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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2014/C 31/01)

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

OJ C 24, 25.1.2014

Past publications

OJ C 15, 18.1.2014

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

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 Tribunal do Trabalho de Lisboa (Portugal) lodged on 5 November 2013 — Jorge Ítalo Assis dos Santos v Banco de Portugal

(Case C-566/13)

(2014/C 31/02)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho de Lisboa

Parties to the main proceedings

Applicant: Jorge Ítalo Assis dos Santos

Defendant: Banco de Portugal

Questions referred

1. Must a rule of national law requiring the central bank of the Member State in question to suspend payment of the 13th and 14th month pay to retired employees of that bank be interpreted as contrary to Article 130 TFEU, in so far as it involves interference by the Government (that is to say, the central administration) in the bank's decision-making powers with regard to its staff policy, in breach of the principal of the autonomy and independence of central banks?

2. Must a rule of national law requiring amounts corresponding to bonuses, payment of which is suspended, to be transferred to an organ of indirect state administration acting under the jurisdiction of the Minister of Finance, whose revenue and expenditure are reported in the state budget, be interpreted as being contrary to Article 123 TFEU, in so far as it infringes the principle prohibiting monetary financing of Member States by central banks?

3. Does the fact that the suspension of payment of the 13th and 14th month pay is restricted to retired workers and does not affect workers in active service infringe the principle of equality, having regard to the prohibition of discrimination laid down in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union? [1]

[1] OJ 2000 C 364, p. 1.

Reference for a preliminary ruling from High Court of Justice (Chancery Division), Patents Court (United Kingdom) made on 14 November 2013 — Actavis Group PTC EHF, Actavis UK Ltd v Boehringer Ingelheim Pharma GmbH & Co. KG

(Case C-577/13)

(2014/C 31/03)

Language of the case: English

Referring court

High Court of Justice (Chancery Division), Patents Court

Parties to the main proceedings

Applicants: Actavis Group PTC EHF, Actavis UK Ltd

Defendant: Boehringer Ingelheim Pharma GmbH & Co. KG

Questions referred

1. (a) If a patent does not, upon grant, contain a claim that explicitly identifies two active ingredients in combination, but the patent could be amended so as to include such a claim could this patent, whether or not such an amendment is made, be relied upon as a 'basic patent in force' for a product comprising those ingredients in combination pursuant to Article 3(a) of Regulation No 469/2009/EC [1] ('the Regulation')?

(b) Can a patent that has been amended after the grant of the patent and either (i) before and/or (ii) after grant of the SPC be relied upon as the 'basic patent in force' for the purposes of fulfilling the condition set out in Article 3(a) of the Regulation?

(c) Where an applicant applies for an SPC for a product comprised of active ingredients A and B in circumstances where,

(i) after the date of application for the SPC but before the grant of the SPC, the basic patent in force, being a European Patent (UK) (the 'Patent') is amended so as to include a claim which explicitly identifies A and B;

and

(ii) the amendment is deemed, as a matter of national law, always to have had effect from the grant of the Patent;

is the applicant for the SPC entitled to rely upon the Patent in its amended form for the purposes of fulfilling the Art 3(a) condition?

2. For the purposes of determining whether the conditions in Article 3 are made out at the date of the application for an SPC for a product comprised of the combination of active ingredients A and B, where (i) the basic patent in force includes a claim to a product comprising active ingredient A and a further claim to a product comprising the combination of active ingredients A and B and (ii) there is already an SPC for a product comprising active ingredient A ('Product X') is it necessary to consider whether the combination of active ingredients A and B is a distinct and separate invention from that of A alone ?

3. Where the basic patent in force 'protects' pursuant to Article 3(a):

(a) A product comprising active ingredient A ('Product X'); and

(b) A product comprising a combination of active ingredient A and active ingredient B ('Product Y').

And where:

(c) An authorisation to place Product X on the market as a medicinal product has been granted;

(d) An SPC has been granted in respect of Product X; and

(e) A separate authorisation to place Product Y on the market as a medicinal product has subsequently been granted.

Does the Regulation, in particular Articles 3(c), 3(d) and/or 13(1) of the Regulation preclude the proprietor of the patent being issued with an SPC in respect of Product Y? Alternatively, if an SPC can be granted in respect of Product Y, should its duration be assessed by reference to the grant of the authorisation for Product X or the authorisation for Product Y?

4. If the answer to question 1(a) is in the negative and the answer to question 1(b)(i) is positive and the answer to question 1(b)(ii) is negative, then in circumstances where:

(i) in accordance with Art 7(1) [of the] Regulation, an application for an SPC for a product is lodged within six months of the date on which a valid authorisation to place that product on the market as a medicinal product has been granted in accordance with Directive 2001/83/EC ([2]) or Directive 2001/82/EC ([3]);

(ii) following the lodging of the application for the SPC, the competent industrial property office raises a potential objection to the grant of the SPC under Article 3(a) of the Regulation;

(iii) following and in order to meet the aforesaid potential objection by the competent industrial property office, an application to amend the basic patent in force relied upon by the SPC applicant is made and granted;

(iv) upon amendment of the basic patent in force, said amended patent complies with Article 3(a);

does the SPC Regulation prevent the competent industrial property office from applying national procedural provisions to enable (a) suspension of the application for the SPC in order to allow the SPC applicant to apply to amend the basic patent, and (b) recommencement of said application at a later date once the amendment has been granted, the said date of recommencement being

— after six months from the date on which a valid authorisation to place that product on the market as a medicinal product was granted but

— within six months of the date on which the application to amend the basic patent in force was granted?

([1]) Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products, OJ L 152, p. 1

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

([3]) Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products, OJ L 311, p. 1

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 18 November 2013 — Coty Germany GmbH v Stadtsparkasse Magdeburg

(Case C-580/13)

(2014/C 31/04)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Coty Germany GmbH

Defendant: Stadtsparkasse Magdeburg

Question referred

Must Article 8(3)(e) of Directive 2004/48/EC [1] be interpreted as precluding a national provision which, in a case such as that in the main proceedings, allows a banking institution to refuse, by invoking banking secrecy, to provide information pursuant to Article 8(1)(c) of that directive concerning the name and address of an account holder?

