation, especially when that application stresses the provisional or estimated character of the data. Where — for certain reasons — the amount of the national assistance granted to a given producer organisation changes during the year, partial Community repayment will be granted on the basis of the amount actually paid, provided that the requirements of European Union law in that regard are fulfilled.

(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.

Action brought on 24 October 2013 — FSA v OHIM — Motokit Veículos e Acessórios (FSA K-FORCE)

(Case T-558/13)

(2014/C 24/40)

Language in which the application was lodged: English

Parties

Applicant: FSA Srl (Busnago, Italy) (represented by: M. Locatelli and M. Cartella, lawyers)

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

Other party to the proceedings before the Board of Appeal: Motokit Veículos e Acessórios, SA (Vagos, Portugal)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 August 2013 given in Case R 436/2012-2;
- Order that the word mark FSA K-FORCE be registered;
- Order the defendant and the intervener to pay the costs of proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark FSA K-FORCE — Community trade mark registration No 9 191 909

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The grounds were those laid down in Article 53(1)(a) CTMR in conjunction with Article 8(1)(b) CTMR

Decision of the Cancellation Division: Declared the registration of the CTM invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 53(1)(a) in conjunction with Article 8(1)(b) CTMR and Article 75 CTMR.

Action brought on 25 October 2013 — Giovanni Cosmetics v OHIM — Vasconcelos & Gonçalves (GIOVANNI GALLI)

(Case T-559/13)

(2014/C 24/41)

Language in which the application was lodged: English

Parties

Applicant: Giovanni Cosmetics, Inc. (Rancho Dominguez, United States) (represented by: J. van den Berg and M. Meddens-Bakker, lawyers)

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

Other party to the proceedings before the Board of Appeal: Vasconcelos & Gonçalves, SA (Lisbon, Portugal)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 August 2013 given in Case R 1189/2012-2;
- Order that the CTM application No 9 232 471 be refused;
- Order the defendant to pay the costs of 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 figurative mark containing the verbal element 'GIOVANNI GALLI' for goods and services in Classes 3, 14 and 18 — Community trade mark application No 9 232 471

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

Mark or sign cited in opposition: Community trade mark registration No 2 404 283 of the word mark 'GIOVANNI' for goods in Class 3

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b)CTMR.

Action brought on 29 October 2013 — Sharp v OHIM (BIG PAD)

(Case T-567/13)

(2014/C 24/42)

Language of the case: English

Parties

Applicant: Sharp KK (Osaka, Japan) (represented by: G. Macias Bonilla, G. Marín Raigal, P. López Ronda and E. Armero, lawyers)

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

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the ~~Fourth~~ Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 August 2013 given in Case R 2131/2012-2;
- Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark containing the verbal elements 'BIG PAD' for goods and services in Class 9 — Community trade mark application No 10 887 231

Decision of the Examiner: Rejected the CTM application

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 7(1)(b) and 7(1)(c) CTMR.

Action brought on 28 October 2013 — Bimbo v OHIM — Café' do Brasil (KIMBO)

(Case T-568/13)

(2014/C 24/43)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal: Café' do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 August 2013 given in Cases R 636/2012-4 and R 608/2012-4;
- Order the intervener to pay the costs of 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 'KIMBO' for goods and services in Classes 11, 21, 30, 32 and 43 — Community trade mark application No 3 420 973

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

Mark or sign cited in opposition: The Spanish trade marks No 291 655, No 451 559 and No 2 244 563

Decision of the Opposition Division: Rejected the opposition in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) and 8(5) CTMR.

Action brought on 28 October 2013 — Bimbo v OHIM — Cafe' do Brasil (Caffè KIMBO Espresso Napoletano)

(Case T-569/13)

(2014/C 24/44)

Language in which the application was lodged: English

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: N. Fernández Fernández-Pacheco, lawyer)

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

Other party to the proceedings before the Board of Appeal: Cafe' do Brasil SpA (Melito di Napoli, Italy)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 August 2013 given in Case R 1561/2012-4;

— Order the intervener to pay the costs of 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 figurative mark in red, gold, white and black containing the verbal elements 'Caffè KIMBO Espresso Napoletano' for a range of goods and services in Classes 30, 32 and 43 — Community trade mark application No 4 037 933

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

Mark or sign cited in opposition: Spanish trade mark No 291 655 for the word 'BIMBO' for goods in Class 30 and earlier well-known mark in Spain 'BIMBO' for goods in Class 30

Decision of the Opposition Division: Rejected the opposition in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) and 8(5) CTMR.

Action brought on 30 October 2013 — Verus v OHIM — Joie International (MIRUS)

(Case T-576/13)

(2014/C 24/45)

Language in which the application was lodged: German

Parties

Applicant: Verus Eood (Sofia, Bulgaria) (represented by: C. Röhl, lawyer)

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

Other party to the proceedings before the Board of Appeal: Joie International Co. Ltd (Hong Kong, China)

Form of order sought

The applicant claims that the General Court should:

— vary the decision of the Fifth Board of Appeal of 23 August 2013 in Case R 715/2012-5 so that the opposition is entirely upheld and the application for Community trade mark 9599416 is rejected;

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

Pleas in law and main arguments

Applicant for a Community trade mark: Joie International Co. Ltd

Community trade mark concerned: word mark 'MIRUS' for goods in Class 12 — application for Community trade mark No 9 599 416

