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### Information and Notices

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OJ C 52, 22.2.2014

**Past publications**

OJ C 45, 15.2.2014

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

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## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 20 November 2013 — Presidenza del Consiglio dei Ministri and Others v Rina Services SpA and Others**

(Case C-593/13)

(2014/C 61/02)

*Language of the case: Italian*

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Appellants:* Presidenza del Consiglio dei Ministri and Others

*Respondents:* Rina Services SpA and Others

**Questions referred**

1. Do the TFEU principles of freedom of establishment (Article 49 TFEU) and freedom to provide services (Article 56 TFEU) and the principles laid down in Directive 2006/123/EC<sup>(1)</sup> ... preclude the adoption and application of national legislation under which SOAs constituted as limited companies 'must have their seat in Italian territory'?
2. Must the derogation provided for in Article 51 TFEU be interpreted as covering an activity such as the certification carried out by private-law bodies which, on the one hand, are required to be formed as limited companies and operate in a competitive market and, on the other hand, are connected with the exercise of official authority and, for that reason, are subject to authorisation and rigorous controls by the Supervisory Authorities?

**Appeal brought on 21 November 2013 by European Commission against the judgment of the General Court (Fourth Chamber) delivered on 6 September 2013 in Case T-465/11: Globula v European Commission**

(Case C-596/13 P)

(2014/C 61/03)

*Language of the case: English*

**Parties**

*Appellant:* European Commission (represented by: K. Herrmann, L. Armati, Agents)

*Other parties to the proceedings:* Globula a.s., Czech Republic

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Fourth Chamber) of 6 September 2013, notified to the Commission on 11 September 2013, in Case T-465/11 Globula v European Commission;
- rule that the first plea at first instance is not well founded and refer the case back to the General Court for consideration of the second and third pleas at first instance; and
- reserve the costs of the proceedings at first instance and on.

<sup>(1)</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

**Pleas in law and main arguments**

According to the Commission the contested judgment should be set aside on the following grounds:

First, violation of Articles 288 and 297(1) TFEU, by finding that the rules of the Second Gas Directive<sup>(1)</sup> apply to the case at hand: this first set of arguments advanced by the Commission will deal with the question whether the General Court was correct in holding (implicitly) that the Commission applied the Third Gas Directive<sup>(2)</sup> retroactively.

Second, the General Court erred in its legal characterisation of the facts and failed to properly apply the legal standard that it itself had announced: assuming that the General Court was correct in holding that application of the substantive rules of the Third Gas Directive would have been retroactive (*quod non*), the question whether the rules contained in Article 36 of the Third Gas Directive constitute an indivisible whole from the point of view of the time at which they take effect will be addressed in order to assess whether the General Court was also correct to hold that retroactive application of the procedural rules contained in that Directive was similarly prohibited.

In Commission's view, the assessment of the notified exemption decision in question on the basis of the procedural and substantive rules laid down in the Third Gas Directive did not entail a retroactive application of that act but is consistent with the principle of immediate application under which a provision of Union law applies from the time it enters into force to the future effects of a situation which arose under the old rule.

<sup>(1)</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC. OJ L 176, p. 57

<sup>(2)</sup> Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC. OJ L 211, p. 94

**Request for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 25 November 2013 — Ministero dell'Economia e delle Finanze and Others v Francesco Cimmino and Others**

(Case C-607/13)

(2014/C 61/04)

*Language of the case: Italian*

**Referring court**

Corte Suprema di Cassazione

**Parties to the main proceedings**

*Appellants:* Ministero dell'Economia e delle Finanze and Others

*Respondents:* Francesco Cimmino and Others

**Questions referred**

1. On a proper construction of Article 11 of Regulation (EC) No 2362/98,<sup>(1)</sup> under which it is the responsibility of the Member States to check that operators are commercially active for their own account as importers into the Community and as independent economic units in terms of management, staffing and operations, is all import activity carried out on behalf of a traditional operator by persons who only formally satisfy the requirements laid down by that regulation in respect of 'new operators' to be excluded from the customs benefits normally granted to new operators?
2. Does Regulation (EC) No 2362/98 permit a traditional operator to sell bananas which are outside the European Union to a newcomer with which it has reached an agreement under which the bananas are to be imported into the European Union at a preferential rate of duty and are to be resold to that traditional operator at a price agreed upon prior to the whole transaction, without the newcomer bearing any actual business risk or making any arrangements regarding the resources necessary for carrying out that transaction?
3. Does the agreement referred to in Question 2 constitute an infringement of the prohibition, laid down in Article 21(2) of Regulation (EC) No 2362/98, on the transfer of rights from new operators to traditional operators, with the result that the transfer carried out remains ineffective and the duty is payable in full and not at a preferential rate, in accordance with Article 4(3) of Regulation No 2988/95? <sup>(2)</sup>

<sup>(1)</sup> Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community (OJ 1998 L 293, p. 32).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

**Appeal brought on 27 November 2013 by British Telecommunications plc against the judgment of the General Court (Eighth Chamber) delivered on 16 September 2013 in Case T-226/09: British Telecommunications plc v European Commission**

(Case C-620/13 P)

(2014/C 61/05)

*Language of the case: English*

**Parties**

*Appellant:* British Telecommunications plc (represented by: J. Holmes, Barrister, H. Legge QC)

*Other parties to the proceedings:* European Commission, BT Pension Scheme Trustees Ltd

### Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal as it relates to the first and second pleas of the appellant's application before the General Court;
- uphold those pleas as well founded;
- set aside Commission Decision 2009/703/EC of 11 February 2009 <sup>(1)</sup>; and
- grant the appellant its costs of the present appeal and of the application to the General Court.

### Pleas in law and main arguments

The appellant puts forward three pleas in law in support of its appeal.

By its first ground of appeal, the appellant submits that in the judgment under appeal the General Court set out its own reasons, which are not contained in the Commission Decision, for disregarding certain special liabilities in its assessment of selectivity. The General Court thereby impermissibly sought to substitute its own reasoning for that of the Commission in assessing whether there was any selective advantage to the appellant.

By its second ground of appeal, the appellant submits that, in any event, the General Court's own reasons contain errors of law because in disregarding the special liabilities: the legal standard the General Court applied was incorrect; and the reasons it relied upon were in each case either irrelevant from the legal perspective or distorted the clear sense of the evidence.