[1] Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 19 November 2013 — Directeur général des finances publiques, Mapfre Warranty SpA v Mapfre asistencia compania internacional de seguros y reaseguros, Directeur général des finances publiques

(Case C-584/13)

(2014/C 31/05)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Appellants: Directeur général des finances publiques, Mapfre Warranty SpA

Respondents: Mapfre asistencia compania internacional de seguros y reaseguros, Directeur général des finances publiques

Question referred

Must Article 2 and Article 13(B)(a) of the Sixth Council Directive 77/388/EEC [1] of 17 May 1977 be interpreted as meaning that the service whereby an economic operator which is independent of a second-hand motor vehicle dealer provides, in return for payment of a lump sum, a warranty covering mechanical breakdowns which may affect certain parts of the second-hand vehicle falls within the category of insurance transactions exempt from value added tax or, on the contrary, as meaning that such a supply falls within the category of 'supply of services'?

[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).

Request for a preliminary ruling from the Juzgado de Primera Instancia No 2 de Santander (Spain) lodged on 25 November 2013 — Banco Bilbao Vizcaya Argentaria, S.A. v Fernando Quintano Ujeta and María Isabel Sánchez García

(Case C-602/13)

(2014/C 31/06)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 2 de Santander

Parties to the main proceedings

Applicant: Banco Bilbao Vizcaya Argentaria, S.A.

Defendants: Fernando Quintano Ujeta and María Isabel Sánchez García

Questions referred

1. Under Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts, and in particular Articles 6(1) and 7(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 contractual clause concerning default interest, declare that as a consequence any type of default interest is invalid, even that which may result from the subsidiary application of a national provision such as Article 1108 of the Civil Code, the Second Transitional Provision of Law No 1/2013, in conjunction with Article 114 of the Law on mortgages, or Article 4 of Royal Decree-Law No 6/2012, and regard itself as not being bound by any recalculation which the professional may have carried out in accordance with the Second Transitional Provision of Law No 1/13?

2. Must the Second Transitional Provision of Law No 1/2013 be interpreted as meaning that it may not constitute an obstacle to the protection of consumer interests?

3. Under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, and in particular Articles 6(1) and 7(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 clause concerning accelerated repayment, declare that that clause does not form part of the contract and draw the conclusions inherent in such a finding[,] even where the professional has waited the minimum time provided for in the national provision?

(1) OJ 1993 L 95, p. 29.

Appeal brought on 26 November 2013 by the Kingdom of the Netherlands against the judgment of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-343/11 Netherlands v Commission

(Case C-610/13 P)

(2014/C 31/07)

Language of the case: Dutch

Parties

Appellant: Kingdom of the Netherlands (represented by: M.K. Bulterman, M.A.M. de Ree, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union of 16 September 2013 in Case T-343/11;

— in so far as the state of proceedings permits the Court to give final judgment, dispose of the case by annulling Decision 2011/244/EU; (1)

— if the state of proceedings does not so permit, refer the case back to the General Court for a ruling on the merits;

— order the Commission to pay the costs, including those of the proceedings before the General Court.

Grounds of appeal and main arguments

— ***First ground***: erroneous interpretation of Article 8 of Regulation No 1433/2003, (2) read in conjunction with Annex I, points 8 and 9, and Annex II, point 1, to that regulation, in so far as costs for the printing of packages were treated as packaging costs and as a result were considered ineligible.

— ***Second ground***: erroneous interpretation of Article 8 of Regulation No 1433/2003, read in conjunction with points 8 and 9 of Annex I to that regulation, in so far as the wrong test was used for the requirements which apply to the description of promotional operations in an operational programme.

— ***Third ground***: incorrect application of Article 7 of Regulation No 1258/1999 (3) and Article 31 of Regulation No 1290/2005 (4) in so far as the Commission was allowed a less onerous burden of proof.

— ***Fourth ground***: erroneous interpretation of Article 6 of Regulation No 1432/2003, (5) read in conjunction with Article 11 of Regulation No 2200/96, (6) in so far as it was concluded that the producer organisation could not manage sales by means of seconded staff.

— ***Fifth ground***: erroneous interpretation of Article 21 of Regulation No 1432/2003 in so far as it was concluded that it was necessary to withdraw recognition from the producer organisation FresQ.

— ***Sixth ground***: incorrect application of Article 7(4) of Regulation No 1258/1999, of Article 31 of Regulation No 1290/2005 and of the principle of proportionality, read in conjunction with Article 21 of Regulation No 1432/2003, in so far as all of the payments made by the producer organisation FresQ were excluded from financing.

(1) Decision of 15 April 2011 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2011 L 102, p. 33).

(2) Commission Regulation (EC) No 1433/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance (OJ 2003 L 203, p. 25).

(3) Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ 1999 L 160, p. 103).

(4) Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

(5) Commission Regulation (EC) No 1432/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 regarding the conditions for recognition of producer organisations and preliminary recognition of producer groups (OJ 2003 L 203, p. 18).

(6) Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 28 November 2013 — Ministre de l'Économie et des Finances v Gérard de Ruyter

(Case C-623/13)

(2014/C 31/08)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Ministre de l'Économie et des Finances

Defendant: Gérard de Ruyter

Question referred

Do the tax levies on income from assets, such as the social contribution on income from assets, the social debt repayment contribution based on that same income, the social levy of 2 % and the additional contribution to that levy, have, by virtue of the mere fact that they contribute to the financing of compulsory French social security schemes, a direct and relevant link with some of the branches of social security listed in Article 4 of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, [1] and do they thus fall within the scope of that regulation?

[1] OJ 1971 L 149, p. 2.

Request for a preliminary ruling from the Högsta förvaltningsdomstolen (Sweden) lodged on 3 December 2013 — Skatteverket v Hilkka Hirvonen

(Case C-632/13)

(2014/C 31/09)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Hilkka Hirvonen

Question referred

Does Article 45 TFEU preclude provisions in a Member State's legislation which mean that a person resident in another Member State — who receives all or almost all his income from the first Member State — can choose between two entirely different systems of taxation, that is to say, either to be taxed at source at a lower tax rate but without the right to such tax relief as is applicable under the ordinary income tax system, or to be taxed on his income under the latter system and thus be able to benefit from the tax relief in question?

Appeal brought on 4 December 2013 by the Kingdom of Spain against the judgment delivered on 16 September 2013 in Case T-2/07 Spain v Commission

(Case C-641/13 P)

(2014/C 31/10)

Language of the case: Spanish

Parties

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

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— uphold the present appeal and partially set aside the judgment of 16 September 2013 in Case T-2/07 *Spain* v *Commission*;

— partially annul, in accordance with the terms indicated, Commission Decision C(2006) 5102 of 20 October 2006, reducing the financial assistance from the Cohesion Fund to the group of projects bearing the reference 2001.ES.16.C.PE.050 and concerning the clearance of the hydrographical basin of Júcar (Spain), in so far as it is considered therein that the use of experience as an award criterion constitutes an irregularity; and

— order the respondent to pay the costs

Pleas in law and main arguments

Error of law as regards the finding that the use of experience as an award criterion is contrary to Article 30 of Directive 93/37 [1]. That provision does not preclude the use of criteria linked to the contractor's experience at the time when a contract is awarded. On the contrary, the tenderer's experience may be assessed, provided that it is used as a criterion that is not intended to measure the tenderer's suitability, that it is kept distinct from the solvency requirement and that it is intended to

determine the most economically advantageous offer by demonstrating a link between the subject-matter of the contract and the quality of its performance.

