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Information and Notices

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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2014/C 85/01)

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

OJ C 78, 15.3.2014

Past publications

OJ C 71, 8.3.2014

OJ C 61, 1.3.2014

OJ C 52, 22.2.2014

OJ C 45, 15.2.2014

OJ C 39, 8.2.2014

OJ C 31, 1.2.2014

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 15 January 2014 — European Commission v Portuguese Republic

(Case C-292/11 P) [1]

(Appeal — Compliance with a judgment of the Court of Justice establishing a failure to fulfil obligations — Periodic penalty payment — Claim for payment — Repeal of the national legislation which gave rise to the failure to fulfil obligations — Assessment by the Commission of the measures adopted by the Member State to comply with the judgment of the Court of Justice — Limits — Division of jurisdiction between the Court of Justice and the General Court)

(2014/C 85/02)

Language of the case: Portuguese

Parties

Appellant: European Commission (represented by P. Hetsch, P. Costa de Oliveira and M. Heller, acting as Agents)

Other party to the proceedings: Portuguese Republic (represented by L. Inez Fernandes and J. Arsénio de Oliveira, acting as Agents)

Interveners in support of the other party to the proceedings: Czech Republic (represented by M. Smolek and D. Hadroušek, acting as Agents), Federal Republic of Germany (represented by T. Henze and J. Möller, acting as Agents), Hellenic Republic (represented by A. Samoni-Bantou and I. Pouli, acting as Agents), Kingdom of Spain (represented by N. Díaz Abad, acting as Agent), French Republic (represented by G. de Bergues, A. Adam, J. Rossi and N. Rouam, acting as Agents), Kingdom of the Netherlands (represented by C. Wissels and M. Noort, acting as Agents), Republic of Poland (represented by M. Szpunar and B. Majczyna, acting as Agents), Kingdom of Sweden (represented by A. Falk, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 29 March 2011 in Case T-33/09 *Portugal* v *Commission*, by which the General Court annulled Commission Decision C(2008) 7419 final of 25 November 2008 — Request that the Portuguese Republic should make the penalty payments due in compliance with the judgment of the Court of Justice in Case C-70/06 *Commission* v *Portugal* [2008] ECR I-1.

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders the European Commission to bear its own costs and to pay those of the Portuguese Republic in the present proceedings;*

3. *Orders the Czech Republic, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Kingdom of the Netherlands, the Republic of Poland and the Kingdom of Sweden to bear their own respective costs.*

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[1] OJ C 252, 27.8.2011.

Judgment of the Court (Tenth Chamber) of 16 January 2014 — European Commission v Kingdom of Spain

(Case C-67/12) [1]

(Failure of a Member State to fulfil obligations — Directive 2002/91/EC — Energy performance of buildings — Articles 3, 7 and 8 — Incomplete transposition)

(2014/C 85/03)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: K. Herrmann and I. Galindo Martin, acting as Agents)

Defendant: Kingdom of Spain (represented by: A. Rubio González and S. Centeno Huerta, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt or communicate, within the prescribed period, all of the measures necessary to ensure compliance with Articles 3, 7 and 8 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance

of buildings (OJ 2003 L 1, p. 65), read in conjunction with Article 29 of Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ 2010 L 153, p. 13).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to ensure compliance with Articles 3, 7 and 8 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings, the Kingdom of Spain has failed to fulfil its obligations under those provisions;*

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

([1]) OJ C 118, 21.04.2012.

Judgment of the Court (Grand Chamber) of 15 January 2014 (request for a preliminary ruling from the Cour de cassation (France)) — Association de médiation sociale v Union locale des syndicats CGT and Others

(Case C-176/12) ([1])

(Social policy — Directive 2002/14/EC — Charter of Fundamental Rights of the European Union — Article 27 — Subjecting the setting up of bodies representing staff to certain thresholds of employees — Calculation of the thresholds — National legislation contrary to European Union law — Role of the national court)

(2014/C 85/04)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Association de médiation sociale

Defendants: Union locale des syndicats CGT, Hichem Laboubi, Union départementale CGT des Bouches-du-Rhône, Confédération générale du travail (CGT),

Re:

Request for a preliminary ruling — Cour de cassation (France) — Interpretation of the provisions of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29) — Interpretation of Articles 27, 51, 52 and 53 of the Charter of Fundamental Rights of the European Union — Interpretation of Article 6(1) and (3) TEU — Whether the aforementioned provisions can be invoked in a dispute between individuals in order to examine whether a national measure transposing the Directive complies with EU law — Lawfulness of a national legislative provision excluding from the calculation of staff numbers of the undertaking, in order to determine, inter alia, the legal thresholds for setting up bodies representing staff, workers holding certain categories of employment contract.

Operative part of the judgment

Article 27 of the Charter of Fundamental Rights of the European Union, by itself or in conjunction with the provisions of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, must be interpreted to the effect that, where a national provision implementing that directive, such as Article L. 1111-3 of the French Labour Code, is incompatible with European Union law, that article of the Charter cannot be invoked in a dispute between individuals in order to disapply that national provision.

([1]) OJ C 184, 23.6.2012

Judgment of the Court (First Chamber) of 16 January 2014 (request for a preliminary ruling from the Audiencia Provincial de Oviedo — Spain) — Constructora Principado SA v José Ignacio Menéndez Álvarez

(Case C-226/12) ([1])

(Directive 93/13/EEC — Consumer contracts — Contract for the purchase of immovable property — Unfair terms — Criteria for assessment)

(2014/C 85/05)

Language of the case: Spanish

Referring court

Audiencia Provincial de Oviedo

Parties to the main proceedings

Applicant: Constructora Principado SA

Defendant: José Ignacio Menéndez Álvarez

Re:

Request for a preliminary ruling — Audiencia Provincial de Oviedo — Interpretation of Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Concept of significant imbalance — Criteria to be taken into account.

Operative part of the judgment

1. Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that:

— *the existence of a 'significant imbalance' does not necessarily require that the costs charged to the consumer by a contractual term have, as regards that consumer, a significant economic impact having regard to the value of the transaction in question, but can result solely from a sufficiently serious impairment of the legal situation in which that consumer, as a party to the contract, is placed by reason of the relevant national provisions, whether this be in the form of a restriction of the rights which, in accordance with those provisions, he enjoys under that contract, or a constraint on the exercise of those rights, or the imposition on him of an additional obligation not envisaged by the national rules;*

— *in assessing whether there is a significant imbalance, it is for the referring court to take into account the nature of the goods or services for which the contract was concluded by referring to all the circumstances attending the conclusion of that contract, as well as all the other terms of the contract.*

([1]) OJ C 227, 28.7.2012.

Judgment of the Court (Grand Chamber) of 22 January 2014 — United Kingdom of Great Britain and Northern Ireland v European Parliament, Council of the European Union

(Case C-270/12) ([1])

(Regulation (EU) No 236/2012 — Short selling and certain aspects of credit default swaps — Article 28 — Validity — Legal basis — Powers of intervention conferred on the European Securities and Markets Authority in exceptional circumstances)

(2014/C 85/06)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: A. Robinson, Agent, J. Stratford QC and A. Henshaw, Barrister)

Defendants: European Parliament (represented by: A. Neergaard, R. Van de Westelaken, D. Gauci and A. Gros-Tchorbadjiyska, Agents), Council of the European Union (represented by: H. Legal, A. De Elera and E. Dumitriu-Segnana, Agents)

Interveners in support of the defendants: Kingdom of Spain (represented by: A. Rubio González, Agent), French Republic (represented by: G. de Bergues, D. Colas and E. Ranaivoson, Agents), Italian Republic (represented by: G. Palmieri, Agent and F. Urbani Neri, avvocato dello Stato), European Commission (represented by: T. van Rijn, B. Smulders, C. Zadra and R. Vasileva, Agents)

Re:

Action for annulment — Validity of Article 28 of Regulation (EU) No 236/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps (OJ 2012 L 86, p. 1) — Institutional balance — Infringement of the conditions established by the case-law of the Court of Justice for the delegation of powers to agencies — Infringement of Articles 290 and 291 TFEU — Infringement of Article 114 TFEU — Attribution of powers of intervention to the European Securities and Markets Authority (ESMA) — Margin of discretion conferred on ESMA as regards the need for it to intervene and the measures to be adopted — Nature of the measures capable of being adopted by ESMA.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

3. *Orders the Kingdom of Spain, the French Republic, the Italian Republic and the European Commission to bear their own costs.*

([1]) OJ C 273, 8.9.2012.

