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Information and Notices

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 27 February 2014 — United Kingdom of Great Britain and Northern Ireland v Council of the European Union

(Case C-656/11) ([1])

(Coordination of social security systems — Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Council decision — Choice of legal basis — Article 48 TFEU — Article 79(2)(b) TFEU)

(2014/C 112/02)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented initially by C. Murrell and subsequently by M. Holt, Agents, and by A. Dashwood QC)

Intervener in support of the applicant: Ireland (represented by E. Creedon, L. Williams and J. Stanley, Agents, and by N.J. Travers BL)

Defendant: Council of the European Union (represented initially by G. Marhic and M. Veiga and subsequently by A. De Elera, Agents)

Interveners in support of the defendant: French Republic (represented by G. de Bergues and N. Rouam, Agents), European Commission (represented initially by V. Kreuschitz and subsequently by S. Pardo Quintillán and J. Enegren, Agents)

Re:

Action for annulment — Council Decision of 16 December 2011 on the position to be taken by the European Union in the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons as regards the replacement of Annex II to that Agreement on the coordination of social security schemes (OJ L 2011 341, p. 1) — Choice of legal basis — Article 48 TFEU (adoption, in the field of social security, of necessary measures to provide freedom of movement for workers) or Article 79(2)(b) TFEU (rights of third-country nationals residing legally in a Member State) — Practical effect of this choice on the rights and obligations of the United Kingdom, by reason of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice.

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 Ireland, the French Republic and the European Commission to bear their own costs.*

([1]) OJ C 49, 18.2.2012.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain)) — Transportes Jordi Besora SL v Generalitat de Catalunya

(Case C-82/12) ([1])

(Indirect taxes — Excise duties — Directive 92/12/EEC — Article 3(2) — Mineral oils — Tax on retail sales — Concept of 'specific purpose' — Transfer of powers to the Autonomous Communities — Financing — Predetermined allocation — Health-care and environmental expenditure)

(2014/C 112/03)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Cataluña

Parties to the main proceedings

Appellant: Transportes Jordi Besora SL

Respondent: Generalitat de Catalunya

Re:

Request for a preliminary ruling — Tribunal Superior de Justicia de Cataluña — Interpretation of Article 3(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) — Mineral oils — Special tax on retail sales of certain hydrocarbons — Indirect taxes other than excise duty pursuing specific purposes — Tax pursuing an aim capable of being achieved by another harmonised tax — Tax established simultaneously with the transfer of certain powers to the regions and directed, in part, at supporting expenditure of the regions linked to the new powers transferred — Purely budgetary purpose

Operative part of the judgment

Article 3(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products must be interpreted as precluding national legislation that establishes a tax on the retail sale of mineral oils such as the tax on retail sales of certain hydrocarbons (Impuesto sobre las Ventas Minoristas de Determinados Hidrocarburos) at issue in the main proceedings, for such a tax cannot be regarded as pursuing a specific purpose within the meaning of that provision where that tax, intended to finance the exercise by the regional or local authorities concerned of their powers in the fields of health and the environment, is not itself directed at protecting health and the environment.

([1]) OJ C 138, 12.5.2012.

Judgment of the Court (First Chamber) of 27 February 2014 — Stichting Woonpunt, Stichting Havensteder, formerly Stichting Com.wonen, Woningstichting Haag Wonen, Stichting Woonbedrijf SWS.Hhvl v European Commission

(Case C-132/12 P) ([1])

(Appeal — State aid — Schemes for aid granted in favour of housing corporations — Compatibility decision — Commitments provided by the national authorities in order to comply with European Union law — Fourth paragraph of Article 263 TFEU — Action for annulment — Conditions governing admissibility — Interest in bringing proceedings — Locus standi — Beneficiaries who are individually and directly concerned — Notion of a 'closed circle')

(2014/C 112/04)

Language of the case: Dutch

Parties

Appellants: Stichting Woonpunt, Stichting Havensteder, formerly Stichting Com.wonen, Woningstichting Haag Wonen, Stichting Woonbedrijf SWS.Hhvl (represented by: P. Glazener and E. Henny, advocaten)

Other party to the proceedings: European Commission (represented by: H. van Vliet, S. Noë and S. Thomas, Agents)

Re:

Appeal brought against the order of the General Court (Seventh Chamber) of 16 December 2011 in Case T-203/10 *Stichting Woonpunt and Others* v *Commission* by which the General Court dismissed as inadmissible an application for annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid E 2/2005 and N 642/2009 — Netherlands — Existing and special project aid to housing corporations.

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 16 December 2011 in Case T-203/10 Stichting Woonpunt and Others v Commission in so far as it declares inadmissible the action brought by Stichting Woonpunt, Stichting Havensteder, Woningstichting Haag Wonen and Stichting Woonbedrijf SWS.Hhvl for annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid No E 2/2005 and N 642/2009 — The Netherlands — Existing and special project aid to housing corporations, in so far as that decision concerns aid measure E 2/2005;*

2. *Dismisses the remainder of the appeal;*

3. *Declares the action for annulment referred to in paragraph 1 of the present operative part to be admissible;*

4. *Refers the case back to the General Court of the European Union for a decision on the merits concerning the action for annulment referred to in paragraph 1 of the present operative part;*

5. *Reserves the costs.*

([1]) OJ C 138, 12.5.2012.

Judgment of the Court (First Chamber) of 27 February 2014 — Stichting Woonlinie, Stichting Allee Wonen, Woningstichting Volksbelang, Stichting WoonInvest, Stichting Woonstede v European Commission

(Case C-133/12 P) ([1])

(Appeal — State aid — Scheme for aid granted in favour of housing corporations — Compatibility decision — Commitments provided by the national authorities in order to comply with European Union law — Fourth paragraph of Article 263 TFEU — Action for annulment — Conditions governing admissibility — Interest in bringing proceedings — Locus standi — Beneficiaries who are individually and directly concerned — Notion of a 'closed circle')

(2014/C 112/05)

Language of the case: Dutch

Parties

Appellants: Stichting Woonlinie, Stichting Allee Wonen, Woningstichting Volksbelang, Stichting WoonInvest, Stichting Woonstede (represented by: P. Glazener and E. Henny, advocaten)

Other party to the proceedings: European Commission (represented by: H. van Vliet, S. Noë and S. Thomas, Agents)

Re:

Appeal brought against the order of the General Court (Seventh Chamber) of 16 December 2011 in Case T-202/10 *Stichting Woonlinie and Others* v *Commission* by which the General Court dismissed as inadmissible an application for annulment in part of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid E 2/2005 and N 642/2009 — Netherlands — Existing and special project aid to housing corporations.

Operative part of the judgment

The Court:

1. *Sets aside the order of the General Court of the European Union of 16 December 2011 in Case T-202/10 Stichting Woonlinie and Others v Commission in so far as it declares inadmissible the action brought by Stichting Woonlinie, Stichting Allee Wonen, Woningstichting Volksbelang, Stichting WoonInvest and Stichting Woonstede for annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid No E 2/2005 and N 642/2009 — The Netherlands — Existing and special project aid to housing corporations, in so far as that decision concerns aid measure E 2/2005;*

2. *Declares the action for annulment referred to in paragraph 1 of the present operative part to be admissible;*

3. *Refers the case back to the General Court of the European Union for a decision on the merits concerning the action for annulment referred to in paragraph 1 of the present operative part;*

4. *Reserves the costs.*

([1]) OJ C 138, 12.5.2012.

Judgment of the Court (Fourth Chamber) of 27 February 2014 (request for a preliminary ruling from the Krajský soud v Plzni — Czech Republic) — Ochranný svaz autorský pro práva k dílům hudebním o.s. (OSA) v Léčebné lázně Mariánské Lázně a.s.

(Case C-351/12) ([1])

(Directive 2001/29/EC — Copyright and related rights in the information society — Definition of 'communication to the public' — Transmission of works in a spa establishment — Direct effect of the provisions of the directive — Articles 56 TFEU and 102 TFEU — Directive 2006/123/EC — Freedom to provide services — Competition — Exclusive right of collective management of copyright)

(2014/C 112/06)

Language of the case: Czech

Referring court

Krajský soud v Plzni

Parties to the main proceedings

Applicant: Ochranný svaz autorský pro práva k dílům hudebním o.s. (OSA)

Defendant: Léčebné lázně Mariánské Lázně a.s.

Re:

Request for a preliminary ruling — Krajský soud v Plzni — Interpretation of Articles 3 and 5 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), Articles 56, 101 and 102 TFEU, and Articles 14 and 16 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) — Exceptions to and limitations of the rights of reproduction and communication — Works transmitted by means of television and radio equipment in rooms of patients of a spa establishment — Direct effect of the provisions of the directive — National legislation conferring on the applicant the exclusive right of collective management of copyright on national territory.

Operative part of the judgment

1. *Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as precluding national legislation which excludes the right of authors to authorise or prohibit the communication of their works, by a spa establishment which is a business, through the intentional distribution of a signal by means of television or radio sets in the bedrooms of the establishment's patients. Article 5(2)(e), (3)(b) and (5) of that directive is not such as to affect that interpretation.*

2. *Article 3(1) of Directive 2001/29 must be interpreted as meaning that it cannot be relied on by a copyright collecting society in a dispute between individuals for the purpose of setting aside national legislation contrary to that provision. However, the national court hearing such a case is required to interpret that legislation, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive.*

3. *Article 16 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, and Articles 56 TFEU and 102 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which reserves the exercise of collective management of copyright in respect of certain protected works in the territory of the Member State concerned to a single copyright collecting society and thereby prevents users of such works, such as the spa establishment in the main proceedings, from benefiting from the services provided by another collecting society established in another Member State.*

However, Article 102 TFEU must be interpreted as meaning that the imposition by that copyright collecting society of fees for its services which are appreciably higher than those charged in other Member States (a comparison of the fee levels having been made on a consistent basis) or the imposition of a price which is excessive in relation to the economic value of the service provided are indicative of an abuse of a dominant position.

([1]) OJ C 295, 29.9.2012

Judgment of the Court (Third Chamber) of 27 February 2014 — European Commission v EnBW Energie Baden-Württemberg AG, Kingdom of Sweden, Siemens AG, ABB Ltd

(Case C-365/12 P) ([1])

(Appeal — Regulation (EC) No 1049/2001 — Access to documents of the institutions — Documents relating to a proceeding under Article 81 EC — Regulation (EC) No 1/2003 and Regulation (EC) No 773/2004 — Access refused — Exceptions relating to the protection of investigations, commercial interests and the decision-making process of the institutions — Obligation upon the institution concerned to carry out a specific, individual examination of the content of the documents covered by the request for access)

(2014/C 112/07)

Language of the case: German

Parties

Appellant: European Commission (represented by: B. Smulders, P. Costa de Oliveira and A. Antoniadis, Agents)

Other parties to the proceedings: EnBW Energie Baden-Württemberg AG, (represented by: A. Hahn and A. Bach, Rechtsanwälte), Kingdom of Sweden (represented by: C. Meyer-Seitz, Agent), Siemens AG (represented by: I. Brinker, C. Steinle and M. Holm-Hadulla, Rechtsanwälte), ABB Ltd (represented by: J. Lawrence, Solicitor, H. Bergmann and A. Huttenlauch, Rechtsanwälte)

Re:

Appeal against the judgment of the General Court (Fourth Chamber) of 22 May 2012 in Case T-344/08 *Enbw Energie Baden-Württemberg* v *Commission* by which the General Court annulled Commission Decision SG.E.3/MV/psi D (2008) 4931 of 16 June 2008 refusing access to the case-file in Case COMP/F/38.899 — Gas insulated switchgear — Erroneous interpretation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) and, in particular, of Article 4(2) and (3) thereof.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 22 May 2012 in Case T-344/08 EnBW Energie Baden-Württemberg v Commission;*

2. *Annuls Commission Decision SG.E.3/MV/psi D (2008) 4931 of 16 June 2008 refusing the request made by EnBW Energie Baden-Württemberg AG for access to the case-file in Case COMP/F/38.899 — Gas insulated switchgear, in so far as, by that decision, the European Commission failed to give a decision on EnBW Energie Baden-Württemberg AG's request to the extent that it sought disclosure of the category 5(b) documents in the file;*

3. *Dismisses the action brought by EnBW Energie Baden-Württemberg AG before the General Court in Case T-344/08 as to the remainder;*

4. *Orders the European Commission and EnBW Energie Baden-Württemberg AG to bear their own costs;*

5. *Orders the Kingdom of Sweden, Siemens AG and ABB Ltd to bear their own costs.*

(1) OJ C 287, 22.9.2012.

Judgment of the Court (Fourth Chamber) of 27 February 2014 (request for a preliminary ruling from the Raad van State — Netherlands) — A. M. van der Ham, A. H. van der Ham-Reijersen van Buuren v College van Gedeputeerde Staten van Zuid-Holland

(Case C-396/12) (1)

(Common agricultural policy — Financing by the EAFRD — Support for rural development — Reduction or discontinuance of payments in the event of non-compliance with the rules on cross-compliance — Concept of 'intentional non-compliance')

(2014/C 112/08)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: A. M. van der Ham, A. H. van der Ham-Reijersen van Buuren

Defendant: College van Gedeputeerde Staten van Zuid-Holland

Re:

Request for a preliminary ruling — Raad van State (Netherlands) — Interpretation of Article 51(1) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1), as amended by Council Regulation (EC) No 74/2009 of 19 January 2009 (OJ 2009 L 30, p. 100), of Article 23 of Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005 as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ 2006 L 368, p. 74), and of Article 67(1) of 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) — Support for rural development — Reduction or discontinuance of payments in the event of non-compliance with the rules — Concept of intentional non-compliance.

Operative part of the judgment

1) *The concept of 'intentional non-compliance' within the meaning of Article 67(1) of 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 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and Article 23 of Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures, must be interpreted as requiring an infringement of the rules on cross-compliance by a beneficiary of aid who seeks a state of non-compliance with those rules or who, without seeking such a state, accepts the possibility that it may occur. European Union law does not preclude a national provision which, like that at issue in the main proceedings, gives a high probative value to the criterion of the existence of a long-established, settled policy, in so far as the beneficiary of aid has the possibility if appropriate of adducing evidence of the lack of intent in his conduct;*

2) *Article 67(1) of Regulation No 796/2004 and Article 23 of Regulation No 1975/2006 must be interpreted as meaning that, in the event of an infringement of the requirements of cross-compliance by a third party who carries out work on the instructions of a beneficiary of aid, the beneficiary may be held responsible for the infringement if he acted intentionally or negligently as a result of the choice or the monitoring of the third party or the instructions given to him, independently of the intentional or negligent nature of the conduct of the third party.*

([1]) OJ C 379, 8.12.2012.