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

Mark or sign cited in opposition: German word mark 'MIRUS' for goods in Classes 12, 25 and 28

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: annulment of the contested decision and rejection of the opposition

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

Action brought on 30 October 2013 — Zehnder v OHIM — UAB ‘Amalva’ (komfovent)

(Case T-577/13)

(2014/C 24/46)

Language in which the application was lodged: English

Parties

Applicant: Zehnder Verkaufs- und Verwaltungs-AG (Gränichen, Switzerland) (represented by: J. Krenzel, lawyer)

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

Other party to the proceedings before the Board of Appeal: UAB ‘Amalva’ (Vilnius, Lithuania)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 29 August 2013 given in Case R 255/2012-4;
- Order the other parties to the proceedings to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark in black and white containing the word element ‘komfovent’ for goods in Class 11 — Community trade mark registration No 4 635 272

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The grounds were those laid down in Article 53(1)(a) in conjunction with Article 8(1)(b) CTMR

Decision of the Cancellation Division: Declared the contested CTM invalid

Decision of the Board of Appeal: Annulled the contested decision and rejected the application for a declaration of invalidity

Pleas in law: Infringement of Articles 8(1)(b) and 75 CTMR.

Action brought on 4 November 2013 — Royal County of Berkshire Polo Club v OHIM — Lifestyle Equities (Royal County of Berkshire POLO CLUB)

(Case T-581/13)

(2014/C 24/47)

Language in which the application was lodged: English

Parties

Applicant: The Royal County of Berkshire Polo Club Ltd (London, United Kingdom) (represented by: J. Maitland-Walker, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Lifestyle Equities CV (Amsterdam, Netherlands)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 July 2013 given in Case R 1374/2012-2;
- Award the applicant the costs of the present proceedings and those incurred before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark containing the verbal elements ‘Royal County of Berkshire POLO CLUB’ for goods and services in Classes 9, 14, 16, 18, 25 and 28 — Community trade mark application No 9 642 621

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

Mark or sign cited in opposition: Community trade mark registrations Nos 8 456 469, 5 482 484, 532 895 and 364 257

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Partially annulled the contested decision

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Action brought on 8 November 2013 — H.P. Gauff Ingenieure v OHIM — Gauff (Gauff JBG Ingenieure)

(Case T-585/13)

(2014/C 24/48)

Language in which the application was lodged: German

Parties

Applicant: H.P. Gauff Ingenieure GmbH & Co. KG — JBG (Nuremberg, Germany) (represented by: G. Schneider-Rothhaar, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gauff GmbH & Co. Engineering KG (Nuremberg, Germany)

Forms of order sought

The applicant claims that the Court should:

- annul the contested decision of the First Board of Appeal of OHIM of 5 September 2013 (Case R 596/2013-1);
- refer the case back to OHIM, recommending that it proceed to *restitutio in integrum*;
- order OHIM to pay the costs, including those incurred in the appeal proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the figurative mark 'Gauff JBG Ingenieure' for goods and services in Classes 9, 11, 19, 36, 37, 39, 40, 41 and 42 — Community trade mark application No 9 992 967

Proprietor of the mark or sign cited in the opposition proceedings: Gauff GmbH & Co. Engineering KG

Mark or sign cited in opposition: German word mark and Community word mark 'Gauff' and German figurative mark and Community figurative mark 'GAUFF' for goods and services in Classes 9, 16, 35, 36, 37, 39, 40, 41, 42 and 44

Decision of the Opposition Division: the opposition was partially upheld

Decision of the Board of Appeal: dismissal of the application for *restitutio in integrum* and rejection of the appeal as inadmissible.

Pleas in law: infringement of Article 81 of Regulation No 207/2009.

Action brought on 8 November 2013 — H.P. Gauff Ingenieure v OHIM — Gauff (Gauff THE ENGINEERS WITH THE BROADER VIEW)

(Case T-586/13)

(2014/C 24/49)

Language in which the application was lodged: German

Parties

Applicant: H.P. Gauff Ingenieure GmbH & Co. KG — JBG (Nuremberg, Germany) (represented by: G. Schneider-Rothhaar, lawyer)

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

Other party to the proceedings before the Board of Appeal: Gauff GmbH & Co. Engineering KG (Nuremberg, Germany)

Form of order sought

The applicant claims that the Court should:

- annul the contested decision taken by the First Board of Appeal of OHIM of 5 September 2013 (Appeal Case R 118/2003-1);
- refer the case back to OHIM with the recommendation to restore it to its previous state;
- order OHIM to pay the costs including those of the proceedings before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: H.P. Gauff Ingenieure GmbH & Co. KG — JBG

Community trade mark concerned: the figurative mark 'THE ENGINEERS WITH THE BROADER VIEW' for goods and services in Classes 11, 19, 36, 37, 39, 40, 41 and 42 — application for Community trade mark No 10 028 082

Proprietor of the mark or sign cited in the opposition proceedings: Gauff GmbH & Co. Engineering KG

Mark or sign cited in opposition: the German word sign and the Community word sign 'Gauß' and the German figurative mark and the Community figurative mark 'GAUFF' for goods and services in Classes 9, 16, 35, 36, 37, 39, 40, 41, 42 and 44