Judgment of the Court (First Chamber) of 16 January 2014 (request for a preliminary ruling from the Bundesfinanzhof (Germany)) — Finanzamt Düsseldorf-Mitte v Ibero Tours GmbH

(Case C-300/12) ([1])

(Value-added tax — Operations of travel agents — Granting of price discounts to customers — Determination of the taxable amount for services provided as part of an intermediary activity)

(2014/C 85/07)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Düsseldorf-Mitte

Defendant: Ibero Tours GmbH

Re:

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 11(C)(1) and Article 26 of Directive 77/388/EEC: Sixth Council Directive 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 L 145, p. 1) — Operations of travel agents — Granting of price discounts to customers resulting in a reduction of the travel agent's commission — Determination of the taxable amount for the intermediary service.

Operative part of the judgment

The provisions of 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, must be interpreted as meaning that the principles established by the Court of Justice of the European Union in Case C-317/94 Elida Gibbs [1996] ECR I-5339 concerning the determination of the taxable amount for VAT purposes do not apply when a travel agent, acting as an intermediary, grants to the final consumer, on the travel agent's own initiative and at his own expense, a price reduction on the principal service provided by the tour operator.

(1) OJ C 287, 22.9.2012

Judgment of the Court (First Chamber) of 16 January 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Ralph Schmid (liquidator of the assets of Aletta Zimmermann) v Lilly Hertel

(Case C-328/12) (1)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 1346/2000 — Insolvency proceedings — Action to set a transaction aside by virtue of the debtor's insolvency — Defendant resident in a third country — Jurisdiction of the court of the Member State where the debtor has the centre of his main interests)

(2014/C 85/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Ralph Schmid (liquidator of the assets of Aletta Zimmermann)

Defendant: Lilly Hertel

Re:

Request for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — Jurisdiction of the courts of the Member State in which the debtor has the centre of his main interests for decisions deriving directly from the insolvency proceedings — Action to set a transaction aside by virtue of insolvency (Insolvenzanfechtungsklage) brought against a defendant whose place of residence is in a third country.

Operative part of the judgment

Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to hear and determine an action to set a transaction aside by virtue of insolvency that is brought against a person whose place of residence is not within the territory of a Member State.

(1) OJ C 303, 6.10.2012.

Judgment of the Court (Second Chamber) of 23 January 2014 (request for a preliminary ruling from the Tribunale di Tivoli — Italy) — Enrico Petillo, Carlo Petillo v Unipol

(Case C-371/12) (1)

(Compulsory insurance against civil liability in respect of the use of motor vehicles — Directive 72/166/EEC, Directive 84/5/EEC, Directive 90/232/EEC and Directive 2009/103/EEC — Road traffic accident — Non-material damage — Compensation — National provisions establishing methods of calculation specific to road traffic accidents which are less favourable to victims than those provided for under the ordinary rules of civil liability — Compatibility with those directives)

(2014/C 85/09)

Language of the case: Italian

Referring court

Tribunale di Tivoli

Parties to the main proceedings

Applicants: Enrico Petillo, Carlo Petillo

Defendant: Unipol

Re:

Request for a preliminary ruling — Tribunale di Tivoli — Interpretation of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability (OJ, English Special Edition 1972 (II), p. 360), of Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1984 L 8, p. 17), of Council Directive 90/232/EEC of 14 May 1990 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (OJ 1990 L 129, p. 33) and of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (OJ 2009 L 263, p. 11) — Insurance against civil liability arising from the use of motor vehicles — Determination of injuries which must be covered by insurance — National legislation providing, in the case of a road traffic accident, for compensation for psychological damage which is less than that provided for under the ordinary rules of civil liability.

Operative part of the judgment

Article 3(1) of Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability, and Article 1(1) and (2) of Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, as amended by Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005, must be interpreted as not precluding national legislation such as that at issue in the main proceedings, which lays down a specific compensation scheme for non-material damage resulting from minor physical injuries caused by road traffic accidents, limiting the compensation payable for such damage in comparison with the compensation allowed for identical damage arising from causes other than those accidents.

(1) OJ C 295, 29.9.2012.

Judgment of the Court (Second Chamber) of 16 January 2014 (request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber) London — United Kingdom) — Nnamdi Onuekwere v Secretary of State for the Home Department

(Case C-378/12) (1)

(Request for a preliminary ruling — Directive 2004/38/EC — Article 16(2) and (3) — Right of permanent residence of third-country nationals who are family members of a Union citizen — Taking into consideration of periods of imprisonment of those nationals)

(2014/C 85/10)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber) London

Parties to the main proceedings

Applicant: Nnamdi Onuekwere

Defendant: Secretary of State for the Home Department

Re:

Request for a preliminary ruling — Upper Tribunal (Immigration and Asylum Chamber) London — Interpretation of Article 16 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Right of permanent residence — Concept of legal residence for a period of five years in the host Member State — Possibility of a period of imprisonment being taken into account.

Operative part of the judgment

1. *Article 16(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that the periods of imprisonment in the host Member State of a third-country national, who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods, cannot be taken into consideration in the context of the acquisition by that national of the right of permanent residence for the purposes of that provision.*

2. *Article 16(2) and (3) of Directive 2004/38 must be interpreted as meaning that the continuity of residence is interrupted by periods of imprisonment in the host Member State of a third-country national who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods.*

([1]) OJ C 295, 29.9.2012.

Judgment of the Court (Second Chamber) of 16 January 2014 (request for a preliminary ruling from the Upper Tribunal (Immigration and Asylum Chamber), London (United Kingdom)) — Secretary of State for the Home Department v M.G.

(Case C-400/12) ([1])

(Reference for a preliminary ruling — Directive 2004/38/EC — Article 28(3)(a) — Protection against expulsion — Method for calculating the 10-year period — Whether periods of imprisonment are to be taken into account)

(2014/C 85/11)

Language of the case: English

Referring court

Upper Tribunal (Immigration and Asylum Chamber), London

Parties to the main proceedings

Appellant: Secretary of State for the Home Department

Respondent: M.G.

Re:

Request for a preliminary ruling — Upper Tribunal (Immigration and Asylum Chamber), London — Interpretation of Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Expulsion decision taken on serious grounds of public security in respect of a Union citizen who had resided in the host Member State for the previous 10 years and who had been sentenced to a period of imprisonment — Notion of a 10-year period of residence in the territory of the host Member State — Whether a period of imprisonment may be taken into account — Whether length of stay must be calculated by counting forward from beginning of stay or by counting back from the expulsion decision — Impact, in the latter case, of a previous period of imprisonment.

Operative part of the judgment

1. *On a proper construction of Article 28(3)(a) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, the 10-year period of residence referred to in that provision must, in principle, be continuous and must be calculated by counting back from the date of the decision ordering the expulsion of the person concerned.*

2. *Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that a period of imprisonment is, in principle, capable both of interrupting the continuity of the period of residence for the purposes of that provision and of affecting the decision regarding the grant of the enhanced protection provided for thereunder, even where the person concerned resided in the host Member State for the 10 years prior to imprisonment. However, the fact that that person resided in the host Member State for the 10 years prior to imprisonment may be taken into consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken.*

([1]) OJ C 331, 27.10.2012

Judgment of the Court (Fourth Chamber) of 16 January 2014 (request for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen (Sweden)) — Flora May Reyes v Migrationsverket

(Case C-423/12) ([1])

(Request for a preliminary ruling — Directive 2004/38/EC — Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States — Right of residence in a Member State of a third-country national who is a direct descendant of a person having the right of residence in that Member State — Concept of 'dependant')

(2014/C 85/12)

Language of the case: Swedish

Referring court

Kammarrätten i Stockholm — Migrationsöverdomstolen

Parties to the main proceedings

Applicant: Flora May Reyes

Defendant: Migrationsverket

Re:

Request for a preliminary ruling — Kammarrätten i Stockholm — Migrationsöverdomstolen — Interpretation of Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) — Right of resident in a Member State of a national of a third country aged over 21 years, who is a direct descendant of a person having the right of residence in that Member State — Notion of 'dependent' — Obligation on the direct descendant to prove that he has tried unsuccessfully to obtain employment or applied to the authorities of the State of origin for financial support to meet his needs, or otherwise tried to support himself.