Judgment of the Court (Eighth Chamber) of 27 February 2014 (requests for a preliminary ruling from the Bundesfinanzhof — Germany) — Pro Med Logistik GmbH (C-454/12) v Finanzamt Dresden-Süd and Eckard Pongratz, acting as the receiver appointed to deal with the bankruptcy of Karin Oertel (C-455/12) v Finanzamt Würzburg mit Außenstelle Ochsenfurt

(Joined Cases C-454/12 and C-455/12) ([1])

(Request for a preliminary ruling — VAT — Sixth VAT Directive — Article 12(3) — Annex H, category 5 — Directive 2006/112/EC — Article 98(1) and (2) — Annex III, point 5 — Principle of neutrality — Transport of passengers and their accompanying luggage — Legislation of a Member State applying different rates of VAT to transport by taxi and to transport by minicab)

(2014/C 112/09)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Pro Med Logistik GmbH (C-454/12), Eckard Pongratz, acting as the receiver appointed to deal with the bankruptcy of Karin Oertel (C-455/12)

Defendants: Finanzamt Dresden-Süd (C-454/12), Finanzamt Würzburg mit Außenstelle Ochsenfurt (C-455/12)

Re:

Requests for a preliminary ruling — Bundesfinanzhof — Germany — Interpretation of Article 98(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) in conjunction with point 5 of Annex III thereto, and of the third subparagraph of Article 12(3)(a), as amended, 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 (OJ 1977 L 145, p. 1) in conjunction with point 5 of Annex H thereto, as amended — Principle of neutrality — Legislation of a Member State providing for a difference in treatment for VAT purposes between supplies of services which are identical from the consumer's point of view and which meet the same needs — Transport of patients by taxi treated differently to the transport of patients by minicab.

Operative part of the judgment

1) *Having regard to the principle of fiscal neutrality, the third subparagraph of Article 12(3)(a) 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, as amended by Council Directive 2001/4/EC of 19 January 2001, read in conjunction with Annex H, category 5, thereto, and Article 98(1) and (2) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, read in conjunction with Annex III, point 5, thereto, must be interpreted as not precluding two types of services for the local transport of passengers and their accompanying luggage, namely transport by taxi and transport by minicab, from being subject to different rates of value added tax, one a reduced rate and the other the standard rate, in so far as, first, by reason of the different statutory requirements to which those two types of transport are subject, the activity of local transport of passengers by taxi constitutes a concrete and specific aspect of the category of services of transport of passengers and their accompanying luggage, covered by category 5 and point 5 of the respective annexes to those directives and, secondly, those differences have a decisive influence on the decision of the average user to use one such service or the other. It is for the referring court to determine whether that is the position in the cases in the main proceedings;*

2) *By contrast, having regard to the principle of fiscal neutrality, the third subparagraph of Article 12(3)(a) of Sixth Directive 77/388, as amended by Directive 2001/4, read in conjunction with Annex H, category 5, thereto, and Article 98(1) and (2) of Directive 2006/112, read in conjunction with Annex III, point 5, thereto, must be interpreted as precluding two types of services for the local transport of passengers and their accompanying luggage, namely transport by taxi and transport by minicab, from being subject to different rates of value added tax in the case where, under a special agreement which applies indiscriminately to the taxi undertakings and minicab undertakings which are parties to it, the transport of passengers by taxi is not a concrete and specific aspect of the transport of passengers and their accompanying luggage, and where that activity carried out under that agreement is considered to be similar, from the point of view of the average user, to the activity of local transport of passengers by minicab, this being a matter for the referring court to determine.*

([1]) OJ C 399, 22.12.2012.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the Okresný súd Svidník — Slovakia) — Pohotovosť s.r.o. v Miroslav Vašuta

(Case C-470/12) ([1])

(Reference for a preliminary ruling — Consumer credit contract — Unfair terms — Directive 93/13/EEC — Enforcement of an arbitration award — Application for leave to intervene in enforcement proceedings — Consumer protection association — National legislation which does not allow such an intervention — Procedural autonomy of the Member States)

(2014/C 112/10)

Language of the case: Slovak

Referring court

Okresný súd Svidník

Parties to the main proceedings

Applicant: Pohotovosť s.r.o.

Defendant: Miroslav Vašuta

Intervening party: Združenie na ochranu občana spotrebiteľa HOOS

Re:

Request for a preliminary ruling — Okresný súd vo Svidníku — Interpretation of Article 6(1) and Article 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Articles 38 and 47 of the Charter of Fundamental Rights of the European Union — Consumer credit contract — Enforcement of an arbitration award — Application by a consumer protection association for leave to intervene in the enforcement procedure — National legislation not providing for the possibility for a third party to intervene — Possibility for the national court to allow that application for leave to intervene.

Operative part of the judgment

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.

([1]) OJ C 46, 16.2.2013.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — Greencarrier Freight Services Latvia v Valsts ieņēmumu dienests

(Case C-571/12) ([1])

(Request for a preliminary ruling — Community Customs Code — Articles 70(1) and 78 — Customs declarations — Partial examination of goods — Sampling — Incorrect code — Application of the results to identical goods covered by earlier customs declarations after release — Post-release examination — Impossible to request a further examination of the goods)

(2014/C 112/11)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Greencarrier Freight Services Latvia SIA

Defendant: Valsts ieņēmumu dienests

Re:

Request for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of the first subparagraph of Article 70(1), and of Article 78(2), of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Application of the results of the examinations of part of the goods in a customs declaration also to identical goods included in other declarations — Whether such a practice by the customs authorities is permissible — Post-clearance examination — Application of the results of the examinations also to declarations which can no longer be verified.

Operative part of the judgment

Article 70(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code must be interpreted as meaning that, since it applies only to goods covered by 'a [single] declaration' where those goods are examined by the customs authorities before those authorities grant the release of those goods, that provision does not permit those authorities, in a case such as that in the main proceedings, to apply the results of the partial examination of goods covered by a customs declaration to goods covered by earlier customs declarations which have already been released by those authorities;

However, Article 78 of that Code is to be interpreted as meaning that it permits the customs authorities to apply the results of a partial examination of goods covered by a customs declaration, carried out by way of sampling of them, to goods covered by earlier customs declarations submitted by the same customs declarant, which were not and can no longer be examined since the release has been granted, where those goods are identical, which it is for the referring court to ascertain.

([1]) OJ C 38, 9.2.2013.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the arbeidshof te Antwerpen (Belgium)) — Lyreco Belgium NV v Sophie Rogiers

(Case C-588/12) ([1])

(Social policy — Directive 96/34/EC — Framework agreement on parental leave — Clauses 1 and 2.4 — Part-time parental leave — Dismissal of a worker without compelling or sufficient reason — Fixed-sum protective award on account of the taking of parental leave — Method of calculating the amount of award)

(2014/C 112/12)

Language of the case: Dutch

Referring court

Arbeidshof te Antwerpen

Parties to the main proceedings

Applicant: Lyreco Belgium NV

Defendant: Sophie Rogiers

Re:

Request for a preliminary ruling — Arbeidshof te Antwerpen — Belgium — Interpretation of clauses 1 and 2.4, of the framework agreement on parental leave concluded by UNICE, CEEP and ETUC, contained in the Annex to Council Directive 96/34/EC of 3 June 1996 (OJ 1996 L 145, p. 4) — Part-time parental leave — Reduction of benefits — Termination of a worker's contract before the end of the period of parental leave without compelling reason — Method of calculating the amount of redundancy compensation.

Operative part of the judgment

On a proper construction of clause 2.4 of the framework agreement on parental leave concluded on 14 December 1995, which is set out in the annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 97/75/EC of 15 December 1997 read in the light both of the objectives of that Framework Agreement and of clause 2.6 thereof, it is contrary to that provision for the fixed-sum protective award payable to a worker on part-time parental leave, where the employer unilaterally and without compelling or sufficient reason terminates that worker's full-time contract of indefinite duration, to be determined on the basis of the reduced salary earned by that worker at the date of the dismissal.

([1]) OJ C 79, 16.3.2013.

Judgment of the Court (Seventh Chamber) of 27 February 2014 — Ningbo Yonghong Fasteners Co. Ltd v Council of the European Union, European Commission and European Industrial Fasteners Institute AISBL (EIFI)

(Case C-601/12 P) ([1])

(Appeal — Dumping — Regulation (EC) No 384/96 — Second subparagraph of Article 2(7)(c) — Imports of certain iron or steel fasteners originating in China — Market economy treatment — Time-limit for adoption of the related decision exceeded — Effect)

(2014/C 112/13)

Language of the case: English

Parties

Appellant: Ningbo Yonghong Fasteners Co. Ltd (represented by: F. Graafsma and J. Cornelis, advocaten)

Other parties to the proceedings: Council of the European Union (represented by: J.-P. Hix and S. Boelaert, Agents, assisted by G. Berrisch, Rechtsanwalt), European Commission (represented by: M. França and T. Maxian Rusche, Agents), and European Industrial Fasteners Institute AISBL (EIFI) (represented by: J. Bourgeois, avocat)

Re:

Appeal brought against the judgment of 10 October 2012 in Case T-150/09 *Ningbo Yonghong Fasteners Co. Ltd* v *Council*, by which the General Court (Seventh Chamber) dismissed an action for the partial annulment of Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ 2009 L 29, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Ningbo Yonghong Fasteners Co. Ltd to pay the costs incurred by the Council of the European Union in the present proceedings;*

3. *Orders the European Commission and the European Industrial Fasteners Institute AISBL (EIFI) each to bear its own costs.*

([1]) OJ C 71, 9.3.2013.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the Cour de cassation — France) — Cartier parfums — lunettes SAS, Axa Corporate Solutions assurances SA v Ziegler France SA, Montgomery Transports SARL, Inko Trade s.r.o., Jaroslav Matěja, Groupama Transport

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

(Request for a preliminary ruling — Judicial cooperation in civil matters — Regulation (EC) No 44/2001 — Article 27(2) — Lis pendens — Article 24 — Prorogation of jurisdiction — Establishment of jurisdiction of the court first seised by reason of appearance being entered without objection by the parties or the adoption of a final judgment)

(2014/C 112/14)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Cartier parfums — lunettes SAS, Axa Corporate Solutions assurances SA

Defendants: Ziegler France SA, Montgomery Transports SARL, Inko Trade s.r.o., Jaroslav Matěja, Groupama Transport

Re:

Request for a preliminary ruling — Cour de cassation (France) — Interpretation of Article 27(2) 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) — Lis pendens — Establishment of the jurisdiction of the court first seised because neither party has claimed that it lacks jurisdiction or because it has adopted a decision which is irrevocable for any reason whatsoever.

Operative part of the judgment

Article 27(2) 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, except in the situation where the court second seised has exclusive jurisdiction by virtue of that regulation, the jurisdiction of the court first seised must be regarded as being established, within the meaning of that provision, if that court has not declined jurisdiction of its own motion and none of the parties has contested its jurisdiction prior to or up to the time at which a position is adopted which is regarded in national procedural law as being the first defence on the substance submitted before that court.

([1]) OJ C 63, 2.3.2013.

Judgment of the Court (Third Chamber) of 27 February 2014 (request for a preliminary ruling from the Sozialgericht Nürnberg — Germany) — Petra Würker v Familienkasse Nürnberg

(Case C-32/13) ([1])

(Social security — Regulation (EEC) No 1408/71 — Family allowances — Articles 77 and 78 — Benefits for dependent children of pensioners and for orphans — Regulation (EC) No 883/2004 — Family benefits — Article 67 — Family members residing in another Member State — Concept of 'pension' — Recipient of a pension granted, pursuant to German legislation, for bringing up children following the death of the person from whom that recipient was divorced ('Erziehungsrente'))

(2014/C 112/15)

Language of the case: German

Referring court

Sozialgericht Nürnberg

Parties to the main proceedings

Applicant: Petra Würker

Defendant: Familienkasse Nürnberg

Re:

Request for a preliminary ruling — Sozialgericht Nürnberg — Interpretation of Articles 77 and 78 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2) and of Article 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1) — Right of a pensioner to family benefits — Concept of 'pension' — Pension granted for bringing up children following the death of the former spouse ('Erziehungsrente').

Operative part of the judgment

1) *On a proper construction of Article 77(1) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 592/2008 of the European Parliament and of the Council of 17 June 2008, a benefit such as the pension for bringing up children provided for in Paragraph 47(1) of Book VI of the Social Security Code (Sozialgesetzbuch, Sechstes Buch), which is granted, in the event of death, to the former spouse of the deceased for the purposes of bringing up the children of that former spouse, cannot be treated in the same way as 'pensions for old age, invalidity or an accident at work or occupational disease' within the meaning of Article 77 of Regulation (EEC) No 1408/71;*

2) *On a proper construction of Article 67 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, a benefit such as the pension for bringing up children provided for in Paragraph 47(1) of Book VI of the Social Security Code is covered by the concept of 'pension' within the meaning of Article 67.*

([1]) OJ C 147, 25.5.2013.

Judgment of the Court (Fourth Chamber) of 27 February 2014 (request for a preliminary ruling from the Arbeidshof te Brussel (Belgium)) — Federaal agentschap voor de opvang van asielzoeker v Selver Saciri, Danijela Dordevic, Danjel Saciri, represented by Selver Saciri and Danijela Dordevic, Sanela Saciri, represented by Selver Saciri and Danijela Dordevic, Denis Saciri, represented by Selver Saciri and Danijela Dordevic, Openbaar Centrum voor Maatschappelijk Welzijn van Diest

(Case C-79/13) ([1])

(Directive 2003/9/EC — Minimum standards for the reception of asylum seekers in the Member States — Article 13(1) — Time-limits for material reception conditions — Article 13(2) — Provisions on material reception conditions — Guarantees — Article 13(5) — Setting and grant of minimum reception conditions for asylum seekers — Size of the aid granted — Article 14 — Modalities for material reception conditions — Saturation of the reception facilities — Referral to national social protection systems — Provision of the material reception conditions in the form of financial allowances)

(2014/C 112/16)

Language of the case: Dutch

Referring court

Arbeidshof te Brussel

Parties to the main proceedings

Applicant: Federaal agentschap voor de opvang van asielzoeker

Defendants: Selver Saciri, Danijela Dordevic, Danjel Saciri, represented by Selver Saciri and Danijela Dordevic, Sanela Saciri, represented by Selver Saciri and Danijela Dordevic, Denis Saciri, represented by Selver Saciri and Danijela Dordevic, Openbaar Centrum voor Maatschappelijk Welzijn van Diest

Re:

Request for a preliminary ruling — Arbeidshof te Brussel — Interpretation of Articles 13(1), (2) and (5) and 14(1), (3), (5) and (8) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ 2003 L 31, p. 18) — Grant of financial assistance — Obligations of the Member States — Saturation of national reception structures for accommodating asylum seekers.