(1) Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54).

Action brought on 13 December 2013 — European Commission v Republic of Austria

(Case C-663/13)

(2014/C 31/11)

Language of the case: German

Parties

Applicant: European Commission (represented by: P. Hetsch, K. Herrmann and T. Maxian Rusche, acting as Agents)

Defendant: Republic of Austria

Form of order sought

The applicant claims that the Court should:

— Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Article 2(a), (b), (d), (f), (g), (h) and (n); Article 3(4)(a) and (b); Article 5; Article 13(1)(e) and the second and third subparagraphs of Article 13(6); Article 14(2), (3), (4) and (5); the second sentence of Article 16(1), the first subparagraph of Article 16(3), the second sentence of Article 16(4), Article 16(6), (7) and (8); Article 17(1)(c) in relation to biofuels, Article 17(2) in relation to bioliquids, Article 17(3)(b)(i) in relation to other Member States and third countries, Article 17(3)(a), Article 17(3)(b)(ii), Article 17(3)(c), Article 17(4)(a) to (c) and Article 17(8); Article 18(1) in relation to bioliquids; and Article 19(1) and (3) in respect of bioliquids of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (1), and with Annexes II, III, IV and V to that directive, either in the whole of the federal territory or in some parts thereof, or by not informing the Commission of such provisions, the Republic of Austria has failed to fulfil its obligations under Article 27(1) of that directive;

— Order the Republic of Austria, in accordance with Article 260(3) TFEU, on account of its failure to fulfil the obligation to notify implementing measures, to pay a penalty payment in the daily amount of EUR 40 512, payable to the own-resources account of the European Union, as from the date of the Court's judgment declaring that there has been a failure to fulfil obligations;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of the directive expired on 5 December 2010.

(1) OJ 2009 L 140, p. 16.

GENERAL COURT

Judgment of the General Court of 11 December 2013 — EMA v Commission

(Case T-116/11) [1]

(Arbitration clause — Sixth framework programme for research, technological development and demonstration contributing to the creation of the European Research Area and to innovation (2002 to 2006) — Dicoems and Cocoon contracts — Non-compliance with the contractual requirements in respect of some of the declared expenses — Termination of the contracts — Repayment of part of the sums paid — Damages — Counterclaim — Non-contractual liability — Unjust enrichment — Action for annulment — Act not open to challenge — Act part of a purely contractual framework from which it is inseparable — Debit note — Inadmissible)

(2014/C 31/12)

Language of the case: Italian

Parties

Applicant: European Medical Association (EMA) (Brussels, Belgium) (represented by: A. Franchi and L. Picciano, lawyers)

Defendant: European Commission (represented by: S. Delaude and F. Moro, acting as Agents and D. Gullo, lawyer)

Re:

First, main claim seeking (i) the reimbursement of costs incurred for the performance of contract No 507126 relating to the Cocoon project and contract No 507760 relating to the Dicoems project, concluded on 7 and 19 December 2003 respectively between the Commission and the applicant, (ii) a declaration that the Commission decision to terminate those contracts is unlawful, (iii) annulment of the corresponding debit note and (iv) the payment of compensation for the harm suffered and, second, in the alternative a claim based on the non-contractual liability of the Commission.

Operative part of the judgment

The Court:

1. *Upholds the action of the European Medical Association (EMA) in so far as it seeks the reimbursement of direct staffing costs relating to the Cocoon and Dicoems contracts of EUR 17 231,28 and indirect related costs arising from the performance of the contracts.*

2. *Dismisses the EMA's action for the remainder.*

3. *Dismisses the Commission's counterclaim.*

4. *Orders each party to bear its own costs, including those relating to the interim proceedings in Case T-116/11 R.*

[1] OJ C 120, 16.4.2011.

Judgment of the General Court of 10 December 2013 — Colgate-Palmolive Company v OHIM — dm-drogerie markt (360° SONIC ENERGY)

(Case T-467/11) [1]

(Community trade mark — Opposition proceedings — Application for the Community word mark 360° SONIC ENERGY — Earlier international word mark SONIC POWER — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 31/13)

Language of the case: English

Parties

Applicant: Colgate-Palmolive Company (New York, New York, United States of America) (represented by: M. Zintler and G. Schindler, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: dm-drogerie markt GmbH & Co. KG (Karlsruhe, Germany)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 25 May 2011 (Case R 1094/2010-2), concerning opposition proceedings between dm-drogerie markt GmbH & Co. KG and Colgate-Palmolive Company.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Colgate-Palmolive Company to pay the costs.*

[1] OJ C 319 of 29.10.2011.

Judgment of the General Court of 11 December 2013 — Przedsiębiorstwo Handlowe Medox Lepiarz Lepiarz v OHIM — Henkel (SUPER GLUE)

(Case T-591/11) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark SUPER GLUE — Earlier Benelux word mark SUPERGLUE — Relative ground for refusal — Likelihood of confusion — Distinctive character of the earlier mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 31/14)

Language of the case: Polish

Parties

Applicant: Przedsiębiorstwo Handlowe Medox Lepiarz Jarosław Lepiarz Alicja sp. j. (Jaworzno, Poland) (represented by: M. Konieczyński and I. Kubiec, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Henkel Corp. (Gulph Mills, Pennsylvania, United States)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 September 2011 (Case R 1147/2010-4) relating to opposition proceedings between Henkel Corp. and Przedsiębiorstwo Handlowe Medox Lepiarz Jarosław Lepiarz Alicja sp.j.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Przedsiębiorstwo Handlowe Medox Lepiarz Jarosław Lepiarz Alicja sp.j. to pay the costs.*

([1]) OJ C 32, 4.2.2012.