Operative part of the judgment

1. *Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as meaning that a Member State cannot require a direct descendant who is 21 years old or older, in circumstances such as those in the main proceedings, in order to be regarded as dependent and thus come within the definition of a family member under Article 2(2)(c) of that provision, to have tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself.*

2. *Article 2(2)(c) of Directive 2004/38 must be interpreted as meaning that the fact that a relative — due to personal circumstances such as age, education and health — is deemed to be well placed to obtain employment and in addition intends to start work in the Member State does not affect the interpretation of the requirement in that provision that he be a 'dependant'.*

([1]) OJ C 355, 17.11.2012

Judgment of the Court (Second Chamber) of 16 January 2014 (request for a preliminary ruling from the Oberlandesgericht Innsbruck — Austria) — Siegfried Pohl v ÖBB-Infrastruktur AG

(Case C-429/12) ([1])

(Request for a preliminary ruling — Equal treatment in employment and occupation — Article 21 of the Charter of Fundamental Rights of the European Union — Article 45 TFEU — Directive 2000/78/EC — Difference in treatment on grounds of age — Determination of the reference date for the purposes of advancement on the salary scale — Limitation period — Principle of effectiveness)

(2014/C 85/13)

Language of the case: German

Referring court

Oberlandesgericht Innsbruck

Parties to the main proceedings

Applicant: Siegfried Pohl

Defendant: ÖBB-Infrastruktur AG

Re:

Request for a preliminary ruling — Oberlandesgericht Innsbruck — Interpretation of Article 6(3) TEU, Article 21 of the Charter of Fundamental Rights of the European Union, Article 45 TFEU and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — Temporal scope — Period before accession — Remuneration of employees in the rail transport sector — National legislation and collective agreement excluding the taking into account of periods of employment completed before reaching the age of 18 for the purpose of determining remuneration — Taking into account of half of the employee's periods of employment completed after reaching the age of 18, except in the case of professional experience acquired with a 'quasi-public' national undertaking or with the national railway company — Limitation period.

Operative part of the judgment

European Union law, and, in particular, the principle of effectiveness, does not preclude national legislation, such as that at issue in the main proceedings, making the right of an employee to seek a reassessment of the periods of service which must be taken into account in order to fix the reference date for the purposes of advancement subject to a 30-year limitation period, which starts to run from the conclusion of the agreement on the basis of which that reference date was fixed or from the classification in an incorrect salary scale.

([1]) OJ C 9, 12.1.2013.

Judgment of the Court (Second Chamber) of 16 January 2014 (request for a preliminary ruling from the Lietuvos vyriausiasis administracinis teismas — Lithuania) — UAB 'Juvelta' v VĮ 'Lietuvos prabavimo rūmai'

(Case C-481/12) ([1])

(Free movement of goods — Article 34 TFEU — Quantitative restrictions on imports — Measures having equivalent effect — Marketing of articles made of precious metals — Hallmark — Requirements laid down in the legislation of the Member State of import)

(2014/C 85/14)

Language of the case: Lithuanian

Referring court

Lietuvos vyriausiasis administracinis teismas

Parties to the main proceedings

Applicant: UAB 'Juvelta'

Defendant: VĮ 'Lietuvos prabavimo rūmai'

Re:

Request for a preliminary ruling — Lietuvos vyriausiasis administracinis teismas — Interpretation of Articles 34 and 36 TFEU — Measures having equivalent effect — Hallmarking of articles of precious metals — National legislation requiring articles to bear a specific hallmark of the authorised independent office — Consumer protection — Prohibition on the marketing of articles bearing a hallmark of the country of origin which does not conform to the national requirements — Presence of an additional mark giving the necessary information but not stamped by the authorised independent office.

Operative part of the judgment

1. *Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, for it to be permissible for them to be sold on the market of a Member State, articles of precious metal imported from another Member State, in which they are authorised to be put on the market and which have been stamped with a hallmark in accordance with the legislation of that second Member State, must, where the information concerning the standard of fineness of those articles provided in that hallmark does not comply with the requirements of the legislation of that first Member State, be stamped again, by an independent assay office authorised by that first Member State, with a hallmark confirming that those articles have been inspected and showing their standard of fineness in accordance with those requirements;*

2. *The fact that additional marking of imported articles of precious metal, intended to provide information relating to the standard of fineness of those articles in a form intelligible to consumers of the Member State of import has not been effected by an independent assay office authorised by a Member State has no effect on the answer to the first question, since a hallmark of the standard of fineness had already been stamped on those articles by an independent assay office authorised by the Member State of export and the information provided by that marking is compatible with that on that hallmark.*

([1]) OJ C 9, 12.1.2013.

Judgment of the Court (Sixth Chamber) of 23 January 2014 — Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) v riha WeserGold Getränke GmbH & Co. KG (formerly Wesergold Getränkeindustrie GmbH & Co. KG), Lidl Stiftung & Co. KG

(Case C-558/12 P) ([1])

(Appeal — Community trade mark — Word mark WESTERN GOLD — Opposition by the proprietor of the national, international and Community word marks WeserGold, Wesergold and WESERGOLD)

(2014/C 85/15)

Language of the case: German

Parties

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

Other parties to the proceedings: riha WeserGold Getränke GmbH & Co. KG (formerly Wesergold Getränkeindustrie GmbH & Co. KG) (represented by: T. Melchert, Rechtsanwalt), Lidl Stiftung & Co. KG (represented by: M. Wolter and A.K. Marx, Rechtsanwälte)

Re:

Appeal against the judgment of 21 September 2012 in Case T-278/10 *Wesergold Getränkeindustrie* v *OHIM — Lidl Stiftung*, by which the General Court (First Chamber) annulled the decision of the First Board of Appeal of OHIM of 24 March 2010 (Case R 770/2009-1), relating to opposition proceedings between Wesergold Getränkeindustrie GmbH & Co. KG and Lidl Stiftung & Co. KG — Application for registration as a Community trade mark of the word sign 'WESTERN GOLD' — Likelihood of confusion with the national, international and Community word marks 'WeserGold', 'Wesergold' and 'WESERGOLD' — Infringement of Article 8(1)(b) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 21 September 2012 in Case T-278/10 Wesergold Getränkeindustrie v OHIM — Lidl Stiftung (WESTERN GOLD);*

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

3. *Reserves the costs.*

([1]) OJ C 32, 2.2.2013.

Judgment of the Court (Fourth Chamber) of 16 January 2014 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Andreas Kainz v Pantherwerke AG

(Case C-45/13) ([1])

(Request for a preliminary ruling — Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Liability for a defective product — Product manufactured in one Member State and sold in another Member State — Interpretation of the concept of 'the place where the harmful event occurred or may occur' — Place of the event giving rise to the damage)

(2014/C 85/16)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Andreas Kainz

Defendant: Pantherwerke AG

Re:

Request for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Liability for defective products — Goods manufactured in one Member State and sold in another Member State — Place where the harmful event occurred or may occur — Situation in which the place where the damage occurred ('Erfolgsort') is in the State where the goods were manufactured — Interpretation of the concept of the 'place of the event giving rise to [the damage]' ('Handlungsort').

Operative part of the judgment

Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in the case where a manufacturer faces a claim of liability for a defective product, the place of the event giving rise to the damage is the place where the product in question was manufactured.