By its third ground of appeal, the appellant maintains that the General Court erred in law in its review of the Commission's reasons for disregarding the special liabilities by upholding those reasons as legally relevant and sufficient to sustain the Commission Decision. The General Court's review is inadequate. In some instances, it is unclear whether or not the General Court accepts the Commission's reasoning and, if so, on what basis. In other instances, the General Court takes into account factors that are legally irrelevant and substitutes its own reasoning for that of the Commission.

<sup>(1)</sup> Commission Decision of 11 February 2009 concerning the State aid C-55/07 (ex NN-63/07, CP-106/06) implemented by the United Kingdom of Great Britain and Northern Ireland — Crown guarantee to BT (notified under document C(2009) 685). OJ L 242, p. 21

### Request for a preliminary ruling from the Oberster Patent- und Markensenat (Austria) lodged on 2 December 2013 — Arne Forsgren

(Case C-631/13)

(2014/C 61/06)

*Language of the case:* German

### Referring court

Oberster Patent- und Markensenat

### Parties to the main proceedings

*Applicant:* Arne Forsgren

*Defendant:* Österreichisches Patentamt

### Questions referred

1. Under Article 1(b) and Article 3(a) and (b) of 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, <sup>(1)</sup> provided that the other conditions are met, may a protection certificate be granted for an active ingredient protected by a basic patent (in this case, *Protein D*) where that active ingredient is contained in the medicinal product (in this case, *Synflorix*) as part of a covalent (molecular) bond with other active ingredients but none the less retains its own effect?
2. If Question 1 is answered in the affirmative:
  - 2.1 Under Article 3(a) and (b) of Regulation (EC) No 469/2009, may a protection certificate be granted for the substance protected by the basic patent (in this case, *Protein D*) where that substance has a therapeutic effect of its own (in this case, as a vaccine against *Haemophilus influenzae* bacteria) but the authorisation of the medicinal product does not relate to that effect?
  - 2.2 Under Article 3(a) and (b) of Regulation (EC) No 469/2009, may a protection certificate be granted for the substance protected by the basic patent (in this case, *Protein D*) where the authorisation describes that substance as a 'carrier' for the actual active ingredients (in this case, *Pneumococcal polysaccharides*), the carrier, as an adjuvant, enhances the effect of those substances, but that effect is not expressly mentioned in the authorisation of the medicinal product?

<sup>(1)</sup> OJ 2009 L 152, p. 1.



**Request for a preliminary ruling from the Cour du travail de Bruxelles (Belgium) lodged on 6 December 2013 — Office national de l'emploi v Marie-Rose Melchior**

(Case C-647/13)

(2014/C 61/07)

*Language of the case: French*

**Referring court**

Cour du travail de Bruxelles

**Parties to the main proceedings**

*Applicant:* Office national de l'emploi

*Defendant:* Marie-Rose Melchior

**Question referred**

Do the principle of sincere cooperation and Article 4(3) TEU, on the one hand, and Article 34(1) of the Charter of Fundamental Rights, on the other, preclude a Member State, in relation to the issue of qualifying for unemployment benefit, from refusing:

- to take account of working periods as a contract employee in the service of a European Union institution, established in that Member State, in particular where, both before and after the period of employment as a contract employee, work was performed as an employed person in accordance with the legislation of that Member State;
- to treat days of unemployment compensated under the 'Conditions of Employment of Other Servants of the European Communities' in the same way as working days, whereas the days of unemployment compensated in accordance with the legislation of that Member State are treated in that way?

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**Action brought on 19 December 2013 — European Commission v Republic of Poland**

(Case C-678/13)

(2014/C 61/08)

*Language of the case: Polish*

**Parties**

*Applicant:* European Commission (represented by: L. Lozano Palacios and D. Milanowska, Agents)

*Defendant:* Republic of Poland

**Form of order sought**

The applicant claims that the Court should:

- declare, on the basis of the first paragraph of Article 258 TFEU, that, by applying a reduced rate of VAT to, inter alia, supplies of:
  - medical equipment, aids and other appliances which are not intended for the exclusive personal use of disabled persons and/or which are not normally intended to alleviate or treat disability;
  - products such as, inter alia, disinfectants, products and preparations for pharmaceutical use, as well as spa products, which are not pharmaceutical products of a kind normally used for health care, prevention of illnesses or as treatment for medical and veterinary purposes, or products used for contraception and sanitary protection,

mentioned in Annex 3 to the Polish Law on VAT with reference to medical equipment, medical goods and pharmaceutical products, the Republic of Poland has failed to fulfil its obligations under Articles 96 to 98 of the VAT Directive, <sup>(1)</sup> in conjunction with Annex III to that directive;

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

**Pleas in law and main arguments**

In support of its action the Commission submits that the Republic of Poland applies a reduced rate of VAT to goods which do not belong in any of the categories of goods mentioned in Annex III to the VAT Directive. Those goods must, however, be made subject to tax at the standard rate as they cannot come within the scope of the exception provided for in Article 98(2) of the Directive.

In the Commission's view, the goods in issue cannot be classified as being either pharmaceutical products of a kind normally used for health care, prevention of illnesses and as a treatment for medical and veterinary purposes, or as equipment normally intended to alleviate or treat disability, for the exclusive personal use of disabled persons. Furthermore, several categories of goods covered by the reduced rate of VAT pursuant to the Polish provisions are unclear or formulated imprecisely, thereby making it impossible to determine which goods are in fact involved.

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

**Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 27 December 2013 — Belgacom SA v Commune de Fléron**

(Case C-685/13)

(2014/C 61/09)

*Language of the case: French*

**Referring court**

Tribunal de première instance de Liège

**Parties to the main proceedings**

*Applicant:* Belgacom SA

*Defendant:* Commune de Fléron

**Question referred**

Do the provisions of the Authorisation Directive,<sup>(1)</sup> and in particular Article 13 thereof pertaining to the methods of imposition of fees for rights of use for radiofrequencies and rights to install facilities on or under public or private property, preclude the imposition on mobile telecommunications operators by the communal administrative authorities of a Member State, by way of a municipal regulation, of a tax comprising a single and flat-rate fee of EUR 2 500 per pylon or mast, the fact giving rise to which is the presence of such pylon or mast on the territory of the commune on 1 January of the year of assessment, in the case where that tax does not represent remuneration and is motivated by budgetary and environmental objectives?