Operative part of the judgment

1. *Article 13(5) of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers must be interpreted as meaning, where a Member State has opted to grant the material reception conditions in the form of financial allowances or vouchers, that those allowances must be provided from the time the application for asylum is made, in accordance with the provisions of Article 13(1) of that directive, and must meet the minimum standards set out in Article 13(2) thereof. That Member State must ensure that the total amount of the financial allowances covering the material reception conditions is sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence, enabling them in particular to find housing, having regard, if necessary, to the preservation of the interests of persons having specific needs, pursuant to Article 17 of that directive. The material reception conditions laid down in Article 14(1), (3), (5) and (8) of Directive 2003/9 do not apply to the Member States where they have opted to grant those conditions in the form of financial allowances only. Nevertheless, the amount of those allowances must be sufficient to enable minor children to be housed with their parents, so that the family unity of the asylum seekers may be maintained.*

2. *Directive 2003/9 must be interpreted as meaning that it does not preclude, where the accommodation facilities specifically for asylum seekers are overloaded, the Member States from referring the asylum seekers to bodies within the general public assistance system, provided that that system ensures that the minimum standards laid down in that directive as regards the asylum seekers are met.*

([1]) OJ C 114, 20.4.2013.

Judgment of the Court (Seventh Chamber) of 27 February 2014 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — HaTeFo GmbH v Finanzamt Haldensleben

(Case C-110/13) ([1])

(Reference for a preliminary ruling — Company law — Recommendation 2003/361/EC — Definition of micro, small and medium-sized enterprises — Types of enterprises taken into consideration in calculating staff numbers and financial amounts — Linked enterprises — Notion of 'group of natural persons acting jointly')

(2014/C 112/17)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: HaTeFo GmbH

Defendant: Finanzamt Haldensleben

Re:

Request for a preliminary ruling — Bundesfinanzhof — Interpretation of the fourth subparagraph of Article 3(3) of the Annex to the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ 2003 L 124, p. 36) — Types of enterprises taken into consideration in calculating staff numbers and financial amounts — Linked enterprises — Notion of group of natural persons acting jointly.

Operative part of the judgment

The fourth subparagraph of Article 3(3) of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises must be interpreted as meaning that enterprises may be regarded as 'linked' for the purposes of that article where it is clear from the analysis of the legal and economic relations between them that, through a natural person or a group of natural persons acting jointly, they constitute a single economic unit, even though they do not formally have any of the relationships referred to in the first subparagraph of Article 3(3) of that annex.

Natural persons who work together in order to exercise an influence over the commercial decisions of the enterprises concerned which precludes those enterprises from being regarded as economically independent from each other are to be regarded as acting jointly for the purposes of the fourth subparagraph of Article 3(3) of that annex. Whether that condition is satisfied depends on the circumstances of the case and is not necessarily conditional on the existence of contractual relations between those persons or a finding that they intended to circumvent the definition of a micro, small or medium-sized enterprise within the meaning of that recommendation.

(1) OJ C 147, 25.5.2013.

Order of the Court (Third Chamber) of 30 January 2014 — Industrias Alen SA de CV v The Clorox Company, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-422/12 P) (1)

(Appeal — Article 181 of the Rules of Procedure — Community trade mark — Opposition proceedings — Application for Community word mark CLORALEX — Earlier national word mark CLOROX — Likelihood of confusion — Regulation (EC) No 207/2009 — Article 8(1)(b) — Cross-appeal — Article 176 of the Rules of Procedure — Requirement to introduce the cross-appeal by a separate document)

(2014/C 112/18)

Language of the case: Spanish

Parties

Appellant: Industrias Alen SA de CV (represented by: A. Padial Martinez, abogada)

Other parties to the proceedings: The Clorox Company (represented by: S. Malynicz, Barrister), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 10 July 2012 in Case T-135/11 *Clorox* v *OHIM — Industrias Alen (CLORALEX)*, by which that court annulled the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 16 December 2010 (Case R 521/2009-4).

Operative part of the order

1. *The main appeal and the cross-appeal are dismissed.*

2. *Industrias Alen SA de CV is ordered to bear its own costs and to pay the costs incurred by The Clorox Company.*

3. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) is to bear its own costs.*

(1) OJ C 379, 8.12.2012.

Order of the Court (Eighth Chamber) of 16 January 2014 (requests for a preliminary ruling from the Debreceni Munkaügyi Bíróság and the Fővárosi Munkaügyi Bíróság (Hungary)) — Dutka József (C-614/12) and Csilla Sajtos (C-10/13) v Mezőgazdasági és Vidékfejlesztési Hivatal (C-614/12) and Budapest Főváros VI. Ker. Önkormányzata (C-10/13)

(Joined Cases C-614/12 and C-10/13) (1)

(Reference for a preliminary ruling — Article 30 of the Charter of Fundamental Rights of the European Union — Implementation of European Union law — Absence — Clear lack of jurisdiction of the Court)

(2014/C 112/19)

Language of the case: Hungarian

Referring courts

Debreceni Munkaügyi Bíróság and Fővárosi Munkaügyi Bíróság

Parties to the main proceedings

Applicants: Dutka József (C-614/12) and Csilla Sajtos (C-10/13)

Defendants: Mezőgazdasági és Vidékfejlesztési Hivatal (C-614/12) and Budapest Főváros VI. Ker. Önkormányzata (C-10/13)

Re:

Requests for a preliminary ruling — Debreceni Munkaügyi Bíróság and Fővárosi Munkaügyi Bíróság — Interpretation of Article 6 TEU and Articles 30 and 51 of the Charter of Fundamental Rights of the European Union — Protection of workers in the event of unjustified dismissal — Dismissal without reasons being given — Official of a public administrative body who has been dismissed on the basis of a provision of national legislation governing the terms and conditions of civil servants.

Operative part of the order

The Court of Justice of the European Union clearly has no jurisdiction to answer the questions referred by the Debreceni Munkaügyi Bíróság (Hungary), by decision of 6 December 2012, and by the Fővárosi Munkaügyi Bíróság (Hungary), by decision of 21 September 2012.

([1]) OJ C 114, 20.4.2013.

Order of the Court (Ninth Chamber) of 16 January 2014 (request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság — Hungary) — Dél-Zempléni Nektár Leader Nonprofit kft v Vidékfejlesztési Miniszter

(Case C-24/13) ([1])

(Agriculture — Regulation (EC) No 1698/2005 — EAFRD — Requirements relating to the legal form of local action groups — Amendment of those requirements — Competence of the Member States — Limits)

(2014/C 112/20)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: Dél-Zempléni Nektár Leader Nonprofit kft

Defendant: Vidékfejlesztési Miniszter

Re:

Request for preliminary ruling — Fővárosi Közigazgatási és Munkaügyi Bíróság — Interpretation of Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 368, p. 15) and of Article 62 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 277, p. 1) — Non-profit-making company declared Leader local action group, set up in the context of agricultural aid — Withdrawal of designation as local action group on the ground that only associations may be classified as such.

Operative part of the order

1. *The provisions of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), in particular Articles 61 and 62 thereof, must be interpreted as meaning that it does not require nor, in principle, prohibit, the adoption of national provisions to the effect that a local action group which meets all of the conditions listed in Article 62(1) of that regulation may not operate unless it does so under a particular form of legal organisation. It is, however, for the referring court to ensure that, bearing in mind all of its relevant characteristics, such legislation does not obstruct the direct applicability of that regulation and that it specifies the exercise of the margin of discretion granted to the Member States by that regulation whilst remaining within its bounds. It is likewise for the referring court to ensure that that national rule observes the provisions of the Charter of Fundamental Rights of the European Union and the general principles of European Union law.*

2. *European Union law does not preclude, in principle, a rule of national law which provides that local action groups may not operate unless they do so under a specific legal form from applying, at the end of a transitional period of one year, to local action groups that have been validly created under a different form of legal organisation under earlier national legislation, even though the aid programmes and the programming period relating thereto are underway. That is so, however, only in so far as it is for the national court to verify that, in the light, in particular, of the specific characteristics of the abovementioned successive rules of national law and of the practical implications thereof, the application of the new legislation to such local action groups specifies the exercise of the margin of discretion granted to the Member States by Regulation No 1698/2005 whilst remaining within its bounds and that such application is in conformity with the provisions of the Charter of Fundamental Rights of the European Union as well as the general principles of European Union law.*

([1]) OJ C 156, 1.6.2013.

Order of the Court (Eighth Chamber) of 30 January 2014 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 17 de Barcelona — Spain) — France Telecom España, SA v Organismo de Gestión Tributaria de la Diputación de Barcelona

(Case C-25/13) ([1])

(Request for a preliminary ruling — Electronic communications networks and services — Directive 2002/20/EC — Fee for the private use or the special right of use for the area under and on local public land imposed on operators supplying electronic communications services — Article 99 of the Rules of Procedure of the Court — Answer able clearly to be deduced from the case-law)

(2014/C 112/21)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 17 de Barcelona — Spain

Parties to the main proceedings

Applicant: France Telecom Espana, SA

Defendant: Organismo de Gestión Tributaria de la Diputación de Barcelona

Re:

Request for a preliminary ruling — Juzgado de lo Contencioso Administrativo de Barcelona — Interpretation of Article 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('the Authorisation Directive') (OJ 2002 L 108, p. 21) — Fees for rights to use and to install facilities — Municipal public land — Transfer of rights and transfer of management of use.

Operative part of the order

European Union law must be interpreted, in the light of the judgment in Joined Cases C-55/11, C-57/11 and C-58/11 Vodafone España and France Telecom España [2012] ECR, as precluding the application of a fee for the use and operation of resources installed on or under public or private property, within the meaning of Article 13 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the Authorisation Directive), to operators supplying electronic communications services which are not the owners of those resources.

([1]) OJ C 108, 13.4.2013.

Order of the Court (Sixth Chamber) of 30 January 2014 (request for a preliminary ruling from the Tribunale ordinario di Firenze — Italy) — Paola C v Presidenza del Consiglio dei Ministri

(Case C-122/13) ([1])

(Request for a preliminary ruling — Judicial cooperation in criminal matters — Directive 2004/80/EC — Article 12 — Compensation of victims of violent intentional crime — Purely internal situation — Clear lack of jurisdiction of the Court)

(2014/C 112/22)

Language of the case: Italian

Referring court

Tribunale ordinario di Firenze

Parties to the main proceedings

Applicant: Paola C

Defendant: Presidenza del Consiglio dei Ministri

Re:

Request for a preliminary ruling — Tribunale Ordinario di Firenze — Interpretation of Article 12 of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15) — Scope — Legislation not providing a compensation scheme for victims of violent intentional crime committed in national territory ensuring fair and appropriate compensation to all victims of violent crimes.

Operative part of the order

The European Court of Justice clearly has no jurisdiction to answer the question put by the Tribunale ordinario di Firenze (Italy).

([1]) OJ C 141, 18.5.2013.

Order of the Court (Sixth Chamber) of 16 January 2014 — nfon AG v Fon Wireless Ltd, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-193/13 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Figurative mark including the word element 'nfon' — Opposition by the proprietor of Community figurative mark including the word element 'fon' and of the national word mark FON — Rejection of the opposition by the Board of Appeal of OHIM)

(2014/C 112/23)

Language of the case: German

Parties

Appellant: nfon AG (represented by: V. von Bomhard, Rechtsanwältin)

Other parties to the proceedings: Fon Wireless Ltd (represented by: L Montoya Terán, abogada; Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Walicka, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Fourth Chamber) of 29 January 2013 in Case T-283/11 *Fon Wireless* v *OHIM — Nfon (Nfon)*, by which the General Court altered the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 18 March 2011 (Case R 1017/2009 4) to the effect that nfon AG's appeal to the Board of Appeal is dismissed — Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Operative part of the order

1. *The appeal is dismissed.*

2. *nfon AG shall bear its own costs and pay those incurred by Fon Wireless AG.*

3. *The Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) shall bear its own costs.*

([1]) OJ C 189, 29.6.2013.

Order of the Court (Eighth Chamber) of 16 January 2014 (request for a preliminary ruling from the Kúria — Hungary) — Ferenc Weigl v Nemzeti Innovációs Hivatal

(Case C-332/13) ([1])

(Reference for a preliminary ruling — Article 30 of the Charter of Fundamental Rights of the European Union — No implementation of European Union law — Court manifestly lacking jurisdiction)

(2014/C 112/24)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicant: Ferenc Weigl

Defendant: Nemzeti Innovációs Hivatal

Re:

Request for a preliminary ruling — Kúria — Interpretation of Article 6 TEU and of Articles 30 and 51 Charter of Fundamental Rights of the European Union — Protection in the event of unjustified dismissal — Dismissal without any reason given — Official of a body of the public authorities having been dismissed on the basis of a provision of the national legislation laying down the civil service code.

Operative part of the order

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Kúria (Hungary), by decision of 5 June 2013, as supplemented by an additional decision of 18 July 2013.

([1]) OJ C 274, 21.9.2013.

Order of the Court (Sixth Chamber) of 16 January 2014 (request for a preliminary ruling from the Fővárosi Ítélőtábla — Hungary) — Ilona Baradics and Others v QBE Insurance (Europe) Ltd Magyarországi Fióktelepe, Magyar Állam

(Case C-430/13) ([1])

(Article 99 of the Rules of Procedure of the Court of Justice — Package travel, package holidays and package tours — National legislation laying down minimum percentages for the security that a travel organiser must provide in order to refund, in the event of insolvency, money paid over by consumers)

(2014/C 112/25)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla

Parties to the main proceedings

Appellants: Ilona Baradics, Adrienn Bóta, Éva Emberné Stál, Lászlóné György, Sándor Halász, Zita Haraszi, Zsanett Hideg, Katalin Holtsuk, Gábor Jancsó, Mária Katona, Gergely Kézdi, László Korpás, Ferencné Kovács, Viola Kőrösi, Tamás Kuzsel, Attila Lajtai, Zsolt Lőrincz, Ákos Nagy, Attiláné Papp, Zsuzsanna Peller, Ágnes Petkovics, László Pongó, Zsolt Porpáczy, Zsuzsanna Rávai, László Román, Zsolt Schneck, Mihály Szabó, Péter Szabó, Zoltán Szalai, Erika Szemeréné Radó, Zsuzsanna Szigeti, Nikolett Szőke, Péter Tóth, Zsófia Várkonyi, Mónika Veress

Respondents: QBE Insurance (Europe) Ltd Magyarországi Fióktelepe, Magyar Állam

Re:

Request for a preliminary ruling — Fővárosi Ítélőtábla — Interpretation of Articles 7 and 9 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59) — Travel contracts concluded with a travel organiser under which the consumers have made payments on account and, in certain cases, paid the travel price in full — Situation in which the travel organiser has become insolvent before those consumers began their trip — Compatibility with Directive 90/314 of national legislation laying down minimum percentages for the security that a travel organiser must provide in order to refund, in the event of insolvency, money paid over by consumers.