Judgment of the General Court of 11 December 2013 — Cisco Systems and Messagenet v Commission

(Case T-79/12) ([1])

(Competition — Concentrations — European markets for internet communications services — Decision declaring the concentration compatible with the internal market — Manifest errors of assessment — Obligation to state reasons)

(2014/C 31/15)

Language of the case: English

Parties

Applicants: Cisco Systems, Inc. (San Jose, California, United States) and Messagenet SpA (Milan, Italy) (represented by: L. Ortiz Blanco, J. Buendía Sierra, A. de Pablo and K. Jörgens, lawyers)

Defendant: European Commission (represented by: N. Khan, S. Noë and C. Hödlmayr, Agents)

Intervener in support of the defendant: Microsoft Corp. (Seattle, Washington, United States) (represented by: G. Berrisch, lawyer)

Re:

Application for annulment of Commission Decision C(2011) 7279 final of 7 October 2011 declaring compatible with the internal market the merger transaction involving the acquisition of control of Skype Global Sàrl by Microsoft Corp. (Case COMP/M.6281 — Microsoft/Skype).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Cisco Systems Inc. and Messagenet SpA to bear their own costs and to pay those incurred by the European Commission and Microsoft Corp.*

([1]) OJ C 109, 14.4.2012.

Judgment of the General Court of 11 December 2013 — Smartbook v OHIM (SMARTBOOK)

(Case T-123/12) ([1])

(Community trade mark — Application for Community word mark SMARTBOOK — Absolute ground for refusal — Lack of distinctiveness — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2014/C 31/16)

Language of the case: German

Parties

Applicant: Smartbook AG (Offenburg, Germany) (represented by: C. Milbradt, A. Schwarz and F. Reiling, lawyers)

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

Intervener in support of the defendant: Qualcomm, Inc. (Dover, Delaware, United States) (represented by: A. Renck, A. Leister and V. von Bomhard, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 15 December 2011 (Case R 799/2011-2), concerning an application for registration of the word sign SMARTBOOK as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Smartbook AG to pay the costs.*

([1]) OJ C 157, 2.6.2012.

Judgment of the General Court of 11 December 2013 — Eckes-Granini v OHIM — Panini (PANINI)

(Case T-487/12) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark PANINI — Earlier national and Community word marks GRANINI — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 31/17)

Language of the case: English

Parties

Applicant: Eckes-Granini Group GmbH (Nieder-Olm, Germany) (represented by: W. Berlit, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Panini SpA (Modène, Italy) (represented by F. Terrano, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 6 September 2012 (Case R 2393/2011-2) relating to opposition proceedings between Eckes-Granini Group GmbH and Panini SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Eckes-Granini Group GmbH to pay the costs.*

([1]) OJ C 26, 26.1.2013

Action brought on 1 October 2013 — Société européenne des chaux et liants v ECHA

(Case T-540/13)

(2014/C 31/18)

Language of the case: French

Parties

Applicant: Société européenne des chaux et liants (Bourgoin-Jallieu, France) (represented by: J. Dezarnaud, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

— Uphold the applicant's request to be fully relieved of the fine of which it has been notified.

Pleas in law and main arguments

The applicant requests that it be relieved of the administrative charge imposed by Decision SME (2013) 1665 of the ECHA which found that the applicant does not fulfil the conditions for eligibility for the reduced fee envisaged for small-sized enterprises, in the light of its corrective declaration submitted after the initiation by the ECHA of the verification procedure relating to the size of the undertaking.

In support of its action, the applicant relies on a certain number of pleas in law:

— the fact that the sanction adopted is disproportionate to the error which can be imputed to it;

— the fact that it corrected its declaration when first requested by the ECHA;

— the fact that it can be excused for misinterpreting an extremely technical document drafted in a language other than its own;

— the illogical nature of an automatic sanction.

Action brought on 25 October 2013 — Hostel Tourist World v OHIM — WRI Nominees (Hostel Tourist World.com)

(Case T-566/13)

(2014/C 31/19)

Language in which the application was lodged: Spanish

Parties

Applicant: Hostel Tourist World, SL (Seville, Spain) (represented by: J.M. Bartrina Díaz, lawyer)

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

Other party to the proceedings before the Board of Appeal: WRI Nominees Ltd (Luxembourg, Luxembourg)

Form of order sought

The applicant claims that the Court should:

— annul OHIM's decision in so far as it upholds the appeal lodged by WRI Nominees Ltd, concerning the cancellation or invalidity of Community trade mark No 7 241 862 HOSTELTOURISTWORLD for Classes 39 and 43 in the International Classification;

— pursuant to Article 65(2) of Regulation No 207/2009, dismiss the appeal lodged by WRI Nominees Ltd in relation to the invalidity of Community trade mark No 7 241 862 'HOSTELTOURISTWORLD.COM' for Classes 35, 39 and 43 in the International Classification, or, in the alternative, order OHIM to take the measures necessary to comply with the judgment of the Court delivered in accordance with the terms indicated in the application; and

— order OHIM to pay the costs of the present proceedings.

Pleas in law and main arguments

Community trade mark concerned, in respect of which an application for a declaration of invalidity was made: Figurative mark 'Hostel-TouristWorld.com' for services in Classes 35, 39 and 43 — Registered Community trade mark No 7 241 862

Proprietor of the mark: The applicant

Applicant for a declaration of invalidity: WRI Nominees Ltd

Grounds for the application for a declaration of invalidity: Infringement of Article 8(1)(b) of Regulation No 207/2009, read in conjunction with Article 53(1)(a) thereof, and of Article 8(4) of Regulation No 207/2009, read in conjunction with Article 53(1)(c) thereof

Decision of the Cancellation Division: Application dismissed

Decision of the Board of Appeal: Appeal of WRI Nominees Ltd upheld in part and decision of the Cancellation Division annulled in part

Pleas in law:

— Infringement of Articles 63 and 64 of Regulation No 207/2009;

— Infringement of Article 8(1)(b) of Regulation No 207/2009, read in conjunction with Article 53(1)(a) thereof.