<sup>(1)</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

**Appeal brought on 15 January 2014 by European Commission against the judgment of the General Court (Second Chamber) delivered on 12 November 2013 in Case T-499/10: MOL Magyar Olaj- és Gázipari Nyrt. v European Commission**

(Case C-15/14 P)

(2014/C 61/10)

*Language of the case: English*

**Parties**

*Appellant:* European Commission (represented by: L. Flynn, K. Talabér-Ritz, agents)

*Other party to the proceedings:* MOL Magyar Olaj- és Gázipari Nyrt.

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Second Chamber) of 12 November 2013 in Case T-499/10 MOL Magyar Olaj- és Gázipari Nyrt. v European Commission; and
  - reject the application to annul Commission Decision C(2010) 3553 final of 9 June 2010 in Case C-1/09 (ex NN-69/2008) on the State aid implemented by Hungary in favour of MOL Nyrt.<sup>(1)</sup>;
  - order the applicant at first instance to pay the costs;
- alternatively,
- refer back the case to the General Court for reconsideration;
  - reserve the costs of the proceedings at first instance and on appeal.

**Pleas in law and main arguments**

The Commission maintains that the judgment under appeal should be set aside because several aspects of that judgment misinterpret or misapply the concept of selectivity.

First, the judgment misapplies the case-law on selectivity in relation to measures for which the national authorities have discretion on the treatment they accord to undertakings.

Second, the General Court incorrectly states the law in considering that the presence of objective criteria necessarily excludes the presence of selectivity.

Third, the judgment erroneously links the presence of selectivity to the intention of the Member State to shield one or more operators from a new regime of fees and thereby overlooked the requirement that the presence of State aid rests on the effects of the measure under examination.

Fourth, the considerations set out in the judgment regarding the ‘subsequent modification of the conditions external to [an agreement preserving a particular level of fees]’ could not be relevant to the case in hand since the subsequent modification of the conditions external to the agreement examined by the Commission was a change in a legislative regime.

<sup>(1)</sup> OJ L 34, p. 55.

**Appeal brought on 16 January 2014 by European Commission against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 5 November 2013 in Case T-512/09: Rusal Armenal ZAO v Council of the European Union**

(Case C-21/14 P)

(2014/C 61/11)

*Language of the case: English*

**Parties**

*Appellant:* European Commission (represented by: J. Brakeland, M. França and T. Maxian Rusche, Agents)

*Other parties to the proceedings:* Rusal Armenal ZAO, Council of the European Union

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court (Second Chamber, extended composition) of 5 November 2013, notified to the Commission on 6 November 2013, in Case T-512/09 Rusal Armenal ZAO v Council;
- reject the first plea of the Application at first instance as unfounded in law;

— refer the case for the remaining pleas to the General Court for reconsideration;

— reserve the costs of the proceedings at first instance and on appeal.

**Pleas in law and main arguments**

The Commission maintains that the judgment under appeal should be set aside on the following grounds:

First, the General Court has ruled *ultra petita*.

Second, the General Court has misinterpreted Article 2(7) of Council Regulation (EC) No 384/96 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup>, in the version applicable when the contested Regulation was adopted, and the intention of the Community legislator, in the sense of the Nakajima case-law <sup>(2)</sup>, when adopting that provision.

Third, the General Court has violated the general principle of Community law of institutional balance.

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<sup>(1)</sup> OJ 1996 L 56, p. 1.

<sup>(2)</sup> Case C-69/89 Nakajima v Council [1991] ECR I-2069, paragraphs 28 to 32; restated in Case C-149/96 Portugal v Council [1999] ECR I-8395, paragraph 49; see also Case C-76/00 P Petrotub and Republica v Council [2003] ECR I-79, paragraphs 53 to 56.

## GENERAL COURT

**Judgment of the General Court of 21 January 2014 — Klein v Commission**(Case T-309/10) <sup>(1)</sup>

*(Non-contractual liability — Medical devices — Articles 8 and 18 of Directive 93/42/EEC — Failure of the Commission to act following notification of a decision prohibiting placing on the market — Sufficiently serious breach of a legal rule conferring rights on individuals)*

(2014/C 61/12)

Language of the case: German

**Parties**

*Applicant:* Christoph Klein (Großgmain, Austria) (represented by: D. Schneider-Addae-Mensah, lawyer)

*Defendant:* European Commission (represented by: A. Sipos and G. von Rintelen, acting as Agents, assisted by C. Winkler, lawyer)

*Intervener in support of the defendant:* Federal Republic of Germany (represented initially by T. Henze and N. Graf Vitzthum, and subsequently by T. Henze and J. Möller, acting as Agents)

**Re:**

Action for damages, on the basis of the combined provisions of Article 268 TFEU and the second paragraph of Article 340 TFEU, seeking compensation for the injury allegedly suffered by the applicant as a result of the Commission's breach of its obligations under Article 8 of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1).

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Mr Christoph Klein to bear his own costs and to pay those incurred by the European Commission;
3. Orders the Federal Republic of Germany to bear its own costs.

<sup>(1)</sup> OJ C 347, 26.11.2011.

**Judgment of the General Court of 21 January 2014 — Bial-Portela v OHIM — Probiotal (PROBIAL)**(Case T-113/12) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community figurative mark PROBIAL — Earlier national, international and Community figurative marks, emblem, business name and logo Bial — Relative grounds for refusal — Article 8(1)(b) and 8(4) and (5) of Regulation (EC) No 207/2009)*

(2014/C 61/13)

Language of the case: English

**Parties**

*Applicant:* Bial-Portela & C<sup>a</sup>, SA (São Mamede do Coronado, Portugal) (represented by: B. Braga da Cruz and J. Pimenta, lawyers)

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

*Other party to the proceedings before the Board of Appeal of OHIM:* Probiotal SpA (Novara, Italy) (represented by: I. Kuschel, lawyer)

**Re:**

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 December 2011 (Case R 1925/2010-4) concerning opposition proceedings between Portela & C<sup>a</sup>, SA and Probiotal SpA.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action;
2. Orders Bial-Portela & C<sup>a</sup>, SA to pay the costs.

<sup>(1)</sup> OJ C 165, 9.6.2012.