Operative part of the order

1. *Article 7 of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours must be interpreted as precluding national legislation where the detailed rules laid down therein do not achieve the result of ensuring that the consumer is provided with an effective guarantee of the refund of all money paid over and repatriation in the event of insolvency on the part of the travel organiser. It is for the referring court to establish whether that is the case as regards the national legislation at issue in the dispute before it.*

2. *Article 7 of Directive 90/314 must be interpreted as meaning that a Member State has no discretion as regards the ambit of the risks that fall to be covered by the security to be provided by the travel organiser or retailer for the benefit of consumers. It is for the referring court to determine whether the criteria laid down by the Member State concerned for setting the amount of the security have the object or effect of limiting the ambit of the risks that fall to be covered by the security, in which case they would clearly be incompatible with the obligations under Directive 90/314 and would constitute a sufficiently serious infringement of EU law which, subject to a finding of a direct causal link, might give rise to liability on the part of the Member State concerned.*

([1]) OJ C 344, 23.11.2013.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 9 December 2013 — Lb Group Ltd v Ministero dell'Economia e delle Finanze and Others

(Case C-651/13)

(2014/C 112/26)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Lb Group Ltd

Defendants: Ministero dell'Economia e delle Finanze, Amministrazione Autonoma dei Monopoli di Stato (AAMS) and Galassia Game Srl

Questions referred

1. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in [Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR] to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in *Costa and Cifone* to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

Request for a preliminary ruling from the Tribunale ordinario di Cagliari (Italy) lodged on 9 December 2013 — Criminal proceedings against Mirko Saba

(Case C-652/13)

(2014/C 112/27)

Language of the case: Italian

Referring court

Tribunale ordinario di Cagliari

Party to the main proceedings

Mirko Saba

Questions referred

1. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in [Joined Cases C-72/10 and C-77/10 *Costa and Cifone* [2012] ECR] to be interpreted as precluding a call for tenders for the award of licences with a period of validity shorter than that of licences awarded in the past, where that tendering procedure has been launched in order to remedy the consequences of the unlawful exclusion of a certain number of operators from earlier tendering procedures?

2. Are Article 49 et seq. TFEU and Article 56 et seq. TFEU and the principles laid down by the Court of Justice of the European Union in *Costa and Cifone* to be interpreted as precluding the possibility that sufficient justification for the shorter period of validity of licences offered for tender, as compared with licences awarded in the past, can be found in the requirement for the licensing system to be reorganised through the alignment of licence expiry dates?

Request for a preliminary ruling from the Consiglio di Giustizia Amministrativa per la Regione Siciliana (Italy) lodged on 24 December 2013 — PFE v Airgest

(Case C-689/13)

(2014/C 112/28)

Language of the case: Italian

Referring court

Consiglio di Giustizia Amministrativa per la Regione Siciliana

Parties to the main proceedings

Applicant: Puligienica Facility Esco SpA (PFE)

Defendant: Airgest SpA

Questions referred

1. Do the principles laid down by the Court of Justice in its judgment of 4 July 2013 in Case C-100/12 *Fastweb*, concerning the specific set of circumstances forming the subject-matter of the request for a preliminary ruling in that case, in which only two undertakings participated in a public procurement procedure, also apply — given the considerable similarities between those circumstances and the facts in the present case — to the case currently before this Council, in which the undertakings participating in the tendering procedure, even though more than two undertakings were admitted, were all excluded by the contracting authority without those exclusion decisions being challenged by undertakings other than those involved in the present proceedings, with the result that, in the dispute currently before this Council, only two undertakings are concerned?

2. In respect solely of issues which can be settled through the application of European Union law, is it the case that, upon a proper construction of European Union law and, in particular, of Article 267 TFEU, Article 99(3) of the Italian Code of Administrative Procedure is precluded to the extent that it makes all principles of law stated by the plenary session of the Council of State binding upon all Chambers and Divisions of the Council of State, even where it is clearly the case that the plenary session has stated, or may have stated, a principle that is contrary to or incompatible with European Union law?

3. Specifically, in the event that doubts arise as to whether a principle of law already stated by the Council of State in plenary session is in conformity with or is compatible with European Union law, is the Chamber or Division of the Council of State to which the case is assigned under an obligation to make a reasoned order referring the decision on the appeal back to the plenary session, even before it is able to make a request to the Court of Justice for a preliminary ruling as to whether the principle of law in question is in conformity with or is compatible with European Union law; or, instead, may — or, rather, must — the Chamber or Division of the Council of State, being national courts against whose decisions no appeal lies, independently refer — as ordinary courts applying European Union law — a question to the Court of Justice for a preliminary ruling so as to obtain the correct interpretation of European Union law?

4. In the event that the answer to [Question 3] is that each Chamber and Division of the Council of State is recognised as having the power or the obligation to refer questions directly to the Court of Justice for a preliminary ruling, or in every case in which the Court of Justice has taken a position — especially if it has done so at a time subsequent to the plenary session of the Council of State — to the effect that the principle of law stated in the plenary session is not in conformity or not wholly in conformity with the correct interpretation of European Union law, may or must each Chamber and each Division of the Council of State, being ordinary courts applying European Union law and against whose decisions no appeal lies, immediately apply the correct interpretation of European Union law as provided by the Court of Justice or, instead, are they under an obligation, even in such cases, to make a reasoned order referring the decision on the appeal back to the plenary session of the Council of State, thereby deferring to the authority of the plenary session of the Council of State and to its discretion all assessment of the application of European Union law already declared binding by the Court of Justice?

5. Lastly, is it not the case that an interpretation of the administrative procedure rules of the Italian Republic as meaning that any potential decision relating to a request to the Court of Justice for a preliminary ruling — or even merely the resolution of the case whenever that flows directly from the application of European Union legal principles already set out by the Court of Justice — is a matter exclusively for the plenary session of the Council of State constitutes an obstacle, not only to the principles that proceedings are to be concluded within a reasonable period and that a review is to be available speedily in relation to procedures for the award of public contracts, but also to the requirement that European Union law is to be promptly applied in full by all courts in all Member States, in a manner which must be consistent with its proper interpretation as provided by the Court of Justice, and moreover for the purposes of ensuring the broadest possible application of the principle of 'effectiveness' (*effet utile*) and the principle of the primacy (in terms not only of substance but also of procedure) of European Union law over the national law of every single Member State (in the present case: over Article 99(3) of the Italian Code of Administrative Procedure)?

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 16 January 2014 — CO Sociedad de Gestion y Participación SA and Others v De Nederlandsche Bank NV, De Nederlandsche Bank NV v CO Sociedad de Gestion y Participación SA and Others

(Case C-18/14)

(2014/C 112/29)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Appellants CO Sociedad de Gestion y Participación SA, Depsa 96 SA, INOC SA, Corporación Catalana Occidente SA, La Previsión 96 SA, Grupo Catalana Occidente SA, Grupo Compañia Española de Crédito y Caución SL, Atradius NV, Atradius Insurance Holding NV, J.M. Serra Farré, M.A. Serra Farré, J. Serra Farré

Respondent: De Nederlandsche Bank NV

and

Appellant: De Nederlandsche Bank NV

Respondents: CO Sociedad de Gestion y Participación SA, Depsa 96 SA, INOC SA, Corporación Catalana Occidente SA, La Previsión 96 SA, Grupo Catalana Occidente SA, Grupo Compañia Española de Crédito y Caución SL, Atradius NV, Atradius Insurance Holding NV, J.M. Serra Farré, M.A. Serra Farré, J. Serra Farré

Questions referred

1. If the competent authority explicitly approves a proposed acquisition as referred to in Article 15a of the Antonveneta Directive, ([1]) is it permitted to impose limitations or conditions on such approval under national law? Does it make a difference in this regard whether such limitations or conditions are based on previous commitments given by the proposed acquirer, as referred to in recital 3 in the preamble to the Directive?

2. If Question 1 is answered in the affirmative, must the limitations or conditions imposed by the competent authority be necessary in the sense that, were they not to be imposed, the competent authority would find it necessary to oppose the proposed acquisition in the light of the assessment based on the criteria laid down in Article 15b(1) of the Antonveneta Directive?

3. If it is permissible to impose limitations or conditions, does Article 15b(1) of the Directive provide a basis for the competent authority to lay down requirements for the acquisition in regard to the 'corporate governance' of the undertaking the acquisition of which is proposed, such as a two-tier supervisory board structure?

([1]) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ 2007 L 247, p. 1).
* NB. It is probable that the case concerns Articles 15a and 15b of Directives 92/49/EEC (OJ 1992 L 228, p. 1) and 2002/83/EC (OJ 2002 L 345, p. 1) rather than any corresponding provisions of Directive 2007/44/EC.

Request for a preliminary ruling from the Landgericht Duisburg (Germany) lodged on 20 January 2014 — Elfriede Stermann, Hans Gerd Stermann v Zurich Deutscher Herold Lebensversicherung AG

(Case C-27/14)

(2014/C 112/30)

Language of the case: German

Referring court

Landgericht Duisburg

Parties to the main proceedings

Applicants: Elfriede Stermann, Hans Gerd Stermann

Defendant: Zurich Deutscher Herold Lebensversicherung AG

This Case was removed from the Register of the Court by Order of the Court of 14 February 2014.

Appeal brought on 28 February 2014 by Federación Nacional de Empresarios de Minas de Carbón (Carbunión) against the order of the General Court (Second Chamber) delivered on 10 December 2013 in Case T-176/11: Federación Nacional de Empresarios de Minas de Carbón (Carbunión) v Council of the European Union

(Case C-99/14 P)

(2014/C 112/31)

Language of the case: English

Parties

Appellant: Federación Nacional de Empresarios de Minas de Carbón (Carbunión) (represented by: K. Desai, solicitor, S. Cisnal de Ugarte, abogada)

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

Form of order sought

The applicant claims that the Court should:

— Declare the appeal well~ founded and admissible;

— Set aside the Order of the General Court of 10 December 2013 in case T-176/11 Carbunión v Council and, annul Articles 3(l)(a), (b), (f) and Article(3)(3) (the **'Contested Provisions"**) of Decision 2010/787 ([1]) (the **'Decision'**) of 10 December 2010 on State aid to facilitate closure of uncompetitive coal mines and give final judgment on the substance of the case; and

— Order the Council to bear the costs incurred by the Appellant both at first instance and in connection with the appeal.

Pleas in law and main arguments

The Appellant relies on five grounds in support of its appeal.

— First, the Appellant submits that the General Court infringed its obligation to state reasons adequately pursuant to Article 36 of the Statute of the Court of Justice when it considered that the Contested Provisions are not severable from the remainder of the Decision.

— Second, the Appellant submits that the General Court erred in law when considering that Article 7 of the Decision would serve no purpose without the Contested Provisions.

— Third, the General Court erred in law in its interpretation of Article 3(1)(a) of the Decision by not considering that the deadline contained therein defines a special temporal scope of the Decision.

— Fourth, the General Court erred in law in its interpretation of the conditions in Article 3(l)(f) of the Decision by considering it a compatibility condition and not a modality of granting the closure aid.

— Fifth, the General Court erred in law in concluding that the severability of the Contested Provisions would alter the spirit and the substance of the Decision.

(1) OJ L 336, p. 24

Order of the President of the Court of 17 January 2014 (request for a preliminary ruling from the Bundespatentgericht — Germany) — Hogan Lovells International LLP v Bayer CropScience K.K.

(Case C-477/12) (1)

(2014/C 112/32)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

(1) OJ C 26, 26.1.2013.

Order of the President of the Court of 6 February 2014 (request for a preliminary ruling from the Bundesgerichtshof — Germany) — Elena Recinto-Pfingsten v Swiss International Air Lines AG

(Case C-259/13) (1)

(2014/C 112/33)

Language of the case: German

The President of the Court has ordered that the case be removed from the register.

(1) OJ C 260, 7.9.2013.

GENERAL COURT

Judgment of the General Court of 27 February 2014 — InnoLux v Commission

(Case T-91/11) ([1])

(Competition — Agreements, decisions and concerted practices — Worldwide market for liquid crystal display (LCD) panels — Agreements and concerted practices concerning prices and production capacity — Territorial jurisdiction — Internal sales — Sales of finished products incorporating cartelised products — Single and continuous infringement — Fines — Rounding method — Unlimited jurisdiction)

(2014/C 112/34)

Language of the case: English

Parties

Applicant: InnoLux Corp., formerly Chimei InnoLux Corp. (Zhunan, Taiwan) (represented by: J.-F. Bellis, lawyer, and R. Burton, Solicitor)

Defendant: European Commission (represented by: P. Van Nuffel, F. Ronkes Agerbeek and A. Biolan, acting as Agents)

Re:

Application for partial annulment of Commission Decision C(2010) 8761 final of 8 December 2010 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39.309 — LCD — Liquid Crystal Displays), and for reduction of the fine imposed on the applicant by that decision.

Operative part of the judgment

The Court:

1. *Sets at EUR 288 000 000 the fine imposed on InnoLux Corp., formerly Chimei InnoLux Corp., in Article 2 of Commission Decision C(2010) 8761 final of 8 December 2010 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/39.309 — LCD — Liquid Crystal Displays);*

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

3. *Orders InnoLux to pay the costs.*

([1]) OJ C 113, 9.4.2011.

Judgment of the General Court of 28 February 2014 — Genebre v OHIM — General Electric (GE)

(Case T-520/11) ([1])

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

(2014/C 112/35)

Language of the case: Spanish

Parties

Applicant: Genebre, SA (Hospitalet de Llobregat, Spain) (represented by: D. Pellisé Urquiza, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: General Electric Company (Schenectady, United States) (represented by: S. Malynicz, Barrister, initially, then E. Armijo Chávarri, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 July 2011 (Case R 20/2009-4), relating to opposition proceedings between General Electric Company and Genebre SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Genebre SA to pay the costs.*

([1]) OJ C 13, 14.1.2012.

Judgment of the General Court of 27 February 2014 — Pêra-Grave v OHIM — Fundação Eugénio de Almeida (Q^{TA} S. JOSÉ DE PERAMANCA)

(Case T-602/11) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark Q^{TA} S. JOSÉ DE PERAMANCA — Earlier national figurative marks VINHO PERA-MANCA TINTO, VINHO PERA-MANCA BRANCO and PÊRA-MANCA — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 112/36)

Language of the case: English

Parties

Applicant: Pêra-Grave — Sociedade Agrícola, Unipessoal L^{da} (Evora, Portugal) (represented by: J. de Oliveira Vaz Miranda Sousa, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Fundação Eugénio de Almeida (Evora) (represented by: B. Braga da Cruz and J. Pimenta, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 19 September 2011 (Case R 1797/2010-2), relating to opposition proceedings between Fundação Eugénio de Almeida and Pêra-Grave — Sociedade Agrícola, Unipessoal L^{da}.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Pêra-Grave — Sociedade Agrícola, Unipessoal L^{da} to pay the costs, including the costs necessarily incurred by Fundação Eugénio de Almeida for the purposes of the proceedings before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).*

([1]) OJ C 32, 4.2.2012.