Action brought on 30 October 2013 — Lesaffre et Compagnie v OHIM — Louis Baking Company (BAKING CENTER BY TECHNOLINE)

(Case T-575/13)

(2014/C 31/20)

Language in which the application was lodged: French

Parties

Applicant: Lesaffre et Compagnie (Paris, France) (represented by: T. De Haan and P. Péters, lawyers)

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

Other party to the proceedings before the Board of Appeal: Louis Baking Company, SL (Girona, Spain)

Form of order sought

— Annul in its entirety the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 August 2013 in Case R 2333/2012-4; and

— Order OHIM to pay the costs incurred by Lesaffre in the proceedings before the General Court and before the Fourth Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Louis Baking Company, SL

Community trade mark concerned: Coloured figurative mark containing the word elements 'BAKING CENTER By TECHNOLINE' for goods and services in Classes 30, 35 and 42 — Application for Community trade mark No 9 195 793

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

Mark or sign cited in opposition: French mark 'BAKING CENTER' for services in Class 41

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal

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

Action brought on 8 November 2013 — Canal + and Canal + France v OHIM — Euronews (News+)

(Case T-591/13)

(2014/C 31/21)

Language in which the application was lodged: French

Parties

Applicants: Canal + SA (Issy-Les-Moulineaux, France) and Canal + France (Issy-Les-Moulineaux) (represented by: L. Barissat, lawyer)

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

Other party to the proceedings before the Board of Appeal: Euronews (Ecully, France)

Form of order sought

The applicants claim that the General Court should:

— rule that there is a likelihood of confusion or association within the meaning of Article 8(1)(b) of Regulation No 207/2009 between the trade mark applied for, NEWS+, and the earlier French word mark ACTU+ No 063 457 667 in respect of the contested services;

— amend paragraphs 23 to 35 of the decision of the Board of Appeal dated 9 September 2013 and refuse registration of the mark NEWS+, applied for in application No 9 141 003;

— in the alternative, annul the decision of the Board of Appeal of 9 September 2013, which dismissed the appeal and confirmed, in breach of Article 8(1)(b) of Regulation No 207/2009, the contested decision rejecting the opposition filed against the application for a Community trade mark NEWS+ No 9 141 003 on the basis of the earlier mark ACTU+ No 063 457 667.

Pleas in law and main arguments

Applicant for a Community trade mark: Euronews

Community trade mark concerned: Word mark 'News+' for services in Classes 35, 38 and 41 — Community trade mark application No 9 141 003

Proprietors of the mark or sign cited in the opposition proceedings: The applicants

Mark or sign cited in opposition: French trade mark 'ACTU+' for goods and services in Classes 9, 28, 35, 38, 39 and 41

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 14 November 2013 — Siemag Tecberg Group v OHIM (Winder Controls)

(Case T-593/13)

(2014/C 31/22)

Language of the case: German

Parties

Applicant: Siemag Tecberg Group GmbH (Haiger, Germany) (represented by T. Sommer, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of OHIM of 5 September 2013 in Case R 1261/2013-4;

— Order OHIM to pay the costs;

— Set a date for the hearing.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Winder Controls' for goods and services in Classes 7, 9, 35, 37, 41 and 42 — Community trade mark application No 11 542 412

Decision of the Examiner: the application was rejected

Decision of the Board of Appeal: the appeal was dismissed

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

Action brought on 15 November 2013 — Bimbo v OHIM (FIBRA PROTEÍNAS NUTRIENTES)

(Case T-600/13)

(2014/C 31/23)

Language of the case: Spanish

Parties

Applicant: Bimbo, SA (Barcelona, Spain) (represented by: J. Carbonell Callicó, lawyer)

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

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the Board of Appeal of 11 September 2013 and, consequently, grant Community figurative mark No 11 094 381 for all of the goods in respect of which it is requested in Class 30;

— order the defendant to pay the costs of the proceedings, in accordance with Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

Community trade mark concerned: Figurative mark 'FIBRA PROTEÍNAS NUTRIENTES' for goods in Class 30 — Community trade mark application No 11 094 381

Decision of the Examiner: Application for registration rejected

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009; and

— Infringement of Article 83 of Regulation No 207/2009 with regard to the principle of equal treatment and Articles 6 and 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Action brought on 26 November 2013 — Romonta v Commission

(Case T-614/13)

(2014/C 31/24)

Language of the case: German

Parties

Applicant: Romonta GmbH (Seegebiet Mansfelder Land, Germany) (represented by: I. Zenke, M. Vollmer, C. Telschow und A. Schulze, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (2013/448/EU, OJ 2013 L 240, p. 27), in so far as Article 1(1) thereof rejects granting the applicant the supplementary quotas requested for the third trading period of the 2013 to 2020 emissions trading on the basis of the hardship clause under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of proportionality

   In the applicant's view, the contested decision infringes the principle of proportionality, as the prohibition on the allocation of supplementary allowances on the basis of cases of hardship is incorrect in the light of the objective formulated by the defendant and in addition is completely disproportionate to the disadvantage faced by the applicant. In the alternative on this point the applicant claims that decision 2011/278/EU [1] is contrary to European law and is invalid.

2. Second plea in law, alleging infringement of the principle of subsidiarity

   In the context of this plea in law, the applicant claims that the contested decision infringes the principle of subsidiarity, according to which the European Union's action must be limited to what is necessary. Contrary to the Commission's argument, the Member States retain a (albeit limited) right to adopt rules on the allocation of allowances. Those rules, the adoption of which remain within the competency of the Member States, include cases of hardship, such as those under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading.

3. Third plea in law, alleging infringement of fundamental rights

   Here, the applicant claims that the contested decision infringes its fundamental rights to freedom to conduct a business, freedom to choose an occupation and property, without those infringements being justified by one of the objectives of general interest or the protection of the rights and freedoms of others recognised by the European Union.

[1] 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

Action brought on 22 November 2013 — Pell Amar Cosmetics v OHIM — Alva Management (Pell amar dr. Ionescu — Calinesti)

(Case T-621/13)

(2014/C 31/25)

Language in which the application was lodged: Romanian

Parties

Applicant: Pell Amar Cosmetics SRL (Băile, Romania) (represented by: E. Grecu, lawyer)

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

Other party to the proceedings before the Board of Appeal: Alva Management GmbH (Icking, Germany)

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 (OHIM) in Case R 388/2013-4;

— order OHIM and Alva Management GmbH to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Pell Amar Cosmetics SRL

Community trade mark concerned: the black and white figurative mark containing the word element 'Pell amar dr. Ionescu — Calinesti' (Community trade mark application No 10 109 981)

Proprietor of the mark or sign cited in the opposition proceedings: Alva Management GmbH

Mark or sign cited in opposition: Community registration No 6 645 071, German registration No 1 161 287, and international registrations Nos 588 232 and 657 169 of the word mark 'PERLAMAR'

Decision of the Opposition Division: Opposition upheld in part

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Misapplication of Article 8(1)(b) of Council Regulation No 207/2009, since there is no likelihood of confusion between the Community trade mark concerned and the trade mark cited in opposition.