**Judgment of the General Court of 21 January 2014 —  
Wilmar Trading v OHIM — Agroekola (ULTRA CHOCO)**

(Case T-232/12) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Application for Community word mark ULTRA CHOCO — Earlier national word mark ultra choco — Unregistered earlier mark ULTRA CHOCO used in the course of trade in the European Union and in Bulgaria — Article 60 of Regulation (EC) No 207/2009 — Failure to comply with the obligation to pay appeal fee within the time-limit — Decision of the Board of Appeal declaring the appeal deemed not to have been filed)*

(2014/C 61/14)

Language of the case: English

**Parties**

*Applicant:* Wilmar Trading Pte Ltd (Singapore, Singapore) (represented by: E. Miller, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Negro and D. Botis, acting as Agents)

*Other party to the proceedings before the Board of Appeal of OHIM:* Agroekola EOOD (Sofia, Bulgaria)

**Re:**

Action brought against the decision of the First Board of Appeal of OHIM of 27 March 2012 (Case R 87/2012-1), relating to opposition proceedings between Wilmar Trading Pte Ltd and Agroekola EOOD.

**Operative part of the judgment**

*The Court:*

1. Dismisses the action.
2. Orders Wilmar Trading Pte Ltd to pay the costs.

<sup>(1)</sup> OJ C 243, 11.8.2012.

**Action brought on 29 November 2013 — Eycharis Nezi v  
OHIM — Etam (E)**

(Case T-645/13)

(2014/C 61/15)

Language in which the application was lodged: Greek

**Parties**

*Applicant:* Eycharis Nezi (Mykonos, Greece) (represented by: A Salkitzoglou, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Etam SAS (Clichy, France)

**Form of order sought**

The applicant claims that the General 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 3 October 2013 in Case R 329/2013-4;
- vary the above decision so that the applicant's mark is registered for all the goods and service which were applied for and,
- order the opponent to pay all the applicant's legal costs, including all costs of any interveners.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* The applicant.

*Community trade mark concerned:* The figurative mark 'E', for goods and services in Classes 14, 16, 18, 25, 26, 35 and 40 — Community trade mark application No 8701138.

*Proprietor of the mark or sign cited in the opposition proceedings:* The opponent before the Board of Appeal.

*Mark or sign cited in opposition:* The Community figurative mark 'E', for goods in Classes 3, 18 and 25.

*Decision of the Opposition Division:* Rejection of the opposition.

*Decision of the Board of Appeal:* Partial annulment of the decision of the Opposition Division.

*Pleas in law:*

- Infringement of the Treaty on the Functioning of the European Union;
- Infringement of Article 4 of Regulation No 207/2009;

— Infringement of Article 8(1)(b) and (5) of Regulation No 207/2009;

— Infringement of Article 76 of Regulation No 207/2009, and

— Infringement of Articles 15 and 42 of Regulation No 207/2009.

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**Action brought on 3 December 2013 — IOIP Holdings v OHIM (GLISTEN)**

(Case T-648/13)

(2014/C 61/16)

*Language of the case: English*

**Parties**

*Applicant:* IOIP Holdings LLC (Fort Wayne, United States of America) (represented by: H. Dhondt and S. Kinart, lawyers)

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

**Form of order sought**

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 1028/2013-2;

— Order the Office to register the Community trade mark applied for;

— Order the defendant to bear the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'GLISTEN' for goods in Class 3 — Community trade mark application No 11 305 273

*Decision of the Examiner:* Rejected the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) CTMR

**Action brought on 12 December 2013 — Time v OHIM (InStyle)**

(Case T-651/13)

(2014/C 61/17)

*Language of the case: English*

**Parties**

*Applicant:* Time Inc. (New York, United States) (represented by: D. Cañadas Arcas, lawyer)

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

**Form of order sought**

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 20 September 2013 given in Case R 827/2013-2;

— Order the defendant to bear the costs of proceedings, including the costs of the appeal proceeding incurred before the Office.

**Pleas in law and main arguments**

*Community trade mark concerned:* The figurative trade mark for goods and services in Classes 9, 16 and 41 — Community trade mark application No 11 264 223

*Decision of the Examiner:* Rejected partially the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) and Article 7(2) CTMR.

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**Action brought on 10 December 2013 — The Smiley Company v OHIM (Shape of a cookie)**

(Case T-656/13)

(2014/C 61/18)

*Language of the case: English*

**Parties**

*Applicant:* The Smiley Company SPRL (Brussels, Belgium) (represented by: A. Freitag, lawyer)

*Defendant:* Office for Harmonization 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 Harmonization in the Internal Market (Trade Marks and Designs) of 8 October 2013 given in Case R 997/2013-4;
- Order the defendant to bear the costs of proceedings.

### Pleas in law and main arguments

*Community trade mark concerned:* The three-dimensional trade mark representing a shape of a cookie with a smiling face for goods in Classes 29 and 30 — Community trade mark application No 11 133 683

*Decision of the Examiner:* Rejected partially the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7 (1) (b) CTMR

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### Action brought on 11 December 2013 — BH Stores v OHIM — Alex Toys (ALEX)

(Case T-657/13)

(2014/C 61/19)

*Language in which the application was lodged:* English

### Parties

*Applicant:* BH Stores BV (Curaçao) (represented by: T. Dolde and M. Hawkins, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Alex Toys LLC (Greenwich, United States of America)

### Form of order sought

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 16 September 2013 given in Case R 1950/2012-2;

— Order the defendant to bear 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 'ALEX' for goods in Classes 16, 20, and 28 — Community trade mark application No 6 540 173

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

*Mark or sign cited in opposition:* The German trade mark registration Nos 1 049 274 and 648 968 for the word mark 'ALEX' and the German trade mark registration No 39 925 705 for the figurative mark containing the verbal element 'ALEX' for goods in Class 28

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

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

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### Appeal brought on 10 December 2013 by BP against the judgment of the Civil Service Tribunal of 30 September 2013 in Case F-38/12 BP v FRA

(Case T-658/13 P)

(2014/C 61/20)

*Language of the case:* English

### Parties

*Appellant:* BP (Barcelona, Spain) (represented by: L. Levi and M. Vandenbussche, lawyers)

*Other party to the proceedings:* European Union Agency for Fundamental Rights (FRA)

### Form of order sought by the appellant

The appellant claims that the Court should:

- Set aside the Civil Service Tribunal's judgment of 30 September 2013 in case F-38/12;

— Consequently, annul the decision not to renew the appellant's contract and to transfer her to another department, dated 27 February 2012; order the defendant to compensate the appellant's material prejudice estimated at 1 320 euros per month from September 2012, to which must be added late interest at the key rate of the European Central Bank plus two percentage points; and order the defendant to compensate the appellant's moral prejudice evaluated *ex aequo et bono* at 50 000 euros; and

— Order the defendant to pay the costs in the first instance and appeal.