Judgment of the General Court of 27 February 2014 — Advance Magazine Publishers v OHIM — López Cabré (VOGUE)

(Case T-229/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark VOGUE — Earlier Community word mark VOGUE — Likelihood of confusion — Identity or similarity of the goods — Identity or similarity of the signs — Article 8(1)(b) of Regulation (EC) No 207/2009 — Vagueness of the trade mark application — Article 26(1)(c) of Regulation No 207/2009 — Rule 2(2) of Regulation (EC) No 2868/95 — Partial refusal to register)

(2014/C 112/37)

Language of the case: English

Parties

Applicants: Advance Magazine Publishers, Inc. (New York, New York, United States of America) (represented by: C. Aikens, Barrister)

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

Other party to the proceedings before the Board of Appeal of OHIM: Eduardo López Cabré (Barcelona, Spain)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 26 March 2012 (case R 1170/2011-4), concerning opposition proceedings between Mr Eduardo López Cabré and Advance Magazine Publishers, Inc.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of OHIM of 26 March 2012 (case R 1170/2011-4), concerning opposition proceedings between Mr Eduardo López Cabré and Advance Magazine Publishers, Inc., in so far as it confirmed the Opposition Division's decision of 18 March 2011 upholding the opposition for accessories in Class 18 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.*

2. *Dismisses the remainder of the claim for annulment of the decision referred to at paragraph 1 of the operative part.*

3. *Declares that there is no need to adjudicate on the claim for the opposition to be upheld solely in relation to umbrellas, parasols and accessories for umbrellas and parasols.*

4. *Orders each party to bear its own costs.*

([1]) OJ C 227, 28.7.2012.

Judgment of the General Court of 5 March 2014 — HP Health Clubs Iberia v OHIM — Shiseido (ZENSATIONS)

(Case T-416/12) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative mark ZENSATIONS — Earlier Community word mark ZEN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Admissibility of the applicant's form of order — Article 46 of the Rules of Procedure — Obligation to state reasons — First sentence of Article 75 of Regulation No 207/2009 — Examination of the facts by the Office of its own motion — Article 76(1) of Regulation No 207/2009)

(2014/C 112/38)

Language of the case: Spanish

Parties

Applicant: HP Health Clubs Iberia (Barcelona, Spain) (represented by: S. Serrat Viñas, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carillo, Agent)

Intervener in support of the defendant: Shiseido Company Ltd (Tokyo, Japan) (represented by: B. Moreau-Margotin, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 6 June 2012 (Case R 2212/2010-1) relating to opposition proceedings between Shiseido Company Ltd and HP Health Clubs Iberia S.A.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Dismisses the heads of claims of Shiseido Company Ltd other than that essentially seeking the dismissal of the action as manifestly inadmissible.*

3. *Orders HP Health Clubs Iberia S.A. to bear its own costs and those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM.)*

4. *Orders Shiseido Company Ltd to bear its own costs.*

([1]) OJ C 355, 17.11.2012.

Judgment of the General Court of 27 February 2014 — Mäurer & Wirtz v OHIM — Sacra (4711 Aqua Mirabilis)

(Case T-25/13) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark 4711 Aqua Mirabilis — Earlier Community word mark AQUA ADMIRABILIS — Relative ground for refusal — Likelihood of confusion — Distinctive character of the earlier mark — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2014/C 112/39)

Language of the case: German

Parties

Applicant: Mäurer & Wirtz GmbH & Co. KG (Stolberg, Germany) (represented by: T. Schulte-Beckhausen and S. Hühner, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Sacra Srl (Venice, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 13 November 2012 (Case R 1601/2011-2) relating to opposition proceedings between Sacra Srl and Mäurer & Wirtz GmbH & Co. KG.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mäurer & Wirtz GmbH & Co. KG to pay the costs.*

([1]) OJ C 71, 9.3.2013.

Judgment of the General Court of 6 March 2014 — Anapurna v OHIM — Annapurna (ANNAPURNA)

(Case T-71/13) ([1])

(Community trade mark — Revocation proceedings — Community word mark ANNAPURNA — Application for annulment filed by the intervener — Article 134(1) to (3) of the Rules of Procedure of the General Court — Genuine use of the trade mark — Article 15(1)(a) and Article 51(1)(a) of Regulation (EC) No 207/2009 — Form of use of the trade mark — Proof of use for the registered goods)

(2014/C 112/40)

Language of the case: English

Parties

Applicant: Anapurna GmbH (Berlin, Germany) (represented by: P. Ehrlinger and T. Hagen, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Annapurna SpA (Prato, Italy) (represented by: S. Verea, K. Muraro and M. Balestriero, lawyers)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 3 December 2012 (Case R 2409/2011 5), relating to revocation proceedings between Anapurna GmbH and Annapurna SpA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Rejects Annapurna SpA's application for annulment;*

3. *Orders Anapurna GmbH to pay the costs, with the exception of those incurred by Annapurna SpA;*

4. *Orders Annapurna SpA to bear its own costs.*

([1]) OJ C 101, 6.4.2013.

Order of the General Court of 31 January 2014 — France v Commission

(Case T-79/09) ([1])

(State aid — Framework system of activities carried out by agricultural inter-trade organisations recognised in France in favour of the members of the represented agricultural industries — Financing by compulsory voluntary contributions — Decision classifying the aid scheme as compatible with the common market — Withdrawal of the decision — No need to adjudicate)

(2014/C 112/41)

Language of the case: French

Parties

Applicant: French Republic (represented initially by: E. Belliard, G. de Bergues and A.-L. Vendrolini, subsequently by E. Belliard, G. de Bergues and J. Gstalter, and lastly by E. Belliard, G. de Bergues, D. Colas and J. Bousin, acting as Agents)

Defendant: European Commission (represented initially by: B. Stromsky and C. Urraca Caviedes, and subsequently by B. Stromsky, acting as Agents)

Re:

Application for annulment of Commission Decision C(2008) 7846 final of 10 December 2008 in respect of State aid No 561/2008 relating to the framework system of activities carried out by agricultural inter-trade organisations recognised in France in favour of the members of the represented agricultural industries.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The European Commission is ordered to pay the costs.*

([1]) OJ C 113, 16.5.2009.

Order of the General Court of 12 February 2014 — Cofra v OHIM — O2 (can do)

(Joined Cases T-162/11 and T-163/11) ([1])

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2014/C 112/42)

Language of the case: German

Parties

Applicant: Cofra Holding (Zug, Switzerland) (represented initially by: K.-U. Jonas and J. Bogatz, and subsequently by M. Viefhues, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented initially by: K. Klüpfel, and subsequently by A. Schifko, acting as Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: O2 Holdings Ltd (Slough, United Kingdom) (represented by: M. Müller and F. Fottner, lawyers)

Re:

Two actions brought against two decisions of the Fourth Board of Appeal of OHIM of 10 January 2011 (Cases R 242/2009-4 and R 246/2009-4), relating to opposition proceedings between ALDEMA AG and O2 Holdings Ltd, on the one hand, and between C&A Mode KG and O2 Holdings Ltd, on the other.

Operative part of the order

1. *There is no longer any need to adjudicate on the actions.*

2. *The applicant and the intervener are ordered to pay their own costs and each shall pay half of the costs incurred by the defendant.*

([1]) OJ C 139, 7.5.2011.

Order of the General Court of 6 February 2014 — Duff Beer v OHIM — Twentieth Century Fox Film (Duff)

(Case T-87/12) ([1])

(Community trade mark — Opposition — Withdrawal of opposition — No need to adjudicate)

(2014/C 112/43)

Language of the case: German

Parties

Applicant: Duff Beer UG (haftungsbeschränkt) (Eschwege, Germany) (represented by: N. Schindler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Twentieth Century Fox Film Corp. (Wilmington, United States) (represented by: S. Böttger and M. Koch, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 12 December 2011 (Case R 456/2011-4) relating to opposition proceedings between Twentieth Century Fox Film Corp. and Duff Beer UG (haftungsbeschränkt).

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The applicant and the intervener shall each bear their own costs and each shall pay one half of the costs incurred by the defendant.*

([1]) OJ C 109, 14.4.2012.

Order of the General Court of 29 January 2014 — Sothys Auriac v OHIM — Grand Hotel Primavera (BEAUTY GARDEN)

(Case T-470/12) ([1])

(Community trade mark — Application for a declaration of invalidity — Withdrawal of that application — No need to adjudicate)

(2014/C 112/44)

Language of the case: French

Parties

Applicant: Sothys Auriac (Auriac, France) (represented by: A. Berthet, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Grand Hotel Primavera SA (Borgo Maggiore, San Marino)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 July 2012 (Case R 1419/2011-1) relating to invalidity proceedings between Grand Hotel Primavera SA and Sothys Auriac.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *The applicant is ordered to bear its own costs and to pay those incurred by the defendant.*

([1]) OJ C 26, 26.1.2013.

Order of the General Court of 7 February 2014 — Pesquerias Riveirenses and Others v Council

(Case T-180/13) ([1])

(Action for annulment — Fisheries policy — Regulation (EU) No 40/2013 — Amalgamation of the northern and southern components of the stock of blue whiting in the north-east Atlantic in order to establish the TAC — Lack of direct concern — Manifestly inadmissible)

(2014/C 112/45)

Language of the case: Spanish

Parties

Applicants: Pesquerias Riveirenses, SL (Ribeira, Spain); Pesquerias Campo de Marte, SL (Ribeira); Pesquera Anpajo, SL (Ribeira); Arrastreros del Barbanza, SA (Ribeira); Martínez Pardavila e Hijos, SL (Ribeira); Lijo Pesca, SL (Ribeira); Frigoríficos Hermanos Vidal, SA (Ribeira); Pesquera Boteira, SL (Ribeira); Francisco Mariño Mos y Otros, CB (Ribeira); Pérez Vidal Juan Antonio y Hno, CB (Ribeira); Marina Nalda, SL (Ribeira); Portillo y Otros, SL (Ribeira); Vidiña Pesca, SL (Ribeira); Pesca Hermo, SL (Ribeira); Pescados Oubiña Pérez, SL (Ribeira); Manuel Pena Graña (Ribeira); Campo Eder, SL (Ribeira); Pesquera Laga, SL (Ribeira); Pesquera Jalisco, SL (Ribeira); Pesquera Jopitos, SL (Ribeira); y Pesca-Julimar, SL (Ribeira) (represented by: J. Tojeiro Sierto, lawyer)

Defendant: Council of the European Union (represented by: A. Westerhof Löfflerová and A. de Gregorio Merino, acting as Agents)

Re:

ACTION for annulment of Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements (OJ 2013 L 23, p. 54), as amended, in so far as it amalgamates the northern and southern components of the stock of blue whiting in the north-east Atlantic in order to establish the TAC (total allowable catch) for blue whiting set out in Annexes IA and IB of that regulation.

Operative part of the order

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

2. *The applicants, Pesquerias Riveirenses, SL, and others, are ordered to bear their own costs as well as those incurred by the Council of the European Union.*

([1]) OJ C 147, 25.5.2013.

Action brought on 25 November 2013 — Minority SafePack — one million signatures for diversity in Europe and Others v Commission

(Case T-646/13)

(2014/C 112/46)

Language of the case: German

Parties

Applicants: Citizens' Committee for the Citizens' Initiative Minority SafePack — one million signatures for diversity in Europe and Others (represented by: E. Johansson, J. Lund and C. Lund, lawyers)

Defendant: Commission

Form of order sought

— Annul Commission Decision C(2013)5969 final of 13 September 2013, published on 16 September 2013;

— Order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of essential procedural requirements

   — The applicants claim that the contested decision infringes the procedural requirements laid down in Article 296(2) TFEU and Article 4(3) of Regulation (EU) No 211/2011. ([1])

   — The applicants state in that regard inter alia that the Commission fails to identify among the eleven topics which form the subject matter of the citizens' initiative those which in its opinion fall outside the framework of its powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. The Commission also does not state why those topics fall outside that framework.

   — As part of this plea the applicants also complain that the Commission does not state why Regulation No 211/2011 does not confer a power to register at least a part or parts of a planned citizens' initiative.

2. Second plea in law, alleging infringement of the treaties or of a provision for implementation of the treaties

   — Pursuant to this plea the applicants claim the infringement of Article 11 TEU, Article 24(1) TFEU and Article 4(2) and (3) of Regulation No 211/2011.

   — The applicants state in that regard that none of the topics in relation to which the Commission is to be called upon to submit proposals lies manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. They add that, even if one of the topics were to fall outside that framework, the Commission should have registered the planned citizens' initiative in respect of the topics which in its opinion did not fall manifestly outside that framework.

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

Action brought on 10 December 2013 — Petco Animal Supplies Stores v OHIM — Gutiérrez Ariza (PETCO)

(Case T-664/13)

(2014/C 112/47)

Language in which the application was lodged: English

Parties

Applicant: Petco Animal Supplies Stores, Inc. (San Diego, United States) (represented by: C. Aikens, Barrister)

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

Other party to the proceedings before the Board of Appeal: Domingo Gutiérrez Ariza (Malaga, Spain)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2013 given in Case R 347/2013-4;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'PETCO' for goods and services in Classes 3, 31 and 35 — Community trade mark application No 10 114 081

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

Mark or sign cited in opposition: Community trade mark No 9 062 902 for the figurative mark in red and white containing the verbal element 'PETCO' for goods and services in Classes 31 and 35

Decision of the Opposition Division: Upheld the opposition in part

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

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

Action brought on 9 December 2013 — European Coalition to End Animal Experiments v ECHA

(Case T-673/13)

(2014/C 112/48)

Language of the case: English

Parties

Applicant: European Coalition to End Animal Experiments (London, United Kingdom) (represented by: D. Thomas, Solicitor)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Board of Appeal of the European Chemicals Agency of 10 October 2013 in Case A-004-2012 relating to section 8.7.2 of Annex X of the Regulation (EC) No 1907/2006 ([1]) (developmental toxicity studies in a second species), insofar as it relates to a second species pre-natal developmental study;

— Remit the case to ECHA, with a direction that it consider where there is a need to conduct a pre-natal developmental study on the registrant's substance, based on the outcome of the first study and all other relevant available data.