([1]) OJ C 147, 25.5.2013.

Request for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 2 July 2013 — SC Schuster & Co Ecologic SRL v Direcția Generală a Finanțelor Publice a Județului Sibiu

(Case C-371/13)

(2014/C 85/17)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: SC Schuster & Co Ecologic SRL

Defendant: Direcția Generală a Finanțelor Publice a Județului Sibiu

By Order of 7 November 2013, the Court of Justice (Sixth Chamber) finds that it clearly has no jurisdiction to answer the question referred to it by the Tribunalul Sibiu (Romania).

Request for a preliminary ruling from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 10 December 2013 — Delphi Hungary Autóalkatrész Gyártó Kft. v Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Adó Főigazgatósága (NAV)

(Case C-654/13)

(2014/C 85/18)

Language of the case: Hungarian

Referring court

Szombathelyi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Delphi Hungary Autóalkatrész Gyártó Kft.

Defendant: Nemzeti Adó- és Vámhivatal Nyugat-dunántúli Regionális Adó Főigazgatósága (NAV)

Questions referred

1. Must Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax, in particular Article 186 thereof, Article 17 of the Charter of Fundamental Rights of the European Union and the principles of equivalence and effectiveness be interpreted as meaning that they preclude legislation and practice of a Member State which prevent the payment of default interest on amounts of value added tax which could not be claimed under legislation which the Court of Justice of the European Union ruled to be contrary to Community law, although in other cases the Member State's legislation provides for the payment of interest in the event of the delayed repayment of value added tax which can be claimed back?

2. Is the practice of a Member State's courts contrary to the principles of effectiveness and equivalence insofar as it refuses to allow claims made in administrative proceedings — thus limiting the options available to a legal person who has suffered loss to an action for damages, despite the fact that such an action is excluded in practice in the national legal order — merely because there is no specific legal rule which is applicable on the facts in the proceedings although [dealing with and] paying similar claims for interest falls within the powers of the tax authority?

3. If the answer to question 2 is in the affirmative, are the courts of the Member State required to interpret and apply in accordance with Community law legal rules of the Member State which are not applicable on the facts, so that equivalent and effective judicial protection can be provided?

4. Must the Community law cited in the first question be interpreted as meaning that [a claim for] interest on taxes collected, retained and not repaid in breach of Community law constitutes an individual right which derives directly from Community law and may be relied on directly before the courts and administrative authorities of the Member State pursuant to Community law, including where the law of the Member State does not provide for the payment of interest in that specific case, it being sufficient, in order to justify a claim for interest, to show that Community law has been breached and that the tax has been collected, retained or not repaid?

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

Request for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 12 December 2013 — L v M, R and K

(Case C-656/13)

(2014/C 85/19)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: L

Other parties to the proceedings: M; R and K

Questions referred

1. Must Article 12(3) of Council Regulation (EC) No 2201/2003 ([1]) of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, ('the Brussels IIa Regulation') be interpreted as establishing jurisdiction over proceedings concerning parental responsibility even where no other related proceedings (that is, 'proceedings other than those referred to in paragraph 1') are pending?

In the event of an affirmative answer to Question 1:

2. Must Article 12(3) of the Brussels IIa Regulation be interpreted as meaning that acceptance expressly or otherwise in an unequivocal manner includes also the situation in which the party who has not initiated proceedings makes a separate application for the initiation of proceedings in the same case but immediately on doing the first act required of him objects that the court lacks jurisdiction in the proceedings previously started on the application by the other party?

([1]) OJ 2003 L 388, p. 1.

Request for a preliminary ruling from the Landgericht Hannover (Germany) lodged on 12 December 2013 — Wilhelm Spitzner, Maria-Luise Spitzner v TUIfly GmbH

(Case C-658/13)

(2014/C 85/20)

Language of the case: German

Referring court

Landgericht Hannover

Parties to the main proceedings

Appellants: Wilhelm Spitzner and Maria-Luise Spitzner

Respondent: TUIfly GmbH

Questions referred

1. Is Article 5(3) of Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, to be interpreted as meaning that an extraordinary circumstance causing a delay to a flight also constitutes an extraordinary circumstance, within the meaning of that provision, for another, subsequent flight, in the case where the effect of the extraordinary circumstance causing a delay affects the later flight solely by reason of the operational organisation of the air carrier?

2. Is Article 5(3) of Regulation (EC) No 261/2004 to be interpreted as meaning that the concept of avoidability relates, not to the extraordinary circumstances as such, but to the delay to or cancellation of the flight caused by those extraordinary circumstances?

3. Is Article 5(3) of Regulation (EC) No 261/2004 to be interpreted as meaning that it is reasonable for air carriers which operate their flights in a so-called rotation system to factor in a minimum time reserve between flights, the length of which corresponds to the time spans laid down in Article 6(1)(a) to (c) of Regulation (EC) No 261/2004?

4. Is Article 5(3) of Regulation (EC) No 261/2004 to be interpreted as meaning that it is reasonable for air carriers which operate their flights in a so-called rotation system to deny boarding to passengers whose flight has already been significantly delayed due to an extraordinary event, or to transport such passengers later, in order to avoid a delay to subsequent flights?

([1]) OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Tribunal do Trabalho de Lisboa (Portugal) lodged on 16 December 2013 — Sindicato Nacional dos Profissionais de Seguros e Afins v Via Directa — Companhia de Seguros SA

(Case C-665/13)

(2014/C 85/21)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho de Lisboa

Parties to the main proceedings

Applicant: Sindicato Nacional dos Profissionais de Seguros e Afins

Defendant: Via Directa — Companhia de Seguros SA

Questions referred

1. Must the principle of equal treatment, from which the prohibition of discrimination is derived, be interpreted as applying to public sector employees?

2. Does the fact that the State imposed a unilateral suspension of the payment of those items of remuneration and applied this only to a specific category of workers — those in the public sector — constitute discrimination having regard to the nature of the employment relationship?

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 16 December 2013 — Rohm Semiconductor GmbH v Hauptzollamt Krefeld

(Case C-666/13)

(2014/C 85/22)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Rohm Semiconductor GmbH

Defendant: Hauptzollamt Krefeld

Questions referred [1]

1. Does the fact that goods have an individual function within the meaning of heading 8543 of the Combined Nomenclature mean that they may not be classified in heading 8541, despite their assembly?

2. If the answer to Question 1 is in the affirmative: In what circumstances are transmitter/receiver modules of the type described in more detail in the grounds, which have an individual function within the meaning of heading 8543, to be regarded as parts of machines or apparatus in heading 8543?

[1] Interpretation of Commission Regulation (EC) No 1832/2002 of 1 August 2002, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2002 L 290, p. 1).

Request for a preliminary ruling from the Curtea de Apel Suceava (România) lodged on 16 December 2013 — Casa Județeană de Pensii Botoșani v Evangeli Paraskevopoulou

(Case C-668/13)

(2014/C 85/23)

Language of the case: Romanian

Referring court

Curtea de Apel Suceava

Parties to the main proceedings

Applicant: Casa Județeană de Pensii Botoșani

Defendant: Evangeli Paraskevopoulou

Question referred

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

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

Appeal brought on 16 December 2013 by Mundipharma GmbH against the judgment of the General Court (Third Chamber) delivered on 16 October 2013 in Case T-328/12 Mundipharma GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-669/13 P)

(2014/C 85/24)

Language of the case: German

Parties

Appellant: Mundipharma GmbH (represented by: F. Nielsen, Rechtsanwalt)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— Set aside the judgment of the General Court of the European Union (Third Chamber) of 16 October 2013 (Case T-328/12);

— Order the defendant and respondent to pay the costs.