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

Decision of the Board of Appeal: rejection of the application for restoring the case to its previous state and rejection of the action as being inadmissible

Pleas in law: infringement of Article 81 of Regulation No 207/2009

Action brought on 4 November 2013 — Schwerdt v OHIM — Iberamigo (cat&clean)

(Case T-587/13)

(2014/C 24/50)

Language in which the application was lodged: German

Parties

Applicant: Miriam Schwerdt (Porta-Westfalica, Germany) (represented by: K. Kruse, lawyer)

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

Other party to the proceedings before the Board of Appeal: Iberamigo, SA (Rubi, Spain)

Form of order sought

The applicant claims that the General Court should:

— annul decision No R 1799/2012-4 of the Board of Appeal of the defendant of 3 September 2013;

— 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: figurative mark in colour representing a cat with the word elements 'cat & clean' for goods in Class 31 — application for Community trade mark No 9 612 301

Proprietor of the mark or sign cited in the opposition proceedings: Iberamigo, SA

Mark or sign cited in opposition: Spanish word mark 'CLEAN CAT' for goods in Class 31

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 and of Article 29 et seq. of the Treaty on the Functioning of the European Union.

Action brought on 7 November 2013 — Deutsche Rockwool Mineralwoll v OHIM — A. Weber (JETROC)

(Case T-588/13)

(2014/C 24/51)

Language in which the application was lodged: English

Parties

Applicant: Deutsche Rockwool Mineralwoll GmbH & Co. OHG (Gladbeck, Germany) (represented by: J. Krenzel, lawyer)

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

Other party to the proceedings before the Board of Appeal: A. Weber SA (Rouhling, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 June 28 August 2013 given in Case R 257/2013-2

— Order the defendant to bear the costs of proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'JETROC' for goods in Classes 1, 17 and 19 — International Registration No 940 180 designating the European Union

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: Likelihood of confusion pursuant to Article 53(1)(a) in conjunction with 8(1)(b) CTMR

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 11 November 2013 — Ratioparts-Ersatzteile v OHIM — Norwood Industries (NORTHWOOD professional forest equipment)

(Case T-592/13)

(2014/C 24/52)

Language in which the application was lodged: German

Parties

Applicant: Ratioparts-Ersatzteile-Vertriebs GmbH (Euskirchen, Germany) (represented by: M. Koch, lawyer)

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

Other party to the proceedings before the Board of Appeal: Norwood Industries (Kilworthy, Canada)

Form of order sought

— Amend the decision of the Second Board of Appeal of 28 August 2013 (case R 356/2013-2) so as to dismiss in its entirety Opposition B1771461; and

— Order the opponent to pay the costs of the opposition proceedings and the respondent in the appeal to pay the costs of the appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Ratioparts-Ersatzteile-Vertriebs GmbH

Community trade mark concerned: Figurative mark 'NORTHWOOD professional forest equipment' for goods and services in Classes 8, 9, 20, 25 and 35 — Community trade mark No 9 412 776

Proprietor of the mark or sign cited in the opposition proceedings: Norwood Industries

Mark or sign cited in opposition: Community word mark 'NORWOOD' for goods in Class 7

Action brought on 14 November 2013 — Sanctuary Brands v OHIM — Richter International (TAILORBYRD)

(Case T-594/13)

(2014/C 24/53)

Language in which the application was lodged: English

Parties

Applicant: Sanctuary Brands LLC (New Canaan, United States) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal: Richter International Ltd (Scarborough, Canada)

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 7 August 2013 given in Case R 1625/2012-1;

— Order the defendant to pay the costs of 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 'TAILORBYRD' for goods in Class 25 — Community trade mark application No 9 325 507

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

Mark or sign cited in opposition: Non-registered figurative mark containing the verbal element 'TAILORBYRD', non-registered word mark and trade name 'TAILORBYRD' and the company name 'Tailorbyrd, LLC', used in the course of trade in the United Kingdom for 'clothing, shirts'

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(4) CTMR.

Action brought on 18 November 2013 — Calida v OHIM — Quanzhou Green Garments (dadida)

(Case T-597/13)

(2014/C 24/54)

Language in which the application was lodged: English

Parties

Applicant: Calida Holding AG (Sursee, Switzerland) (represented by: R. Kaase and H. Dirksmeier, lawyers)

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

Other party to the proceedings before the Board of Appeal: Quanzhou Green Garments Co. Ltd (Quanzhou, China)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 16 September 2013 given in Case R 1190/2012-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: International registration with effect in the European Union No 979 903 for the figurative mark containing the verbal element 'dadida' for goods in Class 25

Proprietor of the Community trade mark: The other party before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: Relative grounds pursuant to Article 53(1)(a) in conjunction with Article 8(1)(b) CTMR

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTMR.

Action brought on 15 November 2013 — Sanctuary Brands v OHIM — Richter International (TAILORBYRD)

(Case T-598/13)

(2014/C 24/55)

Language in which the application was lodged: English

Parties

Applicant: Sanctuary Brands LLC (New Canaan, United States) (represented by: B. Brandreth, Barrister)

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

Other party to the proceedings before the Board of Appeal: Richter International Ltd (Scarborough, Canada)

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 7 August 2013 given in Case R 1115/2012-1;

— Order the defendant to pay the costs of 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 figurative mark containing the verbal element 'TAILORBYRD' for goods in Class 25 — Community trade mark application No 9 325 549

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

Mark or sign cited in opposition: Non-registered figurative mark containing the verbal element 'TAILORBYRD', non-registered word mark and trade name 'TAILORBYRD' and the company name 'Tailorbyrd, LLC', used in the course of trade in the United Kingdom for 'clothing, shirts'

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(4) CTMR.