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 that the Board of Appeal was wrong to say that the cumulative principle in the REACH testing annexes meant that a second species was the default requirement at Annex X to Regulation (EC) No 1907/2006 tonnage. In support of this plea the applicant claims that:

   — The Board of Appeal's reasoning represents a *non sequitur*. Testing requirements do not necessarily increase as one moves to a higher tonnage annex: the cumulative principle is often not relevant for particular endpoints, and is not for developmental toxicity;

— Column 1 of section 8.7.2 of Annex X, by its explicit terms, requires a study in 'one species', not two — the same as column 1 of section 8.7.2 of Annex IX;

— The Board of Appeal's reasoning ignores the clear words of column 2 of section 8.7.2 of Annex IX, which provides that whether a second species study is required at Annex IX or Annex X tonnage depends on the outcome of the first species study and all other relevant available data: it is not automatic;

— The Board of Appeal's conclusion makes no sense in policy terms: it ascribes to the REACH legislators an intention that, at a lower Annex level (Annex IX), the need for a second species study is dependent on scientific evaluation, whereas at a higher Annex level (Annex X), science is irrelevant.

2. Second plea in law, alleging that the Board of Appeal was wrong to say that the legislators had brought forward an Annex X requirement — a second species developmental toxicity study as a default requirement — to Annex IX. In support of this plea the applicant claims that:

— The reasoning is based on a false premise: column 1 of section 8.7.2 of Annex X does not impose a second species study as a default requirement (see the first plea), and it follows that there is no such requirement to bring forward to Annex IX (even supposing that that were otherwise the correct approach).

3. Third plea in law, alleging that the Board of Appeal was wrong to soy that the requirement in column 2 of section 8.7.2 of Annex IX (for evaluation of the need for a second species study) does not carry across to Annex X. In support of this plea the applicant claims that:

— By its explicit terms, this is precisely what column 2 of section 8.7.2 of Annex IX does say, by the words 'or the next'. The approach for the two annexes is identical.

4. Fourth plea in law, alleging that the Board of Appeal was wrong to say that only adaptation under column 2 of section 8.7 of Annex X or Annex XI can obviate the need for a second species study at Annex X tonnage. In support of this plea the applicant claims that:

— Adaptation, whether under column 2 or Annex XI, only becomes relevant if there is first a testing requirement under column 1. With column 1 of section 8.7.2 of Annex X, there is no requirement for a second species developmental toxicity study until and unless evaluation of the first species study and other available evidence points to the need for a second species study (see above).

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1)

Action brought on 20 December 2013 — Harrys Pubar v OHIM — Harry's New York Bar (HARRY'S BAR)

(Case T-711/13)

(2014/C 112/49)

Language in which the application was lodged: English

Parties

Applicant: Harrys Pubar AB (Gothenburg, Sweden) (represented by: L.-E. Ström, lawyer)

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

Other party to the proceedings before the Board of Appeal: Harry's New York Bar SA (Paris, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2013 given in joined Cases R 946/2012-1 and R 995/2012-1;

— Order the defendant to pay the costs of proceedings.

Pleas in law and main arguments

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

Community trade mark concerned: The word mark 'HARRY'S BAR' for goods and services in Classes 25, 29, 30, 32, 33 and 43 — Community trade mark application No 3 378 031

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

Mark or sign cited in opposition: Swedish trade mark registrations Nos 356 009, 320 026, 315 142, 55 6513-1066 for goods and services in Classes 25 and 42

Decision of the Opposition Division: Allowed the opposition in part

Decision of the Board of Appeal: Upheld the appeal in part in Case R 995/2012-1 and dismissed the appeal in Case R 946/2012-1

Pleas in law: Infringement of Article 8(1)(b) and 4 CTMR.

Action brought on 27 December 2013 — Harry's New York Bar v OHIM — Harrys Pubar (HARRY'S BAR)

(Case T-716/13)

(2014/C 112/50)

Language in which the application was lodged: English

Parties

Applicant: Harry's New York Bar SA (Paris, France) (represented by: S. Arnaud, lawyer)

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

Other party to the proceedings before the Board of Appeal: Harrys Pubar AB (Gothenburg, Sweden)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 October 2013 given in joined Cases R 946/2012-1 and R 995/2012-1.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'HARRY'S BAR' for goods and services in Classes 25, 29, 30, 32, 33 and 43 — Community trade mark application No 3 378 031

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

Mark or sign cited in opposition: Swedish trade mark registrations Nos 356 009, 320 026, 315 142, 55 6513-1066 for goods and services in Classes 25 and 42

Decision of the Opposition Division: Allowed the opposition in part

Decision of the Board of Appeal: Upheld the appeal in part in Case R 995/2012-1 and dismissed the appeal in Case R 946/2012-1

Pleas in law: Infringement of Article 8(1)(b) and 4 CTMR.

Action brought on 31 December 2013 — The Directv Group v OHIM — Bolloré (DIRECTV)

(Case T-721/13)

(2014/C 112/51)

Language in which the application was lodged: English

Parties

Applicant: The Directv Group, Inc. (El Segundo, United States) (represented by: F. Valentin, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bolloré SA (Érgue Gaberic, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 10 October 2013 given in Case R 1961/2012-2.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'DIRECTV' for goods and services in Classes 9, 38 and 41 — Community trade mark registration No 243 774

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Partially revoked CTM registration

Decision of the Board of Appeal: Annulled the contested decision and revoked CTM registration in its entirety

Pleas in law: Infringement of Article 51(1)(a) CTMR.

Action brought on 31 December 2013 — The Directv Group v OHIM — Bolloré (DIRECTV)

(Case T-722/13)

(2014/C 112/52)

Language in which the application was lodged: English

Parties

Applicant(s): The Directv Group, Inc. (El Segundo, United States) (represented by: F. Valentin, lawyer)

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

Other party to the proceedings before the Board of Appeal: Bolloré SA (Érgue Gaberic, France)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 October 2013 given in Case R 1960/2012-2.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The figurative mark containing the verbal element 'DIRECTV' for goods and services in Classes 9, 38 and 41 — Community trade mark registration No 100 750

Proprietor of the Community trade mark: The applicant

Party applying for revocation of the Community trade mark: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Partially revoked CTM registration

Decision of the Board of Appeal: Annulled the contested decision and revoked CTM registration in its entirety

Pleas in law: Infringement of Article 51(1)(a) CTMR.

Appeal brought on 2 January 2014 by BQ against the judgment of the Civil Service Tribunal of 23 October 2013 in Case F-39/12, BQ v Court of Auditors

(Case T-7/14 P)

(2014/C 112/53)

Language of the case: French

Parties

Appellant: BQ (Bereldange, Luxembourg) (represented by D. de Abreu Caldas and J.-N. Louis, lawyers)

Other party to the proceedings: the Court of Auditors of the European Union

Form of order sought by the appellant

The appellant claims that the Court should:

— Set aside the judgment of the Civil Service Tribunal (Third Chamber) delivered on 23 October 2013 in Case F-39/12 (*BQ* v *Court of Auditors*);

— Order the Court of Auditors to pay the costs

Pleas in law and main arguments

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

1. First plea in law, alleging error in law as to the requirements for the liability of the European Union to be incurred when implementing Article 24 of the Staff Regulations of Officials of the European Union, in that the CST required that the incident incompatible with the order and tranquillity of the service have an impact on the operation of the service and the health of the protagonists, though that requirement is not provided for either by the Staff Regulations or by case-law. The appellant further argues that the CST distorted the facts in holding, first, that the Court of Auditors took all necessary measures to restore the proper functioning of the service and, secondly, that the disruption to the service had no impact on the health of the protagonists, though the Court of Auditors did not act sufficiently quickly and decisively to end the situation of conflict which caused the appellant's permanent total disability (paragraphs 67 and 68 of the judgment under appeal).

2. Second plea in law, alleging an error of law in the judicial review of legality conducted by the CST when it stated that the medical assessments setting out the existence of mental disorders resulting from psychological harassment to which the appellant was subject whilst at work do not make it possible to establish that the appellant was indeed the victim of harassment. The appellant claims that the Tribunal is not competent to question medical assessments and draw inferences to the contrary (paragraphs 69 and 70 of the judgment under appeal).

3. Third plea in law, alleging infringement of the principle of proportionality resulting from the CST assessing in the amount of EUR 2 000 the damage resulting from the delay of more than two years in providing the appellant with the investigation report, without providing the appellant with a statement of reasons allowing him to understand the criteria which led to the determination of that amount. The appellant submits that the CST did not take account of the context in which the damage occurred.

4. Fourth plea in law, alleging an error of law in the allocation of costs.

Action brought on 8 January 2014 — U4U and Others v Parliament and Council

(Case T-17/14)

(2014/C 112/54)

Language of the case: French

Parties

Applicant: Union pour l'Unité (U4U) (Brussels, Belgium); Unité & Solidarité — Hors Union (USHU) (Brussels); Regroupement Syndical (RS) (Saint-Josse-ten-Noode, Belgium); and Georges Vlandas (Brussels) (represented by: F. Krenc, lawyer)

Defendant: Council of the European Union and European Parliament

Form of order sought

The parties claim that the Court should:

— declare the present action admissible and well founded;

— accordingly, annul Regulation No 10223/2013 of the European Parliament and of the Council of 22 October 2013, amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union in so far as it:

(1) amends Annex X to the Staff Regulations (Art.1, No 70);

(2) amends Article 45 of the Staff Regulations and Annex 1 thereto, and adds Section 5 to Annex XIII (Art. 1, No 27, No 61 and No 73(k)).

Pleas in law and main arguments

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

The first three pleas in law concern the amendment of Annex X to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union ('the Staff Regulations').

1. The first plea alleging an infringement of Article 10 of the Staff Regulations, Articles 12, 27 and 28 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 11 of the European Convention on the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), in particular by the failure to consult the Committee on the reform of Annex X to the Staff Regulations.

2. Second plea alleging infringement of Articles 12, 27 and 28 of the Charter and Article 11 of the ECHR by the lack of information and genuine and appropriate consultation of the unions, officials and other servants as regards the reform of Annex X.

3. Third plea in law alleging a breach of the principles of sound legislation and in particular the duty of thoroughness and the duty to state reasons

   The last three pleas concern the amendment of Article 45 and Annex I to the Staff Regulations, and the addition of Section 5 in Annex XIII thereof.

4. Fourth plea alleging an infringement of Article 10 of the Staff Regulations, Articles 12, 27 and 28 of the Charter and Article 11 of the ECHR, in particular the lack of consultation of the Staff Regulations Committee concerning the reform of AD careers

5. Fifth plea alleging an infringement of Articles 12, 27 and 28 of the Charter and Article 11 of the ECHR by the lack of information and genuine and adequate consultation of the unions, officials and other servants regarding the reform of AD careers.

6. Sixth plea alleging breach of the principles of sound legislation and in particular the duty of thoroughness and the duty to state reasons.

Action brought on 8 January 2014 — Nguyen v Parliament and Council

(Case T-20/14)

(2014/C 112/55)

Language of the case: French

Parties

Applicant: Huynh Duong Vi Nguyen (Woluwe-Saint-Lambert, Belgium) (represented by: M. Velardo, lawyer)

Defendants: Council of the European Union and European Parliament

Form of order sought

— Annul provisions including Article 7 (travelling time) of Annex V to the Staff Regulations and Article 8 (travel expenses) of Annex VII to the Staff Regulations, as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union [(OJ 2013 L 287, p. 15)], in so far as the entitlement to travel expenses and travelling time is linked to the expatriation or foreign-residence allowance;

— Order the defendant to pay the applicant the amount of EUR 169 051,96 for the pecuniary loss suffered and the amount of EUR 40 000 for the non-pecuniary harm;

— Order the defendant to pay damages with late-payment and compensatory interest at the rate of 6,75 % in respect of the pecuniary and non-pecuniary loss suffered;

— Order the defendant to pay the costs incurred by the applicant in the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant — whose place of origin is New York, but who does not receive the expatriation or foreign-residence allowance and, as a result, following the reform of the Staff Regulations of Officials of the European Union, loses the right to the lump-sum payment of the travel expenses and the increase in annual leave by additional days of leave for travelling time, relies on five pleas in law, alleging:

— infringement of an essential procedural requirement and of Article 27 of the Charter of Fundamental Rights of the European Union concerning the right to information and the consultation of workers, since the Staff Regulations Committee was side-lined in the review of the Staff Regulations of Officials;

— infringement of the principle of due regard for established rights, the principles concerning intertemporal law and the principle of legal certainty;

— infringement of the right to legitimate expectations;

— infringement of the principle of equal treatment; and

— infringement of the principle of proportionality.

Action brought on 8 January 2014 — Bergallou v Parliament and Council

(Case T-22/14)

(2014/C 112/56)

Language of the case: French

Parties

Applicant: Amal Bergallou (Lot, Belgium) (represented by: M. Velardo, lawyer)

Defendants: Council of the European Union and European Parliament

Form of order sought

— Annul provisions including Article 7 (travelling time) of Annex V to the Staff Regulations and Article 8 (travel expenses) of Annex VII to the Staff Regulations, as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union [(OJ 2013 L 287, p. 15)], in so far as the entitlement to travel expenses and travelling time is linked to the expatriation or foreign-residence allowance;

— Order the defendant to pay the applicant the amount of EUR 165 596,42 for the pecuniary loss suffered and the amount of EUR 40 000 for the non-pecuniary harm;

— Order the defendant to pay damages with late-payment and compensatory interest at the rate of 6,75 % in respect of the pecuniary and non-pecuniary loss suffered;

— Order the defendant to pay the costs incurred by the applicant in the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant — whose place of origin is in Morocco, but who does not receive the expatriation or foreign-residence allowance and, as a result, following the reform of the Staff Regulations of Officials of the European Union, loses the right to the lump-sum payment of the travel expenses and the increase in annual leave by additional days of leave for travelling time, relies on five pleas in law, which are, in essence, identical to those put forward in Case T-20/14 *Nguyen* v *Parliament and Council*.

Action brought on 6 January 2014 — Bos and Others v Parliament and Council

(Case T-23/14)

(2014/C 112/57)

Language of the case: French

Parties

Applicants: Mark Bos (Ankara, Turkey); Estelle Kadouch (Jerusalem, Israel); Siegfried Krahl (Lago Sul, Brazil); and Eric Lunel (Dakar, Senegal) (represented by: F. Krenc)

Defendants: Council of the European Union and European Parliament

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded;

— accordingly, annul Regulation No 10223/2013 of the European Parliament and of the Council of 22 October 2013, amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, in so far as it amends Annex X thereto (Art.1, No 70);

— order the defendants to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants — contractual agents and officials in European Union delegations — rely on six pleas in law.