Action brought on 28 November 2013 — Molda v Commission

(Case T-629/13)

(2014/C 31/26)

Language of the case: German

Parties

Applicant: Molda AG (Dahlenburg, Germany) (represented by: I. Zenke, M. Vollmer, C. Telschow und A. Schulze, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (2013/448/EU, OJ 2013 L 240, p. 27), in so far as Article 1(1) thereof rejects granting the applicant the supplementary quotas requested for the third trading period of the 2013 to 2020 emissions trading on the basis of the hardship clause under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of proportionality

   In the applicant's view, the contested decision infringes the principle of proportionality, as the prohibition on the allocation of supplementary allowances on the basis of cases of hardship is incorrect in the light of the objective formulated by the defendant and in addition is completely disproportionate to the disadvantage faced by the applicant. In the alternative on this point the defendant claims that decision 2011/278/EU ([1]) is contrary to European law and is invalid.

2. Second plea in law, alleging infringement of the principle of subsidiarity

   In the context of this plea in law, the applicant claims that the contested decision infringes the principle of subsidiarity, according to which the European Union's action must be limited to what is necessary. Contrary to the Commission's argument, the Member States retain a (albeit limited) right to adopt rules on the allocation of allowances. Those rules, the adoption of which remain within the competency of the Member States, include cases of hardship, such as those under Paragraph 9(5) of the German Law on Greenhouse Gas Emissions Trading.

3. Third plea in law, alleging infringement of European rules on State aid

   In the context of the third plea in law, the applicant claims that the contested decision infringes the fundamental rules of the European State aid scheme, according to which undertakings which are in financial difficulties and which implement a sustainable restructuring plan, may receive financial support in the form of restructuring aid. According to the applicant, the defendant does not have the right to refuse such aid.

4. Fourth plea in law, alleging infringement of fundamental rights

   Here, the applicant claims that the contested decision infringes its fundamental rights to freedom to conduct a business, freedom to choose an occupation and property, without those infringements being justified by one of the objectives of general interest or the protection of the rights and freedoms of others recognised by the European Union.

([1]) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772 (OJ 2011 L 130, p. 1).

Action brought on 28 November 2013 — DK Recycling und Roheisen v Commission

(Case T-630/13)

(2014/C 31/27)

Language of the case: German

Parties

Applicant: DK Recycling und Roheisen GmbH (Duisburg, Germany) (represented by: S. Altenschmidt, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Article 1(1) of the Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC [1] of the European Parliament and of the Council (C(2013) 5666, 2013/448/EU, OJ 2013 L 240, p. 27), in so far as it rejects inclusion of the installations with installation identifiers DE000000000001320 and DE-new-14220-0045, presented by Germany to the Commission within the meaning of Article 11(1) of Directive 2003/87/EC, falling within the scope of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances, which should be allocated to those installations free of charge;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

— The contested decision, in so far as it is challenged by the applicant, infringes Directive 2003/87/EC and Decision 2011/278/EU [2]. Furthermore, the decision is incompatible with the principle of proportionality and the Charter of Fundamental Rights of the European Union. It is also not properly justified.

— In so far as the rejection of the free allocation of allowances for the applicant's installations is based on the fact that Germany allocated it an additional transitional free allowances as compensation for excessive hardship, the applicant claims that, contrary to the Commission's opinion, that allocation is not contrary to Decision 2011/278. In any event, a special allocation for hardship cases is required as compensation for excessive burdens as a result of the trade in emissions guaranteed by the Charter of Fundamental Rights of the European Union, in particular the fundamental rights of freedom of undertakings and freedom to choose property, as well as the principle of proportionality.

— In so far as the rejection of the free allocation of allowances for the applicant's installations is based on the fact that Germany granted it an additional transitional free allowances for the manufacture of zinc concentrate in the applicant's blast furnaces on the basis of a process emissions sub-installation, the applicant claims that the contested decision is incompatible with Decision 2011/278 and that the grounds for the decision are contradictory and insufficient.

— Finally, the applicant complains of an infringement of the requirement of good administrative practice under Article 41 of the Charter of Fundamental Rights of the European Union. Ahead of the decision, the applicant was not given any opportunity to submit its opinion.

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[1] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

[2] 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772 (OJ 2011 L 130, p. 1).

Action brought on 29 November 2013 — Raffinerie Heide v Commission

(Case T-631/13)

(2014/C 31/28)

Language of the case: German

Parties

Applicant: Raffinerie Heide GmbH (Hemmingstedt, Germany) (represented by: U. Karpenstein, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC [1] of the European Parliament and of the Council (2013/448/EU, OJ 2013 L 240, p. 27), in so far as Article 1(1) and Annex IA rejected inclusion of the applicant in the list under Article 11 of Directive 2003/87/EC and the preliminary total annual amounts of emission allowances which should be allocated to the applicant under identifier DE000000000000010 free of charge;

— 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 failure to exercise discretion

   In this context the applicant claims that the Union's greenhouse gas emission allowance trading scheme for the third trading period (2013 to 2020) does not exclude allocations in particular cases of hardship and does not release the Commission, in its decisions, from having regard to the fundamental rights of undertakings and the principle of proportionality. The Commission has overlooked this and thereby did not properly exercise its discretion which Union law has granted it.

2. Second plea in law, alleging infringement of the applicant's fundamental rights

   The applicant submits in that regard that the rejection by the national competent authority of the requested allocations infringes the applicant's fundamental rights under Articles 17 and 16 of the Charter of Fundamental Rights of the European Union as well as the principle of proportionality. The expected under-supply of allowances to the applicant would cause it clear disproportionate hardship unforeseen by Directive 2003/87/EC. The creation of a situation likely to endanger the existence of undertakings, such as the applicant, is not appropriate, necessary or proportionate to meet the objectives set out in the directive.

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 29 November 2013 — Arctic Paper Mochenwangen v Commission

(Case T-634/13)

(2014/C 31/29)

Language of the case: German

Parties

Applicant: Arctic Paper Mochenwangen GmbH (Wolpertswende, Germany) (represented by: S. Kobes, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Article 1(1) of Decision 2013/448/EU of the defendant of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC (1) of the European Parliament and of the Council (C(2013) 5666, OJ 2013 L 240, p. 27), in so far as it rejects the inscription of the installation listed in Annex I, Point A with the installation identification code DE000000000000563 on the list of installations covered by Directive 2003/87/EC submitted by Germany to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances allocated free of charge to these installations;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

— The contested decision infringes Directive 2003/87/EC and Decision 2011/278/EU (2) in so far as it is contested by the applicant. The decision is also incompatible with the principle of proportionality and the Charter of Fundamental Rights of the European Union.

— The Decision 2011/278/EU does not preclude an additional preliminary allocation of free allowances as compensation for a case of hardship. In any event, the guarantees of the Charter of Fundamental Rights of the European Union, particularly the fundamental rights to conduct a business and to property, as well as the principle of proportionality require a specific allocation in cases of hardship as compensation for undue burdens resulting from emissions trading.