**Action brought on 12 November 2013 — Wilo v OHIM
(Pioneering for You)**

(Case T-601/13)

(2014/C 24/56)

Language of the case: German

Parties

Applicant: Wilo SE (Dortmund, Germany) (represented by B. Schneiders, lawyer)

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

Forms of order sought

The applicant claims that the Court should:

- annul the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 September 2013 in Case R 555/2013-4;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark ‘Pioneering for You’ for goods and services in Classes 7, 9, 11, 37 and 42 — Community trade mark application No 11 065 588

Decision of the Examiner: rejection of the application

Decision of the Board of Appeal: dismissal of the appeal

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

**Action brought on 14 November 2013 — Léon Van Parys
v Commission**

(Case T-606/13)

(2014/C 24/57)

Language of the case: Dutch

Parties

Applicant: Firma Léon Van Parys NV (Antwerp, Belgium) (represented by: P. Vlaemminck, B. Van Vooren and R. Verbeke, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the letter of the Commission in which it requests supplementary information from the Belgian Administration of Customs and Excise pursuant to Article 907 of Regulation (EEC) No 2454/93; and the letter of the European Commission of 16 September 2013 in which it informs Firma Léon Van Parys of that request and the suspension of the treatment period pursuant to Article 907 of Regulation (EEC) No 2454/93;
- declare that Article 909 of Regulation (EEC) No 2454/93 has fully taken effect to the benefit of the applicant after the Court’s judgment in Case T-324/10 of 19 March 2013 relating to File REM/REC 07/07;
- 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 breach by the Commission of Articles 907 and 909 of Regulation (EEC) No 2454/93, ⁽¹⁾ as well as Article 266(1) TFEU. The applicant argues that the decision deadline of nine months, in accordance with the first-named provisions, had expired, and that the Commission as a result no longer had the competence to decide on the application for remission. As a result, the Commission is no longer competent in so far as it acts in a manner which goes beyond the pure regularisation of the decision partly annulled by the judgment of 19 March 2013 in Case T-324/10 *Firma Léon Van Parys v Commission*.
2. Second plea in law, alleging breach of Article 907 of Regulation (EEC) No 2454/93 and of Article 41 of the Charter of Fundamental Rights of the European Union, concerning the right to good administration. The applicant claims that the Commission makes unlawful use of the possibility of requesting information, and thus suspending the deadline of nine months, in order to avoid a future application of Article 909 of Regulation (EEC) No 2454/93, or at least to postpone it. It also constitutes breach of the principle of good administration for the Commission — as regards an issue for which a deadline of nine months in principle applies — to have conferred upon itself the right to institute a full investigation in 2013 into an application for remission that was submitted at the end of 2007 relating to imports from 1999.

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Action brought on 20 November 2013 — Levi Strauss v OHIM — L&O Hunting Group (101)

(Case T-604/13)

(2014/C 24/58)

*Language in which the application was lodged: English***Parties***Applicant:* Levi Strauss & Co. (San Francisco, United States) (represented by: V. von Bomhard and J. Schmitt, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* L&O Hunting Group GmbH (Isny im Allgäu, Germany)**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 September 2013 given in Case R 1538/2012-2;
- Order that the costs of the proceedings be borne by the defendant and the intervener, in case it was to intervene.

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 '101' for goods in Classes 13, 25 and 28 — Community trade mark application No 9 446 634*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant*Mark or sign cited in opposition:* Community trade mark registration No 26 708 of the word mark '501' for goods in Classes 16, 18 and 25*Decision of the Opposition Division:* Rejected the opposition in its entirety*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Articles 8(1)(b) and 8(5) CTMR.**Action brought on 21 November 2013 — Alma — The Soul of Italian Wine v OHIM — Miguel Torres (SOTTO IL SOLE ITALIANO SOTTO il SOLE)**

(Case T-605/13)

(2014/C 24/59)

*Language in which the application was lodged: English***Parties***Applicant:* Alma — The Soul of Italian Wine LLLP (Bal Harbor, United States) (represented by: F. Terrano, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Miguel Torres, SA (Vilafranca del Penedès, Spain)**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 18/2013-2;
- Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments*Applicant for a Community trade mark:* The applicant*Community trade mark concerned:* The figurative mark containing the verbal elements 'SOTTO IL SOLE ITALIANO SOTTO il SOLE' — Community trade mark application No 9 784 539*Proprietor of the mark or sign cited in the opposition proceedings:* The other party to the proceedings before the Board of Appeal*Mark or sign cited in opposition:* Community trade mark registrations Nos 462 523, 6 373 971 and Spanish trade mark registrations Nos 152 231, 715 524, 2 796 505*Decision of the Opposition Division:* Upheld the opposition in its entirety*Decision of the Board of Appeal:* Dismissed the appeal and rejected the CTM application in its entirety*Pleas in law:* Infringement of Articles 8(1)(b) and 8(5) CTMR.