### Pleas in law and main arguments

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

#### 1. Regarding the decision of non-renewal of the appellant's contract

— Firstly, the appellant alleges that the Civil Service Tribunal violated the principle of the rights of defence and the right to be heard and of access to relevant information embodied in Article 41 of the EU Charter of Fundamental Rights and it distorted the evidence;

— Secondly, the appellant alleges that by refusing to authorise a second exchange of pleadings and the production of relevant evidence in response to the observations of the defendant and at the hearing, the Civil Service Tribunal violated the appellant's rights of defence, committed a manifest error of assessment and denied to the appellant a fair trial;

— Thirdly, the appellant alleges a manifest error made by the Civil Service Tribunal in the assessment of the first plea alleging a manifest error of assessment in the decision of the defendant and distortion of the facts and evidence;

— Fourthly, the appellant alleges a manifest error in the assessment of the pleas on retaliation and misuse of powers, distortion of the facts and evidence.

#### 2. Regarding the decision of reassignment

— Firstly, the appellant alleges an illegal assessment by the Civil Service Tribunal of the second plea, alleging irregular and unilateral amendment of an essential element of the contract of service and a discrepancy between post and grade, and a distortion of evidence;

— Secondly, the appellant alleges that the Civil Service Tribunal erred in law in the assessment of the appellant's

argument in relation to the absence of hearing by the defendant before the decision to transfer and a violation of the rights of defence.

#### 3. The appellant alleges a violation of Article 87(2) and 88 of the Rules of Procedure of the civil Service Tribunal regarding the costs, and a violation of the duty to state reasons.

### Action brought on 12 December 2013 — *dm-drogerie markt v OHIM — Diseños Mireia (D and M)*

(Case T-662/13)

(2014/C 61/21)

*Language in which the application was lodged: English*

#### Parties

*Applicant:* *dm-drogerie markt GmbH & Co. KG* (Karlsruhe, Germany) (represented by: O. Bludovsky and C. Mellein, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* *Diseños Mireia, SL* (Barcelona, Spain)

#### Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1 and cancel the contested trade mark;

— Alternatively: Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1 and remit the case;

— Alternatively: Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 11 September 2013 given in Case R 911/2012-1.

#### 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 consisting of the letters 'D' and 'M' for goods in Class 14 — Community trade mark application No 9 737 917

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

*Mark or sign cited in opposition:* The Community trade mark registration No 3 984 044 for the word mark 'dm' for goods in Class 14

*Decision of the Opposition Division:* Rejected the opposition

*Decision of the Board of Appeal:* Dismissed the appeal

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

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**Action brought on 16 December 2013 — Zitro IP v OHIM — Gamepoint (SPIN BINGO)**

(Case T-665/13)

(2014/C 61/22)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Zitro IP Sàrl. (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Gamepoint BV (The Hague, Netherlands)

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 14 October 2013 given in Case R 1388/2012-4;
- Order the defendant and the other party, should it intervene, to bear 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 coloured figurative mark in colours containing the verbal element 'SPIN BINGO' for goods and services in Classes 9, 41 and 42 — Community trade mark application No 9 545 658

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

*Mark or sign cited in opposition:* The word mark 'ZITRO SPIN BINGO' for goods and services in Classes 9, 28 and 41 — Community trade mark registration No 9 058 868

*Decision of the Opposition Division:* Upheld the opposition in part

*Decision of the Board of Appeal:* Annulled the contested decision and rejected the opposition

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

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**Action brought on 18 December 2013 — Gugler France v OHIM — Gugler (GUGLER)**

(Case T-674/13)

(2014/C 61/23)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Gugler France SA (Besançon, France) (represented by: A. Grolée, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Alexander Gugler (Maxdorf, 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 Harmonization in the Internal Market (Trade Marks and Designs) of 16 October 2013 given in Case R 356/2012-4;
- Cancel the contested trade mark;
- Order the defendant and the other party, should it intervene, 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 figurative mark 'GUGLER' for goods and services in Classes 6, 17, 19, 22, 37, 39 and 42 — Community trade mark registration No 3 324 902

*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)(b) and 53(1)(c) in conjunction with Article 8(4) CTMR

*Decision of the Cancellation Division:* Declared the contested Community trade mark 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 Article 52(1)(b) and 53(1)(c) CTMR

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**Action brought on 20 December 2013 — Brammer v OHIM — Office Ernest T. Freylinger (EUROMARKER)**

(Case T-683/13)

(2014/C 61/24)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Brammer GmbH (Vienna, Austria) (represented by: R. Kornfeld, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Office Ernest T. Freylinger SA (Strassen, Luxembourg)

**Form of order sought**

The applicant claims that the Court should:

in so far as the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) also

confirmed the decision of the Opposition Division of 4 July 2012, in that it upheld the opposition also for the supply of services in Class 38 and in Class 42,

— find that the Office for Harmonisation in the Internal Market (Trade Marks and Designs) made an error;

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2013 in Case R 1653/2012-1;

— order the defendant OHIM to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Brammer GmbH

*Community trade mark concerned:* Word mark 'EUROMARKER' for services in Classes 38, 42 and 45 — Community trade mark application Nr 9 852 849

*Proprietor of the mark or sign cited in the opposition proceedings:* Office Ernest T. Freylinger SA

*Mark or sign cited in opposition:* Word mark 'EURIMARK' for services in Classes 35, 41, 42 and 45 — Community trade mark No 5 850 111

*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 No 207/2009

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**Action brought on 24 December 2013 — TUI Deutschland GmbH v OHIM — Infinity Real Estate & Project Development (Sensimar)**

(Case T-706/13)

(2014/C 61/25)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* TUI Deutschland GmbH (Hanover, Germany) (represented by: D. von Schultz, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Infinity Real Estate & Project Development GmbH (Rantum/Sylt, Germany)

### Form of order sought

The applicant claims that the General 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 17 October 2013 in Case R 1476/2012-1;
- reject the opposition to the applicant's Community trade mark registration No 7 212 889;
- order OHIM to pay the costs relating to the cancellation proceedings, the appeal proceedings and this action before the General Court.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* The applicant.