Grounds of appeal and main arguments

In the judgment under appeal, the General Court held that there was no likelihood of confusion between the marks at issue OXYGESIC and Maxigesic and thus that the requirements of

Article 8(1)(b) of Regulation No 207/2009 ([1]) had not been satisfied. The judgment under appeal is based on a distortion of the facts and contains contradictions which infringe the general rules of logic. It constitutes an infringement of Community law, namely of Article 8(1)(b) of Regulation No 207/2009. If the General Court had carried out a correct and non-contradictory assessment of the facts of the case, it would have reached the conclusion that there was a likelihood of confusion between the marks at issue and would therefore have upheld the action brought against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 23 May 2012.

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

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 17 December 2013 — OTP Bank Nyrt. v Magyar Állam and Magyar Államkincstár

(Case C-672/13)

(2014/C 85/25)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: OTP Bank Nyrt.

Defendants: Magyar Állam and Magyar Államkincstár

Questions referred

1. Does a State guarantee granted under Government Decree 12/2001 of 31 January 2001 and undertaken before the accession of Hungary to the European Union constitute State aid and, if so, is it compatible with the internal market?

2. If the State guarantee granted by that Decree is incompatible with the internal market, what remedies are available under Community law for any damage to the interests of the persons concerned?

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 20 December 2013 — Condor Flugdienst GmbH v Andreas Plakolm

(Case C-680/13)

(2014/C 85/26)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Condor Flugdienst GmbH

Defendant: Andreas Plakolm

Question referred

Is the expression cancellation, which is defined in Article 2(l) of Regulation No 261/2004, ([1]) to be interpreted as meaning that in a situation such as that in the present case it also applies where, although the flight departed under the original flight number, it was not a non-stop flight as originally planned but involved a stopover scheduled before departure, and another aircraft and airline company were used in a sub-charter arrangement?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91, OJ 2004 L 46, p. 1.

Request for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 23 December 2013 — Johannes Demmer v Fødevareministeriets Klagecenter

(Case C-684/13)

(2014/C 85/27)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicant: Johannes Demmer

Defendant: Fødevareministeriets Klagecenter

Questions referred

1. Must the requirement that an agricultural area not be used for 'non-agricultural activities' within the meaning of Article 44(2) of Regulation No 1782/2003 ([1]) and the requirement that an agricultural area be used for 'an agricultural activity or … predominantly used for agricultural activities' within the meaning of Article 34(2)(a) of Regulation No 73/2009 ([2]) be interpreted as meaning that it is a condition for aid that the primary purpose of an area's use be agricultural?

   (a) If so, the Court of Justice is requested to specify what parameters must be taken into account in deciding what purpose of use is the 'primary' use where an area is used for several different purposes at the same time.

   (b) If so, the Court of Justice is further requested to state whether, where applicable, that means that safety areas surrounding runways and taxi and stop-ways at airports, which are part of the airport and are subject to special rules and restrictions, such those at issue, relating to the use of the land, but at the same time are also used to harvest grass for the production of feed pellets, are by their nature and use eligible for aid under the above provisions.

2. Must the requirement that the agricultural land form part of the farmer's 'holding' within the meaning of Article 44(2) of Regulation No 1782/2003 and Article 34(2)(a) of Regulation No 73/2009 be interpreted as meaning that safety areas surrounding runways and taxi and stop-ways at airports, which are part of the airport and are subject to special rules and restrictions, such those at issue, relating to the use of the land, but at the same time are also used to harvest grass for the production of feed pellets, are eligible for aid under the above provisions?

3. If the answer to Question 1(b) and/or Question 2 is in the negative, will there then be, because the parcels of land in addition to being used to cultivate permanent pasture for the production of feed pellets are also safety areas surrounding runways and taxi and stop-ways,

   (a) an error which could reasonably have been detected by the farmer within the meaning of Article 137 of Regulation No 73/2009 where payment entitlements for the areas are nevertheless allocated?

   (b) an error which could reasonably have been detected by the farmer within the meaning of Article 73(4) of Commission implementing Regulation No 796/2004, ([3]) where aid for the areas is nevertheless paid?

   (c) an undue payment in relation to which the beneficiary cannot be regarded as having acted in good faith within the meaning of Article 73(5) of Commission implementing Regulation No 796/2004, where aid for the areas is nevertheless paid?

4. What time is material in assessing whether

   (a) there is an error which could reasonably have been detected by the farmer within the meaning of Article 137 of Regulation No 73/2009,

   (b) there is an error which could reasonably have been detected by the farmer within the meaning of Article 73(4) of Commission implementing Regulation No 796/2004,

   (c) the beneficiary can be regarded as having acted in good faith within the meaning of Article 73(5) of Commission implementing Regulation No 796/2004?

5. Must the assessment referred to in Question 4(a) to (c) be carried out in respect of each individual aid year or for the payments as a whole?

([1]) Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

([2]) Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

([3]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 22 October 2013 — Les Laboratoires Servier SA v Ministre des affaires sociales et de la santé, Ministre de l'Économie et des Finances

(Case C-691/13)

(2014/C 85/28)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Les Laboratoires Servier SA

Defendants: Ministre des affaires sociales et de la santé, Ministre de l'Économie et des Finances

Question referred

Does Article 6(2) of Council Directive 89/105/EEC of 21 December 1988 relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of national health insurance systems [1] require that reasons be stated for decisions as to inclusion or re-inclusion in the list of medicinal products eligible for reimbursement by the health insurance funds which — by limiting, in comparison with the application made, the therapeutic indications giving rise to eligibility for reimbursement, or by making that reimbursement subject to conditions relating to, inter alia, the qualifications of the prescribing doctors, the organisation of care or the follow-up of patients, or in any other way — make the reimbursement by the health insurance funds available to only some of the patients liable to benefit from the medicinal product or only in certain circumstances?

[1] OJ 1989 L 40, p. 8.

Request for a preliminary ruling from the Finanzgericht Hamburg (Germany) lodged on 7 January 2014 — Kernkraftwerke Lippe-Ems GmbH v Hauptzollamt Osnabrück

(Case C-5/14)

(2014/C 85/29)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Kernkraftwerke Lippe-Ems GmbH

Defendant: Hauptzollamt Osnabrück

Questions referred

1. Does the second sentence, in conjunction with the first sentence, [b], of Article 267 of the Treaty on the Functioning of the European Union (TFEU) justify a court of a Member State in referring to the Court of Justice of the European Union questions on the interpretation of EU law which have been put to the national court in connection with the legality of a national law, even if the national court not only has doubts concerning the legality of the national law under EU law, but is also certain that the national law is inconsistent with the national Constitution and therefore, in a parallel case, the national court has already sought a decision from the Constitutional Court which, under national law, alone has jurisdiction to decide on the constitutionality of laws, but the Constitutional Court has not yet given a decision?

   If question 1 is answered in the affirmative:

2. Do Directives 2008/118/EC [1] and 2003/96/EC, [2] which were adopted for the harmonization of excise duty and for energy products and electricity in the Union, preclude the introduction of a national duty which is levied on nuclear fuels used for the commercial production of electricity? Does this depend on whether the national duty can be expected to be passed on to consumers by means of the electricity price and, if appropriate, what is meant by 'passed on'?

3. Can an undertaking resist a duty which a Member State imposes in order to raise revenue on the use of nuclear fuels for the commercial production of electricity, by objecting that the levying of the duty constitutes aid contrary to EU law under article 107 TFEU?

   If the answer to the previous question is in the affirmative:

   Does the German Kernbrennstoffsteuergesetz (Law on excise duty on nuclear fuel, under which a tax for raising revenue is imposed only on undertakings which produce electricity commercially by using nuclear fuels, constitute a State aid within the meaning of Article 107 TFEU? What circumstances are to be taken into account in considering whether other undertakings which are not taxed in the same way are in a similar factual and legal situation?

4. Is the levying of the German nuclear fuel duty inconsistent with the provisions of the Treaty establishing the European Atomic Energy Community (EURATOM)?