Action brought on 22 November 2013 — easyGroup IP Licensing v OHIM — TUI (easyAir-tours)

(Case T-608/13)

(2014/C 24/60)

*Language in which the application was lodged: English***Parties***Applicant:* easyGroup IP Licensing Ltd (London, United Kingdom) (represented by: J. Day, Solicitor)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* TUI AG (Hannover, 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 5 September 2013 given in Case R 1029/2012-1;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments*Applicant for a Community trade mark:* The applicant*Community trade mark concerned:* The figurative mark containing the verbal elements 'easyAir-tours' for goods and services in Classes 16, 36, 39 and 43 — Community trade mark application No 9 220 849*Proprietor of the mark or sign cited in the opposition proceedings:* The other party before the Board of Appeal*Mark or sign cited in opposition:* International trade mark registrations designating the European Union, Community trade mark registration and national trade mark registration of a figurative mark containing *inter alia* the verbal element 'airtours'*Decision of the Opposition Division:* Rejected the Community trade mark application in part*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Article 8(1)(b) CTMR.**Action brought on 22 November 2013 — BlackRock v OHIM (SO WHAT DO I DO WITH MY MONEY)**

(Case T-609/13)

(2014/C 24/61)

*Language of the case: English***Parties***Applicant:* BlackRock, Inc. (New York, United States) (represented by: S. Malynicz, Barrister, K. Gilbert and M. Blair, Solicitors)*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 the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 572/2013-4;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments*Community trade mark concerned:* The word mark 'SO WHAT DO I DO WITH MY MONEY' for services in Classes 35 and 36 — Community trade mark application No 11 144 748*Decision of the Examiner:* Rejected the CTM application in its entirety*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Article 7(1)(b) CTMR.**Action brought on 21 November 2013 — Ecolab USA/OHMI (GREASECUTTER)**

(Case T-610/13)

(2014/C 24/62)

*Language of the case: English***Parties***Applicant:* Ecolab USA (St. Paul, United States) (represented by: G. Hasselblatt and V. Töbelmann, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant requests the Court to decide as follows:

- The decision of the Second Board of Appeal of the Office for the Harmonization in the Internal Market (Trade Marks and Designs) of 5 September 2013 (Case R 1704/2012-2) is overturned insofar as the EU-designation of International registration no. 1103198 GREASECUTTER is rejected.
- The defendant shall bear its own costs as well as the costs of the plaintiff.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'GREASECUTTER' for goods in Classes 3 and 5 — International Registration No W 1103198

Decision of the Examiner: Refused protection of the International Registration designating the European Union

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) of Council Regulation No 207/2009.

Action brought on 21 November 2013 — Australian Gold v OHIM — Effect Management & Holding (HOT)

(Case T-611/13)

(2014/C 24/63)

Language in which the application was lodged: English

Parties

Applicant: Australian Gold LLC (Indianapolis, United States) (represented by: A. von Mühlendahl and H. Hartwig, lawyers)

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

Other party to the proceedings before the Board of Appeal: Effect Management & Holding GmbH (Vöcklabruck, Austria)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 1881/2012-4;
- Order the defendant and the other party before the Board of Appeal, should it intervene, to pay the cost of proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark containing the verbal element 'HOT' for goods in Classes 3, 5, 16 and 25 — International registration designating the European Union No 797 277

Proprietor of the Community trade mark: The other party to the proceedings before the Board of Appeal

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: The grounds were those laid down in Article 52(1)(a) in conjunction with Article 7(1)(b)(c) CTMR

Decision of the Cancellation Division: Granted the application for a declaration of invalidity in part

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

Pleas in law: Infringement of Article 52(1)(a) in conjunction with Article 7(1)(a)(b)(c) and Article 8(3) CTMR.

Action brought on 20 November 2013 — AIC v OHIM — ACV Manufacturing (Heat exchangers)

(Case T-615/13)

(2014/C 24/64)

Language in which the application was lodged: English

Parties

Applicant: AIC S.A. (Gdynia, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: ACV Manufacturing (Seneffe, Belgium)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 291/2012-3;

— Order the defendant to pay the costs of the present proceedings and those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: The design for a product described as 'heat exchangers' — Registered Community Design No 1 618 703-0001

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: It was alleged that the design did not fulfil the requirements of Article 4(1) and (2), in conjunction with Articles 5 and 6 and in particular Article 8(1) and (2) CDR

Decision of the Cancellation Division: Declared the contested RCD invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 25(1)(b) in conjunction with Article 4(2) CDR.

Action brought on 20 November 2013 — AIC v OHIM — ACV Manufacturing (Heat exchanger inserts)

(Case T-616/13)

(2014/C 24/65)

Language in which the application was lodged: English

Parties

Applicant: AIC S.A. (Gdynia, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: ACV Manufacturing (Seneffe, Belgium)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 293/2012-3;

— Order the defendant to pay the costs of the present proceedings and those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: The design for a product described as 'heat exchanger inserts' — Registered Community Design No 1 137 152-0001

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: It was alleged that the design did not fulfil the requirements of Article 4(1) and (2), in conjunction with Articles 5 and 6 and in particular Article 8(1) and (2) CDR

Decision of the Cancellation Division: Declared the contested RCD invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 25(1)(b) in conjunction with Article 4(2) CDR.