*Community trade mark concerned:* The word mark 'Sensimar' for goods and services in Classes 16, 25, 35 and 44 — Community trade mark application No 7 212 889

*Proprietor of the mark or sign cited in the opposition proceedings:* Infinity Real Estate & Project Development GmbH

*Mark or sign cited in opposition:* National word marks 'SANSIBAR' for goods and services in Classes 16, 25, 35 and 44

*Decision of the Opposition Division:* Opposition upheld.

*Decision of the Board of Appeal:* Appeal dismissed.

*Pleas in law:* Infringement of Article 53(1)(a) in conjunction with Article 8(2) in conjunction with Article 8(1)(b) of Regulation No 207/2009.

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### Action brought on 27 December 2013 — Steinbeck v OHIM — Alfred Sternjakob (BE HAPPY)

(Case T-707/13)

(2014/C 61/26)

*Language in which the application was lodged:* German

### Parties

*Applicant:* Steinbeck GmbH (Fulda, Germany) (represented by: M. Heinrich and M. Fischer, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Alfred Sternjakob GmbH & Co. KG (Frankenthal, 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 17 October 2013 in Case R 31/2013-1;
- Order the defendant to pay the costs including those incurred in the course of the appeal 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 'BE HAPPY' for goods in Classes 9, 11 and 18 — Community trade mark No 8 666 083

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade mark:* Alfred Sternjakob GmbH & Co. KG

*Grounds for the application for a declaration of invalidity:* the absolute grounds for invalidity under Article 52(1)(a) of Regulation No 207/2009 in conjunction with Article 7(1)(b) and (c) of that regulation

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

*Decision of the Board of Appeal:* the appeal was dismissed

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

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### Action brought on 27 December 2013 — Steinbeck v OHIM — Alfred Sternjakob (BE HAPPY)

(Case T-709/13)

(2014/C 61/27)

*Language in which the application was lodged:* German

### Parties

*Applicant:* Steinbeck GmbH (Fulda, Germany) (represented by: M. Heinrich and M. Fischer, lawyers)

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

*Other party to the proceedings before the Board of Appeal:* Alfred Sternjakob GmbH & Co. KG (Frankenthal, 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 17 October 2013 in Case R 32/2013-1;
- Order the defendant to pay the costs including those incurred in the course of the appeal 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 'BE HAPPY' for goods in Classes 16, 21, 28 and 30 — Community trade mark No 5 310 057

*Proprietor of the Community trade mark:* the applicant

*Applicant for the declaration of invalidity of the Community trade mark:* Alfred Sternjakob GmbH & Co. KG

*Grounds for the application for a declaration of invalidity:* the absolute grounds for invalidity under Article 52(1)(a) of Regulation No 207/2009 in conjunction with Article 7(1)(b) and (c) of that regulation

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

*Decision of the Board of Appeal:* the appeal was dismissed

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

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

*Other party to the proceedings before the Board of Appeal:* Tiertafel Deutschland eV (Rathenow, Germany)

### Form of order sought

The applicant claims that the General 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 17 October 2013 in Case R 1074/2012-4;
- 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:* The word mark 'Tafel' for services in Classes 39 and 45 — Community trade mark No 8 985 541.

*Proprietor of the Community trade mark:* The applicant.

*Applicant for the declaration of invalidity of the Community trade mark:* Tiertafel Deutschland e.V.

*Grounds for the application for a declaration of invalidity:* Absolute grounds for invalidity under Article 52(1)(a) in conjunction with Article 7(1)(b) and (c) of Regulation No 207/2009 and the applicant's bad faith under Article 52(1)(b) of Regulation No 207/2009

*Decision of the Cancellation Division:* Rejection of the application for a declaration of invalidity.

*Decision of the Board of Appeal:* Appeal upheld and mark declared invalid.

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

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**Action brought on 23 December 2013 — Bundesverband Deutsche Tafel — OHIM — Tiertafel Deutschland (Tafel)**

(Case T-710/13)

(2014/C 61/28)

*Language in which the application was lodged:* German

### Parties

*Applicant:* Bundesverband Deutsche Tafel eV (Berlin, Germany) (represented by: T. Koerl, E. Celenk and S. Vollmer, lawyers)

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**Action brought on 20 December 2013 — Monster Energy v OHIM (REHABILITATE)**

(Case T-712/13)

(2014/C 61/29)

*Language of the case:* English

### Parties

*Applicant:* Monster Energy Company (Corona, United States) (represented by: P. Brownlow, lawyer)

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

### Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 17 October 2013 given in Case R 609/2013-1;

— Order the defendant to bear the costs of proceedings.

### Pleas in law and main arguments

*Community trade mark concerned:* Word mark 'REHABILITATE' for goods in Classes 5, 30 and 32 — Community trade mark application No 10 834 802

*Decision of the Examiner:* Rejected the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(c) and Article 4 CTMR

**Action brought on 30 December 2013 — 9Flats v OHIM — Tibesoca (9flats.com)**

(Case T-713/13)

(2014/C 61/30)

*Language in which the application was lodged:* German

### Parties

*Applicant:* 9Flats GmbH (Hamburg, Germany) (represented by: H. Stoffregen, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Tibesoca, SL (Valencia, 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 25 October 2013 in Case R 1671/2012-2;

— annul the decision of OHIM's Opposition Division of 13 July 2012 in opposition proceedings No B 1 898 686;

— reject the opposition to registration of the mark '9flats.com' — Community trade mark application No 9 832 635

### Pleas in law and main arguments

*Applicant for a Community trade mark:* 9Flats GmbH

*Community trade mark concerned:* Word mark '9flats.com' for services in Classes 36, 38, 39 and 43 — Community trade mark application No 9 832 635

*Proprietor of the mark or sign cited in the opposition proceedings:* Tibesoca, SL

*Mark or sign cited in opposition:* Spanish figurative mark which includes the number and word elements '40 flats apartments' for services in Class 43, Spanish figurative mark which includes the number and word elements '11 flats apartments' for services in Class 43, and Spanish figurative mark which includes the numbers and the word element '50 flats' for services in Class 43

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

*Decision of the Board of Appeal:* Annulment in part of the decision of the Opposition Division

*Pleas in law:* Infringement of Article 8(1)(b) and of Article 7(1)(c) of Regulation No 207/2009

**Action brought on 23 December 2013 — Gold Crest v OHIM (MIGHTY BRIGHT)**

(Case T-714/13)

(2014/C 61/31)

*Language of the case:* English

### Parties

*Applicant:* Gold Crest LLC (Santa Barbara, United States) (represented by: P. Rath and W. Festl-Wietek, lawyers)

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

**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) of 8 October 2013 given in Case R 2038/2012-2;
- Declare the Community trade mark applied for eligible for registration;
- Order the defendant to bear the costs of proceedings.