(1) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ 2009 L 9, p. 12).
(2) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (Text with EEA relevance) (OJ 2003 L 283, p. 51).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 20 January 2014 — Union des syndicats de l'immobilier (UNIS) v Ministre du travail, de l'emploi, de la formation professionnelle et du dialogue social, Syndicat national des résidences de tourisme (SNRT) and Others

(Case C-25/14)

(2014/C 85/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Union des syndicats de l'immobilier (UNIS)

Defendants: Ministre du travail, de l'emploi, de la formation professionnelle et du dialogue social, Syndicat national des résidences de tourisme (SNRT) and Others

Question referred

Is compliance with the obligation of transparency flowing from Article 56 TFEU a mandatory prior condition for the extension, by a Member State, to all undertakings within a sector, of a collective agreement under which a single operator, chosen by the social partners, is entrusted with the management of a compulsory supplementary social security scheme for employees?

Request for a preliminary ruling from the Conseil d'État (France) lodged on 20 January 2014 — Beaudout Père et Fils SARL v Ministre du travail, de l'emploi, de la formation professionnelle et du dialogue social, Confédération nationale de la boulangerie et boulangerie-pâtisserie française, Fédération Générale Agroalimentaire — CFDT and Others

(Case C-26/14)

(2014/C 85/31)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Beaudout Père et Fils SARL

Defendants: Ministre du travail, de l'emploi, de la formation professionnelle et du dialogue social, Confédération nationale de la boulangerie et boulangerie-pâtisserie française, Fédération Générale Agroalimentaire — CFDT and Others

Question referred

Is compliance with the obligation of transparency flowing from Article 56 TFEU a mandatory prior condition for the extension, by a Member State, to all undertakings within a sector, of a collective agreement under which a single operator, chosen by the social partners, is entrusted with the management of a compulsory supplementary social security scheme for employees?

Action brought on 21 January 2014 — European Commission v Republic of Poland

(Case C-29/14)

(2014/C 85/32)

Language of the case: Polish

Parties

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

Defendant: Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that the Republic of Poland has failed to fulfil its obligations under Article 31 of Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation,

procurement, testing, processing, preservation, storage and distribution of human tissues and cells, [1] under Articles 3(b), 4(2) and 7 of, and Annex III to, Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells, [2] and under Article 11 of Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells [3] by exempting reproductive cells and embryonic and foetal tissue from the scope of the provisions of national law designed to transpose those directives;

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

Pleas in law and main arguments

Poland's transposition of Directives 2004/23, 2006/17 and 2006/86 into the Polish legal system is incomplete because the scope of the Law of 1 July 2005 on the procurement, storage and transplantation of cells, tissue and organs, by which those directives were transposed into the Polish legal system, and of the implementing measures adopted on the basis of that Law does not encompass reproductive cells and embryonic and foetal tissue.

As a result, Polish legislation contains no provisions for the transposition of Directives 2004/23 and 2006/86 in so far as those directives relate to reproductive cells and embryonic and foetal tissue.

There has also been a failure to transpose the provisions of Directive 2006/17 concerning reproductive cells, that is to say, Articles 3(b) and 4(2) of, and Annex III to, that directive.

In the procedure prior to the judicial proceedings, while the Republic of Poland confirmed that there were no corresponding provisions in national law, it stressed the following: *'In the context of reproductive cells and embryonic and foetal tissue, the provisions of the directives are to a large degree applied in daily clinical practice — they have been transposed at an expert level …'*.

The Commission takes the view that it was necessary for the provisions in question to be transposed in full by way of legally binding measures.

[1] OJ 2004 L 102, p. 48.
[2] OJ 2006 L 38, p. 40.
[3] OJ 2006 L 294, p. 32.

Action brought on 24 January 2014 — European Commission v Republic of Poland

(Case C-36/14)

(2014/C 85/33)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: K. Herrmann and M. Patakia, Agents)

Defendant: Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that, by engaging in State intervention, unlimited in time, in such a way that (i) energy undertakings are obliged to apply prices for supplies of natural gas which have been approved by the president of the Energy Regulation Authority, although national law does not impose on the national administrative authorities any obligation to check at regular intervals the necessity and nature of the application of that intervention in the gas sector, having regard to the level of development of that sector, and (ii) that intervention is characterised by its application to an unlimited group of users, without any distinction being drawn according to customers and without any differentiation of the situation of individuals within the context of individual groups, the Republic of Poland is applying a measure which is disproportionate and incompatible with Article 3(2) of 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, [1] and, in this connection, has failed to comply with its obligations under Article 3(1), in conjunction with Article 3(2), of that directive;

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

Pleas in law and main arguments

The obligation, laid down in Article 47 of the Polish Energy Law, failure to comply with which attracts a monetary fine, to obtain the approval of the president of the Energy Regulation Authority in respect of prices for supplies of natural gas constitutes, in so far as it applies to all energy undertakings for supplies to customers other than households, State intervention in the form of price regulation which is at variance with the requirements of the principle of proportionality and, in that connection, breaches Article 3(1) and (2) of Directive 2009/73/EC.

The disputed State intervention fails to satisfy the standards laid down by the Court of Justice in its judgment in Case C-265/08 *Federutility and Others*, as the national law in force (the Energy

Law of 10 April 1997) provides for an obligation to apply regulated prices in a manner which goes beyond what is necessary for realisation of a general economic interest (protection against excessively high gas prices). In particular, the obligation to apply for authorisation of prices for natural gas supplies is not limited in time and is not subject to any examination of the situation prevalent on the gas market and justifying such an intervention. In addition, it is applied in the same way to all energy undertakings which have not been expressly exempted by the president of the Energy Regulation Authority, without their position on the gas market being taken into consideration and without any distinction being drawn according to the category of customer receiving the supplies: industrial end users, wholesale concerns and households are treated in the same way.

([1]) OJ 2009 L 211, p. 94.

GENERAL COURT

Action brought on 2 December 2013 — Wolverine International v OHIM — BH Stores (cushe)

(Case T-642/13)

(2014/C 85/34)

Language in which the application was lodged: English

Parties

Applicant: Wolverine International, LP (Grand Cayman, Cayman Islands) (represented by: M. Plesser and R. Heine, lawyers)

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

Other party to the proceedings before the Board of Appeal: BH Stores BV (Curaçao, Netherlands Antilles)

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 30 September 2013 given in Case R 1269/2012-4;

— Reject the request for a declaration of invalidity;

— Order the defendant to bear the costs of proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark containing the verbal element 'cushe' for goods in Class 25 — International Registration No 859 087 designating the European Union

Proprietor of the Community trade mark: The applicant

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

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

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

Decision of the Board of Appeal: Annulled the contested decision and declared the contested IR designating the European Union invalid

Pleas in law: Infringement of Article 8(1)(b) and Article 57(2) and (3) CTMR

Action brought on 13 December 2013 — AENM v Parliament

(Case T-678/13)

(2014/C 85/35)

Language of the case: French

Parties

Applicant: Alliance of European National Movements (AENM) (Matzenheim, France) (represented by: J.-P. Le Moigne, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul Decision No 110655 of 14 October 2013, which fixed the definitive allowance granted by the European Parliament to the Alliance of European National Movements in respect of 2012 at EUR 186 292,12 and consequently decided that the Alliance of European National Movements should reimburse EUR 45 476,00, having regard to the fact that EUR 231 412,80 has already been allocated to the applicant association;

— order the European Parliament to pay all the costs and to pay on that basis a sum of EUR 20 000,00 to the Alliance of European National Movements.

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 a lack of competence on the part of the author of the act, since the signatory of that act did not have any authority to adopt, sign and notify the contested decision.

2. Second plea in law, alleging infringement of essential procedural requirements, since the Parliament did not give the applicant the opportunity to state its views on the discrepancies noted.

3. Third plea in law, alleging infringement of the rule of law, in so far as:

   — contributions in kind are a lawful method of financing;

   — the applicant has been discriminated against in terms of its budget as against other European political parties;

   — the right of an individual to be heard prior to the enactment of a measure adversely affecting him has not been observed.

4. Fourth plea in law, alleging misuse of powers, since the Parliament used financial constraints in order to restrict the means of action of a political party whose ideals are not shared by some of the Parliament's members.