Action brought on 20 November 2013 — AIC v OHIM — ACV Manufacturing (Heat exchanger inserts)

(Case T-617/13)

(2014/C 24/66)

Language in which the application was lodged: English

Parties

Applicant: AIC S.A. (Gdynia, Poland) (represented by: J. Radłowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: ACV Manufacturing (Seneffe, Belgium)

Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 September 2013 given in Case R 688/2012-3;
- Order the defendant to pay the costs of the present proceedings and those incurred before the Board of Appeal.

Pleas in law and main arguments

Registered Community design in respect of which a declaration of invalidity has been sought: The design for a product described as 'heat exchanger inserts' — Registered Community Design No 1 137 152-0002

Proprietor of the Community design: The applicant

Applicant for the declaration of invalidity of the Community design: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: It was alleged that the design did not fulfil the requirements of Article 4(1) and (2), in conjunction with Articles 5 and 6 and in particular Article 8(1) and (2) CDR

Decision of the Cancellation Division: Declared the contested RCD invalid

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 25(1)(b) in conjunction with Article 4(2) CDR.

Appeal brought on 26 November 2013 by Carla Faita against the judgment of the Civil Service Tribunal of 16 September 2013 in Case F-92/11, *Faita v EESC*

(Case T-619/13 P)

(2014/C 24/67)

Language of the case: French

Parties

Appellant: Carla Faita (Brussels, Belgium) (represented by: D. Abreu Caldas, M. Abreu Caldas and J.-N. Louis, lawyers)

Other party to the proceedings: European Economic and Social Committee (EESC)

Form of order sought by the appellant

The applicant claims that the Court should:

- annul the decision of the Civil Service Tribunal of the European Union (Second Chamber) of 16 September 2013 in Case F-92/11 (*Faita v EESC*);
- order the EESC to pay the appellant a sum of EUR 15 000 by way of compensation for non-material damage resulting from the breach of the appointing authority's duty of care;
- order the EESC to pay the costs.

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 an error of law as regards the purpose of the pre-litigation procedure and the principle of sound administration, the Civil Service Tribunal not having found fault with the fact that the rejection of the complaint contained identical reasoning, word for word, to that to that in the rejection of the application against which the complaint was brought, despite the fact that the complaint contained different arguments to those in the application (relating to paragraphs 44 and 65 to 67 of the contested judgment).
2. Second plea in law, alleging first, an infringement of the rights of the defence, to the extent that the appellant did not have the opportunity to make an argument during the procedure in front of the Civil Service Tribunal when the Civil Service Tribunal found that the appointing authority relied on a fifth implicit reason in its decision to reject the appellant's application and, second, an error of law, in so far as the Civil Service Tribunal undertook an analysis of the conditions laid down in Article 12a(3) of the Staff Regulations of Officials of the European Union in its review of legality of the application of Article 24 of those Regulations (relating to paragraphs 94 and onwards in the judgment under appeal).

Action brought on 22 November 2013 — *Marchi Industriale v ECA*

(Case T-620/13)

(2014/C 24/68)

Language of the case: Italian

Parties

Applicant: *Marchi Industriale* (Florence, Italy) (represented by: M. Baldassarri and F. Donati, lawyers)

Defendant: European Chemicals Agency (ECA)

Form of order sought

The applicant claims that the General Court should annul and thereby declare invalid Decision No SME/2013/3747 of the European Chemicals Agency, thus rendering inoperative each of the effects of that decision, including the annulment of the invoices issued for the recovery of higher taxes and penalties purportedly owing.

Pleas in law and main arguments

The present action is brought against the decision of the European Chemicals Agency that the applicant does not satisfy the requirements for being regarded as a small or medium-sized enterprise within the meaning of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1), denying the applicant the benefits provided for in that regulation and providing that it is to pay the fees and charges allegedly owing.

The applicant relies on two pleas in law.

1. First plea in law, alleging total failure to state reasons, in so far as, notwithstanding the detailed documentary information provided to challenge the calculation criteria used to determine the size of the undertaking, the defendant failed to take any account the arguments put forward.
2. Second plea in law, alleging that data relating to the company Essemar SpA, in which Marchi Industriale has a holding, was incorrectly taken into account.

— It is submitted in this regard that, contrary to what is claimed by the defendant, Esseco Group srl is not connected, even indirectly, with the applicant and cannot, in any event, be regarded as a 'partner enterprise'. While Esseco Group has a 50.0005% holding in the share capital of Essemar, the remainder of the share capital in Essemar, amounting to 49.9995%, is held by the applicant. However, while, on a formal level, Esseco Group holds the majority of the share capital in Essemar, it does not have the majority of voting rights within that company. Therefore, there does not exist between Esseco Group and the applicant the special relationship referred to in Article 3(2) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 214, p. 36).

Action brought on 27 November 2013 — Unión de Almacenistas de Hierros de España v Commission

(Case T-623/13)

(2014/C 24/69)

*Language of the case: Spanish***Parties**

Applicant: Unión de Almacenistas de Hierros de España (Madrid, Spain) (represented by: A. Creus Carreras and A. Valiente Martín, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the Commission's decision of 18 September 2013;
- order the Commission to pay the costs of the present proceedings; and
- in addition, as a measure of organisation of procedure, order the Commission to submit to the Court the documents to which it has denied access, so that the Court may examine them and ascertain whether the submissions made in the application are correct.