1. First plea in law, alleging a breach of the principle of equal treatment, Articles 20, 21 and 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter'), in so far as the reform of the Staff Regulations of Officials of the European Union and the conditions of Employment of Other Servants of the European Union introduces dramatic and savage cuts to the right to annual leave for officials and other servants serving in a third country. The applicants claim that the contested regulation does not take into account the specific situation of those officials and servants.

2. Second plea in law, alleging an infringement of Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedom ('the ECHR') and Articles 7 and 31(2) of the Charter, in so far as the reform of the Staff Regulations and the Conditions of Employment of Other Servants does not respect the applicants' private and family life, since their right to annual leave has been cut by almost one half, and that reduction unduly obstructs their private and family life.

3. Third plea in law, alleging breach of the principle of proportionality.

4. Fourth plea in law, alleging breach of the principle of the protection of legitimate expectations in that the advantages related to serving in a third country — which led to the choice of the applicants — have suddenly disappeared with the reform of Annex X to the Staff Regulations.

5. Fifth plea in law, alleging infringement of Article 10 of the Staff Regulations and Articles 12, 27 and 28 of the Charter and Article 11 of the ECHR on account of the lack of information, consultation and cooperation during the procedure which led to the reform of Annex X to the Staff Regulations.

6. Sixth plea in law, alleging a breach of the principles of sound legislation and, in particular, the duty of thoroughness and the duty to state reasons, both on account of the lack of information and proper consultation of the Staff Regulations Committee and the unions during the procedure which led to the reform of Annex X to the Staff Rules and by the failure to state the reasons for the decisions relating to that annex.

Action brought on 10 January 2014 — Electrabel and Dunamenti Erőmű v Commission

(Case T-40/14)

(2014/C 112/58)

Language of the case: English

Parties

Applicants: Electrabel (Brussels, Belgium) and Dunamenti Erőmű Zrt. (Százhalombatta, Hungary) (represented by: J. Philippe, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Declare the action admissible;

— Find that the European Commission has incurred non-contractual liability for the unlawful adoption of decision 2009/609/EC of 4 June 2008 on State aid C 41/2005 (OJ 2009 L 225, p. 53) (the 'PPA decision');

— Order the Commission to fully compensate jointly to the applicants the losses incurred by them that flow from the wrongful early termination of the power purchase agreement ('PPA') dated 10 October 1995 between Magyar Villamos Művek ('MVM'), the state-owned electricity wholesaler, and Dunamenti, a power generator, in application of decision 2009/609/EC of 4 June 2008 on State aid C 41/2005, and which amount to a minimum of EUR 250 million, such amount to be updated and amended in view of future data to become available;

— Order interest to be paid on the above compensation from the date of the judgment establishing the obligation to pay damages in this case at a rate of 8 % per year, or at such a rate as the Court might fix in the exercise of its discretion; and

— Order the defendant to pay the costs of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the PPA decision is manifestly unlawful. The applicants contend that the PPA decision (which is currently being appealed before the General Court — case T-179/09) is vitiated by a large number of grave errors that are incompatible with the normal conduct of an institution in charge of ensuring the application of competition rules and should thus give rise to liability on part of the EU, as:

   — the data included in the PPA decision clearly demonstrate that the PPA did not confer any economic advantage;

   — the PPA formed part of Dunamenti's privatisation package and pre-dated it, and was thus valued in the price paid by Electrabel but the Commission refused to take it into account, thereby manifestly infringing EU law;

   — the recovery order of the PPA decision is so deeply vitiated that a calculation made by well-known economists found, as an outcome, a negative aid, which means no aid.

   The applicants submit that such gross mistakes cannot be explained by the *prima facie* complexity of the case or by the objective constraints to which the Commission is subject when carrying out State aid control. Rather, these mistakes are to a large extent due to the Commission's refusal to assess the PPA individually and constitute clear evidence of a serious failure to observe the limits imposed on the discretion of the Commission.

2. Second plea in law, alleging that actual damage has been suffered by the applicants as a result of the early termination of the PPA. Due to the unlawful conduct of the Commission, the PPA was terminated before the end of its contractual term. The applicants submit that, as a result of this early termination, they have incurred very significant losses and that such damage, which cannot be precisely quantified at this stage, exceeds €250 million.

3. Third plea in law, alleging that there is a direct causal link between the Commission's unlawful conduct and the damage incurred by the applicants. The applicants contend that if the Commission's conduct had been compliant with EU law, there would be no early termination of the PPA, thus the damage arising for the applicants from the wrongful PPA decision would have been avoided.

Action brought on 17 January 2014 — Zentralverband des Deutschen Bäckerhandwerks v Commission

(Case T-49/14)

(2014/C 112/59)

Language of the case: German

Parties

Applicant: Zentralverband des Deutschen Bäckerhandwerks e.V. (Berlin, Germany) (represented by: I. Jung, M. Teworte-Vey, A. Renvert and J. Saatkamp, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Implementing Decision of 14 November 2013 concerning the rejection of a request to cancel a name entered in the register of protected designations of origin and protected geographical indications pursuant to Regulation (EU) No 1151/2012 of the European Parliament and of the Council (Kołocz śląski/kołacz śląski (PGI)) (notified under document C(2013) 7626).

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 an incorrect legal basis

   — The applicant claims that the defendant based the contested decision, unlawfully, on the new version of Regulation (EU) 1151/2012 ([1]) applicable when the decision was adopted rather than on the older version Regulation (EC) No 510/2006 ([2]) applicable at the time of the applicant's request. The defendant thereby infringed the principle expressed by the maxim '*tempus regit actum*'.

   — The applicant also argues that the request to cancel the entry is admissible and well founded under Regulation No 510/2006. It states in this context inter alia that there are two reasons for the cancellation (the indication at issue is a generic name within the meaning of Article 3(1) of Regulation No 510/2006; the geographical area Silesia is incorrectly defined in the specification of the registration) within the meaning of Article 12(2) of Regulation No 510/2006 and that a divergent interpretation and application of that provision would impinge upon the fundamental rights of bakery businesses in the Federal Republic.

2. Second plea in law, alleging infringement of Regulation No 1151/2012

— The applicant claims that the request would even be admissible and well founded were it to be assessed on the basis of Regulation No 1151/2012.

([1]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1).

([2]) Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).

Action brought on 24 January 2014 — Bredenkamp and others v Council and Commission

(Case T-66/14)

(2014/C 112/60)

Language of the case: English

Parties

Applicants: John Arnold Bredenkamp (Harare, Zimbabwe); Echo Delta (Holdings) PCC Ltd (Castletown, Ile de Man); Scottlee Holdings (Private) Ltd (Harare); and Fodya (Private) Ltd (Harare) (represented by: P. Moser, QC (Queen's Counsel) and G. Martin, Solicitor)

Defendants: European Commission and Council of the European Union

Form of order sought

The applicants claim that the Court should:

— Adopt a measure of organisation of procedure to order the defendants to produce all information or evidence, which may be in the possession of those institutions concerning the listing of the applicants;

— Order the Council and/or the Commission to pay the applicants damages for non-material and material losses suffered due to the unlawful imposition of EU sanctions on the applicants by adding (and then maintaining until 2012) the applicants' names in the Annex to Council Regulation (EC) No 314/2004 by, respectively: Council Common Position 2009/68/CFSP and Commission Regulation (EC) No 77/2009; Council Decision 2010/92/CFSP and Commission Regulation (EU) No 173/2010, and Council Decision 2011/101/CFSP and Commission Regulation (EU) No 174/2011;

— Order that compound interest at the rate of Euribor + 2 % (or such other interest rate as may be ordered) is to be paid on the amount payable from the defendants to the applicants as from the date of the judgment;

— Order the defendants to pay the applicants' costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the acts in question lacked any proper legal basis, being promulgated on the basis of Articles 60 and 301 EC only, which concern exclusively provisions vis-à-vis third countries, not private individuals and companies.

2. Second plea in law, alleging that the acts in question disclosed manifest errors of fact in failing to show any strong ties to the Government of Zimbabwe or financial or other support for the regime, thereby failing to satisfy the defendants' burden of proof and resulting in an unlawful decision making process.

3. Third plea in law, alleging that the acts in question violated essential procedural requirements by failing to give any or sufficient reasons, and failing to give the applicants the opportunity to be heard or make exculpatory submissions.

4. Fourth plea in law, alleging that the acts in question violated fundamental principles of EU law as also enshrined in Article 1 of the First Additional Protocol to the European Convention on Human Rights (ECHR), by unlawfully restricting the Applicants' rights to their own property.

Action brought on 1 February 2014 — Viraj Profiles v Council

(Case T-67/14)

(2014/C 112/61)

Language of the case: English

Parties

Applicant: Viraj Profiles Ltd (Maharashtra, India) (represented by: V. Akritidis and Y. Melin, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1106/2013 of 5 November 2013 (OJ L 298, p. 1) imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain stainless steel wires originating in India, as far as it applies to Viraj Profiles Limited;

— Order the Council, and any intervener who may be allowed to support the Council in the course of the proceedings, to bear the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the cost of production calculated in the Contested Regulation has been adjusted in a way that is manifestly erroneous, in breach of Article 2(1), (3), (4), (5), (6), (11) and (12) of the basic regulation. The EU institutions have applied an upward adjustment under a methodology which when followed yields an adjustment lower than the one disclosed by the Commission. The adjustment also includes items that should not be included in the cost of production of the Applicant. The dumping margin calculated on the basis of this erroneous methodology breaches Article 2(11) and (12) of the basic Regulation.

2. Second plea in law, alleging that the finding that the injury suffered by the Union industry is caused by Indian imports is manifestly erroneous, in that it does not consider the impact of Chinese imports, which were the main source of injury in the period considered and broke the causal link between dumped Indian imports and the injury, and the EU institutions performed no non-attribution analysis, in breach of Article 3(6) and (7) of the basic Regulation.

3. Third plea in law, alleging that the Commission failed to examine the accuracy and adequacy of the evidence on causation provided in the complaint justifying the initiation of the investigation in breach of Articles 5(2), (3), (7) and 9 (5) of the basic Regulation.

Action brought on 27 January 2014 — UAB MELT WATER v OHIM (MELT WATER Original)

(Case T-69/14)

(2014/C 112/62)

Language in which the application was lodged: Lithuanian

Parties

Applicant: Research and Production Company MELT WATER UAB (Klaipėda, Lithuania) (represented by V. Viešūnaitė, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the Fifth Board of Appeal of OHIM of 26 November 2013 in Case R 494/2013-5 and order OHIM to register, as a Community trade mark, the mark 'MELT WATER Original' in respect of which the applicant, Research and Production Company MELT WATER UAB, has sought registration (application No 01 078 2068);

— award costs in favour of the applicant, Research and Production Company MELT WATER UAB;

— order the defendant, OHIM, to produce the file concerning the action relating to that application for registration of a Community trade mark (application No 010 782 068).

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark in respect of which registration is sought: a light-blue figurative mark containing the word elements 'MELT WATER Original', for goods in Class 32 — application No 010 782 068 for registration of a Community trade mark.

Decision of the Examiner: application rejected.

Decision of the Board of Appeal: appeal dismissed.

Pleas in law: Article 7(1)(c) and 7(1)(b) of Council Regulation (EC) No 207/2009, together with the related case-law of the European Union Courts.

Action brought on 27 January 2014 — UAB MELT WATER v *OHIM (Form of a bottle)*

(Case T-70/14)

(2014/C 112/63)

Language in which the application was lodged: Lithuanian

Parties

Applicant: Research and Production Company MELT WATER UAB (Klaipėda, Lithuania) (represented by V. Viešūnaitė, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— set aside the decision of the Fifth Board of Appeal of OHIM of 26 November 2013 in Case R 481/2013-5 and order OHIM to register, as a Community trade mark, the mark consisting of the form of a bottle in respect of which the applicant, Research and Production Company MELT WATER UAB, has sought registration (application No 010 751 584);

— award costs in favour of the applicant, Research and Production Company MELT WATER UAB;

— order the defendant, OHIM, to produce the file concerning the action relating to that application for registration of a Community trade mark (application No 010 751 584).

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant.

Community trade mark in respect of which registration is sought: a three-dimensional mark consisting of the form of a bottle, for goods in Class 32 — application No 010 751 584 for registration of a Community trade mark.

Decision of the Examiner: application rejected.

Decision of the Board of Appeal: appeal dismissed.

Pleas in law: Articles 4 and 7(1)(b) of Council Regulation (EC) No 207/2009, together with the case-law of the European Union Courts.

Action brought on 4 February 2014 — Copernicus-Trademarks v OHIM — Maquet (LUCEO)

(Case T-82/14)

(2014/C 112/64)

Language in which the application was lodged: German

Parties

Applicant: Copernicus-Trademarks Ltd (Borehamwood, United Kingdom) (represented by: F. Henkel, lawyer)

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

Other party to the proceedings before the Board of Appeal: Maquet GmbH & Co. KG (Rastatt, Germany)

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 November 2013 in Case R 2292/2012-4 and reject the application for a declaration of invalidity of the Community trade mark LUCEO, No 8 554 974;

In the alternative, annul the contested decision and refer the case back to the Board of Appeal;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: the word mark LUCEO for goods in Classes, 10, 12 and 28 — Community trade mark No 8 554 974

Proprietor of the Community trade mark: the applicant

Applicant for the declaration of invalidity of the Community trade mark: Maquet GmbH & Co. KG

Grounds for the application for a declaration of invalidity: Article 52(1)(b) of Regulation No 207/2009

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

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law:

— Infringement of the second sentence of Article 75 of Regulation No 207/2009

— Infringement of Article 74 of Regulation No 207/2009

— Infringement of Article 52(1)(b) of Regulation No 207/2009

Action brought on 4 February 2014 — LTJ Diffusion v OHIM — Arthur et Aston (ARTHUR & ASTON).

(Case T-83/14)

(2014/C 112/65)

Language in which the application was lodged: French

Parties

Applicant: LTJ Diffusion (Colombes, France) (represented by: S. Lederman, lawyer)

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

Other party to the proceedings before the Board of Appeal: Arthur et Aston SAS (Giberville, France)

Form of order sought

The applicant claims that the General Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market of 2 December 2013 in Case R 1963/2012-1 in so far as it ruled that the use of the earlier mark 'ARTHUR' No 17731 did not comply with the provisions of Article 15(1)(a) of Regulation No 207/2009;

— if the Court, following its case-law (judgment of 4 June 2013, Case T-514/11, 'DECATHLON'), finds that it has no power to rule on the merits of the opposition filed by the company LTJ DIFFUSION on 14 April 2011 since the Board of Appeal has not yet adopted a position, it is also asked the following: to refer the case to the competent formation of the Court for a ruling to be made on the merits of the opposition filed by the company LTJ DIFFUSION on 14 April 2011 against the application for registration of the Community trade mark No 9509911, relating to the word sign 'ARTHUR & ASTON', to designate certain goods in Classes 3, 9, 14 and 25 and specifically '*footwear, boots and shoes*'.