**Pleas in law and main arguments**

*Community trade mark concerned:* The word mark 'MIGHTY BRIGHT' for goods and services in Class 11 — Community trade mark application No 10 853 141

*Decision of the Examiner:* Rejected the application

*Decision of the Board of Appeal:* Dismissed the appeal

*Pleas in law:* Infringement of Article 7(1)(b) and (c) and Article 65(2) CTMR.

**Action brought on 6 January 2014 — Banco Mare Nostrum v Commission**

(Case T-16/14)

(2014/C 61/32)

*Language of the case:* Spanish

**Parties**

*Applicant:* Banco Mare Nostrum SA (Madrid, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero, A. Lamadrid de Pablo and A. Biondi, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

- in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

- in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

- annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and

- order the Commission to pay the costs of these proceedings.

**Pleas in law and main arguments**

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia v Commission*.

**Action brought on 6 January 2014 — Aguas de Valencia v Commission**

(Case T-18/14)

(2014/C 61/33)

*Language of the case:* Spanish

**Parties**

*Applicant:* Aguas de Valencia, SA (Valencia, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;

- in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;

- in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

- annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and
- order the Commission to pay the costs of these proceedings.

### Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia v Commission*.

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### Action brought on 8 January 2014 — NetMed v OHIM — Sander chemisch-pharmazeutische Fabrik (SANDTER 1953)

(Case T-21/14)

(2014/C 61/34)

*Language in which the application was lodged: German*

### Parties

*Applicant:* NetMed Sàrl (Wasserbillig, Luxembourg) (represented by: S. Schafhaus, lawyer)

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

*Other party to the proceedings before the Board of Appeal:* Sander chemisch-pharmazeutische Fabrik GmbH (Baden-Baden, 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 24 October 2013 in Case R 1846/2012-1;
- Order the defendant to pay the costs including those incurred in the appeal and opposition proceedings.

### Pleas in law and main arguments

*Applicant for a Community trade mark:* the applicant

*Community trade mark concerned:* the word mark 'SANDTER 1953' for goods in Classes 3, 5 and 10 — Community trade mark application No 9 448 887

*Proprietor of the mark or sign cited in the opposition proceedings:* Sander chemisch-pharmazeutische Fabrik GmbH

*Mark or sign cited in opposition:* the German word mark 'Sander' for goods in Classes 5, 10 and 25; the international figurative mark with protection in the Benelux countries, Austria and France which includes the word element 'SANDER', for goods in Classes 5, 10 and 25

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

*Decision of the Board of Appeal:* the appeal was dismissed

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

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### Action brought on 7 January 2014 — NCG Banco v Commission

(Case T-24/14)

(2014/C 61/35)

*Language of the case: Spanish*

### Parties

*Applicant:* NCG Banco, SA (Corunna, Spain) (represented by: J.L. Buendía Sierra, E. Abad Valdenebro, R. Calvo Salinero and A. Lamadrid de Pablo, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the General Court should:

- annul the contested decision in so far as it categorises the measures which, according to that decision, together constitute the 'Spanish Tax Lease System' as new State aid that is incompatible with the internal market;
- in the alternative, annul Articles 1 and 4 of the contested decision, which identify the investors in the Economic Interest Groupings (EIGs) as beneficiaries of the alleged aid and as the sole addressees of the order for recovery;
- in the alternative, annul Article 4 of the contested decision, in so far as it orders recovery of the alleged aid;

- annul Article 4 of the contested decision, in so far as it makes a determination as to the lawfulness of the private contracts between the investors and other entities; and
- order the Commission to pay the costs of these proceedings.

### Pleas in law and main arguments

The pleas in law and main arguments are those put forward in Case T-700/13 *Bankia v Commission*.

### Action brought on 9 January 2014 — Spain v Commission

(Case T-25/14)

(2014/C 61/36)

*Language of the case: Spanish*

### Parties

*Applicant:* Kingdom of Spain (represented by: M.J. García-Valdecasas Dorrego, Abogado del Estado)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

- annul Commission Decision C(2013) 7095 of 29 October 2013 on the compliance of 2014 unit rates for charging zones under Article 17 of Implementing Regulation (EU) No 391/2013, in so far as it sets Spain's unit rate at EUR 71.69 (Continental Spain) and EUR 58.36 (Spain, Canary Islands); and
- order the Commission to pay the costs.

### Pleas in law and main arguments

By the present action, the applicant contests the Commission Decision of 29 October 2013 on the compliance of 2014 unit rates for charging zones under Article 17 of Implementing Regulation (EU) No 391/2013, in so far as it sets Spain's unit rate at EUR 71.69 (Continental Spain) and EUR 58.36 (Spain, Canary Islands).

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

1. Breach of the first paragraph of Article 2 of Commission Regulation (EU) No 1191/2010 of 16 December 2010, read in conjunction with Article 11a of Regulation (EC) No 1794/2006 laying down a common charging scheme for air navigation services, since, in accordance with those provisions, the service providers are not required to pay, during the first reference period (2012-2014), the difference

between the actual number of service units and the number of service units forecast where this does not exceed +/-2 %, in the case of Member States with national regulations in existence before 8 July 2010 that establish a reduction on the unit rate going beyond the European Union-wide targets.