Pleas in law and main arguments

In the present proceedings, the applicant seeks annulment of the express rejection of its request for access to certain documents. The implied rejection of that request is the subject-matter of Case T-419/13 *Unión de Almacenistas de Hierros de España v Commission*.

The pleas in law and main arguments are similar to those put forward in that case.

Action brought on 4 December 2013 — Serco Belgium and Others v Commission

(Case T-644/13)

(2014/C 24/70)

*Language of the case: English***Parties**

Applicants: Serco Belgium (Brussels, Belgium); SA Bull NV (Auderghem, Belgium); and Unisys Belgium (Brussels) (represented by: V. Ost and M. Vanderstraeten, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the European Commission's decision of 30 October 2013, communicated to applicants by letter dated 31 October 2013, rejecting the OPTIMUS consortium's bid for tender DIGIT/R2/PO/2012/026 — ITIC-SM (IT service management for the integrated and consolidated IT desktop environment of the European Commission) (OJ 2012/S 69-112095) and awarding the contract to the GISIS consortium; and
- order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on one plea in law

The applicants' offer was rejected because of the extremely low marks awarded by the Commission on the award sub-criteria relating to staffing. In short, the Commission considered that the number of staff proposed by applicants is too low and therefore inadequate to assure the requested quality of service.

The applicants' plea alleges that its bid was rejected on the basis of unlawful award criteria. The sub-criteria relating to staffing are not aimed at identifying the tender which is economically the most advantageous since:

- as the Commission expressly admits, the answers to these criteria provided by tenderers do not give rise to (contractual) requirements. The applicants contend that it is contrary to EU law to evaluate tenderers on the basis of statements which are not binding;
- these sub-criteria are not related to the quality of the tender (the level of service that will be provided) but rather to the tenderer's intrinsic ability to commit a sufficient number of staff in order to meet the performance requirements imposed by the service level agreement (SLA). These sub-criteria are therefore selection criteria;
- since no optimal number of staff was mentioned and no precise indication was given on how the Commission would value the indicated number of staff, and since the essence of the Commission's integration and consolidation project, as made clear by the tender specifications, is to achieve the high standard of quality contractually imposed in the most efficient manner, these sub-criteria led to an unpredictable result;
- in any event, if the Commission had doubts that the applicants would be able to perform according to the terms offered (because of the perceived insufficient numbers of staff), it should have sought clarifications prior to rejecting an offer that was 47 million euros cheaper than the successful bid.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 3 December 2013 — CT v EACEA

(Case F-36/13) ⁽¹⁾

*(Civil Service — Temporary staff — Contract for an
indefinite period — Termination — Adverse reflection on
position — Breakdown in the relationship of trust)*

(2014/C 24/71)

Language of the case: French

Parties

Applicant: CT (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: Education, Audiovisual and Culture Executive Agency (EACEA) (represented by: H. Monet, acting as Agent, and B. Wägenbaur, lawyer)

Re:

Application for annulment of the decision to terminate the applicant's contract of employment on the basis of Article 47(c)(i) of the Conditions of Employment of Other Servants (CEOS).

Operative part of the judgment

The Tribunal:

1. Dismisses the action;
2. Orders CT to bear his own costs and to pay those incurred by the Education, Audiovisual and Culture Executive Agency (EACEA).

⁽¹⁾ OJ C 207, 20.7.2013, p. 58.

Action brought on 17 September 2013 — ZZ v REA

(Case F-88/13)

(2014/C 24/72)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Frabetti, lawyer)

Defendant: Research Executive Agency (REA)

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's request to treat his mother as a dependent child pursuant to Article 2(4) of Annex VII to the Staff Regulations.

Form of order sought

— Annul the decision of the Office for Administration and Payment of Individual Entitlements (PMO.1), notified on 28 November 2012, rejecting the applicant's request of 20 July 2012 to treat his mother as a dependent child pursuant to Article 2(4) of Annex VII to the Staff Regulations, for the period from 1 November 2012 to 31 October 2013;

— award the applicant compensation, subject to any amendment and/or increase, in the amount of EUR 1 000 to make good the non-material damage caused by the vexatious and hurtful nature of the decisions rejecting the request and the complaint prior to action;

— order the REA to pay the costs.

Action brought on 18 September 2013 — ZZ v Commission

(Case F-89/13)

(2014/C 24/73)

Language of the case: Italian

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decisions to recover the sum of EUR 504.67 by withholding that sum from the applicant's invalidity allowance for the each of the three months from January to March 2013.

Form of order sought

— Annul the decisions, contained in the applicant's pension statements for the months January to March 2013, to withhold EUR 504,67 from the invalidity allowance to which the applicant was entitled in respect of those months;

- in so far as necessary, annul the decision, whatever the form in which it was adopted, rejecting the complaint of 13 April 2013 against those decisions;
- annul each decision contained in the note of 22 April 2013 bearing the reference ‘Ref Ares(2013)790217’ in the top right-hand corner of the first page of that note;
- order the Commission to pay to the applicant the following sums: (1) EUR 504.67 together with interest on that sum at the rate of 10 % per annum and annual capitalisation from 1 February 2013 until actual payment of that sum; (2) EUR 504,67 together with interest on that sum at the rate of 10 % per annum and annual capitalisation from 1 March 2013 until actual payment of that sum; (3) EUR 504,67 together with interest on that sum at the rate of 10 % per annum and annual capitalisation from 1 April 2013 until actual payment of that sum;
- order the Commission to pay the costs.