— Finally, the applicant alleges infringement of the requirements of a fair administrative practice pursuant to Article 41 of the Charter of Fundamental Rights of the European Union. Prior to the decision, the applicant was not given any opportunity to express an opinion.

(1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

(2) 2011/278/EU: Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).

Action brought on 3 December 2013 — Gemeente Bergen op Zoom v Commission

(Case T-641/13)

(2014/C 31/30)

Language of the case: Dutch

Parties

Applicant: Gemeente Bergen op Zoom (Bergen op Zoom, Netherlands) (represented by: T. Hovius and R. Pasma, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul the decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant contests the Commission's decision of 2 October 2013, ([1]) whereby the Commission found that the purchase by the Bergen op Zoom municipality of the industrial premises of Koninklijke Nedalco BV and Nedalco International BV did not constitute State aid within the meaning of Article 107(1) TFEU.

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

1. First plea in law, alleging breach of Article 107 TFEU and/or Article 108 TFEU in so far as the Commission failed to apply the market economy investor principle or, at least, applied that principle incorrectly, did not rely on the proper facts in that regard and/or did not provide sufficient reasons for the application of that principle.

2. Second plea in law, alleging breach of Article 107 TFEU and/or Article 108 TFEU in so far as the Commission incorrectly assessed the facts and/or the law and committed a manifest error of assessment in concluding that Nedalco had not been granted a (selective) advantage that it could not have acquired in the ordinary course of business.

3. Third plea in law, alleging infringement of the principles relating to the duty of care and the duty to state reasons in so far as the Commission erred in failing to investigate the facts put forward by the municipality and/or to provide sound reasons for the decision.

([1]) OJ 2013 C 335, p. 1.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2013 — Teughels v Commission

(Case F-117/11) [1]

(Civil service — Officials — Pensions — Transfer of pension rights acquired under a national pension scheme — Regulation adapting the rate of contribution to the EU pension scheme — Adaptation of actuarial values — Need to adopt general implementing provisions — Temporal application of new general implementing provisions)

(2014/C 31/31)

Language of the case: French

Parties

Applicant: Catherine Teughels (Eppegem, Belgium) (represented by: L. Vogel, lawyer)

Defendant: European Commission (represented by: D. Martin and J. Baquero Cruz, Agents)

Re:

Action for annulment of the decision of the Office for administration and payment of individual rights determining the applicant's retirement pension rights and of the calculation of the number of years of pensionable service to be taken into account in order to determine those rights.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the European Commission to bear its own costs and to bear the costs incurred by Ms Teughels.*

[1] OJ C 25 of 28 01 2012, p. 70.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2013 — Verile and Gjergji v Commission

(Case F-130/11) [1]

(Civil service — Officials — Pensions — Transfer of pension rights acquired in a national pension scheme — Regulation adjusting the rate of contribution to the European Union pension scheme — Adjustment of actuarial values — Need to adopt general implementing provisions — Temporal application of the new general implementing provisions — Withdrawal of a proposal for crediting of pensionable years — Lawfulness — Conditions)

(2014/C 31/32)

Language of the case: French

Parties

Applicants: Marco Verile (Cadrezzate, Italy) and Anduela Gjergji (Brussels, Belgium) (represented by: D. Abreu Caldas, A. Coolen, J.-N. Louis, É. Marchal and S. Orlandi, lawyers)

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

Re:

Application for annulment of the decisions transferring pension rights acquired before entry into the Commission's service based on the recalculated proposal of the PMO.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of the European Commission of 20 May 2011 and of 19 May 2011 addressed respectively to Mr Verile and Ms Gjergji;*

2. *Orders the European Commission to bear its own costs and to pay the costs incurred by Mr Verile and Ms Gjergji.*

[1] OJ C 65, 3.3.2012, p. 22.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2013 — Sesma Merino v OHIM

(Case F-125/12) [1]

(Civil service — Officials — Assessment report — Objectives for 2011/2012 — Measure not having an adverse effect — Action inadmissible)

(2014/C 31/33)

Language of the case: German

Parties

Applicant: Alvaro Sesma Merino (El Campello, Spain) (represented by: H. Tettenborn, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Faedo, R. Pethke and P. Saba, Agents)

Re:

Action for annulment of both the applicant's staff report for 2011 and the decision setting the objectives to be attained, and a claim for damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Sesma Merino to bear his own costs and to bear the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

[1] OJ C 26 of 26.01.2013, p. 72.

Judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2013 — A v Commission

(Case F-142/12) [1]

(Civil service — Social security — Accident or occupational disease — Article 73 of the Staff Regulations — Partial permanent invalidity — Claim for compensation)

(2014/C 31/34)

Language of the case: French

Parties

Applicant: A (S., France) (represented by: B. Cambier, A. Paternostre and G. Ladrière, lawyers)

Defendant: European Commission (represented by: V. Joris, acting as Agent, C. Mélotte, lawyer)

Re:

Application for annulment of the Commission's decision on the application for recognition of occupational disease, which the applicant brought under Article 73 of the Staff Regulations, conferring on him a partial permanent invalidity rate of 20 % and establishing the date of stabilisation as 25 February 2010, and a claim for compensation in respect of his material and non-material damage.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 11 January 2012 to close the procedure opened under Article 73 of the Staff Regulations of Officials of the European Union as a result of the occupational disease suffered by A;*

2. *Orders the European Commission to pay to A the sum of EUR 3 500;*

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

4. *Orders the European Commission to bear its own costs and to pay those incurred by A.*

[1] OJ C 26, 26.1.2013, p. 77.

Order of the Civil Service Tribunal (Third Chamber) of 12 December 2013 — Marcuccio v Commission

(Case F-58/12) [1]

(Civil service — Decision to retire an official on grounds of invalidity — Annulment by the Tribunal on the ground of failure to state reasons — Request for implementation of the judgment — Request for reinstatement — Judgment of the Tribunal set aside — No interest in bringing proceedings — Article 266 TEU — Non-contractual liability of the institution — Action in part manifestly inadmissible and in part manifestly lacking any foundation in law)

(2014/C 31/35)

Language of the case: Italian

Parties

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

Defendant: European Commission (represented by: J. Currall and G. Gattinara, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Application for annulment of the Commission's implied decision refusing the applicant's request to implement the judgment of the Civil Service Tribunal of 4 November 2008 in Case F-41/06 *Marcuccio* v *Commission* and, on that basis, assignment of the applicant to duties relating to a post in the function group corresponding to the former's grade and an application for damages.