Pleas in law and main arguments

Applicant for a Community trade mark: Arthur et Aston SAS

Community trade mark concerned: Word mark 'ARTHUR & ASTON' for goods in Classes 3, 9, 14 and 25 (Community trade mark application No 9 509 911)

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

Mark or sign cited in opposition: National semi-figurative trade mark containing the word element 'Arthur' for goods in Class 25.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 15(1)(a) of Regulation No 207/2009 Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 12 February 2014 — Tecalan v OHIM (TECALAN)

(Case T-100/14)

(2014/C 112/66)

Language in which the application was lodged: German

Parties

Applicant: Tecalan GmbH (Grünberg, Germany) (represented by: S. Holthaus, lawyer)

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

Other party to the proceedings before the Board of Appeal: Ensinger GmbH (Nufringen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 December 2013 in Case R 2308/2012-1;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Tecalan GmbH

Community trade mark concerned: Wordmark TECALAN for goods in Class 17 (Community trade mark registration No 6 203 285)

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

Mark or sign cited in opposition: Word mark TECADUR for goods in Class 17

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 10 February 2014 — British Aggregates v Commission

(Case T-101/14)

(2014/C 112/67)

Language of the case: English

Parties

Applicant: British Aggregates Association (Lanark, United Kingdom) (represented by: L. Van den Hende, lawyer, and L. Geary, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Order the annulment pursuant to Article 263 TFEU of the Commission Decision of 31 July 2013 C(2013) 4901 final published in the Official Journal of the European Union on 28 November 2013 in Case SA.34775 (ex N863/2001) — Aggregates Levy;

— Order that the defendant pay the applicant's costs in these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has made a manifest error of assessment in deciding that three exemptions under the Finance Act 2001 do not result in selectivity and therefore do not result in State aid under Article 107(1) TFEU.

2. Second plea in law, alleging that the Commission has failed to state reasons for the contested decision as required by Article 296 TFEU because the Commission has not explained why the different treatment of similar situations does not constitute State aid. Further, the reasoning put forward by the Commission is contradictory on the face of the contested decision.

3. Third plea in law, alleging that the Commission has infringed its duty to initiate the formal investigation procedure in accordance with Article 108(3) TFEU, as this is not a case where the Commission can reach a firm view that a measure does not result in aid, without necessitating a detailed examination of the matter.

Action brought on 17 February 2014 — Deutsche Post AG v OHIM

(Case T-102/14)

(2014/C 112/68)

Language in which the application was lodged: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: K. Hamacher and C. Giersdorf, lawyers)

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

Other party to the proceedings before the Board of Appeal: PostNL Holding BV (Den Haag, Netherlands)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 December 2013 in Case R 2108/2012 1;

— order the defendant and, as the case may be, the other party to the proceedings, to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Deutsche Post AG

Community trade mark concerned: Word mark 'TPG POST' for goods and services in Classes 6, 9, 16, 20, 35, 38 and 39 (Community trade mark registration No 2 920 916)

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

Mark or sign cited in opposition: National and Community word marks 'DP', 'POST' and 'Deutsche Post' for goods and services in Classes 9, 12, 14, 16, 25, 28, 35, 36, 38, 39 and 42

Decision of the Opposition Division: Opposition rejected

Decision of the Board of Appeal: Appeal dismissed

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

Action brought on 17 February 2014 — Frucona Košice v Commission

(Case T-103/14)

(2014/C 112/69)

Language of the case: English

Parties

Applicant: Frucona Košice a.s. (Košice, Slovakia) (represented by: K. Lasok, QC, B. Hartnett, Barrister, O. Geiss, lawyer, and J. Holmes, Barrister)

Defendant: European Commission

Form of order sought

The applicant claim that the Court should:

— Annul the Commission decision C (2013) 6261 dated 16 October 2013 on State Aid No SA.18211 (C 25/2005) (ex NN 21/2005) addressed to the Slovak Republic; and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision was adopted in breach of the rights of defence.

2. Second plea in law, alleging that the Commission erred in law in recital 83 of the contested decision.

3. Third plea in law, alleging that the Commission erred in fact and law in concluding that it would have been more advantageous for the Slovak tax authorities to initiate a bankruptcy procedure (recitals 88-119 of the contested decision).

4. Fourth plea in law, alleging that the Commission erred in concluding that the tax execution procedure would have led to a higher return than under the arrangement procedure.

Action brought on 12 February 2014 — TrekStor v OHIM — Scanlab (iDrive)

(Case T-105/14)

(2014/C 112/70)

Language in which the application was lodged: German

Parties

Applicant: TrekStor Ltd (Hong Kong, Hong Kong) (represented by: M. Alber, lawyer)

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

Other party to the proceedings before the Board of Appeal: Scanlab AG (Puchheim, Germany)

Form of order sought

The applicant claims that the Court should:

— Alter the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 December 2013 in Case R 2330/2012-1 to the effect that the mark 'iDrive' is allowed to proceed to registration in its entirety and that the opposing party's opposition is rejected;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'iDrive' for goods in Class 9 (Community trade mark application No 10 267 573)

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

Mark or sign cited in opposition: the national word mark 'IDRIVE' for goods and services in Classes 9 and 42

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(1)(b) in conjunction with Article [42](5) of Regulation No 207/2009

Action brought on 17 February 2014 — Unitec Bio v Council

(Case T-111/14)

(2014/C 112/71)

Language of the case: English

Parties

Applicant: Unitec Bio SA (Buenos Aires, Argentina) (represented by: J.-F. Bellis and R. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 17 February 2014 — Molinos Río de la Plata v Council

(Case T-112/14)

(2014/C 112/72)

Language of the case: English

Parties

Applicant: Molinos Río de la Plata SA (Buenos Aires, Argentine) (represented by: J.-F. Bellis and R. Luff, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 17 February 2014 — Oleaginosa Moreno Hermanos v Council

(Case T-113/14)

(2014/C 112/73)

Language of the case: English

Parties

Applicant: Oleaginosa Moreno Hermanos SACIFI y A (Bahia Blanca, Argentina) (represented by: J.-F. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 17 February 2014 — Vicentin v Council

(Case T-114/14)

(2014/C 112/74)

Language of the case: English

Parties

Applicant: Vicentin SAIC (Avellaneda, Argentina) (represented by: J.-F. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation ([1]).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

3. Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

(1) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 17 February 2014 — Aceitera General Deheza v Council

(Case T-115/14)

(2014/C 112/75)

Language of the case: English

Parties

Applicant: Aceitera General Deheza SA (General Deheza, Argentina) (represented by: J.-F. Bellis and R. Luff, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it concerns the applicant; and

— Order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Institutions have committed a manifest error in the appreciation of the facts by concluding that there was a distortion of the prices of soya beans and soybean oil justifying the application of the second paragraph of Article 2(5) of the Basic Anti-dumping Regulation (1).

2. Second plea in law, alleging that the second paragraph of Article 2(5) of the Basic Antidumping Regulation, as construed by the Institutions in the present case, may not be applied to imports from a WTO member as it is inconsistent with the WTO Anti-dumping Agreement.

Third plea in law, alleging that the injury assessment fails to take into consideration factors that break the causal link between the alleged injury and the allegedly dumped imports in violation of Article 3(7) of the Basic-Anti-dumping Regulation.

(1) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51)

Action brought on 18 February 2014 — PT Ciliandra Perkasa v Council

(Case T-120/14)

(2014/C 112/76)

Language of the case: English

Parties

Applicant: PT Ciliandra Perkasa (West Jakarta, Indonesia) (represented by: F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it imposes an anti-dumping duty on the applicant; and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council and the Commission (the 'Institutions') committed a manifest error of assessment in finding that the applicant's Crude Palm Oil ('CPO') purchase prices are distorted. More specifically, the Institutions failed to take into consideration that the applicant is a fully vertically integrated biodiesel producer and that, therefore, any alleged effect of the Differential Export Tax ('DET') system does not apply to it. In addition, the Institutions committed a manifest error of assessment in (1) not finding that the applicant and its related CPO suppliers constitute a single legal entity for all practical and even legal purposes and (2) finding that the applicant's CPO purchase prices from related companies were not at arm's length.

2. Second plea in law, alleging that the WTO Anti-Dumping Agreement does not allow to adjust costs for the simple reason that these are lower than in other markets or are 'distorted' due to government intervention. Article 2 (5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; hereafter referred to as 'the basic Regulation') should therefore be ruled inapplicable insofar as it provides for such a possibility to adjust costs.

3. Third plea in law, alleging that the adjustment to the costs of CPO in the present case constitutes a violation of Article 2 (5) of the basic Regulation. More specifically, the applicant submits the following claims:

   — The necessary evidence on the basis of which it was concluded that the CPO prices on the Indonesian market are distorted is missing and the Institutions committed a manifest error of assessment in finding that CPO prices on the Indonesian market are distorted;

   — By using the reference export price ('HPE') to adjust the costs, the Institutions did not adjust the costs on 'a reasonable basis' as mandated by Article 2(5) of the basic Regulation and/or on the basis of '*sources which are unaffected by such distortions*'; and

   — Article 2(5) of the basic Regulation does not allow to adjust costs in situations in which prices are simply and allegedly 'low'.

4. Fourth plea in law, alleging that in determining the reasonable profit margin, the Council did not comply with the legal obligation contained in Article 2(6)(c) of the basic Regulation. This Article requires that the amount of reasonable profit cannot exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. Fifth plea in law, alleging that the Institutions have failed to consider information and arguments submitted by the applicant in the course of the investigation. By doing so, they have not only breached their obligation of due diligence and proper administration by not carefully and impartially examining all relevant evidence before them but also failed to comply with the obligation contained in Article 20 (5) of the basic Regulation as well as with the obligation to provide reasons as mandated by Article 253 TEC (Article 296 TFEU).

Action brought on 18 February 2014 — PT Pelita Agung Agrindustri v Council

(Case T-121/14)

(2014/C 112/77)

Language of the case: English

Parties

Applicant: PT Pelita Agung Agrindustri (Medan, Indonesia) (represented by: F. Graafsma and J. Cornelis, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia (OJ 2013 L 315, p. 2), insofar as it imposes and anti-dumping duty on the applicant; and

— Order the defendant to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the WTO Anti-Dumping Agreement does not allow to adjust costs for the simple reason that these are lower than in other markets or are 'distorted' due to government intervention. Article 2(5) of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51; hereafter referred to as 'the basic Regulation') should therefore be ruled inapplicable insofar as it provides for such a possibility to adjust costs.

2. Second plea in law, alleging that the adjustment to the costs of Crude Palm Oil (CPO) in the present case constitutes a violation of Article 2 (5) of the basic Regulation. More specifically, the applicant submits the following claims:

   — The necessary evidence on the basis of which it was concluded that the CPO prices on the Indonesian market are distorted is missing and the Council and the European Commission (hereafter 'the Institutions') committed a manifest error of assessment in finding that CPO prices on the Indonesian market are distorted;

   — By using the reference export price ('HPE') to adjust the costs, the Institutions did not adjust the costs on 'a reasonable basis' as mandated by Article 2 (5) of the basic Regulation and/or on the basis of '*sources which are unaffected by such distortions*'; and

   — Article 2(5) of the basic Regulation does not allow to adjust costs in situations in which prices are simply and allegedly 'low'.

3. Third plea in law, alleging that the Institutions committed a manifest error of assessment in finding that the applicant's CPO purchase prices from related parties are distorted. More specifically, the Institutions committed a manifest error of assessment in finding that the applicant's CPO purchase prices from related companies were not at arm's length.

4. Fourth plea in law, alleging that in determining the reasonable profit margin, the Council did not comply with the legal obligation contained in Article 2(6)(c) of the basic Regulation. This Article requires that the amount of reasonable profit cannot exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. Fifth plea in law, alleging that the Institutions, by refusing to make an appropriate adjustment on account of a price premium associated with the certification of compliance with RED, have manifestly misstated the facts and violated Articles 3 (2) and 3 (3) of the basic Regulation because the applicant's export prices were not objectively compared with the Union industry's target price. In addition, by refusing to make the necessary adjustment for the RED certification, the Institutions impermissibly discriminated against the applicant as compared to other Indonesian producers.

6. Sixth plea in law, alleging that the Institutions breached Article 3(7) of the basic Regulation and committed a manifest error of assessment in finding that Double Counting Regulations did not contribute to the injury suffered by the Union industry.

7. Seventh plea in law, alleging that the Institutions have failed to consider information and arguments submitted by the applicant in the course of the investigation. By doing so, they have not only breached their obligation of due diligence and proper administration by not carefully and impartially examining all relevant evidence before them but also failed to comply with the obligation contained in Article 20 (5) of the basic Regulation as well as with the obligation to provide reasons as mandated by Article 296 TFEU.

Action brought on 21 February 2014 — Netherlands v Commission

(Case T-126/14)

(2014/C 112/78)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: M. Bulterman and J. Langer, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— Primarily, annul Article 1 of the contested decision and the annex thereto, in so far as that provision and annex relate to interest, in the amount of EUR 4 703 231,78, which, it is alleged, the Netherlands wrongly failed to calculate in respect of a number of claims relating to the late payment of additional levies and unlawfully granted export refunds;

— In the alternative, annul Article 1 of the contested decision and the annex thereto, in so far as that provision and annex relate to interest, in the amount of EUR 3 208 935,04, which, it is alleged, the Netherlands wrongly failed to calculate in respect of a number of claims relating to the late payment of additional levies;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The action seeks partial annulment of Commission Implementing Decision 2013/763/EU of 12 December 2013 on excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2013 L 338, p. 81).

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

1. First plea in law, alleging infringement of the principle that reasons must be given, by reason of the lack of coherent and comprehensible reasoning for the contested decision.

2. Second plea in law, alleging breach of Article 13(2) TEU by reason of the imposition of an adjustment in relation to interest rates without indication of a basis under European Union law for doing so, and/or misapplication of the principle of equivalence by reason of the assumption that the Netherlands, at the time of the relevant facts, had charged interest in connection with comparable domestic claims.

3. Third plea in law, alleging infringement of the principle of care, in conjunction with Article 8(2) of Regulation (EEC) No 729/70 ([1]) and Article 5(2) of Regulation (EEC) No 595/91, ([2]) by reason of the failure to take a decision, prior to 16 October 2006, on outstanding claims.

([1]) Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (OJ, English Special Edition 1970(I), p. 218).

([2]) Council Regulation (EEC) No 595/91 of 4 March 1991 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Regulation (EEC) No 283/72 (OJ 1991 L 67, p. 11).

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