Action brought on 18 September 2013 — ZZ v Commission

(Case F-90/13)

(2014/C 24/74)

Language of the case: Italian

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the decision rejecting the applicant’s request for compensation for the harm suffered as a result of the infringement alleged of the applicant’s right to confidentiality caused by the defendant’s sending a letter concerning his situation to a lawyer who did not represent him.

Form of order sought

- Annul the measure, whatever the form in which it was adopted, rejecting the request sent by the applicant to the Commission on 26 October 2012 and duly received by the Commission;

- annul the measure, whatever the form in which it was adopted, rejecting the request sent by the applicant to the Commission on 4 July 2012 and duly received by the Commission;
- annul the measure, whatever the form in which it was adopted, rejecting the complaint against the decision rejecting the request of 9 March 2012, sent by the applicant to the Commission on 26 September 2012 and duly received by the Commission;
- annul the note of 12 November 2012 bearing the reference ‘HR.D.2/MB/ac/Ares(2012)1332162’ in the top right-hand corner of the single page comprising the note;
- annul the note of 27 September 2012 bearing the reference ‘Ref Ares (2012) 1131229-27/09/2012’ in the top right-hand corner of the first of the two pages comprising the note;
- annul the measure, whatever the form in which it was adopted, rejecting the complaint of 10 March 2013;
- annul the measure, whatever the form in which it was adopted, rejecting the complaint of 2 January 2013;
- in so far as necessary, annul the note of 29 April 2013 bearing the reference ‘Ref Ares(2013) 977767 — 29/04/2013’ in the top right-hand corner of the first of the three pages comprising the note;
- order the Commission to pay to the applicant the sum of EUR 10 000,00 together with interest on that sum at the rate of 10 % per annum and annual capitalisation from 28 February 2013 until actual payment of that sum;
- order the Commission to pay to the applicant the sum of EUR 25 000,00 together with interest on that sum at the rate of 10 % per annum and annual capitalisation from 5 November 2012 until actual payment of that sum;
- order the Commission to pay the costs.

Action brought on 9 October 2013 — ZZ v Commission

(Case F-102/13)

(2014/C 24/75)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision to calculate the crediting of pension rights acquired before the entry into service on the basis of the new GIP, and relating to the transfer of the applicant's pension rights to the European Union pension scheme which applies the new GIP for Articles 11 and 12 of Annex VIII to the Staff Regulations of Officials.

Form of order sought

The applicant claims that the Tribunal should:

- declare that Article 9 of the general implementing provisions for Article 11(2) of Annex VIII to the Staff Regulations is unlawful and, therefore, inapplicable;
- annul the decision to credit the pension rights acquired by the applicant before her entry into service, in connection with the transfer of those rights to the pension scheme of the European Union institutions, pursuant to the general implementing provisions for Article 11(2) of Annex VIII to the Staff Regulations of 3 March 2011;
- order the Commission to pay the costs.

Action brought on 25 October 2013 — ZZ v European Commission

(Case F-107/13)

(2014/C 24/76)

Language of the case: French

Parties

Applicant: ZZ (represented by: É. Boigelot and R. Murru, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to impose a disciplinary penalty on the applicant under Article 9(2) of Annex IX to the Staff Regulations and an application for damages for the non-material harm allegedly suffered and an application for reimbursement of the sums already withheld.

Form of order sought

The applicant claims that the Tribunal should:

- Annul the decision of 14 March 2013 imposing on him a penalty of the reduction of his monthly net pension by one third for a two-year period;
- Order the defendant to pay compensation to the applicant for the harm suffered, fixed at the total sum off EUR 10 000, subject to being increased during the proceedings;
- Order the Commission to pay all the costs.

Action brought on 28 October 2013 — ZZ v Council

(Case F-108/13)

(2014/C 24/77)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the applicant's salary statements for January, February and March 2013, established pursuant to Council decision of 20 December 2012 by which it refused to adopt the Commission's proposal for a regulation adjusting, with the effect from 1 July 2012, the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto.

Form of order sought

- Annul the applicant's salary statements issued since 15 January 2013;
- order the Council to pay the applicant arrears of remuneration to which he is entitled from 1 July 2012 together with late-payment interest calculated, with effect from the date on which the arrears fell due, at the rate fixed by the ECB for main refinancing operations increased by two points;
- order the Council to pay the applicant a symbolic EUR 1 as compensation for the non-material damage suffered as a result of the administrative errors repeatedly committed by the Council and the appointing authority;
- order the Council to pay the costs.

Action brought on 11 November 2013 — ZZ v Commission

(Case F-110/13)

(2014/C 24/78)

Language of the case: French

Parties

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

Defendant: European Commission

candidates authorised to attend the 'certification' training programme in 2013 (Administrative Notice No 13-2013);

Subject-matter and description of the proceedings

Annulment of the Commission decision excluding the applicant from the list of candidates authorised to attend the 'certification' training programme in 2013.

— in so far as necessary, annul the Commission decision of 30 July 2013, dismissing the applicant's complaint;

Form of order sought

— Annul the decision of the European Commission of 19 April 2013 excluding the applicant from the list of

— award the applicant damages in the amount of EUR 10 000;

— order the Commission to pay the costs.

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