Action brought on 16 December 2013 — AENM v Parliament

(Case T-679/13)

(2014/C 85/36)

Language of the case: French

Parties

Applicant: Alliance of European National Movements (AENM) (Matzenheim, France) (represented by: J.-P. Le Moigne, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Parliament of 7 October 2013, partially repeated by the decision of 14 October 2013, and which fixed the definitive allowance granted by the European Parliament to the Alliance of European National Movements in respect of 2012 at EUR 186 292,12 and consequently decided that the Alliance of European National Movements must reimburse EUR 45 476,00 having regard to the fact that EUR 231 412,80 has already been allocated to the applicant association;

— order the European Parliament to pay all the costs and to pay on that basis a sum of EUR 20 000,00 to the Alliance of European National Movements.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law which are essentially identical or similar to those it relies on in Case T-678/13 *AENM* v *Parliament*.

Action brought on 20 December 2013 — Bilbaina de Alquitranes and Others v Commission

(Case T-689/13)

(2014/C 85/37)

Language of the case: English

Parties

Applicants: Bilbaína de Alquitranes, SA (Luchana-Baracaldo, Vizcaya, Spain); Deza, a.s. (Valašské Meziříčí, Czech Republic); Industrial Química del Nalón, SA (Oviedo, Spain); Koppers Denmark A/S (Nyborg, Denmark); Koppers UK Ltd (Scunthorpe, United Kingdom); Koppers Netherlands BV (Uithoorn, Netherlands); Rütgers basic aromatics GmbH (Castrop-Rauxel, Germany); Rütgers Belgium NV (Zelzate, Belgium); Rütgers Poland Sp. z o.o. (Kędzierzyn-Koźle, Poland); Bawtry Carbon International Ltd (Doncaster, United Kingdom); Grupo Ferroatlántica, SA (Madrid, Spain); SGL Carbon GmbH (Meitingen, Germany); SGL Carbon GmbH (Bad Goisern am Hallstättersee, Austria); SGL Carbon (Passy, France); SGL Carbon, SA (La Coruña, Spain); SGL Carbon Polska S.A. (Racibórz, Poland); and ThyssenKrupp Steel Europe AG (Duisburg, Germany) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Declare the Application admissible and well-founded;

— Annul the Contested Act as far as it classifies CTPHT as H400 and H410;

— Order the Commission to pay the costs and expenses of these proceedings.

Pleas in law and main arguments

The Applicants seek partial annulment of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures ('the CLP Regulation') (OJ L 261, p. 5), insofar as it classifies pitch, coal tar, high temp CAS Number 65996-93-2 ('CTPHT') as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) (the 'Contested Act').

In support of the action, the applicants rely on three pleas in law:

1. First plea in law, alleging that the contested act is unlawful because it infringes the REACH and CLP provisions regarding classification of substances as toxic for the aquatic environment and studies which must be accepted for this purpose, as well as the principle of equal treatment, in so far as it rejected studies performed according to REACH and OECD guidelines and it required testing without any accepted standardised method.

2. Second plea in law, alleging that the contested act is unlawful because it is based on a manifest error of assessment since it failed to take into consideration the inert inherent properties of CTPHT which have notably a significant impact on UV light testing and the application of the summation method; it established M-factors for PAH constituents without a proper assessment of the studies relied upon and it rejected information provided by the Applicants without valid justification.

3. Third plea in law, alleging that the contested decision is unlawful because it breached the EU law principles of transparency and right of defence.

Action brought on 10 January 2014 — Czech Republic v Commission

(Case T-27/14)

(2014/C 85/38)

Language of the case: Czech

Parties

Applicant: Czech Republic (represented by: M. Smolek, J. Vláčil and T. Müller, Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Annul the European Commission's call C(2013)7221 final of 4 November 2013 for the withdrawal of the decision of the Ministerstvo průmyslu a obchodu České republiky (Czech Ministry of Trade and Industry), which grants a derogation to the gas storage facilities in Dambořice from the national legislation implementing the provisions of Directive 2003/55/EC [1] on the rules for the access of third parties and

— Order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 266(1) TFEU

   — In this connection, the applicant submits that the Commission, by the adoption of the contested decision, proceeded in a manner directly contrary to the judgment in Case T-465/11 *Globula* v *Commission* [2013] ECR.

2. Second plea in law, alleging infringement of Article 22(4) of Directive 2003/55/EC

   — In this plea, the applicant submits that the Commission adopted the contested decision after the expiry of the time-limit set in Article 22(4) of Directive 2003/55/EC.

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[1] 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 2003 L 176, p. 57).

Action brought on 13 January 2014 — Laverana v OHIM (BIO — INGRÉDIENTS VÉGÉTAUX — PROPRE FABRICATION)

(Case T-30/14)

(2014/C 85/39)

Language of the case: German

Parties

Applicant: Laverana GmbH & Co. KG (Wennigsen, Germany) (represented by J. Wachinger und M. Zöbisch, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 11 November 2013 in Case R 1749/2013-4 and authorise the publication of the application for registration of the Community trade mark No 11 642 527 for goods and services in Classes 3, 5 and 35;

— in the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 11 November 2013 in Case R 1749/2013-4 and refer the case back to the Office so that it adopts a new decision;

— in the alternative, annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 11 November 2013 in Case R 1749/2013-4;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The figurative mark in black and white, including the word elements 'BIO — INGRÉDIENTS VÉGÉTAUX — PROPRE FABRICATION' for goods and services in Classes 3, 5 an 35 — application for registration of Community trade mark No 11 642 527

Decision of the Examiner: Refused the application in part

Decision of the Board of Appeal: Dismissed the appeal

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

Action brought on 5 February 2014 — Secop v Commission

(Case T-79/14)

(2014/C 85/40)

Language of the case: German

Parties

Applicant: Secop GmbH (Flensburg, Germany) (represented by: U. Schnelle and C. Aufdermauer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul Commission Decision Aiuto di Stato SA.37640, C(2013) 9119 final — Aiuti per il salvataggio a favore di ACC Compressors S.p.A., Italia (State aid SA.37640 C(2013) 9119 final; Rescue aid in favour of ACC Compressors S.p.A., Italy) of 18 December 2013 in accordance with Article 264(1) TFEU;

— 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

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

1. First plea in law, alleging infringement of Article 296 TFEU

   — The applicant alleges a failure to sufficiently state the reasons for the contested decision. It claims that, despite having knowledge of the circumstances of the case, obtained during concurrent merger control proceedings brought by the applicant concerning the purchase of assets belonging to a subsidiary of the State aid recipient, the Commission failed to take account of the consequences of situation for the eligibility for State aid of the State aid recipient and the particular consequences of the positive State aid decision for the applicant.

2. Second plea in law, alleging infringement of the Treaties

   — The applicant alleges an infringement of Article 107(3)(c) TFEU. In that regard, it claims, inter alia, that the State aid recipient is not competitive and is a new undertaking which resulted from restructuring measures. As a result of the purchase of assets belonging to one of companies within its group of undertakings by the applicant, the State aid recipient was

deprived of necessary assets for the continuation of its business, without which it could not either continue or recommence its business activities.

— Next, the applicant alleges infringement of Article 108(2) and (3) TFEU. The applicant claims that the Commission should have taken account of the serious difficulties with regard to the compatibility of the State aid with the single market and initiated the main investigation procedure.

— Finally, the applicant alleges in the context of the second plea in law infringement of the principle of equal treatment.

3. Third plea in law, alleging an error of assessment

— The applicant claims that the Commission made an error of assessment in so far as it failed to take account of the circumstances of the case essential to the review and assessment and thus made its decision on the basis insufficient facts.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 11 February 2014 — Armani v Commission

(Case F-65/12) [1]

(Civil Service — Remuneration Annulment of the decision of the Commission not to grant the applicant family allowance in respect of his wife's son of a previous marriage — Family allowances — Entitlement to the dependent child allowance — Dependent child — Child of the applicant's wife)

(2014/C 85/41)

Language of the case: French

Parties

Applicant: Enrico Maria Armani (Brussels, Belgium) (represented by: D. Abreu Caldas, S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

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

Re:

Application for the annulment of the decision of the Commission not to grant the applicant family allowance in respect of his wife's son of a previous marriage.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 17 August 2011, by which the European Commission refused to recognise Mr Armani's entitlement to a dependent child allowance in respect of his wife's child;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Commission to bear its own costs and to pay those incurred by Mr Armani.*

[1] OJ C 243, 11.8.2012, p. 34.