2. Breach of the principle of the hierarchy of norms, since a decision cannot amend a European Union Regulation; nor can it decide that a risk sharing mechanism 'appl[ies] already' with effect from a 0 % difference instead of with effect from a 2 % difference, when the relevant regulation has made no express provision to that effect.
3. Abuse of procedure, since, in establishing *ex novo* a risk sharing criterion in the charging scheme, the Commission did not follow the procedure established in Article 5(3) of Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky, referred to in Article 15(4) of Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky. According to the applicant, those provisions provide that the Commission is to adopt implementing rules for the purpose of establishing that charging scheme, assisted by the Single Sky Committee and, moreover, in accordance with the procedure laid down in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

In the alternative, the applicant also invokes a breach of the obligation to state reasons, and of Article 16 of Regulation (EC) No 550/2004 since, before taking its decision, the Commission did not consult the Single Sky Committee concerning whether or not Spain's position was consistent with the principles and rules of the charging scheme.

### Action brought on 7 January 2014 — Taetel v Commission

(Case T-29/14)

(2014/C 61/37)

*Language of the case: Spanish*

### Parties

*Applicant:* Taetel, SL (Madrid, Spain) (represented by: E. Navarro Varona, P. Vidal Martínez, J. López-Quiroga Teijero and G. Canalejo Lasarte, lawyers)

*Defendant:* European Commission



### Form of order sought

The applicant claims that the General Court should:

- annul the contested decision under Article 263 TFEU in so far as the decision establishes the existence of State aid and orders its recovery from the investors;
- in the alternative, annul Articles 1, 2 and 4(1) of the decision, inasmuch as they identify the investors as beneficiaries who have to repay the alleged aid;
- in the alternative, declare inapplicable the order, in Article 4(1), for recovery of the aid from the investors, inasmuch as it is contrary to the principles of legal certainty and the protection of legitimate expectations since recovery may not be ordered from a date earlier than the publication of the decision to initiate [the formal investigation procedure];
- in the alternative, annul Article 2 of the decision and declare invalid the methodology for determining the alleged advantage [conferred] to be repaid by the investors;
- declare non-existent or, in the alternative, annul in part Article 4(1) of the decision relating to the prohibition on ‘transfer[ring] the burden of recovery on other subjects’, inasmuch as this amounts to a decision on the prohibition or presumed invalidity of the contractual clauses on recovery from third parties of the amounts the investors have to repay to the Spanish State; and
- order the Commission to pay the costs.

### Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-700/13 *Bankia v Commission*, Case T-719/13 *Lico Leasing and Pequeños y Medianos Astilleros de Reconversión v Commission* and Case T-3/14 *Anudal Industrial v Commission*.

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

It is claimed, in particular, that Article 107 TFEU has been infringed in so far as the contested decision finds that, as a whole, the tax regime at issue, applicable to certain finance lease agreements for the acquisition of newly-built vessels, constitutes State aid.

According to the applicant, the fiscal decision also infringes Article 107 TFEU in so far as it finds that the measures that make up the tax regime in question constitute ‘new’ State aid.

In the alternative, the applicant alleges breach of the principles of legal certainty and the protection of legitimate expectations, and infringement of Articles 107, 108 and 206 TFEU, in so far as [the decision] identifies incorrectly the beneficiaries and determines incorrectly the amounts to be recovered; and infringement of Article 108(3) TFEU, Article 19 of Council Regulation (EC) No 659/1999 [of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty], Article 3(6) of the Treaty on European Union and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, in so far as Article 4(1) of the contested decision prohibits, or finds to be invalid the contractual

clauses pursuant to which the investors may claim from third parties the amounts they would have had to repay to the Spanish authorities.

### Action brought on 7 January 2014 — Banco Popular Español v Commission

(Case T-31/14)

(2014/C 61/38)

*Language of the case: Spanish*

### Parties

*Applicant:* Banco Popular Español, SA (Madrid, Spain) (represented by: E. Navarro Varona, P. Vidal Martínez, J. López-Quiroga Teijero and G. Canalejo Lasarte, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the General Court should:

- annul the contested decision under Article 263 TFEU in so far as the decision establishes the existence of State aid and orders its recovery from the investors;
- in the alternative, annul Articles 1, 2 and 4(1) of the decision, inasmuch as they identify the investors as beneficiaries who have to repay the alleged aid;
- in the alternative, declare inapplicable the order, in Article 4(1), for recovery of the aid from the investors, inasmuch as it is contrary to the principles of legal certainty and the protection of legitimate expectations since recovery may not be ordered from a date earlier than the publication of the decision to initiate [the formal investigation procedure];
- in the alternative, annul Article 2 of the decision and declare invalid the methodology for determining the alleged advantage [conferred] to be repaid by the investors;
- declare non-existent or, in the alternative, annul in part Article 4(1) of the decision relating to the prohibition on ‘transfer[ring] the burden of recovery on other subjects’, inasmuch as this amounts to a decision on the prohibition or presumed invalidity of the contractual clauses on recovery from third parties of the amounts the investors have to repay to the Spanish State; and
- order the Commission to pay the costs.

### Pleas in law and main arguments

The decision contested in the present proceedings is the same as that contested in Case T-29/14 *Taetel v Commission*.

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

## EUROPEAN UNION CIVIL SERVICE TRIBUNAL

### Action brought on 9 January 2014 — ZZ and ZZ v Court of Auditors

(Case F-2/14)

(2014/C 61/39)

*Language of the case: French*

#### Parties

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

*Defendant:* European Court of Auditors

#### Subject-matter and description of the proceedings

Annulment of the decision of the Court of Auditors not to examine the action to be taken following the complaint made by the applicants against two of their colleagues as a result of their joint malicious statement and to consider that it was not necessary to take measures which were required under its duty to provide assistance.

#### Form of order sought

- Annul the decision of 13 December 2012 of the Court of Auditors to close the applicants' file concerning their request under Article 24 without taking any action against two of their colleagues;
- order the Court of Auditors to pay the applicants, for non-material damage, provisionally EUR 1 towards damage assessed at EUR 100 000;

- order the Court of Auditors to pay the costs.

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### Action brought on 13 January 2014 — ZZ v Parliament

(Case F-4/14)

(2014/C 61/40)

*Language of the case: French*

#### Parties

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

*Defendant:* European Parliament

#### Subject-matter and description of the proceedings

Annulment of the decision to dismiss the applicant at the end of the probationary period.

#### Form of order sought

- Annul the decision of 26 February 2013 announcing his dismissal;
- set the amount of EUR 35 000, together with default interest, which the European Parliament is under an obligation to pay him should his re-instatement meet with insurmountable legal obstacles;
- order the Parliament to pay the costs.



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