Operative part of the order

1. *The action is dismissed as being in part manifestly inadmissible and in part manifestly lacking any foundation in law.*

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

([1]) OJ C 295, 29.09.2012, p. 33.

Order of the Civil Service Tribunal (Third Chamber) of 13 December 2013 — Van Oost, Ibarra de Diego, Theodoridis and Hotz v Commission

(Joined Cases F-137/12, F-138/12, F-139/12 and F-141/12) ([1])

(Civil service — Officials — Promotion — Certification procedure 2010-2011 — Exclusion from the list of certified officials — Amicable settlement on the initiative of the Tribunal — Time-limit for lodging a complaint — Complaint out of time — Concept of excusable error — Diligence required of a normally well-informed official — Information obtained by telephone — Proof — Inadmissibility)

(2014/C 31/36)

Language of the cases: French

Parties

Applicants: Fabrice Van Oost (Ville Pommerœul, Belgium), Maria Belén Ibarra de Diego (Alicante, Spain), Nicolaos Theodoridis (Soignies, Belgium) and Margarita Hotz (Brussels, Belgium), (represented by: S. Pappas, lawyer)

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

Re:

Applications for annulment of the decisions of EPSO not to include the applicants in the list of persons who have passed the tests at the end of the training programme which is part of the certification procedure, and claims for damages.

Operative part of the order

1. *Cases F-137/12, F-138/12 and F-139/12 are removed from the Register of the Tribunal.*

2. *The parties in Cases F-137/12, F-138/12 and F-139/12 shall bear their own costs in accordance with their agreement.*

3. *The action in Case F-141/12 is dismissed as inadmissible.*

4. *Ms Hotz shall bear her own costs and pay those incurred by the European Commission in Case F-141/12.*

([1]) OJ C 26, 26.1.2013, pp. 75 and 76.

Order of the Civil Service Tribunal (Third Chamber) of 13 December 2013 — Marcuccio v Commission

(Case F-2/13) ([1])

(Civil service — Time-limit for bringing proceedings — Language in which the decision rejecting a complaint was written — Article 34(1) and (6) of the Rules of Procedure — Signed copy of the application sent by fax within the time-limit for bringing proceedings — That copy and the original signed application received subsequently not the same — Action lodged out of time — Manifestly inadmissible)

(2014/C 31/37)

Language of the case: Italian

Parties

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

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

Re:

Application for annulment of the implied decision rejecting the applicant's request to apply to the salary received by him from May 2001 until the end of his mission in Angola the correction coefficient referred to in Articles 12 and 13 of Annex X to the Staff Regulations.

Operative part of the order

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

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

([1]) OJ C 129, 4.5.2013, p. 30.

Action brought on 12 November 2013 — ZZ v EMCDDA

(Case F-79/13)

(2014/C 31/38)

Language of the case: English

Parties

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

Defendant: European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

Subject-matter and description of the proceedings

The annulment of the decision rejecting the applicant's request in order to state that a moral harassment was held by the superior and of the decision not renew the applicant's contract and, as a consequence, the conduct of a new impartial investigation plus the compensation of the material and moral prejudices.

Form of order sought

— Annul the Director's decision of 11th September 2012 rejecting the Applicant's request;

— annul the decision not to renew the Applicant's contract dated 14th September 2012;

— annul the Chairman of the Management Board's decision of 13th May 2013 and the Director's decision of 25th June 2013, rejecting the Applicant's complaint;

— as a consequence, to conduct a new regular, unbiased and impartial investigation;

— compensate the material prejudice suffered by the Applicant estimated at 430 202 euros;

— compensate the moral prejudice suffered by the Applicant estimated at 120 000 euros;

— order the Defendant to pay for all costs.

Action brought on 20 November 2013 — ZZ v Commission

(Case F-111/13)

(2014/C 31/39)

Language of the case: French

Parties

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

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the EPSO decision not to admit the applicant to the selection phase of Competition EPSO/AD/231/12 (AD7) and to reclassify him Competition EPSO/AD/230/12 (AD5) and of the decision to enter him on the reserve list for the abovementioned AD5 competition, as well as damages for non-pecuniary harm allegedly suffered.

Form of order sought

— annul the act of 16.7.2012, the act of 3.9.2012, 3.12.2012 the act of 13.2.2013, the act of 15.3.2013 and, in so far as necessary, the acts dismissing the applicant's claims of 21.8.2013 and 2.10.2013;

— order the Commission to compensate the applicant in the amount of EUR 300 580;

— order the Commission to pay the costs.

Action brought on 29 November 2013 — ZZ v European Environment Agency (EEA)

(Case F-115/13)

(2014/C 31/40)

Language of the case: English

Parties

Applicant: ZZ (represented by: A. Bertolini, lawyer)

Defendant: European Environment Agency (EEA)

Subject-matter and description of the proceedings

The annulment of the decision not to renew the contract of the applicant and as a consequence, to reinstate the applicant to the post she held or to another suitable post or, if not, order the defendant to compensate the applicant for the material damage suffered and, in any case, the moral prejudice suffered.

Form of order sought

— Annul the decision of the European Environment Agency dated 29 May 2013 rejecting the complaint lodged by the applicant on 1st May 2013

— as a consequence:

  — reinstate the applicant in the post which she held or in another post suitable to her competencies within EEA by way of extension of her contract in accordance with the requirements of the regulations;

  — alternatively, and in the event that the claim for reinstatement set out above is not upheld, order the defendant to compensate the applicant for the material damage suffered, provisionally estimated *ex aequo et bono* at the difference between the remuneration which she received as a member of the contract agent staff within EEA at the very least for a length of time similar to that of her initial contract (three years);

— in any event, order the defendant to pay a provisional *ex aequo et bono* sum of EUR 5 000 in compensation for the non-material damage, together with late-payment interest at the statutory rate as from the date of the judgment;

— order the defendant to pay the costs.

Action brought on 30 November 2013 — ZZ v Frontex

(Case F-117/13)

(2014/C 31/41)

Language of the case: English

Parties

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

Defendant: Agence européenne pour la gestion de la coopération opérationnelle aux frontières extérieures des États membres de l'Union européenne (FRONTEX)

Subject-matter and description of the proceedings

The annulment of the decision not to renew the contract of the applicant after the annulment, by the Civil Service Tribunal, of the first decision of non-renewal of his contract.

Form of order sought

— Annul the decision of Frontex dated 19 February 2013 not to renew the contract of the applicant;

— exercise, if so required, its full jurisdiction to ensure the effectiveness of its decision;

— order the Defendant to pay the costs.

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