Judgment of the Civil Service Tribunal (Third Chamber) of 12 February 2014 — Bodson and Others v EIB

(Case F-73/12) [1]

(Civil Service — EIB staff — Contractual nature of the employment relationship — Reform of the EIB system of remuneration and salary progression)

(2014/C 85/42)

Language of the case: French

Parties

Applicants: Jean-Pierre Bodson and Others (Luxembourg, Luxembourg) (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: C. Gómez de la Cruz, T. Gilliams and G. Nuvoli, acting as Agents, and P.E. Partsch, lawyer)

Re:

First, application for annulment of the decisions contained in salary slips to apply the general decision of the European Investment Bank setting a salary progression capped at 2.8% for all staff and the decision establishing a merit grid entailing the loss of 1 % of salary and, second, a subsequent application for the institution to be ordered to pay the difference in remuneration together with damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Bodson and the seven other applicants whose names are listed in the annex to bear their own costs and to pay those incurred by the European Investment Bank.*

[1] OJ C 295, 29.9.2012, p. 33.

Judgment of the Civil Service Tribunal (Third Chamber) of 12 February 2014 — Bodson and Others v EIB

(Case F-83/12) [1]

(Civil service — EIB staff — Contractual nature of the employment relationship — Remuneration — Reform of the EIB awards scheme)

(2014/C 85/43)

Language of the case: French

Parties

Applicants: Jean-Pierre Bodson and Others (Luxembourg, Luxembourg) (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: C. Gómez de la Cruz, T. Gilliams and G. Nuvoli, acting as Agents, and P.E. Partsch, lawyer)

Re:

First, application for annulment of the decisions to distribute awards to the applicants pursuant to the new performance system resulting from the decision of 14 December 2010 of the Board of Directors and the decisions of 9 November 2010 and 16 November 2011 of the Management Committee and, second, subsequent application for the defendant to be ordered to pay the difference in remuneration, and damages.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Bodson and the seven other applicants whose names are listed in the annex to bear their own costs and to pay those incurred by the European Investment Bank.*

[1] OJ C 295, 29.9.2012, p. 34.

Action brought on 20 December 2013 — ZZ v FRA

(Case F-97/13)

(2014/C 85/44)

Language of the case: English

Parties

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

Defendant: European Union Agency for Fundamental Rights (FRA)

Subject-matter and description of the proceedings

To annul the decision to nominate another candidate to the Senior Programme Manager position in FRA and the implicit decision not to nominate the applicant to the other position of Senior Programme Manager, mentioned in the vacancy notice.

Form of order sought

— Annul the Director's decision of 5th February 2013 informing the Applicant that the Director of FRA had chosen to appoint another candidate to the position of Senior Programme Manager — Social Research (AD8) and, as a consequence, not to appoint her to this position;

— annul the undated implicit decision not to appoint her to the other position as Senior Programme Manager in the vacancy notice;

— annul any decision taken on the basis of these illegal decisions;

— annul the decision of 11th July 2013 insofar as it rejects the Applicant's complaint and as it refuses to initiate an administrative inquiry, conducted by an unquestionably unbiased, impartial and objective investigator, in order to establish the facts;

— compensate the material prejudice suffered by the Applicant estimated at 550 651 euros;

— compensate the moral prejudice suffered by the Applicant estimated at 70 000 euros;

— order the Defendant to pay for all costs.

Action brought on 27 November 2013 — ZZ v ENISA

(Case F-112/13)

(2014/C 85/45)

Language of the case: Greek

Parties

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

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

Subject-matter and description of the proceedings

Annulment of the decision of ENISA's executive director to terminate the applicant's open-ended employment contract.

Form of order sought

— Annul the implied decision rejecting the applicant's administrative claim and all other earlier unlawful acts, including the act by which ENISA dismissed the applicant;

— Order payment to the applicant of the sum of EUR 50 000 in compensation for the non-pecuniary harm suffered;

— Order ENISA to pay the costs.

Action brought on 10th January 2014 — ZZ v European Aviation Safety Agency (EASA)

(Case F-3/14)

(2014/C 85/46)

Language of the case: English

Parties

Applicant: ZZ (represented by: M. T. Bontinck, Ms A. Guillerme, lawyers)

Defendant: European Aviation Safety Agency (EASA)

Subject-matter and description of the proceedings

The annulment of EASA's decision to renew the contract of the applicant for only one year instead of five years, in violation of article 39 of Regulation (EC) 216/2008/CE.

Form of order sought

— Annul the decision dated March 12th, 2013 of the Management Board to extend his contract for only one year;

— and therefore, annul the amendment nº 2 to his contract of employment which renew the contract for a one year period;

— order the Defendant to pay the costs.

Action brought on 17 January 2014 — ZZ v Commission

(Case F-5/14)

(2014/C 85/47)

Language of the case: French

Parties

Applicant: ZZ (represented by: É. Boigelot, lawyer)

Defendant: Commission

Subject-matter and description of the proceedings

Application to annul the Commission's decision to remove the applicant from his post under Article 9(1)(h) of Annex IX to the Staff Regulations without reduction of his pension rights following an internal investigation begun following an investigation by OLAF opened against an undertaking, and the claim for damages and interest for the non-financial and financial harm allegedly suffered.

Form of order sought

— Annul the decision adopted on 16 October 2013, notified at the applicant's residence on 18 October thereafter by the Commission Security Service, taken by the tripartite AA in Case CMS 12/042, under which 'Mr ZZ is removed from his post under Article 9(1)(h) of Annex IX to the Staff Regulations without reduction of his pension rights' and taking 'effect in the month following the date of his signature';

— order the Commission to pay EUR 33 000, by way of compensation for non-material, medical, family, professional and material damage and the adverse effect on the applicant's career, provisionally set at EUR 1 on an assessed amount, subject to increase or decrease during the proceedings;

— in any event, order the defendant to pay the entire costs, in accordance with Article 87(1) of the Rules of Procedure of the Civil Service Tribunal.

Action brought on 28 January 2014 — ZZ v Commission

(Case F-6/14)

(2014/C 85/48)

Language of the case: French

Parties

Applicant: ZZ (represented by: F. Van der Schueren, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision refusing to grant the applicant a survivor's pension following the death of her former spouse.

Form of order sought

— Annul the decision of the European Commission of 29 October 2013 in response to the claim of the applicant (No R/485/13) refusing to grant her a survivor's maintenance pension following the death of her former spouse;

— Order the Commission to pay the costs.

Action brought on 29 January 2014 — ZZ v Commission

(Case F-7/14)

(2014/C 85/49)

Language of the case: French

Parties

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

Defendant: Commission

Subject-matter and description of the proceedings

Annulment of the Commission decision to reduce to two years instead of three the extension period of the temporary staff contract of the applicant.

Form of order sought

— Annul the decision of the European Commission of 18 July 2013 reducing from three to two years the extension period of the temporary staff contract of the applicant granted by decision of 23 November 2011;

— Fix at EUR 45 000, together with default interest, the amount of compensation due to the applicant in the event that the Commission is, lawfully, unable to reinstate the applicant for the period of one year;

— Order the Commission to pay the entirety of the costs.

Action brought on 31 January 2014 — ZZ v EIB

(Case F-8/14)

(2014/C 85/50)

Language of the case: French

Parties

Applicant: ZZ (represented by: A. Senes and L. Payot, lawyers)

Defendant: European Investment Bank

Subject-matter and description of the proceedings

Annulment of the decision refusing to promote the applicant from function F to function E.

Form of order sought

— Annul the decision of the Adjudication Committee of 23 October 2013;

— order the EIB to pay the costs.

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